

ITEM 6
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

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

Health Fee Elimination
Fiscal Years 2001-2002, 2002-2003
05-4206-I-03

Long Beach Community College District, Claimant

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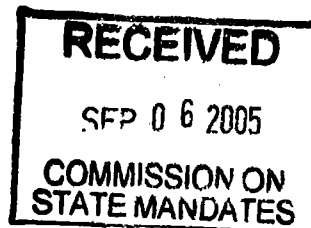
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SixTen and Associates

Mandate Reimbursement Services

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September 1, 2005

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

RE: Health Fee Elimination
Fiscal Years: 2001-02 through 2002-03
Incorrect Reduction Claim

Dear Ms. Higashi:

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

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

Irma Ramos, Administrative Dean
Human Resources
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

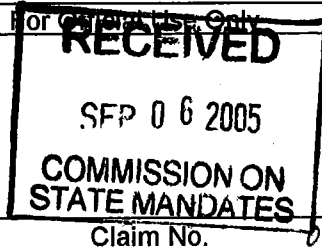
Thank-you.

Sincerely,

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

Keith B. Petersen

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (12/89)



INCORRECT REDUCTION CLAIM FORM

Local Agency or School District Submitting Claim

LONG BEACH COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

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Address

Irma Ramos, Administrative Dean
Human Resources
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Representative Organization to be Notified

Telephone Number

Robert Miyashiro, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

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E-mail: robertm@SSCal.com

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to section 17561 of the Government Code. This incorrect reduction claim is filed pursuant to section 17561(b) of the Government Code.

CLAIM IDENTIFICATION: Specify Statute or Executive Order

HEALTH FEE ELIMINATION Chapter 1, Statutes of 1984, 2nd E.S. Education Code Section 76355
Chapter 1118, Statutes of 1987

<u>Fiscal Year</u>	<u>Amount of the Incorrect Reduction</u>
2001-2002	\$193,957
2002-2003	\$272,672
Total Amount	\$466,629

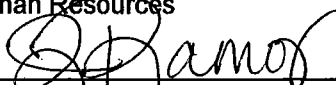
IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING AN INCORRECT REDUCTION CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Irma Ramos, Administrative Dean
Human Resources

Voice: 562-938-4095
Fax: 562-938-4364
E-Mail: iramos@lbcc.edu



Signature of Authorized Representative

Date

X

August 30, 2005

1 Claim Prepared by:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, California 92117
6 Voice: (858) 514-8605
7 Fax: (858) 514-8645

8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11 INCORRECT REDUCTION CLAIM OF:)
12) No. CSM _____
13)
14) Chapter 1, Statutes of 1984, 2nd E.S.
15) Chapter 1118, Statutes of 1987
16 LONG BEACH)
17 Community College District,) Education Code Section 76355
18)
19) Health Fee Elimination
20 Claimant.)
21) Annual Reimbursement Claims:
22)
23) Fiscal Year 2001-02
24) Fiscal Year 2002-03
25)
26 _____)
INCORRECT REDUCTION CLAIM FILING

27 PART I. AUTHORITY FOR THE CLAIM

28 The Commission on State Mandates has the authority pursuant to Government
29 Code Section 17551(d) to "... to hear and decide upon a claim by a local agency or
30 school district, filed on or after January 1, 1985, that the Controller has incorrectly
31 reduced payments to the local agency or school district pursuant to paragraph (2) of
32 subdivision (d) of Section 17561." Long Beach Community College District (hereafter
33 "district" or "claimant") is a school district as defined in Government Code Section

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

1 17519.¹ Title 2, CCR, Section 1185 (a), requires the claimant to file an incorrect
2 reduction claim with the Commission.

3 This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185 (b),
4 requires incorrect reduction claims to be filed no later than three years following the
5 date of the Controller's remittance advice notifying the claimant of a reduction. A
6 Controller's audit report dated April 27, 2005 has been issued, but no remittance
7 advices have been issued. The audit report constitutes a demand for repayment and
8 adjudication of the claim. On May 14, 2005, the Controller issued "results of review
9 letters" reporting the audit results and amounts due claimant, subject to payment when
10 appropriations are available, and constitutes a payment action.

11 There is no alternative dispute resolution process available from the Controller's
12 office. In response to an audit issued March 10, 2004, Foothill-De Anza Community
13 College attempted to utilize the informal audit review process established by the
14 Controller to resolve factual disputes. Foothill-De Anza was notified by the Controller's
15 legal counsel by letter of July 15, 2004 (attached as Exhibit "A"), that the Controller's
16 informal audit review process was not available for mandate audits and that the proper
17 forum was the Commission on State Mandates.

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

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

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

PART II. SUMMARY OF THE CLAIM

The Controller conducted a field audit of District's annual reimbursement claims for the District's actual costs of complying with the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and Chapter 1118, Statutes of 1987) for the period of July 1, 2000 through June 30, 2003. As a result of the audit, the Controller determined that \$466,629 of the claimed costs for were unallowable:

Fiscal <u>Year</u>	Amount <u>Claimed</u>	Audit <u>Adjustment</u>	SCO <u>Payments</u>	Amount Due <u><State> District</u>
2001-02	\$244,306	\$193,957	\$25,457	\$24,892
2002-03	<u>\$272,672</u>	<u>\$ 272,672</u>	<u>\$ 0</u>	<u>\$ 0</u>
Totals	\$516,978	\$466,629	\$25,457	\$24,892

Since the District has been paid \$25,457 for these claims, the audit report concludes that a remaining amount of \$24,892 should be paid to the District "contingent on available appropriations."

PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

The District has not filed any previous incorrect reduction claims for this mandate program. The District is not aware of any other incorrect reduction claims having been adjudicated on the specific issues or subject matter raised by this incorrect reduction claim.

/

quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

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

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

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

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

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

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

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

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

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

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

1 Section 72246, effective April 15, 1993.

2 2. Test Claim

3 On December 2, 1985, Rio Hondo Community College District filed a test claim
4 alleging that Chapter 1, Statutes of 1984, 2nd Extraordinary Session, by eliminating the
5 authority to levy a fee and by requiring a maintenance of effort, mandated additional
6 costs by mandating a new program or the higher level of service of an existing program
7 within the meaning of California Constitution Article XIII B, Section 6.

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

14 At a hearing on April 27, 1989, the Commission of State Mandates determined
15 that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to
16 apply to all community college districts which provided health services in fiscal year
17 1986-1987 and required them to maintain that level of health services in fiscal year

district.

(f) A district that begins charging a health fee may use funds for startup costs from other district funds and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

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

1 1987-1988 and each fiscal year thereafter.

2 3. Parameters and Guidelines

3 On August 27, 1987, the original parameters and guidelines were adopted. On
4 May 25, 1989, those parameters and guidelines were amended. A copy of the
5 parameters and guidelines, as amended on May 25, 1989, is attached as Exhibit "B."
6 So far as is relevant to the issues presented below, the parameters and guidelines
7 state:

8 "V. REIMBURSABLE COSTS

9 A. Scope of Mandate

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

13 VI. CLAIM PREPARATION

14 B... 3. Allowable Overhead Cost

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

18 VII. SUPPORTING DATA

19 For auditing purposes, all costs claimed must be traceable to
20 source documents and/or worksheets that show evidence of the
21 validity of such costs....

22 VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

23 Any offsetting savings the claimant experiences as a direct result
24 of this statute must be deducted from the costs claimed. In
25 addition, reimbursement for this mandate received from any

1 source, e.g., federal, state, etc., shall be identified and deducted
2 from this claim. This shall include the amount of \$7.50 per full-time
3 student per semester, \$5.00 per full-time student for summer
4 school, or \$5.00 per full-time student per quarter, as authorized by
5 Education Code section 72246(a). This shall also include
6 payments (fees) received from individuals other than students who
7 are not covered by Education Code Section 72246 for health
8 services. ...”

9 4. Claiming Instructions

10 The Controller has annually issued or revised claiming instructions for the
11 Health Fee Elimination mandate. A copy of the September 1997 revision of the
12 claiming instructions is attached as Exhibit “C.” The September 1997 claiming
13 instructions are believed to be, for the purposes and scope of this incorrect reduction
14 claim, substantially similar to the version extant at the time the claims which are the
15 subject of this Incorrect reduction claim were filed. However, since the Controller’s
16 claim forms and instructions have not been adopted as regulations, they have no force
17 of law, and, therefore, have no effect on the outcome of this incorrect reduction claim.

18 PART V. STATE CONTROLLER CLAIM ADJUDICATION

19 The Controller conducted an audit of District’s annual reimbursement claims for
20 Fiscal years 2001-02 and 2002-03. The audit concluded that only 10% of the
21 District’s costs, as claimed, are allowable. A copy of the April 27, 2005-audit report and
22 the District’s response is attached as Exhibit “D.”

23 VI. CLAIMANT’S RESPONSE TO THE STATE CONTROLLER

24 By letter dated February 4, 2005, the Controller transmitted a copy of its draft

1 audit report. By letter dated February 23, 2005, the District objected to the proposed
2 adjustments set forth in the draft audit report. A copy of District's letter of February 23,
3 2005 is attached as Exhibit "E." The Controller then issued its final audit report without
4 change to the adjustments as stated in the draft audit report.

5 **PART VII. STATEMENT OF THE ISSUES**

6 **Finding 1: Unallowable services and supplies costs**

7 The Controller asserts unallowable services and supplies direct costs totaling
8 \$17,894 for both fiscal years. This total amount comprises \$11,869 in "overclaimed"
9 athletic insurance costs and duplicated charges of \$6,025 for services and supplies for
10 both fiscal years.

11 Health Insurance Premium

12 The District pays two types of student insurance premiums. The basic and
13 catastrophic coverage for the general student population, and a separate premium
14 amount for intercollegiate athletes. The Controller's adjustment improperly disallows a
15 portion of the general population premium as somehow being related to intercollegiate
16 athletics. The audit report does not describe how the disallowance was calculated.
17 Regardless, the adjustment is inappropriate since student athletes are part of the
18 student population for purpose of the general student population insurance premium.
19 The insurance premiums for athletes pertains to coverage while participating in
20 intercollegiate sports, not while they are attending class or on campus in their capacity

1 a member of the general student population.

2 Services and Supplies

3 The District does not contest this adjustment.

4 **Finding 2 - Overstated indirect cost rates claimed**

5 The Controller asserts that the district overstated its indirect cost rates and costs
6 in the amount of \$139,093 for both fiscal years. This finding is based upon the
7 Controller's statement that "the district did not obtain federal approval for its IRCPs.
8 We calculated indirect cost rates using the methodology allowed by the SCO claiming
9 instructions." Contrary to the Controller's ministerial preferences, there is no
10 requirement in law that the district's indirect cost rate must be "federally" approved, and
11 further the Controller has never specified the federal agencies which have the authority
12 to approve indirect cost rates. Further, it should be noted that the Controller did not
13 determine that the District's rate was excessive or unreasonable.

14 CCFS-311

15 In fact, both the District's method and the Controller's method utilized the same
16 source document, the CCFS-311 annual financial and budget report required by the
17 state. The difference in the claimed and audited methods is in the determination of
18 which of those cost elements are direct costs and which are indirect costs. Indeed,
19 federally "approved" rates which the Controller will accept without further action, are
20 "negotiated" rates calculated by the district and submitted for approval, indicating that

1 the process is not an exact science, but a determination of the relevance and
2 reasonableness of the cost allocation assumptions made for the method used.

3 Regulatory Requirements

4 No particular indirect cost rate calculation is required by law. The parameters
5 and guidelines state that "Indirect costs *may be claimed* in the manner described by the
6 Controller in his claiming instructions." The district claimed these indirect costs "in the
7 manner" described by the Controller. The correct forms were used and the claimed
8 amounts were entered at the correct locations. Further, "may" is not "shall"; the
9 parameters and guidelines do not require that indirect costs be claimed in the manner
10 described by the Controller. In the audit report, the Controller asserts that "the specific
11 directions for the indirect cost rate calculation in the claiming instructions are an
12 extension of *Parameters and Guidelines*." It is not clear what the legal significance of
13 the concept of "extension" might be, regardless, the reference to the claiming
14 instructions in the parameters and guidelines does not change "may" into a "shall."
15 Since the Controller's claiming instructions were never adopted as law, or regulations
16 pursuant to the Administrative Procedure Act, the claiming instructions are merely a
17 statement of the ministerial interests of the Controller and not law.

18 Unreasonable or Excessive

19 Government Code Section 17561(d)(2) requires the Controller to pay claims,
20 provided that the Controller may audit the records of any school district to verify the
21 actual amount of the mandated costs, and may reduce any claim that the Controller

1 determines is excessive or unreasonable. The Controller is authorized to reduce a
2 claim only if it determines the claim to be excessive or unreasonable. Here, the District
3 has computed its ICRPs utilizing cost accounting principles from the Office of
4 Management and Budget Circular A-21, and the Controller has disallowed it without a
5 determination of whether the product of the District's calculation would, or would not, be
6 excessive, unreasonable, or inconsistent with cost accounting principles.

7 Neither State law nor the parameters and guidelines made compliance with the
8 Controller's claiming instructions a condition of reimbursement. The district has
9 followed the parameters and guidelines. The burden of proof is on the Controller to
10 prove that the product of District's calculation is unreasonable, not to recalculate the
11 rate according to its unenforceable ministerial preferences. Therefore, Controller
12 made no determination as to whether the method used by the District was reasonable,
13 but, merely substituted its FAM-29C method for the method reported by the District.
14 The substitution of the FAM-29C method is an arbitrary choice of the Controller, not a
15 "finding" enforceable either by fact or law.

16 **Finding 3: Understated authorized health service fees**

17 This finding is based on the Controller's recalculation of the student health
18 services fees which may have been "collectible" which was then compared to the
19 District's student health fee revenues actually received, resulting in a total adjustment
20 of \$217,409 for the two fiscal years.

1 Education Code Section 76355

2 Education Code Section 76355, subdivision (a), in relevant part, provides: "The
3 governing board of a district maintaining a community college *may require* community
4 college students to pay a fee . . . for health supervision and services . . ." There is no
5 requirement that community colleges levy these fees. The permissive nature of the
6 provision is further illustrated in subdivision (b) which states "*If, pursuant to this*
7 *Section, a fee is required, the governing board of the district shall decide the amount of*
8 *the fee, if any, that a part-time student is required to pay. The governing board may*
9 *decide whether the fee shall be mandatory or optional.*"

10 Parameters and Guidelines

11 This Controller states that the "*Parameters and Guidelines* requires that the
12 district deduct authorized health fees from claimed costs." The parameters and
13 guidelines do not state this but instead state:

14 "Any offsetting savings that the claimant experiences as a direct result of
15 this statute must be deducted from the costs claimed. In addition,
16 reimbursement for this mandate received from any source, e.g., federal, state,
17 etc., shall be identified and deducted from this claim. This shall include the
18 amount of [student fees] as authorized by Education Code Section 72246(a)³."

19 In order for the district to "experience" these "offsetting savings" the district must
20 actually have collected these fees. Student fees actually collected must be used to
21 offset costs, but not student fees that could have been collected and were not. The use

³ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

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

1 of the term “any offsetting savings” further illustrates the permissive nature of the fees.

2 Government Code Section 17514

3 The Controller relies upon Government Code Section 17514 for the conclusion
4 that “[t]o the extent community college districts can charge a fee, they are not required
5 to incur a cost.” Government Code Section 17514, as added by Chapter 1459, Statutes
6 of 1984, actually states:

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

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

16 Government Code Section 17556

17 The Controller relies upon Government Code Section 17556 for the conclusion
18 that “the COSM shall not find costs mandated by the State if the school district has the
19 authority to levy fees to pay for the mandated program or increased level of service.”

20 Government Code Section 17556 as last amended by Chapter 589/89 actually states:

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

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

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

8 Student Health Services Fee Amount

9 The Controller asserts that the district should have collected a student health
10 service fee each semester from non-exempt students in the amount of \$9 or \$12,
11 depending on the fiscal year and whether the student is enrolled full time or part time.
12 Districts receive notice of these fee amounts from the Chancellor of the California
13 Community Colleges. An example of one such notice is the letter dated March 5, 2001,
14 attached as Exhibit "F." While Education Code Section 76355 provides for an
15 increase in the student health service fee, it did not grant the Chancellor the authority
16 to establish mandatory fee amounts or mandatory fee increases. No state agency was
17 granted that authority by the Education Code, and no state agency has exercised its
18 rulemaking authority to establish mandatory fees amounts. It should be noted that the
19 Chancellor's letter properly states that increasing the amount of the fee is at the option
20 of the district, and that the Chancellor is not asserting that authority. Therefore, the
21 Controller cannot rely upon the Chancellor's notice as a basis to adjust the claim for

1 "collectible" student health services fees.

2 Fees Collected vs. Fees Collectible

3 This issue is one of student health fees revenue actually received, rather than
4 student health fees which might be collected. The Commission determined, as stated
5 in the parameters and guidelines that the student fees "experienced" (*collected*) would
6 reduce the amount subject to reimbursement. Student fees not collected are student
7 fees not "experienced" and as such should not reduce reimbursement. Further, the
8 amount 'collectible" will never equal actual revenues collected due to changes in
9 student's BOGG eligibility, bad debt accounts, and refunds.

10 Because districts are not required to collect a fee from students for student
11 health services, and if such a fee is collected, the amount is to be determined by the
12 District and not the Controller, the Controller's adjustment is without legal basis. What
13 claimants are required by the parameters and guidelines to do is to reduce the amount
14 of their claimed costs by the amount of student health services fee revenue actually
15 received. Therefore, student health fees are merely collectible, they are not
16 mandatory, and it is inappropriate to reduce claim amounts by revenues not received.

17 **Finding 4: Understated expenditures and offsetting reimbursements**

18 This adjustment is not material and is not disputed by the district.

19 **Statute of Limitations for Audit**

20 This issue is not a finding of the Controller. The District asserts that the first

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

1 year of the two claims audited, FY 2001-02, is beyond the statute of limitations for audit
2 when the Controller completed its audit on April 27, 2005. The District raised this issue
3 at the beginning of the audit and in its letter dated February 23, 2005 in response to the
4 draft audit report.

5 Chronology of Claim Action Dates

6	December 6, 2002	FY 2001-02 claim filed by the District (certified mail)
7	August 18, 2004	Entrance conference date.
8	December 31, 2004	FY 2001-02 statute of limitations for audit expires
9	April 27, 2005	Controller's final audit report issued

10 The District's fiscal year 2001-02 claim was mailed to the Controller on
11 December 6, 2002. According to Government Code Section 17558.5, this claim is
12 subject to audit no later than December 31, 2004. The audit was not completed by this
13 date. Therefore, the audit adjustments for Fiscal Year 2001-02 are barred by the
14 statute of limitations set forth in Government Code Section 17558.5.

15 In its final audit report, the Controller responded as follows: The claim was filed
16 in December 2002. The audit was initiated on August 18, 2004, which is prior to the
17 statutory deadline fo December 2004." Note that the Controller considers the audit
18 "initiated" on the date of the entrance conference. Thus, the Controller is thus
19 asserting that date when the audit was "initiated" is relevant to the period of limitations,
20 and not the date of the audit report. In any case, a review of the legislative history of
21 Government Code Section 17558.5 indicates that the matter of the audit "initiation" date

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1 is not relevant to any fiscal year claims which are the subject of this audit.

2 Statutory History

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

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

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

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

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

25 FY 2001-02 is subject to the two-year statute of limitations established by Chapter
26 945/95. FY 2001-02 was beyond audit when the audit report was issued. Since funds

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

1 were appropriated for the program for all the fiscal years which are the subject of the
2 audit, the alternative measurement date is not applicable, and the potential factual
3 issue of when the audit is initiated is not relevant. The FY 2001-02 claim is subject to
4 this statute, since the claim was filed in December 2002.

5 Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003
6 amended Section 17558.5 to state:

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

15 The FY 2002-03 claim is subject to this statute, since the claim was filed in
16 January 2004. However, the District does not allege a statute of limitations problem for
17 FY 2002-03. The amendment is pertinent since it indicates this is the first time that the
18 factual issue of the date the audit is “initiated” for mandate programs for which funds
19 are appropriated is introduced. Therefore, at the time the claim is filed, it is impossible
20 for the claimant to know when the statute of limitations will expire, which is contrary to
21 the purpose of a statute of limitations.

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

24 “(a) A reimbursement claim for actual costs filed by a local agency or school
25 district pursuant to this chapter is subject to the initiation of an audit by the

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

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

8 None of the fiscal period claims which are the subject of the audit are subject to
9 this amended version of Section 17558.5. The amendment is pertinent since it
10 indicates this is the first time that the Controller audits may be completed at a time
11 other than the stated period of limitations.

12 Initiation of An Audit

13 The audit report states that the Controller’s staff “initiated the audit” with the
14 entrance conference on August 18, 2004. Initiation of the audit is not relevant to the
15 annual claims which are the subject of this incorrect reduction claim. The words
16 “initiate an audit” are used only in the second sentence of Section 17558.5, that is, in a
17 situation when no funds are appropriated for the program for the fiscal year for which
18 the claim is made. Then, and only then, is the Controller authorized to “initiate an
19 audit” within two years from the date of initial payment. The claim at issue here were
20 not subject to the “no funds appropriated” provision, they were subject only to the first
21 sentence of the statute, i.e., they was only “subject to audit” through December 2004.
22 The words of the statute are quite clear and unambiguous: this claim is no longer
23 subject to audit after December 31, 2004. The unmistakable language of Section
24 17558.5 is confirmed by the later actions of the Legislature. Chapter 1128, Statutes of

1 2002, amended subdivision (a) of Government Code Section 17558.5 to change the
2 "subject to audit" language of the first sentence to "subject to the initiation of an audit."
3 Had the Legislature intended the former Section to mean "subject to the initiation of an
4 audit," there would have been no need to amend the statute to now say "subject to the
5 initiation of an audit."

6 The Controller did not complete the audit within the statutory period allowed for
7 the first fiscal year claim included in this audit. The date the audit was "initiated" is not
8 relevant, only the date the audit was completed as evidenced by the (final) Controller's
9 audit report. The audit findings are therefore void for the FY 2001-02 claim.

10 **PART VIII. RELIEF REQUESTED**

11 The District filed its annual reimbursement claims within the time limits
12 prescribed by the Government Code. The amounts claimed by the District for
13 reimbursement of the costs of implementing the program imposed by Chapter 1,
14 Statutes of 1984, 2nd E.S., Chapter 1118, Statutes of 1987, and Education Code
15 Section 76355 represent the actual costs incurred by the District to carry out this
16 program. These costs were properly claimed pursuant to the Commission's parameters
17 and guidelines. Reimbursement of these costs is required under Article XIII B, Section
18 6 of the California Constitution. The Controller denied reimbursement without any
19 basis in law or fact. The District has met its burden of going forward on this claim by
20 complying with the requirements of Section 1185, Title 2, California Code of
21 Regulations. Because the Controller has enforced and is seeking to enforce these

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

1 adjustments without benefit of statute or regulation, the burden of proof is now upon the
2 Controller to establish a legal basis for its actions.

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

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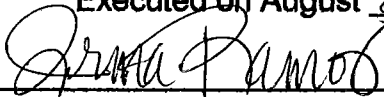
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PART IX. CERTIFICATION

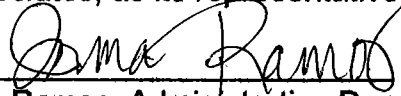
By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents are true and correct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

Executed on August 30, at Long Beach, California, by


Irma Ramos, Administrative Dean
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808
Voice: 562-938-4095
Fax: 562-938-4364
E-Mail: iramos@lbcc.edu

APPOINTMENT OF REPRESENTATIVE

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

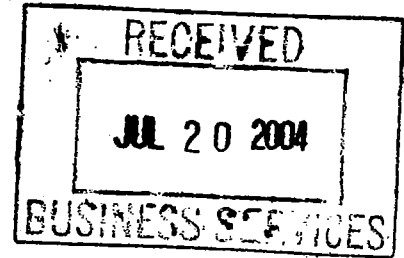

Irma Ramos, Administrative Dean
Long Beach Community College District

8-30-05
Date

Attachments:

Exhibit "A"	SCO Legal Counsel's Letter of June 15, 2004
Exhibit "B"	Parameters and Guidelines as amended May 25, 1989
Exhibit "C"	Controller's Claiming Instructions September 1997
Exhibit "D"	SCO Audit Report date April 27, 2004
Exhibit "E"	Claimant's Letter dated February 23, 2005
Exhibit "F"	Chancellor's Letter dated March 5, 2001

Exhibit A



STEVE WESTLY
California State Controller

July 15, 2004

Mike Brandy, Vice Chancellor
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos, CA 94022

Re: Foothill-De Anza Community College District Audit

Dear Mr. Brandy:

This is in response to your letter to me dated May 13, 2004, concerning the Controller's Audit of the Health Fee claim.

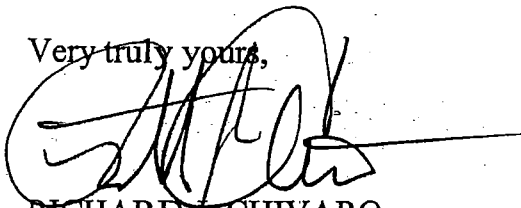
The Controller's informal audit review process was established to resolve factual disputes where no other forum for resolution, other than a judicial proceeding, is available.

The proper forum for resolving issues involving mandated cost programs is through the incorrect reduction process through the Commission on State Mandates. As such, this office will not be scheduling an informal conference for this matter.

However, in light of the concerns expressed in your letter concerning the auditors assigned and the validity of the findings, I am forwarding your letter to Vince Brown, Chief Operating Officer, for his review and response.

If you have any questions you may contact Mr. Vince Brown at (916) 445-2038.

Very truly yours,



RICHARD J. CHIVARO
Chief Counsel

RJC/st

cc: Vincent P. Brown, Chief Operating Officer, State Controller's Office
Jeff Brownfield, Chief, Division of Audits, State Controller's Office

Exhibit B

Adopted: 8/27/87
Amended: 5/25/89

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

I. SUMMARY OF MANDATE

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

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

II. COMMISSION ON STATE MANDATES' DECISION

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

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

III. ELIGIBLE CLAIMANTS

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

IV. PERIOD OF REIMBURSEMENT

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

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

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

V. REIMBURSABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

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

ACCIDENT REPORTS

APPOINTMENTS

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

ASSESSMENT, INTERVENTION & COUNSELING

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

EXAMINATIONS (Minor Illnesses)

- Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

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

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

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

INSURANCE

- On Campus Accident
- Voluntary
- Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE

- Inquiry/Interpretation
- Pap Smears

PHYSICALS

- Employees
- Students
- Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)

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

PARKING CARDS/ELEVATOR KEYS

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

REFERRALS TO OUTSIDE AGENCIES

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

TESTS

- Blood Pressure
- Hearing
- Tuberculosis
- Reading
- Information
- Vision
- Glucometer
- Urinalysis

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

MISCELLANEOUS

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

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

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

A. Description of Activity

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

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

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no

less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

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

and

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

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

Exhibit C

HEALTH FEE ELIMINATION

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

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

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

2. Eligible Claimants

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

3. Appropriations

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

4. Types of Claims

A. Reimbursement and Estimated Claims

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

B. Minimum Claim

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

5. Filing Deadline

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

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

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

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

6. Reimbursable Components

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

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

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

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

7. Reimbursement Limitations

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

8. Claiming Forms and Instructions

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

A. Form HFE- 2, Health Services

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

B. Form HFE-1.1, Claim Summary

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

C. Form HFE-1.0, Claim Summary

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

D. Form FAM-27, Claim for Payment

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

Illustration of Claim Forms

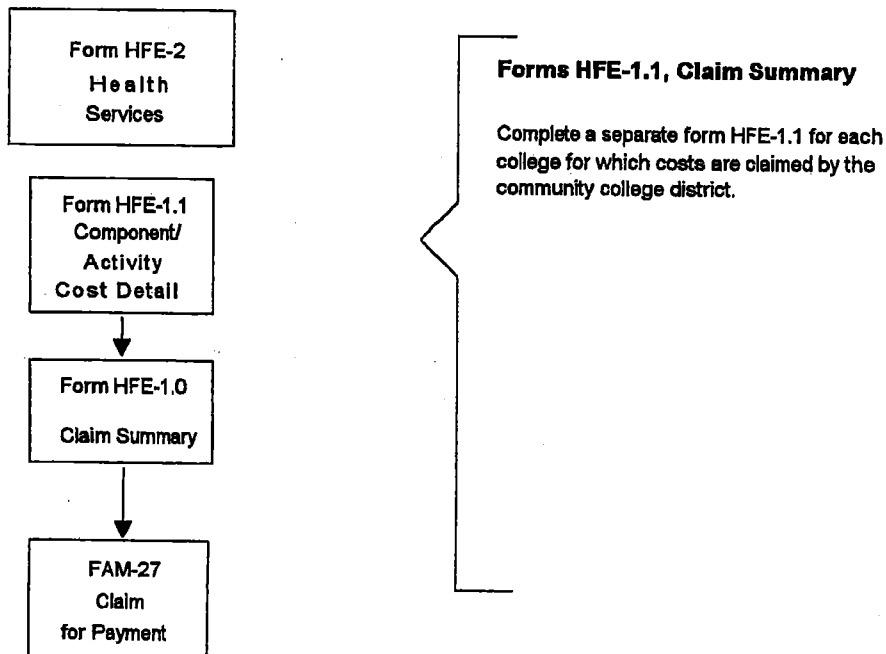


Exhibit D

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HUMAN RESOURCES

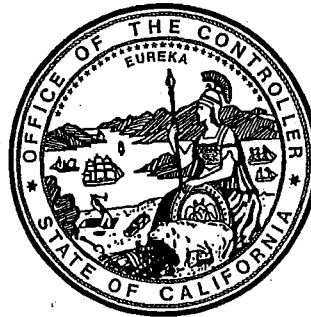
LONG BEACH COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2001, through June 30, 2003



STEVE WESTLY
California State Controller

April 2005



STEVE WESTLY
California State Controller

April 27, 2005

Jan Kehoe, Ed.D.
Superintendent-President
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Dear Dr. Kehoe:

The State Controller's Office audited the claims filed by Long Beach Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health service fees, and claimed unallowable costs. The State paid the district \$25,457. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at COSM's Web site at www.csm.ca.gov (Guidebook link), and obtain IRC forms by telephone at (916) 323-3562 or by e-mail at csminfo@csm.ca.gov.

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

Sincerely,

A handwritten signature in cursive script that reads "Vincent P. Brown".

VINCENT P. BROWN
Chief Operating Officer

VPB:JVB/ams

cc: Irma Ramos

Administrative Dean

Human Resources

Long Beach Community College District

Ed Monroe, Program Assistant

Fiscal Accountability Section

Chancellor's Office

California Community Colleges

Jeannie Oropeza, Program Budget Manager

Education Systems Unit

Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the claims filed by Long Beach Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003. The last day of fieldwork was October 14, 2004.

The district claimed \$516,978 for the mandated program. The audit disclosed that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health services fees, and claimed unallowable costs. The State paid the district \$25,457. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

Background

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

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

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

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

Parameters and Guidelines establishes state mandate and defines reimbursement criteria. COSM adopted *Parameters and Guidelines* on August 27, 1987, and amended it on May 25, 1989. In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for mandated programs, to assist school districts in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003.

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

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of *Government Code* Section 17558.5. We did not audit the district's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

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

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures, as recommended by *Government Auditing Standards*. However, the district declined our request.

Conclusion

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

For the audit period, Long Beach Community College District claimed \$516,978 for Health Fee Elimination Program costs. Our audit disclosed that \$50,349 is allowable and \$466,629 is unallowable.

For FY 2001-02, the State paid the district \$25,457. Our audit disclosed that \$50,349 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

For FY 2002-03, the State made no payment to the district. The audit disclosed that none of the costs claimed is allowable.

**Views of
Responsible
Official**

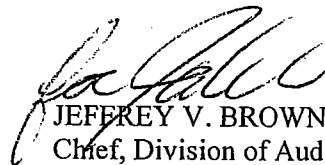
We issued a draft audit report on February 4, 2005. Irma Ramos, Administrative Dean, Human Resources, responded by letter dated February 23, 2005 (Attachment), disagreeing with the audit results. The final audit report includes the district's response.

Based on the district's response, Finding 1 reported in the draft report for \$9,222 has been removed from this final report. Consequently, Findings 1 through 5 in the draft report have been renumbered as Findings 1 through 4.

Finding 1 stated that pregnancy testing claimed during the audit period was not offered during the FY 1996-97 base year and, therefore, the costs were unallowable. The finding was supported by the district's "Fall 1991 LAC Health Services Semester Report" that stated pregnancy testing was "now" offered, among other services. Additional evidence was not available to support that pregnancy testing was not offered in the FY 1996-97 base year.

Restricted Use

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


JEFFREY V. BROWNFIELD
Chief, Division of Audits

**Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2003**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Salaries and benefits	\$ 318,568	\$ 318,568	\$ —	
Services and supplies	98,913	90,493	(8,420)	Findings 1, 4
Subtotal	417,481	409,061	(8,420)	
Indirect costs	149,291	75,424	(73,867)	Findings 1, 2, 4
Total health expenditures	566,772	484,485	(82,287)	
Less authorized health fees	(321,995)	(432,828)	(110,833)	Finding 3
Less offsetting savings/reimbursements	—	(837)	(837)	Finding 4
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Total costs	\$ 244,306	50,349	\$ (193,957)	
Less amount paid by the State		(25,457)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,892		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries and benefits	\$ 342,109	\$ 342,109	\$ —	
Services and supplies	96,417	87,780	(8,637)	Finding 1
Subtotal	438,526	429,889	(8,637)	
Indirect costs	148,836	77,522	(71,314)	Findings 1, 2
Total health expenditures	587,362	507,411	(79,951)	
Less authorized health fees	(313,843)	(531,252)	(217,409)	Finding 3
Less offsetting savings/reimbursements	(847)	(847)	—	
Total costs	272,672	(24,688)	(297,360)	
Adjustment to eliminate negative balance	—	24,688	24,688	
Net allowable costs	\$ 272,672	—	\$ 272,672	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ —		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>Summary: July 1, 2001, through June 30, 2003</u>				
Salaries and benefits	\$ 660,677	\$ 660,677	\$ —	
Services and supplies	195,330	178,273	(17,057)	Findings 1, 4
Subtotal	856,007	838,950	(17,057)	
Indirect costs	298,127	152,946	(145,181)	Findings 1, 2, 4
Total health expenditures	1,154,134	991,896	(162,238)	
Less authorized health fees	(635,838)	(964,080)	(328,242)	Finding 3
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Less offsetting savings/reimbursements	(847)	(1,684)	(837)	Finding 4
Total costs	516,978	25,661	(491,317)	
Adjustment to eliminate negative balance	—	24,688	24,688	
Net allowable costs	\$ 516,978	50,349	\$ (466,629)	
Less amount paid by the State		(25,457)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,892		

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Unallowable services
and supplies costs**

The district overclaimed services and supplies costs totaling \$17,894 during the audit period. The related unallowable indirect costs totaled \$6,241, based on claimed indirect cost rates.

The district overclaimed insurance premiums paid for student basic and catastrophic coverage by \$11,869, because it included unallowable premiums paid for athletic insurance. In addition, the district inadvertently claimed \$6,025 twice for services and supplies.

The following table summarizes the audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Student insurance premiums	\$ (5,857)	\$ (6,012)	\$ (11,869)
Costs claimed twice	(3,400)	(2,625)	(6,025)
Total direct costs	(9,257)	(8,637)	\$ (17,894)
Indirect cost rate claimed	× 35.76%	× 33.94%	
Related indirect costs	(3,310)	(2,931)	\$ (6,241)
Total direct costs (from above)	(9,257)	(8,637)	(17,894)
Audit adjustment	\$ (12,567)	\$ (11,568)	\$ (24,135)

Parameters and Guidelines states that the cost of insurance is reimbursable for the following activities: (1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.

Education Code Section 76355(d) (formerly Section 72246(2)) states that athletic insurance is not an authorized expenditure for health services.

Parameters and Guidelines also states that all costs claimed must be traceable to source documentation that shows evidence of the validity of such costs.

Recommendation

We recommend the district ensure that it claims only costs for health services that are reimbursable under the mandate program. In addition, the district should ensure that all costs claimed are supported by source documentation.

District's Response

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

SCO's Comment

The finding and recommendation remain unchanged. The district did not provide any additional information supporting the allowability of insurance costs claimed.

**FINDING 2—
Overstated indirect
cost rates claimed**

The district overstated its indirect cost rates, thus overstating its indirect costs by \$139,093 for the audit period.

The district claimed indirect costs based on indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its ICRPs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions. The calculated indirect costs rates did not support the indirect cost rates claimed. The audited and claimed indirect cost rates are summarized as follows.

	Fiscal Year	
	2001-02	2002-03
Allowable indirect cost rate	18.23%	17.96%
Less claimed indirect cost rate	(35.76)%	(33.94)%
Unsupported indirect cost rate	<u>(17.53)%</u>	<u>(15.98)%</u>

Based on these unsupported indirect cost rates, we made the following audit adjustments.

	Fiscal Year		Total
	2001-02	2002-03	
Allowable costs originally claimed	\$ 403,367	\$ 427,927	
Unsupported indirect cost rate	×(17.53)%	×(15.98)%	
Audit adjustment	<u>\$ (70,710)</u>	<u>\$ (68,383)</u>	<u>\$ (139,093)</u>

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO claiming instructions. Those instructions require that districts obtain federal approval of ICRPs prepared according to Office of Management and Budget (OMB) Circular A-21. As an alternative, districts may use form FAM-29C to compute indirect cost rates. Form FAM-29C uses total expenditures reported in the *California Community College Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)*.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO claiming instructions. The district should obtain federal approval for ICRPs prepared in accordance with OMB Circular A-21. As an alternative, the district should use Form FAM-29C to prepare ICRPs based on the methodology allowed in the SCO claiming instructions.

District's Response

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law,

that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

SCO's Comment

The finding and recommendation remain unchanged.

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO's claiming instructions. Therefore, the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of *Parameters and Guidelines*. The SCO's claiming instructions state that community colleges have the option of using a federally approved rate prepared in accordance with OMB Circular A-21 or the SCO's alternate methodology using Form FAM-29C. In this case, the district chose to use indirect cost rates not approved by a federal agency, which is not an option provided by the SCO's claiming instructions.

**FINDING 3—
Understated
authorized health fee
revenues claimed**

For the audit period, the district understated authorized health service fees by \$217,409. The district reported actual revenue received rather than health fees the district was authorized to collect.

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as district-prepared reports indicating the number of students who received fee waivers.

Using the student enrollment and exemption data, we calculated the health fees the district was authorized to collect, as shown in the following table.

	Fall	Spring	Summer	Total
<u>Fiscal Year 2001-02</u>				
Student enrollment	\$ 23,157	\$ 27,910	\$ 14,823	
Less allowable health fee exemptions	<u>(11,295)</u>	<u>(11,206)</u>	<u>(4,819)</u>	
Subtotal	11,862	16,704	10,004	
Authorized student health fee	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (142,344)</u>	<u>\$ (200,448)</u>	<u>\$ (90,036)</u>	<u>\$ (432,828)</u>
<u>Fiscal Year 2002-03</u>				
Student enrollment	\$ 29,273	\$ 28,939	\$ 16,941	
Less allowable health fee exemptions	<u>(11,499)</u>	<u>(11,991)</u>	<u>(4,209)</u>	
Subtotal	17,774	16,948	12,732	
Authorized student health fee	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (213,288)</u>	<u>\$ (203,376)</u>	<u>\$ (114,588)</u>	<u>\$ (531,252)</u>

The following table summarizes the resulting audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Health fee claimed	\$ 321,995	\$ 313,843	\$ 635,838
Less authorized health service fees	(432,828)	(531,252)	(964,080)
Audit adjustment	\$ (110,833)	\$ (217,409)	\$ (328,242)

Parameters and Guidelines requires that the district deduct authorized health fees from claimed costs. *Education Code* Section 76355(c) authorizes health fees for all students except those students who: (1) depend exclusively on prayer for healing; (2) attend a community college under an approved apprenticeship training program; or (3) demonstrate financial need. (*Education Code* Section 76355(a) increased authorized health fees by \$1 effective with the Summer 2001 session.)

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

Recommendation

We recommend that the district deduct authorized health service fees from allowable health service program costs on the mandate claim. The district should maintain records to support its calculation of authorized health service fees. This includes records that identify actual student enrollment and students exempt from health fees pursuant to *Education Code* Section 76355(c).

District’s Response

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest “authorized” rate. The State Controller does not provide the factual basis for the calculation of the “authorized” rate, nor provide any reference to the “authorizing” source, nor the legal right of any state entity to “authorize” student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the “authorizing” state agency.

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

to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. This Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to maintain that level of service" will exceed the statutory limit for the student health fees.

SCO's Comment

The finding and recommendation remain unchanged.

As mentioned above, the district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as district-prepared reports indicating the number of students who received fee waivers.

We agree that community college districts may choose not to levy a health services fee. This is true even if *Education Code* Section 76355 provides the districts with the authority to levy such fees. However, the effect of not imposing the health services fee is that the related health services costs do not meet the requirement for mandated costs as defined by *Government Code* Section 17514. Health services costs recoverable through an authorized fee are not costs that the district is required to incur. *Government Code* Section 17556 states that COSM shall not find costs mandated by the State as defined in *Government Code* Section 17514 if the district has authority to levy fees to pay for the mandated program or increased level of service.

**FINDING 4—
Understated
expenditures and
offsetting
reimbursements**

The district underclaimed services and supplies by \$837 in FY 2001-02. The related indirect costs totaled \$153, based on the allowable indirect cost rate claimed for that fiscal year. The district also underclaimed offsetting revenues received in reimbursement of the \$837 expenditure noted above.

The health center expended \$837 to provide TB (tuberculosis) tests for the health center staff, and this amount was reimbursed by the district. The reimbursement was improperly recorded as an offset to expenditures (cost applied) rather than recorded as revenue for services rendered.

The following table summarizes the resulting audit adjustment.

	Fiscal Year 2001-02
Underclaimed services and supplies	\$ 837
Allowable indirect cost rate	× 18.23%
Related indirect costs	153
Total underclaimed services and supplies (from above)	837
Audit adjustment, total health expenditures	<u>\$ 990</u>
Audit adjustment, offsetting reimbursements	<u>\$ (837)</u>

Parameters and Guidelines states that eligible community college districts shall be reimbursed for the costs of providing a health services program. *Parameters and Guidelines* also requires the districts to list the cost of materials that have been consumed or expended specifically for the purpose of this mandate.

Parameters and Guidelines states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) shall be identified and deducted from this claim.

Recommendation

We recommend the district include the expenditure of \$837 for providing TB tests for the health center staff in the direct costs of providing a health services program during FY 2001-02. In addition, the \$837 reimbursement received from the district should be shown as offsetting revenue.

District's Response

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

SCO's Comment

The finding and recommendation remain unchanged. The district agrees with the net audit adjustment.

**OTHER ISSUE—
Statute of limitations**

The district's response included comments regarding our authority to audit costs claimed for FY 2001-02. The district's response and the SCO's comment follow.

District's Response

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

SCO's Comment

Government Code Section 17558.5(a), in effect during the audit period, states that a district's reimbursement claim is subject to an audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The claim was filed in December 2002. The audit was initiated on August 18, 2004, which is prior to the statutory deadline of December 2004.

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



Board of Trustees
Dr. Thomas J. Clark
Jeffrey A. Kellogg
Dianne Theil McNinch
Douglas W. Otto
Roberto Uranga

Superintendent-President
E. Jan Kehoe, Ph.D.

Long Beach City College • Long Beach Community College District
4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
State Controller's Audit
Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy *services* were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of *services* which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory *test* constitutes a different level of *service* from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

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The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

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

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

C05-MCC-001



Exhibit E



Pos	Fax Note	7671	Date	2-23-05	# of pages	1
To	Keith Peterson		From	Jennifer Bartz		
Co./Dept	Six Ten		Co.	LBCC		
Phone #	858 514 4605		Phone #	562 938 4572		
Fax #	858 514 8645		Fax #	562 938 4364		

Will go out in tomorrow's mail. *JMB*

Board of Trustees
 Dr. Thomas J. Clark
 Jeffrey A. Kellong
 Dianne Theil McMinel
 Douglas W. Orr
 Roberto Uranga
 Superintendent-President
 E. Jan Kehoe, Ph.D.

Long Beach City College • Long Beach Community College District
 4901 East Carson Street • Long Beach, California 90808

LBCC

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
 Health Fee Elimination
 State Controller's Audit
 Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy services were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of services which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory test constitutes a different level of service from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

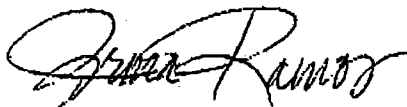
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The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

Exhibit F

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU



March 5, 2001

To: Superintendents/Presidents
Chief Business Officers
Chief Student Services Officers
Health Services Program Directors
Financial Aid Officers
Admissions and Records Officers
Extended Opportunity Program Directors

From: Thomas J. Nussbaum
Chancellor

Subject: Student Health Fee Increase

Education Code Section 76355 provides the governing board of a community college district the option of increasing the student health services fee by the same percentage as the increase in the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar above the existing fee, the fee may be increased by \$1.00.

Based on calculations by the Financial, Economic, and Demographic Unit in the Department of Finance, the Implicit Price Deflator Index has now increased enough since the last fee increase of March 1997 to support a one dollar increase in the student health fees. Effective with the Summer Session of 2001, districts may begin charging a maximum fee of \$12.00 per semester, \$9.00 for summer session, \$9.00 for each intersession of at least four weeks, or \$9.00 for each quarter.

For part-time students, the governing board shall decide the amount of the fee, if any, that the student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

The governing board operating a health services program must have rules that exempt the following students from any health services fee:

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

- Students who are attending a community college under an approved apprenticeship training program.
- Students who receive Board of Governors Enrollment Fee Waivers, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

All fees collected pursuant to this section shall be deposited in the Student Health Fee Account in the Restricted General Fund of the district. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors. Allowable expenditures include health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both. Allowable expenditures exclude athletic-related salaries, services, insurance, insurance deductibles, or any other expense that is not available to all students. No student shall be denied a service supported by student health fee on account of participation in athletic programs.

If you have any questions about this memo or about student health services, please contact Mary Gill, Dean, Enrollment Management Unit at 916.323.5951. If you have any questions about the fee increase or the underlying calculations, please contact Patrick Ryan in Fiscal Services Unit at 916.327.6223.

CC: Patrick J. Lenz
Ralph Black
Judith R. James
Frederick E. Harris

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Annual Reimbursement Claims

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use only (19) Program Number 00029 (20) Date File ___/___/___ (21) LRS Input ___/___/___
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(01) Claimant Identification Number: L S-19250
(02) Mailing Address: A B E L H E R E Long Beach Community College District County of Location Los Angeles Street Address 4901 East Carson Street City State Zip Code Long Beach CA 90808

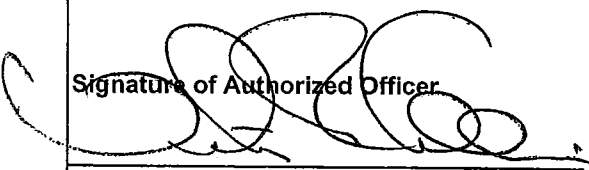
Reimbursement Claim Data	
(22) HFE - 1.0, (04)(b)	\$ 244,306
(23)	
(24)	
(25)	
(26)	
Type of Claim	(27)
Estimated Claim	(28)
(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>
(06) 2002-2003	(12) 2001-2002
(07) \$ 265,000	(13) \$ 244,306
Less: 10% Late Penalty, but not to exceed \$1000	(14) \$ -
Less: Estimate Claim Payment Received	(15) \$ 25,457
Net Claimed Amount	(16) \$ 218,849
(08) \$ 265,000	(17) \$ 218,849
Due to State	(18) \$ -

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

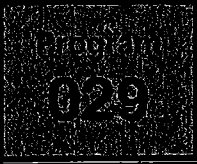
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, set forth on the attached statements.

Signature of Authorized Officer


Date **NOV 13 2002**
 Victor Collins
 Executive Vice-President, Human Resources


Victor R. Collins Type or Print Name	Title
(39) Name of Contact Person or Claim SixTen and Associates	
Telephone Number	(858) 514-8605
E-Mail Address	kbpsixten@aol.com

	<p>MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY</p>	<p>FORM HFE-1.0</p>
--	---	--

<p>(01) Claimant: Claimant Name Long Beach Community College District</p>	<p>(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/></p>	<p>Fiscal Year 2001-2002</p>
---	--	---

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

	(a) Name of College		(b) Claimed Amount
1.	Long Beach City College	\$	244,305.53
2.		\$	-
3.		\$	-
4.		\$	-
5.		\$	-
6.		\$	-
7.		\$	-
8.		\$	-
9.		\$	-
10.		\$	-
11.		\$	-
12.		\$	-
13.		\$	-
14.		\$	-
15.		\$	-
16.		\$	-
17.		\$	-
18.		\$	-
19.		\$	-
20.		\$	-
21.		\$	-
(04) Total Amount Claimed			
	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$	244,306

	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/> Fiscal Year 2001-2002
--	---

(03) Name of College Long Beach City College

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

LESS SAME MORE

	Direct Cost	Indirect Cost of: 35.76%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 417,480	\$ 149,291	\$ 566,771
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87	\$ 346.86	\$ 124	\$ 471
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]	\$ 417,134	\$ 149,167	\$ 566,301

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

Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester	1,247	11,984		\$ -		\$ -	\$ -
2. Per spring semester	3,006	15,131		\$ -		\$ -	\$ -
3. Per summer session	1,570	9,486		\$ -		\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected *(ACTUAL per ledger general ledger attached) \$ 321,995

(10) Sub-total [Line (07) - line (09)] \$ 244,306

Cost Reduction

(11) Less: Offsetting Savings, if applicable \$ -

(12) Less: Other Reimbursements, if applicable \$ -

(13) Total Amount Claimed [Line (10) - (line (11) + line (12))] \$ 244,306

**LONG BEACH COMMUNITY COLLEGE DISTRICT
CALCULATION OF INDIRECT COST RATE,
FISCAL YEAR
2000-2001**

*FOR 01-02
CLAIMS*

REFERENCE (CCFS 311)	DESCRIPTION	2000-2001
INSTRUCTIONAL ACTIVITY		
	Instructional Costs	
	Instructional Salaries and Benefits	37,398,743
	Instructional Operating Expenses	1,772,057
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	7,195
	TOTAL INSTRUCTIONAL COSTS 1	39,177,995
	Non-Instructional Costs	
	Non-Instructional Salaries and Benefits	3,056,277
	Instructional Admin. Salaries and Benefits	2,633,275
	Instructional Admin. Operating Expenses	491,553
	Auxiliary Classes Non-Inst. Salaries and Benefits	756,406
	Auxiliary Classes Operating Expenses	589,740
	TOTAL NON-INSTRUCTIONAL COSTS 2	7,527,251
	TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)	46,705,246
DIRECT SUPPORT ACTIVITY		
	Direct Support Costs	
	Instructional Support Services Non Inst. Salaries and Benefits	2,240,408
	Instructional Support Services Operating Expenses	233,963
	Admissions and Records	1,626,697
	Counselling and Guidance	4,232,273
	Other Student Services	4,952,083
	TOTAL DIRECT SUPPORT COSTS 4	13,285,424
	TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)	59,990,670
	Indirect Support Costs	
	Operation and Maintenance of Plant	6,528,323
	Planning and Policy Making	3,517,094
	General Instructional Support Services	11,407,189
	TOTAL INDIRECT SUPPORT COSTS 6	21,452,606
	TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS	81,443,276
SUPPORT COSTS ALLOCATION RATES		
Indirect Support Costs Allocation Rate =	Total Indirect Supports Costs (6)	35.76%
	Total Instructional Activity Costs and Direct Support Costs (5)	
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4)	28.45%
	Total Instructional Activity Costs (3)	
Total Support Cost Allocation		64.21%

Long Beach Community College District
Health Fee Elimination
Summary -2001-2002

Student Health Costs, shown in G/L - YTD	\$418,317.55
Less: Income reimbursement for Staff TB tests Included as expenses in G/L above See HFE 1.8 submitted by district	-837.12
Adjusted 2001-2002 Health Fee Expenses	<u>\$417,480.43</u>

Costs of 2001-02 Vaccine given to students - Not Given in 1986-87

Fall 2001 17 Vaccines Given	
R.N. Cost 5.67 hrs @ \$46.86 (Cindi Blomberg)	265.90
Supplies Safety Syringes 17 @ .58	9.86
Gloves 17x2 @ .12	4.08
Alcohol Wipes 17x2 @ .03	1.02
Spring 2002 4 Vaccines Given	
R.N. Cost 1.34 hrs @ \$46.86 (Cindi Blomberg)	62.48
Supplies Safety Syringes 4 @ .58	2.32
Gloves 4x2 @ .12	0.96
Alcohol Wipes 4x2 @ .03	0.24
2001-02 Costs in excess of level in 86/87	<u>346.86</u>

LONG BEACH COMMUNITY COLLEGE DISTRICT
 ADOPTED BUDGET 2002-2003
 REVENUE OF GENERAL FUND 01

DESCRIPTION	ADOPTED BUDGET 2001-2002	ACTUAL 2001-2002	ADOPTED BUDGET 2002-2003
OTHER STATE REVENUE (CONTINUED)			
Other State Revenue - Unrestricted	0	0	0
Center for International Trade	294,875	258,412	331,338
Mandated Cost Reimbursement	654,365	499,025	560,000
TOTAL OTHER STATE REVENUE	\$ 16,980,944	\$ 19,821,606	\$ 18,131,806
LOCAL REVENUE			
Gifts and Endowments	1,400	1,414	1,400
American Language and Culture Institute Fees	187,000	128,286	130,000
Johns Hopkins University	151,146	59,852	0
City of Long Beach Assessment	0	54,584	55,000
Sale of Publications	126,864	120,331	99,063
Veterans' Stadium Concessions	51,000	70,000	70,000
Veterans' Stadium Parking Lot Rental	95,000	103,934	104,000
Community Services Leases and Rentals	787,000	816,086	820,000
Rent, PCI/Walnut Property	107,000	158,828	160,000
Veterans' Stadium Rental	12,200	12,100	13,000
Interest - TRANS	59,000	76,840	76,000
Interest - Other	351,000	211,676	200,000
Community Services - Community Education and Events	450,000	450,167	450,000
Community Services - Recreation	127,549	119,018	120,000
Community Services - Senior Classes	117,150	48,900	50,000
Community Services - Summer Academy (Fastrax)	14,823	16,877	16,000
Senior Studies Trip Fees	0	24,021	50,000
Student Health Fees	24,000	27,154	22,000
Materials Fees	334,801	321,995	325,000
Transcript Fees	86,000	96,687	97,000
Parking Fees	70,000	79,095	80,000
Foreign Students Fees	240,000	186,154	185,000
	600,000	609,578	610,000
	1,090,000	1,340,894	1,400,000

P.02
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LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

Year 2002 : Period - 12 (05/30/2002)

644000 Health Services Fylpaa, J.

INT NUMBER	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB TTD	EXPEND TTD	AVAILABLE BAL. TTD	BAL. PCT	
									100000 Academic Salaries
0 0490	Acad Sal NI RS Supv/Coord Physical/Mental Health	0.00	0.00	0.00	0.00	31,028.44	-31,028.44	0.0	
Total		0.00	0.00	0.00	0.00	31,028.44	-31,028.44	0.0	
0 0490	Acad Sal NI SS Hrly Physical/Mental Health	1,500.00	1,500.00	0.00	0.00	0.00	1,500.00	100.0	
Total		1,500.00	1,500.00	0.00	0.00	0.00	1,500.00	100.0	
0 0490	Noninstr Sal, Contr/Reg Status	0.00	0.00	0.00	0.00	0.00	0.00	0.0	
0 0490	Acad Sal NI SS RS W/SS Assign Physical/Mental Health	0.00	0.00	0.00	0.00	1,513.23	-1,513.23	0.0	
Total		0.00	0.00	0.00	0.00	1,513.23	-1,513.23	0.0	
0 0490	Acad Sal NI Other Hourly Physical/Mental Health	23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	
Total		23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	
0 0490	Acad Sal NI Other Hourly	23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	
Total		23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	
0 0490	Noninstr Sal, Other	24,600.00	24,600.00	0.00	0.00	15,327.80	9,272.20	37.7	
Total		24,600.00	24,600.00	0.00	0.00	15,327.80	9,272.20	37.7	
0 0490	100000 Academic Salaries	24,600.00	24,600.00	0.00	0.00	46,356.24	-21,756.24	-88.4	
Total		24,600.00	24,600.00	0.00	0.00	46,356.24	-21,756.24	-88.4	
200000 Classified/Oth NAcademic Salar									
0 0490	Cl Sal NI RS Clerical Physical/Mental Health	64,084.00	64,084.00	0.00	0.00	71,581.21	-7,497.21	-11.7	
Total		64,084.00	64,084.00	0.00	0.00	71,581.21	-7,497.21	-11.7	
0 0490	Cl Sal NI RS Other Physical/Mental Health	92,392.00	92,392.00	0.00	0.00	101,321.25	-8,929.25	-9.7	
Total		92,392.00	92,392.00	0.00	0.00	101,321.25	-8,929.25	-9.7	
0 0490	Noninstr Sal, Reg Status	156,476.00	156,476.00	0.00	0.00	172,902.46	-16,426.46	-10.5	
Total		156,476.00	156,476.00	0.00	0.00	172,902.46	-16,426.46	-10.5	
0 0490	Cl Sal NI H Clerical Sub Pd Lv Physical/Mental Health	0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	
Total		0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	
0 0490	Cl Sal NI H Clerical Sub Pd Lv	0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	
Total		0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

TR ID: LBCGL04 Group D

F Year 2002 : Period - 12 (06/30/2002)

644000 - Health Services

Fylpaa, J.

UNT NUMBER	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE BAL. TTD	BAL. PCT
200000 Classified/Oth NAcademic Salar								
00 0490	Cl Sal NI H Non Clerical Physical/Mental Health	38,598.00	38,598.00	0.00	0.00	20,846.93	17,751.07	46.0
Total		38,598.00	38,598.00	0.00	0.00	20,846.93	17,751.07	46.0
00 0490	Moninstr Salaries, Other	38,598.00	38,598.00	0.00	0.00	21,915.33	16,682.67	43.2
Total		195,074.00	195,074.00	0.00	0.00	194,817.79	256.21	0.1
300000 Employee Benefits								
00 0490	Staff Benefits Gen, Minstruct Physical/Mental Health	78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
Total		78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
00 0490	Other Benefits	78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
Total		78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
400000 Supplies and Materials								
00 0490	Duplicating Non Instr (Pulse) Physical/Mental Health	1,320.00	1,320.00	0.00	0.00	647.41	672.59	51.0
Total		1,320.00	1,320.00	0.00	0.00	647.41	672.59	51.0
00 0490	NI Supplies & Materials Physical/Mental Health	12,316.00	11,791.00	-92.00	149.37	10,759.54	974.09	8.3
Total		12,316.00	11,791.00	-92.00	149.37	10,759.54	974.09	8.3
00 0490	Non. Instr Supplies & Materials	13,636.00	13,111.00	-92.00	149.37	11,406.95	1,646.68	12.6
Total		13,636.00	13,111.00	-92.00	149.37	11,406.95	1,646.68	12.6
500000 Other Operating Exp/Services								
00 0490	Pers Srv or Firm & Advertising Physical/Mental Health	23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3
Total		23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

Cont ID: LBCGL004 Group D

BY: Off year 2002 : Period - 12 (06/30/2002)

644000 - Health Services Fylpaa, J.

CONT NUMBER T - PROG	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE		BAL.	
							BAL. TTD	PCT	BAL. TTD	PCT
500000 Other Operating Exp/Services										
Total	Contract Services	23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3		
200 0490	Conferences Academic Physical/Mental Health	500.00	500.00	0.00	0.00	395.00	105.00	21.0		
Total	Conferences Academic	500.00	500.00	0.00	0.00	395.00	105.00	21.0		
500 0490	Conferences Classified Physical/Mental Health	642.00	0.00	0.00	0.00	0.00	0.00	0.0		
Total	Conferences Classified	642.00	0.00	0.00	0.00	0.00	0.00	0.0		
000 0490	Staff Development Activities Physical/Mental Health	108.00	108.00	0.00	0.00	0.00	108.00	100.0		
Total	Staff Development Activities	108.00	108.00	0.00	0.00	0.00	108.00	100.0		
000 0490	Travel/Conf/Oth Exp Reimbursed Memberships/Fees/Dues Physical/Mental Health	1,250.00	608.00	0.00	0.00	395.00	213.00	35.0		
Total	Memberships/Fees/Dues Physical/Mental Health	475.00	0.00	0.00	0.00	0.00	0.00	0.0		
Total	Dues and Memberships	475.00	0.00	0.00	0.00	0.00	0.00	0.0		
0490	Other Insurance Physical/Mental Health	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0		
Total	Other Insurance	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0		
Total	Insurance	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0		
300 0490	Equip Repairs Ni Physical/Mental Health	500.00	500.00	0.00	0.00	0.00	500.00	100.0		
Total	Equip Repairs Ni	500.00	500.00	0.00	0.00	0.00	500.00	100.0		
Total	Contracts Rents/Leases/Equip Rp	500.00	500.00	0.00	0.00	0.00	500.00	100.0		
Total	500000 Other Operating Exp/Services	82,901.03	81,784.05	0.00	20,525.00	80,071.00	-18,811.95	-23.0		
600000 Capital Outlay										

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

C ID: LBCGL004 Group D

Year 2002 : Period - 12 (06/30/2002)

644000 - Health Services

Fy1pa, J.

MT NUMBER PROG	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE BAL. TTD	BAL. PCT
	600000 Capital Outlay							
0490	Equip Non-Inst \$200-\$999.99 Physical/Mental Health	7,000.00	6,800.00	0.00	568.31	7,011.57	-779.88	-11.5
Total		7,000.00	6,800.00	0.00	568.31	7,011.57	-779.88	-11.5
0490	Equip Non-Inst \$1,000 & Up Physical/Mental Health	0.00	1,842.00	0.00	1,260.03	1,260.03	-678.06	-36.8
Total		0.00	1,842.00	0.00	1,260.03	1,260.03	-678.06	-36.8
0490	Equip Non-Inst \$1,000 & Up Equipment	7,000.00	8,642.00	0.00	1,828.34	8,271.60	-1,457.94	-16.9
Total		7,000.00	8,642.00	0.00	1,828.34	8,271.60	-1,457.94	-16.9
82	700000 Other Outgo							
0490	Reserves Physical/Mental Health	0.00	0.00	0.00	0.00	0.00	0.00	0.0
Total		0.00	0.00	0.00	0.00	0.00	0.00	0.0
0490	Reserve for Contingencies	0.00	0.00	0.00	0.00	0.00	0.00	0.0
Total		0.00	0.00	0.00	0.00	0.00	0.00	0.0
0490	700000 Other Outgo	0.00	0.00	0.00	0.00	0.00	0.00	0.0
Total		0.00	0.00	0.00	0.00	0.00	0.00	0.0
Total	Health Services	401,445.03	401,445.05	-92.00	22,502.71	418,317.55	39,283.21	-9.8

418,317.55

ok

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8417, 480.43
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cont



**MANDATED COSTS
HEALTH FEE ELIMINATION
COMPONENT/ACTIVITY COST DETAIL**

**FORM
HFE-2.1**

(01) Claimant Long Beach Community College District	Fiscal Year 2001-2002	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)		
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention		
Child Abuse Reporting and Counseling	X	X
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list Diabetes	X	X
Examinations, minor illnesses		
Recheck Minor Injury		
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;">020</div>	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1
--	--	-----------------

(01) Claimant Long Beach Community College District	Fiscal Year 2001-2002
--	------------------------------

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
--	----------------------	-----------------------

Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		X
Information	X	X
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students	X	X
Athletes		
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops		
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list---> Ibuprofen		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key	X	X
Parking Inquiry		
Elevator Passes	X	X
Temporary Handicapped Parking Permits		

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use only (19) Program Number 00029 (20) Date File ___/___/___ (21) LRS Input ___/___/___	PROGRAM 029
--	--	----------------

(01) Claimant Identification Number:	
L S19250	
(02) Mailing Address:	
A	
B	
E Claimant Name	
L Long Beach Community College District	
County of Location	
H Los Angeles	
E Street Address	
R 4901 East Carson Street	
E City State Zip Code	
Long Beach CA 90808	

Reimbursement Claim Data	
(22) HFE - 1.0, (04)(b)	\$ 272,672
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	
(37)	


Type of Claim	Estimated Claim	Reimbursement Claim	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)
			(30)
Fiscal Year of Cost	(06) 2003-2004	(12) 2002-2003	(31)
Total Claimed Amount	(07) \$ 275,000	(13) \$ 272,672	(32)
Less: 10% Late Penalty, but not to exceed \$1000		(14) \$ -	(33)
Less: Estimate Claim Payment Received		(15) \$ -	(34)
Net Claimed Amount		(16) \$ 272,672	(35)
Due from State	(08) \$ 275,000	(17) \$ 272,672	(36)
Due to State		(18) \$ -	(37)

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987.

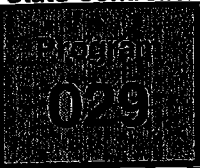
The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, set forth on the attached statements.



Victor R. Collins
 Type or Print Name

Date 1-9-04
 Executive Vice-President, Human Resources
 Title

(39) Name of Contact Person or Claim
 SixTen and Associates
 Telephone Number (858) 514-8605
 E-Mail Address kbpsixten@aol.com



**MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY**

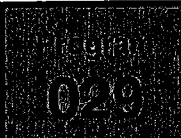
**FORM
HFE-1.0**

(01) Claimant: Claimant Name	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
Long Beach Community College District		

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

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$ 272,671.72
2.	\$ -
3.	\$ -
4.	\$ -
5.	\$ -
6.	\$ -
7.	\$ -
8.	\$ -
9.	\$ -
10.	\$ -
11.	\$ -
12.	\$ -
13.	\$ -
14.	\$ -
15.	\$ -
16.	\$ -
17.	\$ -
18.	\$ -
19.	\$ -
20.	\$ -
21.	\$ -
(04) Total Amount Claimed	\$ 272,672

[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]

	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
--	---	------------------------------

(03) Name of College Long Beach City College

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

LESS SAME MORE

	Direct Cost	Indirect Cost of: 33.94%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 438,526	\$ 148,836	\$ 587,362
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87		\$ -	\$ -
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]	\$ 438,526	\$ 148,836	\$ 587,362

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

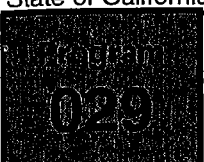
Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester				\$ -		\$ -	\$ -
2. Per spring semester				\$ -		\$ -	\$ -
3. Per summer session				\$ -		\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -
(09) Total health fee that could have been collected	[Line (8.1g) + (8.2g) +(8.6g)]						\$ 313,843
(10) Sub-total	[Line (07) - line (09)]						\$ 273,519

Cost Reduction	
(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ 847.00
(13) Total Amount Claimed	[Line (10) - (line (11) + line (12))] \$ 272,672

**LONG BEACH COMMUNITY COLLEGE DISTRICT
CALCULATION OF INDIRECT COST RATE,
FISCAL YEAR
2001-2002**

For 02-09 classes

REFERENCE (CCFS 311)	DESCRIPTION	2001-2002
INSTRUCTIONAL ACTIVITY		
	Instructional Costs	
	Instructional Salaries and Benefits	44,670,763
	Instructional Operating Expenses	1,557,892
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	0
	TOTAL INSTRUCTIONAL COSTS 1	46,228,655
	Non-Instructional Costs	
	Non-Instructional Salaries and Benefits	0
	Instructional Admin. Salaries and Benefits	2,857,705
	Instructional Admin. Operating Expenses	392,783
	Auxiliary Classes Non-Inst. Salaries and Benefits	946,883
	Auxiliary Classes Operating Expenses	579,448
	TOTAL NON-INSTRUCTIONAL COSTS 2	4,776,819
	TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)	51,005,474
DIRECT SUPPORT ACTIVITY		
	Direct Support Costs	
	Instructional Support Services Non Inst. Salaries and Benefits	2,850,939
	Instructional Support Services Operating Expenses	242,783
	Admissions and Records	1,766,898
	Counseling and Guidance	5,340,780
	Other Student Services	6,094,425
	TOTAL DIRECT SUPPORT COSTS 4	16,295,825
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)		
		67,301,299
	Indirect Support Costs	
	Operation and Maintenance of Plant	7,368,294
	Planning and Policy Making	3,504,511
	General Instructional Support Services	11,972,136
	TOTAL INDIRECT SUPPORT COSTS 6	22,844,941
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS		
		90,146,240
SUPPORT COSTS ALLOCATION RATES		
Indirect Support Costs Allocation Rate =	Total Indirect Support Costs (6) Total Instructional Activity Costs and Direct Support Costs (5)	33.94%
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4) Total Instructional Activity Costs (3)	31.95%
Total Support Cost Allocation		65.89%

	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1
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(01) Claimant	Fiscal Year	
Long Beach Community College District	2002-2003	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)		
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

029	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1
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(01) Claimant Long Beach Community College District	Fiscal Year 2002-2003
--	------------------------------

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
--	----------------------	-----------------------

Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		
Information	X	X
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops		
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits	X	X

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
(01) Claimant Long Beach Community College District		Fiscal Year 2002-2003	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies			
Private Medical Doctor		X	X
Health Department		X	X
Clinic		X	X
Dental		X	X
Counseling Centers		X	X
Crisis Centers		X	X
Transitional Living Facilities, battered/homeless women		X	X
Family Planning Facilities		X	X
Other Health Agencies		X	X
Tests			
Blood Pressure		X	X
Hearing		X	X
Tuberculosis			
Reading		X	X
Information		X	X
Vision		X	X
Glucometer		X	X
Urinalysis		X	X
Hemoglobin			
EKG			
Strep A Testing		X	X
PG Testing			
Monospot			
Hemacult			
Others, list			
Miscellaneous			
Absence Excuses/PE Waiver		X	X
Allergy Injections			
Band-aids		X	X
Booklets/Pamphlets		X	X
Dressing Change		X	X
Rest		X	X
Suture Removal		X	X
Temperature		X	X
Weigh		X	X
Information		X	X
Report/Form			
Wart Removal		X	X
Others, list		X	X
Committees			
Safety		X	X
Environmental			
Disaster Planning		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X



JOHN CHIANG
California State Controller

RECEIVED

DEC 17 2008

COMMISSION ON
STATE MANDATES

December 16, 2008

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

Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Re: **Incorrect Reduction Claim**
Health Fee Elimination, 05-4206-I-03
Long Beach Community College District, Claimant
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2001-02 and 2002-03

Dear Ms. Higashi and Mr. Petersen:

This letter is in response to the above-entitled Incorrect Reduction Claim. The subject claims were reduced primarily because the Claimant claimed excessive indirect costs, based upon an invalid ICRP, and understated authorized health service fees. The reductions were appropriate and in accordance with law.

The Controller's Office is empowered to audit claims for mandated costs and to reduce those that are "excessive or unreasonable."¹ This power has been affirmed in recent cases, such as the Incorrect Reductions Claims (IRCs) for the *Graduation Requirements* mandate.² If the claimant disputes the adjustments made by the Controller pursuant to that power, the burden is upon them to demonstrate that they are entitled to the full amount of the claim. This principle likewise has been upheld in the *Graduation Requirements* line of IRCs.³ See also Evidence Code section 500.⁴ In this case, the audit

¹ See Government Code section 17561, subdivisions (d)(1)(C) and (d)(2), and section 17564.

² See for example, the Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District [No. CSM 4435-I-01 and 4435-I-37], adopted September 28, 2000, at page 9.

³ See for example, the Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District [No. CSM 4435-I-01 and 4435-I-37], adopted September 28, 2000, at page 16.

⁴ "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

determined that the claimant was claiming indirect costs based on an unapproved ICRP, as required by the Parameters and Guidelines. Therefore, these claimed costs are unsupported and thus, disallowed.

In its claim, the Claimant utilizes an unapproved indirect cost rate proposal. The Parameters and Guidelines provide for the use of an ICRP determined using the OMB Circular A-21 method, or the SCO's FAM-29C. Since the Claimant did not have a current approved ICRP (via the OMB Circular A-21 method), the auditors utilized the FAM-29C and determined that the allowable rate was much less than claimed. The claim was thus reduced to reflect the allowable rate.

In addition, the audit determined that the Claimant understated authorized health services fees, confusing collected with authorized. The Parameters and Guidelines provide that offsetting savings shall include the amount authorized for student fees. The relevant amount is not the amount charged, nor the amount collected, rather, it is the amount authorized. This is consistent with mandates law in general, and specific case law on point.⁵ Therefore, these claimed costs are unsupported and thus, disallowed.

The Claimant also asserts that the audit of the 2001-02 FY is precluded by the statute of limitations, specifically, Government Code section 17558.5. However, the Claimant incorrectly applies the 1996 version of this statute. Even under this inappropriate version, their conclusion is based on an erroneous interpretation that attempts to rewrite that section, adding a deadline for completion of the audit where none exists. Effective July 1, 1996, Section 17558.5 provided that a claim is "subject to audit" for two years after the end of the calendar year in which the reimbursement claim is filed (or last amended). In this case, the claim for 2001-02 was filed on December 6, 2002, making the claim "subject to audit" up through December 31, 2004. Although there may be a dispute as to what constitutes the initiation of an audit, it is clear that the audit was initiated no later than August 18, 2004, when the entrance conference was held. This is before the deadline of December 31, 2004. Therefore, the audit of the fiscal year 2000-01 was proper, even under the 1996 version of Section 17558.5.

More important is the fact that the 2001-02 audit was subject to the provisions of Section 17558.8 that were effective on January 1, 2003, not the 1996 version. Unless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.⁶ Under the 1996 version, the claims were subject to audit until December 31, 2004, well after the January 1, 2003, effective date. Therefore, the 2003 provisions of Section 17558.5, which provide that an audit

⁵ See *Connell v. Santa Margarita Water District* (1997) 59 Cal.App.4th 382, 400-03.

⁶ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465. See also, 43 Cal.Jur.3d, Limitations of Actions § 8.

December 16, 2008

Page 3

must be initiated no later than three years after the claim is filed or last amended, are applicable to the claim. In this case, those provisions required that the 2001-02 audit be initiated by December 6, 2005. Since the audit was initiated no later than August 18, 2004, when the entrance conference was held, and in fact completed on April 27, 2005, it is valid and enforceable.

Enclosed please find a complete detailed analysis from our Division of Audits, exhibits, and supporting documentation with declaration.

Sincerely,



SHAWN D. SILVA
Staff Counsel

SDS/ac

Enclosure

cc: Irma Ramos, Long Beach Community College District
Ginny Brummels, Div. of Acctg. & Rptg., State Controller's Office (w/o encl.)
Jim Spano, Division of Audits, State Controller's Office (w/o encl.)

1 **PROOF OF SERVICE**

2 I am employed in the County of Sacramento, State of California. At the time of service, I was at least 18
3 years of age, a United States citizen employed in the county where the mailing occurred, and not a party to the
4 within action. My business address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

5 On December 16, 2008, I served the foregoing document entitled:

6 **SCO'S RESPONSE TO THE INCORRECT REDUCTION CLAIM FOR
7 LONG BEACH COMMUNITY COLLEGE DISTRICT, CSM 05-4206-I-10**

8 on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope,
9 addressed as follows:

10 Paula Higashi (*original*)
11 Executive Director
12 Commission on State Mandates
13 980 Ninth Street, Suite 300
14 Sacramento, CA 95814

15 Irma Ramos, Administrative Dean
16 Long Beach Community College District
17 4901 East Carson Street
18 Long Beach, CA 90808

19 Keith B. Petersen, President
20 SixTen and Associates
21 5252 Balboa Avenue, Suite 807
22 San Diego, CA 92117

23 **BY MAIL**

24 I placed the envelope for collection and processing for mailing following this business's ordinary practice with
25 which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited
in the ordinary course of business with the United States Postal Service.

BY PERSONAL SERVICE

I caused to be delivered by hand to the above-listed addressees.

BY OVERNIGHT MAIL/COURIER

To expedite the delivery of the above-named document, said document was sent via overnight courier for next day
delivery to the above-listed party.

BY FACSIMILE TRANSMISSION

In addition to the manner of service indicated above, a copy was sent by facsimile transmission to the above-listed
party.

I declare that I am employed in the office of a member of the bar of this court at whose direction the
service was made. I declare under penalty of perjury under the laws of California that the foregoing is true and
correct.

Executed on December 16, 2008, at Sacramento, California.


Amber A. Camarena

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

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TAB 1

1 **OFFICE OF THE STATE CONTROLLER**

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

5 BEFORE THE
6 COMMISSION ON STATE MANDATES
7 STATE OF CALIFORNIA
8

9
10 INCORRECT REDUCTION CLAIM ON:

11 *Health Fee Elimination Program*

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

14 LONG BEACH COMMUNITY COLLEGE
15 DISTRICT,
16 Claimant

No.: CSM 05-4206-I-03

AFFIDAVIT OF BUREAU CHIEF

17 I, Jim L. Spano, make the following declarations:

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

1 7) A field audit of the claims for fiscal year (FY) 2001-02 and FY 2002-03 commenced on
2 August 18, 2004, and ended on October 14, 2004.

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

6 Date: November 17, 2006

7 OFFICE OF THE STATE CONTROLLER

8
9
10 By:  _____

11 Jim L. Spano, Chief
12 Compliance Audits Bureau
13 Division of Audits
14 State Controller's Office
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24
25

TAB 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
LONG BEACH COMMUNITY COLLEGE DISTRICT
For Fiscal Year (FY) 2001-02 and FY 2002-03**

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

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim that the Long Beach Community College District submitted on September 6, 2005. The SCO audited the district's claims for costs of the legislatively mandated Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003. The SCO issued its final report on April 27, 2005 (**Exhibit D**).

The district submitted reimbursement claims totaling \$516,978 as follows.

- FY 2001-02—\$244,306 (**Exhibit G**)
- FY 2002-03—\$272,672 (**Exhibit G**)

The SCO determined that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates and understated authorized health services fees. The State paid the district \$25,457. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations. The following table summarizes the audit results.

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>
<u>July 1, 2001, through June 30, 2002</u>			
Salaries and benefits	\$ 318,568	\$ 318,568	\$ —
Services and supplies	98,913	90,493	(8,420)
Subtotal	417,481	409,061	(8,420)
Indirect costs	149,291	75,424	(73,867)
Total health expenditures	566,772	484,485	(82,287)
Less authorized health fees	(321,995)	(432,828)	(110,833)
Less offsetting savings/reimbursements	—	(837)	(837)
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—
Total costs	<u>\$ 244,306</u>	50,349	<u>\$ (193,957)</u>
Less amount paid by the State		(25,457)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 24,892</u>	
<u>July 1, 2002, through June 30, 2003</u>			
Salaries and benefits	\$ 342,109	\$ 342,109	\$ —
Services and supplies	96,417	87,780	(8,637)
Subtotal	438,526	429,889	(8,637)
Indirect costs	148,836	77,522	(71,314)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>
<u>July 1, 2002, through June 30, 2003 (continued)</u>			
Total health expenditures	587,362	507,411	(79,951)
Less authorized health fees	(313,843)	(531,252)	(217,409)
Less offsetting savings/reimbursements	(847)	(847)	—
Total costs	272,672	(24,688)	(297,360)
Adjustment to eliminate negative balance	—	24,688	24,688
Net allowable costs	<u>\$ 272,672</u>	—	<u>\$ 272,672</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>Summary: July 1, 2001, through June 30, 2003</u>			
Salaries and benefits	\$ 660,677	\$ 660,677	\$ —
Services and supplies	195,330	178,273	(17,057)
Subtotal	856,007	838,950	(17,057)
Indirect costs	298,127	152,946	(145,181)
Total health expenditures	1,154,134	991,896	(162,238)
Less authorized health fees	(635,838)	(964,080)	(328,242)
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—
Less offsetting savings/reimbursements	(847)	(1,684)	(837)
Total costs	516,978	25,661	(491,317)
Adjustment to eliminate negative balance	—	24,688	24,688
Net allowable costs	<u>\$ 516,978</u>	50,349	<u>\$ (466,629)</u>
Less amount paid by the State		(25,457)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 24,892</u>	

The district believes that its claimed indirect cost rates are appropriate and that it reported the correct amount of health service fee revenues. The district did not contest the audit adjustments identified in Finding 1 (unallowable services and supplies) and Finding 4 (understated expenditures and related offsetting revenues) of the final audit report. The district believes that the SCO was not authorized to audit the district's FY 2001-02 claim.

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

Parameters and Guidelines

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

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

V. REIMBURSABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

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

Parameters and Guidelines (amended May 25, 1989) provides the following claim preparation criteria.

VI. CLAIM PREPARATION

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

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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

3. Allowable Overhead Cost

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

Parameters and Guidelines (amended May 25, 1989) defines supporting data as follows.

VII. SUPPORTING DATA

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

Parameters and Guidelines (amended May 25, 1989) defines offsetting savings and other reimbursements as follows.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount . . . authorized by Education Code Section 72246 for health services [now Education Code Section 76355].

SCO Claiming and Filing Instructions

The SCO annually issues claiming instructions, which contain filing instructions for mandated cost programs. The September 2002 claiming instructions provide instructions for indirect costs. Section 5B(2) of the instructions (**Tab 3**) states, "A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 'Cost Principles for Educational Institutions,' or the Controller's methodology outlined in the following paragraphs [FAM-29C]. . . ." The instructions are consistent with the Health Fee Elimination Claim Summary Instructions, Item (05) (**Tab 4**).

The September 2002 indirect cost claiming instructions are believed to be, for the purposes and scope of the audit period, substantially similar to the version extant at the time the district filed its FY 2000-01 and FY 2001-02 mandated cost claims.

II. UNALLOWABLE SERVICES AND SUPPLIES

Issue

The district overclaimed services and supplies by \$17,894 for the audit period. The related unallowable indirect costs totaled \$6,241, based on claimed indirect cost rates. The district overclaimed insurance premiums paid for student basic and catastrophic coverage by \$11,869 because it included unallowable premiums paid for athletic insurance. In addition, the district inadvertently claimed \$6,025 twice for services and supplies.

SCO Analysis

Parameters and Guidelines states that the cost of insurance is reimbursable for the following activities: (1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.

Education Code Section 76355(d) (formerly Section 72246(2)) states that athletic insurance is not an authorized expenditure for health services.

Parameters and Guidelines also states that all costs claimed must be traceable to source documentation that shows evidence of the validity of such costs.

District's Response

The district does not dispute this adjustment.

III. OVERSTATED INDIRECT COST RATES CLAIMED

Issue

The district overstated its cost rates, thus overstating its indirect costs by \$139,093 for the audit period.

The district claimed indirect costs based on indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant using OMB Circular A-21 (**Tab 5**) methodology. However, the district did not receive federal approval of its ICRPs.

The SCO claiming instructions provide an alternative indirect costs rate methodology. Consequently, for FY 2001-02 and FY 2002-03, the SCO auditor calculated indirect costs using the methodology described in the SCO claiming instructions using Form FAM-29C. The alternative methodology did not support the rates that the district claimed.

Consistent with this methodology, the SCO auditor calculated the indirect cost rates of 18.23% for FY 2001-02 and 17.96% for FY 2002-03. The differences between rates claimed and rates computed by the SCO were applied to total direct costs for each corresponding year, resulting in overstated claimed costs of \$70,710 for FY 2001-02 and \$68,383 for FY 2002-03.

SCO Analysis

Parameters and Guidelines allows community college districts to claim indirect costs according to the SCO's claiming instructions (**Tab 3**). The claiming instructions require that districts obtain federal approval of ICRPs prepared using OMB Circular A-21 methodology. Alternatively, districts may use the SCO's Form FAM-29C to compute indirect cost rates. Form FAM-29C calculates indirect cost rates using total expenditures reported on the *California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)*. Form FAM-29C eliminates unallowable expenses and segregates the adjusted expenses between those incurred for direct and indirect activities relative to the mandated cost program.

District's Response

... Contrary to the Controller's ministerial preferences, there is no requirement in law that the district's indirect cost rate must be "federally" approved, and further the Controller has never specified the federal agencies which have the authority to approve indirect cost rates. ...

CCFS-3111

In fact, both the District's method and the Controller's method utilized the same source document, the CCFS-311 annual financial and budget report required by the state. The difference in the claimed and audited methods is in the determination of which of those cost elements are direct costs and which are indirect costs. ...

Regulatory Requirements

No particular indirect cost rate calculation is required by law. The parameters and guidelines state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The district claimed these indirect costs "in the manner" described by the Controller. The correct forms were used and the claimed amounts were entered at the correct locations. Further, "may" is not "shall"; the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller. ... Since the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are merely a statement of the ministerial interests of the Controller and not law.

Unreasonable or Excessive

Government Code Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable. Here, the District has computed its ICRPs utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed it without a determination of whether the product of the District's calculation would, or would not, be excessive, unreasonable, or inconsistent with cost accounting principles. ...

Neither State law nor the parameters and guidelines made compliance with the controller's claiming instructions a condition of reimbursement. The district has followed the parameters and guidelines. The burden of proof is on the controller to prove that the product of District's calculation is unreasonable, not to recalculate the rate according to its unenforceable ministerial preferences. Therefore, Controller made no determination as to whether the method used by the District was reasonable, but, merely substituted its FAM-29C method for the method reported by the District (*sic*).

The substitution of the FAM-20C method is an arbitrary choice of the Controller, not a “finding” enforceable either by fact or law.

SCO's Comment

Parameters and Guidelines, Section VI, states, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The district misinterprets “may be claimed” by implying that compliance with the claiming instructions is voluntary. Instead, “may be claimed” simply permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions. The district's implication that it claimed costs in the manner described by the SCO simply by completing what it interprets to be the correct forms is without merit.

The SCO's claiming instructions state, “A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 ‘Cost Principles for Educational Institutions,’ or the Controller's methodology outlined in the following paragraphs [FAM-29C]. . . .” This instruction is consistent with *Parameters and Guidelines* for other community college district mandated programs, including the following.

- Absentee Ballots
- Collective Bargaining
- Health Benefits for Survivors of Peace Officers and Firefighters
- Law Enforcement College Jurisdiction Agreements
- Mandate Reimbursement Process
- Open Meetings Act
- Photographic Record of Evidence
- Sex Offenders Disclosure by Law Enforcement Officers
- Sexual Assault Response Procedure

(Note: These *Parameters and Guidelines* provide a third option, a 7% flat rate.) Therefore, the SCO did not act arbitrarily by using the FAM-29C methodology to calculate allowable indirect cost rates.

We agree with the district's statement that the difference between the claimed and audited rates is the identification of costs as direct or indirect. The FAM-29C methodology classifies costs as direct or indirect as they relate to the mandated cost program.

In addition, neither this district nor any other district requested that the COSM review the SCO's claiming instructions pursuant to Title 2, *California Code of Regulations* (CCR), Section 1186. Furthermore, the district may not now request a review of the claiming instructions applicable to the audit period. Title 2 CCR Section 1186(j)(2) states, “A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”

The SCO is not responsible for identifying the district's responsible federal agency. OMB Circular A-21 states:

[Cognizant agency responsibility] is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. . . . In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency assignment shall default to HHS.

Government Code Section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. *Government Code* Section 17561(d)(2) allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is

excessive or unreasonable. In addition, *Government Code* Section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention that the SCO "is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable" is without merit.

Nevertheless, the SCO did conclude that the district's claimed indirect costs were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ." ¹ The district did not obtain federal approvals of its ICRPs for FY 2001-02 and FY 2002-03; therefore, the SCO auditor calculated indirect costs using the methodology described in the SCO claiming instructions using Form FAM-29C. The alternative methodology indirect cost rates did not support the rates that the district claimed; thus, the rates claimed were excessive.

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

IV. UNDERSTATED AUTHORIZED HEALTH FEE REVENUES CLAIMED

Issue

The district understated authorized health service fees by \$217,409 for the audit period because it reported actual revenues received rather than the health service fees it was authorized to collect.

The district was unable to retrieve student attendance data from its computer system that was used to calculate the revenues reported in its reimbursement claims. At the district's recommendation, the SCO recalculated the authorized health service fees the district was authorized to collect and compared that total to what the district reported.

SCO Analysis

Parameters and Guidelines requires district to deduct authorized health services fees from costs claimed. *Education Code* Section 76355(c) states that health fees are authorized from all students except those students who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; (3) demonstrate financial need.

Effective with the summer of 1997, authorized health service fees, pursuant to *Education Code* Section 76355, were \$8 per student for summer semester and \$11 per student for the fall and spring semesters. Effective with the summer 2001 session, *Education Code* Section 76355(a) authorized a \$1 increase to health service fees, resulting in authorized health service fees of \$9 per student for summer semester and \$12 per student for the fall and spring semesters.

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

District's Response

This finding is based on the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of \$217,409 for the two fiscal years.

Education Code Section 76355

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

Parameters and Guidelines

This Controller states that the "*Parameters and Guidelines* requires that the district deduct authorized health fees from claimed costs." The parameters and guidelines do not state this but instead state:

"Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)²."

² Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

In order for a district to "experience" these "offsetting savings" the district must actually have collected these fees. Student health fees actually collected must be used to offset costs, but not student health fees that could have been collected and were not. The use of the term "any offsetting savings" further illustrates the permissive nature of the fees.

Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "[t]o the extent community college districts can charge a fee, they are not required to incur a cost." . . . There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language which describes the legal effect of fees collected.

Government Code Section 17556

The Controller relies upon Government Code Section 17556 for the conclusion that "the COSM shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service." . . . The Controller misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where there is authority to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Student Health Services Fee Amount

The Controller asserts that the district should have collected a student health service fee each semester from non-exempt students in the amount of \$9 or \$12, depending on the fiscal year and whether the student is enrolled full time or part time. Districts receive notice of these fee amounts from the Chancellor of the California Community Colleges. An example of one such notice is the letter dated March 5, 2001, attached as Exhibit "F." While Education Code Section 76355 provides for an increase in the student health service fee, it did not grant the Chancellor the authority to establish mandatory fee amounts or mandatory fee increases. . . . Therefore, the Controller cannot rely upon the Chancellor's notice to adjust the claim for "collectible" student health services fees.

Fees Collected vs. Fees Collectible

This issue is one of student health fees revenue actually received, rather than student health fees which might be collected. The Commission determined, as stated in the parameters and guidelines that the student health fees "experienced" (*collected*) would reduce the amount subject to reimbursement. Student fees not collected are student fees not "experienced" and as such should not reduce reimbursement. Further, the amount "collectible" will never equal actual revenues collected due to changes in a student's BOGG eligibility, bad debt accounts, and refunds.

Because districts are not required to collect a fee from students for student health services, and if such a fee is collected the amount is to be determined by the District and not the Controller, the Controller's adjustment is without legal basis. What claimants are required by the parameters and guidelines to do is to reduce the amount of their claimed costs by the amount of student health services fee revenue actually received. Therefore, student health fees are merely collectible, they are not mandatory, and it is inappropriate to reduce claim amounts by revenues not received.

SCO's Comment

We agree that community college districts may choose not to levy a health service fee. However, *Education Code* Section 76355(a) provides districts the authority to levy a health service fee. *Education Code* Section 76355(c) specifies the authorized fees. We also agree that the California Community Colleges Chancellor's Office (CCCCO) does not have the authority to establish mandatory fee amounts or mandatory fee increases. The CCCCCO merely notifies districts of changes to the authorized fee amount, pursuant to *Education Code* Section 76355(a).

Regardless of the district's decision to levy or not levy a health service fee, the district does have the authority to levy the fees. In addition, contrary to the district's response, the SCO made no distinction between full-time or part-time students regarding the authorized health service fee. Districts are authorized to levy the full fee amount to both part-time and full time students. *Government Code* Section 17514 states that "costs mandated by the state" means any increased costs that a school district is required to incur. Furthermore, *Government Code* Section 17556(d) states that the COSM shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service. For the Health Fee Elimination mandated program, the COSM clearly recognized the availability of another funding source by including the fees as offsetting savings in *Parameters and Guidelines*, Section VIII (amended May 25, 1989). To the extent districts have authority to charge a fee, they are not required to incur a cost.

The district misrepresents the COSM's determination regarding authorized health service fees. The COSM's staff analysis of May 25, 1989, regarding the proposed *Parameters and Guidelines* amendments (**Tab 6**), states:

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

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

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

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

Thus, it is clear that the COSM's intent was that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter

from the CCCCCO, dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the COSM regarding authorized health service fees.

Since the COSM's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language, COSM staff did not further revise the proposed *Parameters and Guidelines*. The COSM's meeting minutes of May 25, 1989 (Tab 7) show that the Commission adopted the proposed *Parameters and Guidelines* on consent, with no additional discussion. Therefore, there was no change to the COSM's interpretation regarding authorized health service fees.

Two court cases addressed the issue of fee authority.³ Both cases concluded that "costs" as used in the constitutional provision, exclude "expenses that are recoverable from sources other than taxes." In both cases, the source other than taxes was fee authority.

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

The district also states, "the amount 'collectible' will never equal actual revenues collected due to changes in a student's BOGG eligibility, bad debt accounts, and refunds." The SCO calculated authorized health service fees based on the district's records of enrollment and BOGG grants. The district is responsible for providing accurate enrollment and BOGG grant data, including any changes that result from BOGG grant eligibility or students who disenroll. Consistent with OMB Circular A-21, Section J, the district is responsible for any bad debt accounts. Further, *Parameters and Guidelines* does not include a provision for bad debt accounts related to health service fees.

V. UNDERSTATED EXPENDITURES AND OFFSETTING REIMBURSEMENTS

Issue

The district underclaimed services and supplies by \$837 for FY 2001-02. The related indirect costs totaled \$153, based on the allowable indirect cost rate claimed for that fiscal year. The district also underclaimed offsetting revenues received in reimbursement of the \$837 expenditure noted above.

SCO Analysis

Parameters and Guidelines states that eligible community college districts shall be reimbursed for the costs of providing a health services program. *Parameters and Guidelines* also requires the districts to list the cost of materials that have been consumed or expended specifically for the purpose of this mandate.

Parameters and Guidelines states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) shall be identified and deducted from this claim.

District's Response

The district stated that this issue is not material and, therefore, does not dispute the adjustment.

VI. STATUTE OF LIMITATIONS FOR AUDIT

Issue

Based on the statute of limitations for audit, the district believes that the SCO had no authority to assess audit adjustments for FY 2001-2002.

SCO Analysis

Government Code Section 17558.5(a), effective July 1, 1996, states that a district's reimbursement claim is subject to audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The district filed its FY 2001-2002 claim on December 6, 2002. Thus, this claim was subject to audit until December 31, 2004. The SCO conducted an audit entrance conference on August 18, 2004. Therefore, the SCO initiated an audit within the period that the claim was subject to audit.

District's Response

... The District asserts that the first year of the two claims audited, FY 2001-02, was beyond the statute of limitations for audit when the Controller completed its audit on April 27, 2005.

Chronology of Claim Action Dates

December 06, 2002	FY 2001-02 claim filed by the District
August 18, 2004	Entrance conference date.
December 31, 2004	FY 2001-02 statute of limitations for audit expires
April 27, 2005	Controller's audit report issued

The District's fiscal year 2001-02 claim was mailed to the Controller on December 06, 2002. According to *Government Code* Section 17558.5, this claim is subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the audit adjustments for FY 2001-02 are barred by the statute of limitations set forth in *Government Code* Section 17558.5....

Statutory History

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

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

FY 2001-02, is subject to the two-year statute of limitations established by Chapter 945/95. FY 2001-02 was beyond audit when the audit report was issued. ...

Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003 amended Section 17558.5....

The amendment is pertinent since it indicates this is the first time that the factual issue of the date the audit is "initiated" for mandate programs for which funds are appropriated is introduced. ...

Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5.... The amendment is pertinent since it indicates this is the first time that the Controller audits may be completed at a time other than the stated period of limitations.

Initiation of An Audit

... The Controller did not complete the audit within the statutory period allowed for the first year claim included in this audit. ... The audit findings are therefore void for the FY 2001-02 claim. ...

SCO's Comment

The SCO initiated the audit of the district's FY 2001-02 claim on August 18, 2004, which is prior to the December 31, 2004, deadline for the claim to be audited.

The district believes that the audit initiation date is not relevant because the phrase "initiate an audit" is not specifically stated in the *Government Code* language applicable to these claims. Instead, the

district believes the audit report date is relevant. In particular, the district believes that Chapter 890, Statutes of 2004 is pertinent because “it indicates this is the first time that the Controller audits may be completed at a time other than the stated period of limitations.” This is an erroneous conclusion; before Chapter 890, Statutes of 2004, there was no statutory language defining when the SCO must complete an audit.

As of July 1, 1996, *Government Code* Section 17558.5(a) stated, “A reimbursement claim. . . is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. . .” In construing statutory language, we are to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Dyna-Med., Inc. v. Fair Employment and Housing Com.* [(1987)] 43 Cal.3d 1379, 1386.) In doing so, we look first to the statute’s words, giving them their usual and ordinary meaning. (*Committee of Seven Thousand v. Superior Court* [(1988)] 45 Cal. 3d 491, 501.)

In *Government Code* Section 17558.5(a), the words “subject to” mean that the district is “in a position or circumstance that places it under the power or authority of another.”⁴ The SCO exercised its authority to audit the district’s claims by conducting the audit entrance conference within the statute of limitations. There is no statutory language that requires the SCO to publish a final audit report before the two-year period expires.

⁴ Source: American Heritage Dictionary of the English Language, Fourth Edition © 2000.

As of January 1, 2003, *Government Code* Section 17558.5(a) was amended to state, “A reimbursement claim. . . is subject to the initiation of an audit by the Controller no later than three years after the reimbursement claim is filed or last amended, whichever is later. . .” [Emphasis added.] While the amendment does not define the start of an audit, the phrase “initiation of an audit” implies the first step taken by the Controller. Construing the statutory language to permit the Controller’s initial contact as the audit’s initiation is consistent with the statutory language as well as subsequent amendments. To read the statute as requiring that the SCO publish a final audit report would be to read into the statute provisions that do not exist.

The fundamental purpose underlying the statute of limitations is “to protect the defendants from having to defend stale claims by providing notice in time to prepare a fair defense on the merits.” (*Downs v. Department of Water & Power* [(1977)] 58 Cal. App. 4th 1093.) Here, the SCO exercised its authority to audit the district’s claims by conducting the audit entrance conference on August 18, 2004, well before the statute of limitations expired for the FY 2001-2002 claim (December 31, 2004).

VII. CONCLUSION

The SCO audited the Long Beach Community College District’s claims for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003. The district claimed \$516,978 for the mandated program. Our audit disclosed that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates and understated authorized health service fees

The district claimed unallowable services, supplies, and related indirect costs totaling \$24,135. The district claimed costs that are not reimbursable under the mandated program and inadvertently claimed some costs twice. The district does not dispute this adjustment.

The district overstated its indirect cost rates, thus overstating its indirect costs by \$139,093 for the audit period. The district did not obtain federal approval of its indirect cost rate proposals prepared using OMB Circular A-21 methodology. The SCO calculated indirect cost rates using the alternate methodology; these rates did not support the rates claimed.

The district understated authorized health fees by \$217,409 for the audit period because it reported actual revenues received rather than the health service fees it was authorized to collect.

The district underclaimed services, supplies and related indirect costs by \$990 for FY 2001-02. The district also underclaimed related offsetting revenues totaling \$837. The district stated that this issue is not material and, therefore, does not dispute the adjustment.


In addition, the SCO initiated the audit of FY 2001-02 prior to the deadline for the claim to be audited.

In conclusion, the COSM should find that: (1) the SCO had authority to audit FY 2001-02; (2) the SCO correctly reduced the district's FY 2001-02 claim by \$193,957; and (3) the SCO correctly reduced the district's FY 2002-03 claim by \$272,672.

VIII. CERTIFICATION

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

Executed on November 17, 2006, at Sacramento, California, by:



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

TAB 3

B. Indirect Cost

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

(1) Indirect Costs for Schools

School districts and county superintendents of schools may claim indirect costs incurred for mandated costs. For fiscal years prior to 1986-87, school districts and county superintendents of schools may use the Department of Education Form Nos. J41A or J-73A, respectively, applicable to the fiscal year of the claim. The rate, however, must not be applied to items of direct costs claimed in complying with the mandate if those same costs are included in cost centers identified as General Support (i.e., EDP Codes 400, 405, 410 in Column 3). For the 1986-87 and subsequent fiscal years, school districts and county superintendents of schools may use the Annual Program Cost Data Report, Department of Education Form Nos. J-380 or J-580, respectively, applicable to the fiscal year of the claim.

The amount of indirect costs the claimant is eligible to claim is computed by multiplying the rate by direct costs. When applying the rate, multiply the rate by direct costs not included in total support services EDP No. 422 of the J-380 or J-580. If there are any exceptions to this general rule for applying the indirect cost rate, they will be found in the individual mandate instructions.

(2) Indirect Cost Rate for Community Colleges

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

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

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

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

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

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

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration	6000					
Academic Administration	301	2,941,386	105,348	2,836,038	0	2,836,038
Course Curriculum & Develop.	302	21,595	0	21,595	0	21,595
Instructional Support Service	6100					
Learning Center	311	22,737	863	21,874	0	21,874
Library	312	518,220	2,591	515,629	0	515,629
Media	313	522,530	115,710	406,820	0	406,820
Museums and Galleries	314	0	0	0	0	0
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300	1,679,596	54,401	1,625,195	0	1,625,195
Other Student Services	6400					
Financial Aid Administration	321	391,459	20,724	370,735	0	370,735
Health Services	322	0	0	0	0	0
Job Placement Services	323	83,663	0	83,663	0	83,663
Student Personnel Admin.	324	289,926	12,953	276,973	0	276,973
Veterans Services	325	25,427	0	25,427	0	25,427
Other Student Services	329	0	0	0	0	0
Operation & Maintenance	6500					
Building Maintenance	331	1,079,260	44,039	1,035,221	0	1,035,221
Custodial Services	332	1,227,668	33,677	1,193,991	0	1,193,991
Grounds Maintenance	333	596,257	70,807	525,450	0	525,450
Utilities	334	1,236,305	0	1,236,305	0	1,236,305
Other	339	3,454	3,454	0	0	0
Planning and Policy Making	6600	587,817	22,451	565,366	565,366	0
General Inst. Support Services	6700					
Community Relations	341	0	0	0	0	0
Fiscal Operations	342	634,605	17,270	617,335	553,184	(a) 64,151
Subtotal		\$32,037,201	\$1,856,299	\$30,180,902	\$1,118,550	\$29,062,352

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES					FORM FAM-29C	
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
General Inst. Sup. Serv. (cont.)	6700					
Administrative Services	343	\$1,244,248	\$219,331	\$1,024,917	\$933,494	(a) \$91,423
Logistical Services	344	1,650,889	126,935	1,523,954	1,523,954	0
Staff Services	345	0	0	0	0	0
Noninstr. Staff Benefit & Incent.	346	10,937	0	10,937	0	10,937
Community Services	6800					
Community Recreation	351	703,858	20,509	683,349	0	683,349
Community Service Classes	352	423,188	24,826	398,362	0	398,362
Community Use of Facilities	353	89,877	10,096	79,781	0	79,781
Ancillary Services	6900					
Bookstores	361	0	0	0	0	0
Child Development Center	362	89,051	1,206	87,845	0	87,845
Farm Operations	363	0	0	0	0	0
Food Services	364	0	0	0	0	0
Parking	365	420,274	6,857	413,417	0	413,417
Student Activities	3663	0	0	0	0	0
Student Housing	67	0	0	0	0	0
Other	379	0	0	0	0	0
Auxiliary Operations	7000					
Auxiliary Classes	381	1,124,557	12,401	1,112,156	0	1,112,156
Other Auxiliary Operations	382	0	0	0	0	0
Physical Property Acquisitions	7100	814,318	814,318	0	0	0
(05) Total		\$38,608,398	\$3,092,778	\$35,515,620	\$3,575,998	\$31,939,622
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				11.1961%		
(07) Notes						
(a) Mandated Cost activities designated as direct costs per claim instructions.						

TAB 4

HEALTH FEE ELIMINATION

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

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

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

2. Eligible Claimants

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

3. Appropriations

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

4. Types of Claims

A. Reimbursement and Estimated Claims

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

B. Minimum Claim

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

5. Filing Deadline

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

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

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

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

6. Reimbursable Components

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

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

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

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

7. Reimbursement Limitations

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

8. Claiming Forms and Instructions

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

A. Form HFE- 2, Health Services

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

B. Form HFE-1.1, Claim Summary

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

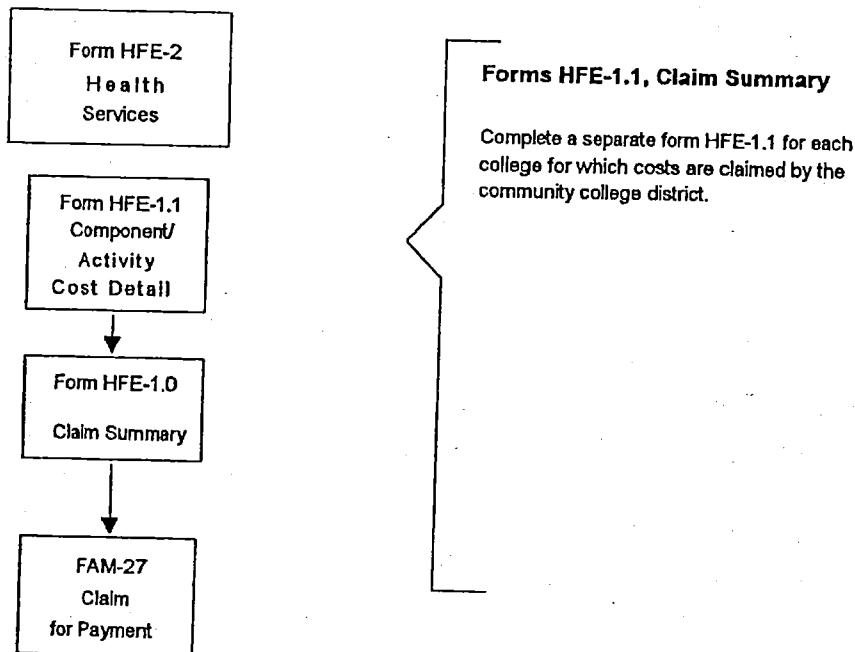
C. Form HFE-1.0, Claim Summary

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

D. Form FAM-27, Claim for Payment

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

Illustration of Claim Forms



CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use Only (19) Program Number 00029 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program 029
--	---	---------------------------

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

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

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, set forth on the attached statements.

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

Program 029	HEALTH FEE ELIMINATION Certification Claim Form Instructions	FORM FAM-27
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- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address was enclosed with the letter regarding the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form HFE-1.0 and enter the amount from line (04)(b).
- (08) Enter the same amount as shown on line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form HFE-1.0, line (04)(b).
- (14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., HFE-1.0, (04)(b), means the information is located on form HFE-1.0, line (04), column (b). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. Completion of this data block will expedite the payment process.
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (38) Enter the name, telephone number, and e-mail address of the person whom this office should contact if additional information is required.

SUBMIT A SIGNED, ORIGINAL FORM FAM-27 WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS (NO COPIES NECESSARY) TO:

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

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

Address, if delivered by other delivery service:

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

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY		FORM HFE-1.0
(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 19__/19__
(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)		
(a) Name of College	(b) Claimed Amount	
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	

<p>HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions</p>	<p>FORM HFE-1.0</p>
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(01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.

(02) Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which the expenses were/are to be incurred. A separate claim must be filed for each fiscal year.

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

(03) List all the colleges of the community college district which have increased costs. A separate form HFE-1.1 must be completed for each college showing how costs were derived.

(04) Enter the total claimed amount of all colleges by adding the Claimed Amount, line (3.1b) + line (3.2b) ...+ (3.21b).

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY							FORM HFE-1.1
(01) Claimant		(02) Type of Claim			Fiscal Year		
		Reimbursement <input type="checkbox"/>					
		Estimated <input type="checkbox"/>			19__/19__		
(03) Name of College							
(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.							
LESS <input type="checkbox"/>		SAME <input type="checkbox"/>		MORE <input type="checkbox"/>			
					Direct Cost	Indirect Cost	Total
(05) Cost of health services for the fiscal year of claim							
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87							
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]							
(08) Complete columns (a) through (g) to provide detail data for health fees							
Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester							
2. Per spring semester							
3. Per summer session							
4. Per first quarter							
5. Per second quarter							
6. Per third quarter							
(09) Total health fee that could have been collected					[Line (8.1g) + (8.2g) +(8.6g)]		
(10) Sub-total					[Line (07) - line (09)]		
Cost Reduction							
(11) Less: Offsetting Savings, if applicable							
(12) Less: Other Reimbursements, if applicable							
(13) Total Amount Claimed					[Line (10) - (line (11) + line (12))]		

HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.1
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- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.
- (02) **Type of Claim.** Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form HFE-1.1 must be filed for a reimbursement claim. If you are filing an estimated claim and the estimate does not exceed the previous year's actual costs by 10%, do not complete form HFE-1.1. Simply enter the amount of the estimated claim on form FAM-27, line (05), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the name of the college or community college district that provided student health services in the 1986/87 fiscal year and continue to provide the same services during the fiscal year of the claim.
- (04) Compare the level of health services provided during the fiscal year of reimbursement to the 1986/87 fiscal year and indicate the result by marking a check in the appropriate box. If the "Less" box is checked, STOP and do not complete the remaining part of this claim form. No reimbursement is forthcoming.
- (05) Enter the direct cost, indirect cost, and total cost of health services for the fiscal year of claim on line (05). Direct cost of health services is identified on the college expenditures report (individual college's cost of health services as authorized under Education Code § 76355 and included in the district's Community College Annual Financial and Budget Report CCFS-311, EDP Code 6440, column 5). **If the amount of direct costs claimed is different than shown on the expenditures report, provide a schedule listing those community college costs that are in addition to, or a reduction to expenditures shown on the report.** For claiming indirect costs, college districts have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21), or the State Controller's methodology outlined in "Filing a Claim" of the Mandated Cost Manual for Schools.
- (06) Enter the direct cost, indirect cost, and total cost of health services that are in excess of the level provided in the 1986/87 fiscal year.
- (07) Enter the difference of the cost of health services for the fiscal year of claim, line (05), and the cost of providing current fiscal year health services that is in excess of the level provided in the 1986/87 fiscal year, line (06).
- (08) Complete columns (a) through (g) to provide details on the amount of health service fees that could have been collected. **Do not include students who are exempt from paying health fees established by the Board of Governors and contained in Section 58620 of Title 5 of the California Code of Regulations.** After 01/01/93, the student fees for health supervision and services were \$10.00 per semester, \$5.00 for summer school, and \$5.00 for each quarter. Beginning with the summer of 1997, the health service fees are: \$11.00 per semester and \$8.00 for summer school, or \$8.00 for each quarter.
- (09) Enter the sum of Student Health Fees That Could Have Been Collected, (other than from students who were exempt from paying health fees) [Line (8.1g) + line (8.2g) + line (8.3g) + line (8.4g) + line (8.5g) + line (8.6g)].
- (10) Enter the difference of the cost of providing health services at the 1986/87 level, line (07) and the total health fee that could have been collected, line (09). If line (09) is greater than line (07), no claim shall be filed.
- (11) Enter the total savings experienced by the school identified in line (03) as a direct cost of this mandate. Submit a schedule of detailed savings with the claim.
- (12) Enter the total other reimbursements received from any source, (i.e., federal, other state programs, etc.). Submit a schedule of detailed reimbursements with the claim.
- (13) Subtract the sum of Offsetting Savings, line (11), and Other Reimbursements, line (12), from Total 1986/87 Health Service Cost excluding Student Health Fees.

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

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

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

TAB 5



Office of Management and Budget

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CIRCULAR A-21 **(Revised 05/10/04)**

CIRCULAR NO. A-21 **Revised**

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for Educational Institutions

1. *Purpose.* This Circular establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions. The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* The Circular supersedes Federal Management Circular 73 8, dated December 19, 1973. FMC 73 8 is revised and reissued under its original designation of OMB Circular No. A 21.

3. *Applicability.*

- a. All Federal agencies that sponsor research and development, training, and other work at educational institutions shall apply the provisions of this Circular in determining the costs incurred for such work. The principles shall also be used as a guide in the pricing of fixed price or lump sum agreements.
- b. In addition, Federally Funded Research and Development Centers associated with educational institutions shall be required to comply with the Cost Accounting Standards, rules and regulations issued by the Cost Accounting Standards Board, and set forth in 48 CFR part 99; provided that they are subject thereto under defense related contracts.

4. *Responsibilities.* The successful application of cost accounting principles requires development of mutual understanding between representatives of educational institutions and of the Federal Government as to their scope, implementation, and interpretation.

5. *Attachment.* The principles and related policy guides are set forth in the Attachment, "Principles for determining costs applicable to grants, contracts, and other agreements with educational institutions."

6. *Effective date.* The provisions of this Circular shall be effective October 1, 1979, except for subsequent amendments incorporated herein for which the effective dates were specified in these revisions (47 FR 33658, 51 FR 20908, 51 FR 43487, 56 FR 50224, 58 FR 39996, 61 FR 20880, 63 FR 29786, 63 FR 57332, 65 FR 48566 and 69 FR 25970). Institutions as of the start of their first fiscal year beginning after that date shall implement the provisions. Earlier implementation, or a delay in implementation of individual provisions, is permitted by mutual agreement between an institution and the cognizant Federal agency.

7. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395 3993.

Attachment

**PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS,
CONTRACTS, AND OTHER AGREEMENTS WITH
EDUCATIONAL INSTITUTIONS**

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A. Purpose and scope

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1. General
2. Simplified procedure

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J. General provisions for selected items of cost

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3. Alcoholic beverages
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(2) Other than formal negotiation. The cognizant agency and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this Circular.

- g. Formalizing determinations and agreements. The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest.
- h. Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.

12. Standard Format for Submission. For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution by institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating F&A rates, as described in Section H.

H. Simplified method for small institutions.

1. General.

- a. Where the total direct cost of work covered by Circular A 21 at an institution does not exceed \$10 million in a fiscal year, the use of the simplified procedure described in subsections 2 or 3, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as distribution basis.
- b. The simplified procedure should not be used where it produces results that appear inequitable to the Federal Government or the institution. In any such case, F&A costs should be determined through use of the regular procedure.

2. Simplified procedure Salaries and wages base.

- a. Establish the total amount of salaries and wages paid to all employees of the institution.
- b. Establish an F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:
 - (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and

scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The total amount of salaries and wages included in the F&A cost pool must be separately identified.

- c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a the amount of salaries and wages included under subsection b.
 - d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.
 - e. Apply the F&A cost rate to direct salaries and wages for individual agreements to determine the amount of F&A costs allocable to such agreements.
3. Simplified procedure Modified total direct cost base.
- a. Establish the total costs incurred by the institution for the base period.
 - b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:
 - (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).
 - (2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.
 - (3) Library.
 - (4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The modified total direct costs amount

included in the F&A cost pool must be separately identified.

- c. Establish a modified total direct cost distribution base, as defined in Section G.2, that consists of all institution's direct functions.
- d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.
- e. Apply the F&A cost rate to the modified total direct costs for individual agreements to determine the amount of F&A costs allocable to such agreements.

J. General provisions for selected items of cost.

Sections 1 through 54 provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of cost is properly treated as direct cost or F&A cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

1. *Advertising and public relations costs.*

- a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.
- b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
- c. The only allowable advertising costs are those that are solely for:
 - (1) The recruitment of personnel required for the performance by the institution of obligations arising under a sponsored agreement (See also subsection b. of section J.42, Recruiting);
 - (2) The procurement of goods and services for the performance of a sponsored agreement;
 - (3) The disposal of scrap or surplus materials acquired in the performance of a sponsored agreement except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or
 - (4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

TAB 6

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

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

Executive Summary

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

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

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

Claimant

Rio Hondo Community College District

Requesting Party

California Community Colleges Chancellor's Office

Chronology

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

Summary of Mandate

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

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

Proposed Amendments

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

Recommendations

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

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

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

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

Staff Analysis

Issue 1: Eligible Claimants

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

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

Issue 2: Reimbursement Alternatives

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

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

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

Issue 3: Offsetting Savings and Other Reimbursements

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

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

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

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

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

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

Issue 4: Editorial Changes

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

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

Staff Recommendation

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

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

I. SUMMARY OF MANDATE

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

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

II. COMMISSION ON STATE MANDATES' DECISION

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

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

III. ELIGIBLE CLAIMANTS

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

IV. PERIOD OF REIMBURSEMENT

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

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

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

V. REIMBURSEMENTABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

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

ACCIDENT REPORTS

APPOINTMENTS

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

ASSESSMENT, INTERVENTION & COUNSELING

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

EXAMINATIONS (Minor Illnesses)
Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

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

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

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

INSURANCE

- On Campus Accident
- Voluntary
- Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE
Inquiry/Interpretation
Pap Smears

PHYSICALS
Employees
Students
Athletes

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

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

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

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

MISCELLANEOUS

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

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a list of each item for which reimbursement is claimed under this mandate. // *Eligible/charges/day/claim/costs/under one/two/alternatives//XX/fee/amount/previously/collected/per student/and/enrollment/count//or/XX/actual/costs/of/program/*

A. Description of Activity

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

B. Claiming/Alternatives

Claimed costs should be supported by the following information:

Alternative/1//Fees/Previously/Collected/in/1983-84/Fiscal/Year/

1/ Fees/collected/in/the/1983-84/fiscal/year/for/support/the/health/services/program/

2/ Total/number/of/students/under/item/Y1/R/Y1/through/4/above///Listing/this/alternative//the/total/amount claimed/would/be/item/Y1/B/Y1/attributed/by/item Y1/B/2//with/the/total/amount/reimbursed/increased/by the/applicable/implied/rate/deduction/

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

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 19836-847 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester; \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) ~~now~~ received from individuals other than students who ~~were~~ are not covered by ~~former~~ Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct;

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

and

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

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

CHANCELLOR'S OFFICE

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COMMUNITY COLLEGES

NINTH STREET
 SACRAMENTO, CALIFORNIA 95814
 (916) 445-8732 445-1163



February 22, 1989



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

Dear Mr. Eich:

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

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

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

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

Mr. Eich

2

February 22, 1989

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

Sincerely,

David Mertes

DAVID MERTES
Chancellor

DM:PR:mh

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

State of California

Memorandum

March 22, 1989

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

From : Department of Finance

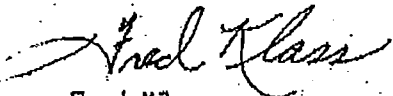
Proposed Amendments to Parameters and Guidelines for Claim No. CSM-4206 -- Chapter 1, Statutes of 1984, 2nd E.S. and Chapter 1118, Statutes of 1987 -- Health Fee Elimination

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

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

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

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


Fred Klass
Assistant Program Budget Manager

cc: see second page

cc: Glen Beatie, Stat' Controller's Office
Pat Ryan, Chancel 's Office, Community College
Juliet Musso, Legislative Analyst's Office
Richard Frank, Attorney General

LR:1988-2

CHANCELLOR'S OFFICE

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COMMUNITY COLLEGES

1000 NINTH STREET
 SACRAMENTO, CALIFORNIA 95814
 (916) 445-8752 445-1163



April 3, 1989

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

Attention: Ms. Deborah Fraga-Decker

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

Dear Mr. Eich:

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

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

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

Sincerely,

DAVID MERTES
 Chancellor

DM:PR:mh

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



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

April 3, 1989



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

Dear Ms. Fraga-Decker:

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

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

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

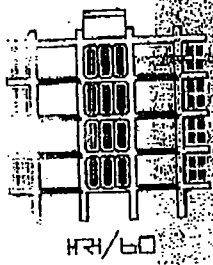
If you have any questions, please call Glen Beatie at 3-8137.

Sincerely,

Glenn Haas, Assistant Chief
 Division of Accounting

GH/GB:dvl

SC81822



RIO HONDO COMMUNITY COLLEGE DISTRICT
3600 Workman Mill Road • Whittier, CA 90608 • Phone (214) 692-0921

HRI/BO



March 16, 1989

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

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

Dear Deborah:

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

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

Yours very truly,

Timothy M. Wood
Vice President
Administrative Affairs

TMW:hh

TAB 7

MINUTES

COMMISSION ON STATE MANDATES

May 25, 1989

10:00 a.m.

State Capitol, Room 437
Sacramento, California

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

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

Item 1 Minutes

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

The minutes were adopted without objection.

Consent Calendar

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

- Item 2 Proposed Statement of Decision
Chapter 406, Statutes of 1988
Special Election - Bridges
- Item 3 Proposed Statement of Decision
Chapter 583, Statutes of 1985
Infectious Waste Enforcement
- Item 4 Proposed Statement of Decision
Chapter 980, Statutes of 1984
Court Audits
- Item 5 Proposed Statement of Decision
Chapter 1286, Statutes of 1985
Homeless Mentally Ill

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

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

The following items were continued:

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

The next item to be heard by the Commission was:

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

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

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

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

Member Martinez moved and Member Buenrostro seconded a motion to adopt the staff recommendation to deny the proposed amendments to the parameters and guidelines. The roll call vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statewide Cost Estimate
Chapter 498, Statutes of 1983
Education Code Section 51225.3
Graduation Requirements

Carol Miller appeared on behalf of the claimant, Santa Barbara Unified School District, Jim Apps and Don Enderton appeared on behalf of the Department of Finance, and Rick Knott appeared on behalf of the San Diego Unified School District.

Carol Miller began the discussion on this matter by stating her objection to the Department of Finance raising issues that were already argued in the parameters and guidelines hearings for this mandate. Based on this objection, Ms. Miller requested that the Commission adopt staff's recommendation and allow the Controller's Office to handle any audit exceptions.

Jim Apps stated that because school districts did not report funds that have been received by them, then the data reported in the survey is suspect. Therefore, the Department of Finance is not convinced that the cost estimate based on the data received by the schools is legitimate.

Discussion continued on the validity of the cost estimate and on the figures presented to the Commission for its consideration.

Member Creighton then made a motion to adopt staff's recommendation. Member Shuman seconded the motion. The vote on the motion was: Member Buenrostro, no; Member Creighton, aye; Member Martinez, no; Member Shuman, aye; and Chairperson Gould, no. The motion failed.

Chairperson Gould made an alternative motion that staff, the Department of Finance, and the school districts, conduct a pre-hearing conference and agree on an estimate to be presented to the Commission at a future hearing. Member Buenrostro seconded the motion. The roll call vote on the motion was unanimous. The motion carried.

Item 11 Statewide Cost Estimate
Chapter 815, Statutes of 1979
Chapter 1327, Statutes of 1984
Chapter 757, Statutes of 1985
Short-Doyle Case Management

Pamela Stone, representing the County of Fresno, stated that the county was in agreement with the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years, and was opposed to the reduction of the costs estimate being proposed by the Department of Mental Health's late filing.

Lynn Whetstone, representing the Department of Mental Health, stated that the Department agrees with the methodology used by Commission staff to develop the cost estimate, however, the Department questioned the manner in which Commission staff extrapolated its survey figures into a statewide estimate. Ms. Whetstone stated that due to the reasons stated in its late filing, the Department believes that the cost estimate be reduced to \$17,280,000.

Member Shuman moved, and Member Martinez seconded a motion to adopt the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years. The roll call vote on the motion was unanimous. The motion carried.

Item 14 State Mandates Apportionment System
Request for Review of Base Year Entitlement
Chapter 1242, Statutes of 1977
Senior Citizens' Property Tax Postponement

Leslie Hobson appeared on behalf of the claimant, County of Placer, and stated agreement with the staff analysis.

There were no other appearances and no further discussion.

Member Creighton moved approval of the staff recommendation. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 15 Test Claim
Chapter 670, Statutes of 1987
Assigned Judges

Vicki Wajdak and Pamela Stone appeared on behalf of the claimant, County of Fresno. Beth Mullen appeared on behalf of the Administrative Office of

the Courts. Jim Apps appeared on behalf of the Department of Finance. Allan Burdick appeared on behalf of the County Supervisors Association of California. Pamela Stone restated the claimant's position that the revenue losses due to this statute were actually increased costs because Fresno is now required to compensate its part-time justice court judges for work performed in another county while on assignment. Beth Mullen stated her opposition to this interpretation because Fresno's part-time justice court judge cannot be assigned elsewhere until all work required to be performed for Fresno has been completed; therefore, Fresno is only required to compensate the judge for its own work.

There followed discussion by the parties and the Commission regarding the applicability of the Supreme Court's decisions in County of Los Angeles and Lucia Mar. Chairperson Gould asked Commission Counsel Gary Hori whether this statute imposed a new program and higher level of service as contemplated by these two decisions. Mr. Hori stated that it did meet the definition of new program and higher level of service as contemplated by the Supreme Court.

Member Creighton moved to adopt the staff recommendation to find a mandate on counties whose part-time justice court judge is assigned within the home county. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 18 Test Claim
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1980
Chapter 1373, Statutes of 1980
Public Law 99-372
Attorney's Fees - Special Education

Chairperson Gould recused himself from the hearing on this item.

Clayton Parker, representing the Newport-Mesa Unified School District, submitted a late filing on the test claim rebutting the staff analysis. Member Creighton stated that he had not had an opportunity to review the late filing and inquired on whether the claim should be heard at this hearing. Staff informed Member Creighton and Member Buenrostro that in reviewing the filing before this item was called, the filing appeared to be summary of the claimant's position on the staff analysis, and that there appeared to be no reason to continue the item.

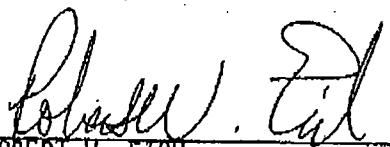
Mr. Parker stated that Commission staff had misstated the events that resulted in the claimant having to pay attorneys' fees to a pupil's guardians, and because of case law, courts do not have any discretion in awarding attorney's fees. Mr. Parker stated that because state legislation has codified the Federal Education of the Handicapped Act, school districts are subject to the provisions of Public Law 94-142 and Public Law 99-372. Member Buenrostro then inquired whether staff was comfortable with discussing the issue of a state executive order incorporating federal law.

Minutes
Hearing of May 25, 1989
Page 6

Staff informed the Commission that it was not comfortable discussing this issue, and further noted that it appeared that Mr. Parker was basing his reasoning for finding P.L. 99-372 to be a state mandated program, on the Board of Control's finding that Chapter 1247, Statutes of 1977, and Chapter 797, Statutes of 1980, were a state mandated program. Staff noted that Board of Control's finding is currently the subject of the litigation in Huff v. Commission on State Mandates (Sacramento County Superior Court Case No. 352295).

Member Creighton moved and Member Martinez seconded a motion to continue this item and have legal counsel and staff review the arguments presented by Mr. Parker. The vote on the motion was unanimous. The motion carried.

With no further items on the agenda, Chairperson Gould adjourned the hearing at 11:45 a.m.



ROBERT W. EICH
Executive Director

RWE:GLH:cm:0224g

**DISTRICT'S
INCORRECT REDUCTION CLAIM
FILED WITH THE
COMMISSION ON STATE MANDATES
ON SEPTEMBER 6, 2005**

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



September 16, 2005

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Ginny Brummels
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 501
Sacramento, CA 95816

Re: **Incorrect Reduction Claim**

Health Fee Elimination, 05-4206-I-03
Long Beach Community College District, Claimant
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2001-2002, 2002-2003

Dear Mr. Petersen and Ms. Brummels:

On September 6, 2005, the Long Beach Community College District filed an incorrect reduction claim (IRC) with the Commission on State Mandates (Commission) based on the *Health Fee Elimination* program for fiscal years 2001-2002 and 2002-2003. Commission staff determined that the IRC filing is complete.

Government Code section 17551, subdivision (b), requires the Commission to hear and decide upon claims filed by local agencies and school districts that the State Controller's Office (SCO) has incorrectly reduced payments to the local agencies or school districts.

SCO Review and Response. Please file the SCO response and supporting documentation regarding this claim within 90 days of the date of this letter. Please include an explanation of the reason(s) for the reductions and the computation of reimbursements. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based on the declarant's personal knowledge, information or belief. The Commission's regulations also require that the responses (opposition or recommendation) filed with the Commission be simultaneously served on the claimants and their designated representatives, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1185.01.)

The failure of the SCO to respond within this 90-day timeline shall not cause the Commission to delay consideration of this IRC.

Claimant's Rebuttal. Upon receipt of the SCO response, the claimant and interested parties may file rebuttals. The rebuttals are due 30 days from the service date of the response.

Prehearing Conference. A prehearing conference will be scheduled if requested.

Public Hearing and Staff Analysis. The public hearing on this claim will be scheduled after the record closes. A staff analysis will be issued on the IRC at least eight weeks prior to the public hearing.

Dismissal of Incorrect Reduction Claims. Under section 1188.31 of the Commission's regulations, IRCs may be dismissed if postponed or placed on inactive status by the claimant for more than one year. Prior to dismissing a claim, the Commission will provide 60 days notice and opportunity for the claimant to be heard on the proposed dismissal.

Please contact Tina Poole at (916) 323-8220 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Patton".

NANCY PATTON
Assistant Executive Director

Enclosure: Incorrect Reduction Claim Filing - (SCO only)

J:mandates/IRC/2005/4206-I-03/completeltr

C-1

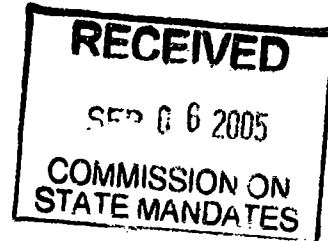
SixTen and Associates

Mandate Reimbursement Services

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

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

September 1, 2005



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

RE: Health Fee Elimination
Fiscal Years: 2001-02 through 2002-03
Incorrect Reduction Claim

Dear Ms. Higashi:

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

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

Irma Ramos, Administrative Dean
Human Resources
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Thank-you.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Petersen".

Keith B. Petersen

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (12/89)

For Official Use Only

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SEP 06 2005

COMMISSION ON
STATE MANDATES

05-4206-I-03

NCORRECT REDUCTION CLAIM FORM

Local Agency or School District Submitting Claim

LONG BEACH COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Voice: 858-514-8605
Fax: 858-514-8645
E-mail: Kbpsixten@aol.com

Address

Irma Ramos, Administrative Dean
Human Resources
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Representative Organization to be Notified

Telephone Number

Robert Miyashiro, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011
E-mail: robertm@SSCal.com

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to section 17561 of the Government Code. This incorrect reduction claim is filed pursuant to section 17561(b) of the Government Code.

CLAIM IDENTIFICATION: Specify Statute or Executive Order

HEALTH FEE ELIMINATION Chapter 1, Statutes of 1984, 2nd E.S. Education Code Section 76355
Chapter 1118, Statutes of 1987

<u>Fiscal Year</u>	<u>Amount of the Incorrect Reduction</u>
2001-2002	\$193,957
2002-2003	\$272,672
Total Amount	\$466,629

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING AN INCORRECT REDUCTION CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Irma Ramos, Administrative Dean
Human Resources

Voice: 562-938-4095
Fax: 562-938-4364
E-Mail: iramos@lbcc.edu

Signature of Authorized Representative

Date

X

August 30, 2005

1 Claim Prepared by:
Keith B. Petersen
SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, California 92117
6 Voice: (858) 514-8605
7 Fax: (858) 514-8645

8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11 INCORRECT REDUCTION CLAIM OF:)

No. CSM _____

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

16 LONG BEACH)
17 Community College District,)

) Education Code Section 76355

) Health Fee Elimination

20 Claimant.)

) Annual Reimbursement Claims:

) Fiscal Year 2001-02

) Fiscal Year 2002-03

25 _____)
26 INCORRECT REDUCTION CLAIM FILING

27 PART I. AUTHORITY FOR THE CLAIM

28 The Commission on State Mandates has the authority pursuant to Government
29 Code Section 17551(d) to "... to hear and decide upon a claim by a local agency or
30 school district, filed on or after January 1, 1985, that the Controller has incorrectly
31 reduced payments to the local agency or school district pursuant to paragraph (2) of
32 subdivision (d) of Section 17561." Long Beach Community College District (hereafter
33 "district" or "claimant") is a school district as defined in Government Code Section

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

1 17519.¹ Title 2, CCR, Section 1185 (a), requires the claimant to file an incorrect
2 reduction claim with the Commission.

3 This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185 (b),
4 requires incorrect reduction claims to be filed no later than three years following the
5 date of the Controller's remittance advice notifying the claimant of a reduction. A
6 Controller's audit report dated April 27, 2005 has been issued, but no remittance
7 advices have been issued. The audit report constitutes a demand for repayment and
8 adjudication of the claim. On May 14, 2005, the Controller issued "results of review
9 letters" reporting the audit results and amounts due claimant, subject to payment when
10 appropriations are available, and constitutes a payment action.

There is no alternative dispute resolution process available from the Controller's
12 office. In response to an audit issued March 10, 2004, Foothill-De Anza Community
13 College attempted to utilize the informal audit review process established by the
14 Controller to resolve factual disputes. Foothill-De Anza was notified by the Controller's
15 legal counsel by letter of July 15, 2004 (attached as Exhibit "A"), that the Controller's
16 informal audit review process was not available for mandate audits and that the proper
17 forum was the Commission on State Mandates.

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

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

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

PART II. SUMMARY OF THE CLAIM

The Controller conducted a field audit of District's annual reimbursement claims for the District's actual costs of complying with the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and Chapter 1118, Statutes of 1987) for the period of July 1, 2000 through June 30, 2003. As a result of the audit, the Controller determined that \$466,629 of the claimed costs for were unallowable:

Fiscal Year	Amount Claimed	Audit Adjustment	SCO Payments	Amount Due <State> District
2001-02	\$244,306	\$193,957	\$25,457	\$24,892
2002-03	<u>\$272,672</u>	<u>\$ 272,672</u>	<u>\$ 0</u>	<u>\$ 0</u>
Totals	\$516,978	\$466,629	\$25,457	\$24,892

Since the District has been paid \$25,457 for these claims, the audit report concludes that a remaining amount of \$24,892 should be paid to the District "contingent on available appropriations."

PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

The District has not filed any previous incorrect reduction claims for this mandate program. The District is not aware of any other incorrect reduction claims having been adjudicated on the specific issues or subject matter raised by this incorrect reduction claim.

1 PART IV. BASIS FOR REIMBURSEMENT

2 1. Mandate Legislation

3 Chapter 1, Statutes of 1984, 2nd Extraordinary Session, repealed Education
4 Code Section 72246 which had authorized community college districts to charge a
5 student health services fee for the purpose of providing health supervision and
6 services, direct and indirect medical and hospitalization services, and operation of
7 student health centers. This statute also required the scope of health services for
8 which a community college district charged a fee during the 1983-84 fiscal year be
9 maintained at that level in the 1984-85 fiscal year and every year thereafter. The
10 provisions of this statute were to automatically repeal on December 31, 1987.

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

14 Chapter 8, Statutes of 1993, Section 29, repealed Education Code Section
15 72246, effective April 15, 1993. Chapter 8, Statutes of 1993, Section 34, added
16 Education Code Section 76355², containing substantially the same provisions as former

² Education Code Section 76355, added by Chapter 8, Statutes of 1993, Section 34, effective April 15, 1993, as last amended by Chapter 758, Statutes of 1995, Section 99:

"(a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each

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

quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

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

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

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

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

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

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

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

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

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

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

1 Section 72246, effective April 15, 1993.

2 2. Test Claim

3 On December 2, 1985, Rio Hondo Community College District filed a test claim
4 alleging that Chapter 1, Statutes of 1984, 2nd Extraordinary Session, by eliminating the
5 authority to levy a fee and by requiring a maintenance of effort, mandated additional
6 costs by mandating a new program or the higher level of service of an existing program
7 within the meaning of California Constitution Article XIII B, Section 6.

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

14 At a hearing on April 27, 1989, the Commission of State Mandates determined
15 that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to
16 apply to all community college districts which provided health services in fiscal year
17 1986-1987 and required them to maintain that level of health services in fiscal year

district.

(f) A district that begins charging a health fee may use funds for startup costs from other district funds and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

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

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

1 1987-1988 and each fiscal year thereafter.

2 3. Parameters and Guidelines

3 On August 27, 1987, the original parameters and guidelines were adopted. On
4 May 25, 1989, those parameters and guidelines were amended. A copy of the
5 parameters and guidelines, as amended on May 25, 1989, is attached as Exhibit "B."
6 So far as is relevant to the issues presented below, the parameters and guidelines
7 state:

8 "V. REIMBURSABLE COSTS

9 A. Scope of Mandate

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

13 VI. CLAIM PREPARATION

14 B... 3. Allowable Overhead Cost

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

18 VII. SUPPORTING DATA

19 For auditing purposes, all costs claimed must be traceable to
20 source documents and/or worksheets that show evidence of the
21 validity of such costs....

22 VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

23 Any offsetting savings the claimant experiences as a direct result
24 of this statute must be deducted from the costs claimed. In
25 addition, reimbursement for this mandate received from any

1 source, e.g., federal, state, etc., shall be identified and deducted
2 from this claim. This shall include the amount of \$7.50 per full-time
3 student per semester, \$5.00 per full-time student for summer
4 school, or \$5.00 per full-time student per quarter, as authorized by
5 Education Code section 72246(a). This shall also include
6 payments (fees) received from individuals other than students who
7 are not covered by Education Code Section 72246 for health
8 services. ...”

9 4. Claiming Instructions

10 The Controller has annually issued or revised claiming instructions for the
11 Health Fee Elimination mandate. A copy of the September 1997 revision of the
12 claiming instructions is attached as Exhibit “C.” The September 1997 claiming
13 instructions are believed to be, for the purposes and scope of this incorrect reduction
14 claim, substantially similar to the version extant at the time the claims which are the
15 subject of this Incorrect reduction claim were filed. However, since the Controller’s
16 claim forms and instructions have not been adopted as regulations, they have no force
17 of law, and, therefore, have no effect on the outcome of this incorrect reduction claim.

18 PART V. STATE CONTROLLER CLAIM ADJUDICATION

19 The Controller conducted an audit of District’s annual reimbursement claims for
20 Fiscal years 2001-02 and 2002-03. The audit concluded that only 10% of the
21 District’s costs, as claimed, are allowable. A copy of the April 27, 2005-audit report and
22 the District’s response is attached as Exhibit “D.”

23 VI. CLAIMANT’S RESPONSE TO THE STATE CONTROLLER

24 By letter dated February 4, 2005, the Controller transmitted a copy of its draft

1 audit report. By letter dated February 23, 2005, the District objected to the proposed
2 adjustments set forth in the draft audit report. A copy of District's letter of February 23,
3 2005 is attached as Exhibit "E." The Controller then issued its final audit report without
4 change to the adjustments as stated in the draft audit report.

5 **PART VII. STATEMENT OF THE ISSUES**

6 **Finding 1: Unallowable services and supplies costs**

7 The Controller asserts unallowable services and supplies direct costs totaling
8 \$17,894 for both fiscal years. This total amount comprises \$11,869 in "overclaimed"
9 athletic insurance costs and duplicated charges of \$6,025 for services and supplies for
10 both fiscal years.

Health Insurance Premium

12 The District pays two types of student insurance premiums. The basic and
13 catastrophic coverage for the general student population, and a separate premium
14 amount for intercollegiate athletes. The Controller's adjustment improperly disallows a
15 portion of the general population premium as somehow being related to intercollegiate
16 athletics. The audit report does not describe how the disallowance was calculated.
17 Regardless, the adjustment is inappropriate since student athletes are part of the
18 student population for purpose of the general student population insurance premium.
19 The insurance premiums for athletes pertains to coverage while participating in
20 intercollegiate sports, not while they are attending class or on campus in their capacity

1 a member of the general student population.

2 Services and Supplies

3 The District does not contest this adjustment.

4 **Finding 2 - Overstated indirect cost rates claimed**

5 The Controller asserts that the district overstated its indirect cost rates and costs
6 in the amount of \$139,093 for both fiscal years. This finding is based upon the
7 Controller's statement that "the district did not obtain federal approval for its IRCPs.
8 We calculated indirect cost rates using the methodology allowed by the SCO claiming
9 instructions." Contrary to the Controller's ministerial preferences, there is no
10 requirement in law that the district's indirect cost rate must be "federally" approved, and
11 further the Controller has never specified the federal agencies which have the authority
12 to approve indirect cost rates. Further, it should be noted that the Controller did not
13 determine that the District's rate was excessive or unreasonable.

14 CCFS-311

15 In fact, both the District's method and the Controller's method utilized the same
16 source document, the CCFS-311 annual financial and budget report required by the
17 state. The difference in the claimed and audited methods is in the determination of
18 which of those cost elements are direct costs and which are indirect costs. Indeed,
19 federally "approved" rates which the Controller will accept without further action, are
20 "negotiated" rates calculated by the district and submitted for approval, indicating that

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

1 the process is not an exact science, but a determination of the relevance and
2 reasonableness of the cost allocation assumptions made for the method used.

3 Regulatory Requirements

4 No particular indirect cost rate calculation is required by law. The parameters
5 and guidelines state that "Indirect costs *may be claimed* in the manner described by the
6 Controller in his claiming instructions." The district claimed these indirect costs "in the
7 manner" described by the Controller. The correct forms were used and the claimed
8 amounts were entered at the correct locations. Further, "may" is not "shall"; the
9 parameters and guidelines do not require that indirect costs be claimed in the manner
10 described by the Controller. In the audit report, the Controller asserts that "the specific
11 directions for the indirect cost rate calculation in the claiming instructions are an
12 extension of *Parameters and Guidelines*." It is not clear what the legal significance of
13 the concept of "extension" might be, regardless, the reference to the claiming
14 instructions in the parameters and guidelines does not change "may" into a "shall."
15 Since the Controller's claiming instructions were never adopted as law, or regulations
16 pursuant to the Administrative Procedure Act, the claiming instructions are merely a
17 statement of the ministerial interests of the Controller and not law.

18 Unreasonable or Excessive

19 Government Code Section 17561(d)(2) requires the Controller to pay claims,
20 provided that the Controller may audit the records of any school district to verify the
21 actual amount of the mandated costs, and may reduce any claim that the Controller

1 determines is excessive or unreasonable. The Controller is authorized to reduce a
2 claim only if it determines the claim to be excessive or unreasonable. Here, the District
3 has computed its ICRPs utilizing cost accounting principles from the Office of
4 Management and Budget Circular A-21, and the Controller has disallowed it without a
5 determination of whether the product of the District's calculation would, or would not, be
6 excessive, unreasonable, or inconsistent with cost accounting principles.

7 Neither State law nor the parameters and guidelines made compliance with the
8 Controller's claiming instructions a condition of reimbursement. The district has
9 followed the parameters and guidelines. The burden of proof is on the Controller to
10 prove that the product of District's calculation is unreasonable, not to recalculate the
11 rate according to its unenforceable ministerial preferences. Therefore, Controller
12 made no determination as to whether the method used by the District was reasonable,
13 but, merely substituted its FAM-29C method for the method reported by the District.
14 The substitution of the FAM-29C method is an arbitrary choice of the Controller, not a
15 "finding" enforceable either by fact or law.

16 **Finding 3: Understated authorized health service fees**

17 This finding is based on the Controller's recalculation of the student health
18 services fees which may have been "collectible" which was then compared to the
19 District's student health fee revenues actually received, resulting in a total adjustment
20 of \$217,409 for the two fiscal years.

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

1 Education Code Section 76355

2 Education Code Section 76355, subdivision (a), in relevant part, provides: "The
3 governing board of a district maintaining a community college *may require* community
4 college students to pay a fee . . . for health supervision and services . . ." There is no
5 requirement that community colleges levy these fees. The permissive nature of the
6 provision is further illustrated in subdivision (b) which states "*If, pursuant to this*
7 *Section, a fee is required, the governing board of the district shall decide the amount of*
8 *the fee, if any, that a part-time student is required to pay. The governing board may*
9 *decide whether the fee shall be mandatory or optional.*"

10 Parameters and Guidelines

This Controller states that the "*Parameters and Guidelines* requires that the
12 district deduct authorized health fees from claimed costs." The parameters and
13 guidelines do not state this but instead state:

14 "Any offsetting savings that the claimant experiences as a direct result of
15 this statute must be deducted from the costs claimed. In addition,
16 reimbursement for this mandate received from any source, e.g., federal, state,
17 etc., shall be identified and deducted from this claim. This shall include the
18 amount of [student fees] as authorized by Education Code Section 72246(a)³."

19 In order for the district to "experience" these "offsetting savings" the district must
20 actually have collected these fees. Student fees actually collected must be used to
21 offset costs, but not student fees that could have been collected and were not. The use

³ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

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

1 of the term "any offsetting savings" further illustrates the permissive nature of the fees.

2 Government Code Section 17514

3 The Controller relies upon Government Code Section 17514 for the conclusion
4 that "[t]o the extent community college districts can charge a fee, they are not required
5 to incur a cost." Government Code Section 17514, as added by Chapter 1459, Statutes
6 of 1984, actually states:

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

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

16 Government Code Section 17556

17 The Controller relies upon Government Code Section 17556 for the conclusion
18 that "the COSM shall not find costs mandated by the State if the school district has the
19 authority to levy fees to pay for the mandated program or increased level of service."

20 Government Code Section 17556 as last amended by Chapter 589/89 actually states:

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

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

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

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

8 Student Health Services Fee Amount

9 The Controller asserts that the district should have collected a student health
10 service fee each semester from non-exempt students in the amount of \$9 or \$12,
depending on the fiscal year and whether the student is enrolled full time or part time.
12 Districts receive notice of these fee amounts from the Chancellor of the California
13 Community Colleges. An example of one such notice is the letter dated March 5, 2001,
14 attached as Exhibit "F." While Education Code Section 76355 provides for an
15 increase in the student health service fee, it did not grant the Chancellor the authority
16 to establish mandatory fee amounts or mandatory fee increases. No state agency was
17 granted that authority by the Education Code, and no state agency has exercised its
18 rulemaking authority to establish mandatory fees amounts. It should be noted that the
19 Chancellor's letter properly states that increasing the amount of the fee is at the option
20 of the district, and that the Chancellor is not asserting that authority. Therefore, the
21 Controller cannot rely upon the Chancellor's notice as a basis to adjust the claim for

1 "collectible" student health services fees.

2 Fees Collected vs. Fees Collectible

3 This issue is one of student health fees revenue actually received, rather than
4 student health fees which might be collected. The Commission determined, as stated
5 in the parameters and guidelines that the student fees "experienced" (*collected*) would
6 reduce the amount subject to reimbursement. Student fees not collected are student
7 fees not "experienced" and as such should not reduce reimbursement. Further, the
8 amount 'collectible" will never equal actual revenues collected due to changes in
9 student's BOGG eligibility, bad debt accounts, and refunds.

10 Because districts are not required to collect a fee from students for student
11 health services, and if such a fee is collected, the amount is to be determined by the
12 District and not the Controller, the Controller's adjustment is without legal basis. What
13 claimants are required by the parameters and guidelines to do is to reduce the amount
14 of their claimed costs by the amount of student health services fee revenue actually
15 received. Therefore, student health fees are merely collectible, they are not
16 mandatory, and it is inappropriate to reduce claim amounts by revenues not received.

17 **Finding 4: Understated expenditures and offsetting reimbursements**

18 This adjustment is not material and is not disputed by the district.

19 **Statute of Limitations for Audit**

20 This issue is not a finding of the Controller. The District asserts that the first

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

1 year of the two claims audited, FY 2001-02, is beyond the statute of limitations for audit
2 when the Controller completed its audit on April 27, 2005. The District raised this issue
3 at the beginning of the audit and in its letter dated February 23, 2005 in response to the
4 draft audit report.

5 Chronology of Claim Action Dates

6	December 6, 2002	FY 2001-02 claim filed by the District (certified mail)
7	August 18, 2004	Entrance conference date.
8	December 31, 2004	FY 2001-02 statute of limitations for audit expires
9	April 27, 2005	Controller's final audit report issued

10 The District's fiscal year 2001-02 claim was mailed to the Controller on
December 6, 2002. According to Government Code Section 17558.5, this claim is
12 subject to audit no later than December 31, 2004. The audit was not completed by this
13 date. Therefore, the audit adjustments for Fiscal Year 2001-02 are barred by the
14 statute of limitations set forth in Government Code Section 17558.5.

15 In its final audit report, the Controller responded as follows: The claim was filed
16 in December 2002. The audit was initiated on August 18, 2004, which is prior to the
17 statutory deadline fo December 2004." Note that the Controller considers the audit
18 "initiated" on the date of the entrance conference. Thus, the Controller is thus
19 asserting that date when the audit was "initiated" is relevant to the period of limitations,
20 and not the date of the audit report. In any case, a review of the legislative history of
21 Government Code Section 17558.5 indicates that the matter of the audit "initiation" date

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

1 is not relevant to any fiscal year claims which are the subject of this audit.

2 Statutory History

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

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

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

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

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

25 FY 2001-02 is subject to the two-year statute of limitations established by Chapter
26 945/95. FY 2001-02 was beyond audit when the audit report was issued. Since funds

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

1 were appropriated for the program for all the fiscal years which are the subject of the
2 audit, the alternative measurement date is not applicable, and the potential factual
3 issue of when the audit is initiated is not relevant. The FY 2001-02 claim is subject to
4 this statute, since the claim was filed in December 2002.

5 Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003
6 amended Section 17558.5 to state:

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

15 The FY 2002-03 claim is subject to this statute, since the claim was filed in
16 January 2004. However, the District does not allege a statute of limitations problem for
17 FY 2002-03. The amendment is pertinent since it indicates this is the first time that the
18 factual issue of the date the audit is “initiated” for mandate programs for which funds
19 are appropriated is introduced. Therefore, at the time the claim is filed, it is impossible
20 for the claimant to know when the statute of limitations will expire, which is contrary to
21 the purpose of a statute of limitations.

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

24 “(a) A reimbursement claim for actual costs filed by a local agency or school
25 district pursuant to this chapter is subject to the initiation of an audit by the

Incorrect Reduction Claim of Long Beach Community College District
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1 Controller no later than three years after the date that the actual reimbursement
2 claim is filed or last amended, whichever is later. However, if no funds are
3 appropriated or no payment is made to a claimant for the program for the fiscal
4 year for which the claim is filed, the time for the Controller to initiate an audit
5 shall commence to run from the date of initial payment of the claim. In any case,
6 an audit shall be completed not later than two years after the date that the audit
7 is commenced."

8 None of the fiscal period claims which are the subject of the audit are subject to
9 this amended version of Section 17558.5. The amendment is pertinent since it
10 indicates this is the first time that the Controller audits may be completed at a time
11 other than the stated period of limitations.

12 Initiation of An Audit

13 The audit report states that the Controller's staff "initiated the audit" with the
14 entrance conference on August 18, 2004. Initiation of the audit is not relevant to the
15 annual claims which are the subject of this incorrect reduction claim. The words
16 "initiate an audit" are used only in the second sentence of Section 17558.5, that is, in a
17 situation when no funds are appropriated for the program for the fiscal year for which
18 the claim is made. Then, and only then, is the Controller authorized to "initiate an
19 audit" within two years from the date of initial payment. The claim at issue here were
20 not subject to the "no funds appropriated" provision, they were subject only to the first
21 sentence of the statute, i.e., they was only "subject to audit" through December 2004.
22 The words of the statute are quite clear and unambiguous: this claim is no longer
23 subject to audit after December 31, 2004. The unmistakable language of Section
24 17558.5 is confirmed by the later actions of the Legislature. Chapter 1128, Statutes of

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

1 2002, amended subdivision (a) of Government Code Section 17558.5 to change the
2 "subject to audit" language of the first sentence to "subject to the initiation of an audit."
3 Had the Legislature intended the former Section to mean "subject to the initiation of an
4 audit," there would have been no need to amend the statute to now say "subject to the
5 initiation of an audit."

6 The Controller did not complete the audit within the statutory period allowed for
7 the first fiscal year claim included in this audit. The date the audit was "initiated" is not
8 relevant, only the date the audit was completed as evidenced by the (final) Controller's
9 audit report. The audit findings are therefore void for the FY 2001-02 claim.

10 **PART VIII. RELIEF REQUESTED**

The District filed its annual reimbursement claims within the time limits
12 prescribed by the Government Code. The amounts claimed by the District for
13 reimbursement of the costs of implementing the program imposed by Chapter 1,
14 Statutes of 1984, 2nd E.S., Chapter 1118, Statutes of 1987, and Education Code
15 Section 76355 represent the actual costs incurred by the District to carry out this
16 program. These costs were properly claimed pursuant to the Commission's parameters
17 and guidelines. Reimbursement of these costs is required under Article XIII B, Section
18 6 of the California Constitution. The Controller denied reimbursement without any
19 basis in law or fact. The District has met its burden of going forward on this claim by
20 complying with the requirements of Section 1185, Title 2, California Code of
21 Regulations. Because the Controller has enforced and is seeking to enforce these

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

1 adjustments without benefit of statute or regulation, the burden of proof is now upon the
2 Controller to establish a legal basis for its actions.

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

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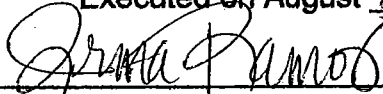
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PART IX. CERTIFICATION

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

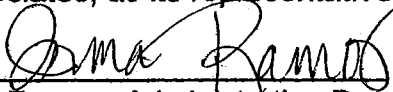
Executed on August 30, at Long Beach, California, by



Irma Ramos, Administrative Dean
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808
Voice: 562-938-4095
Fax: 562-938-4364
E-Mail: iramos@lbcc.edu

APPOINTMENT OF REPRESENTATIVE

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



Irma Ramos, Administrative Dean
Long Beach Community College District

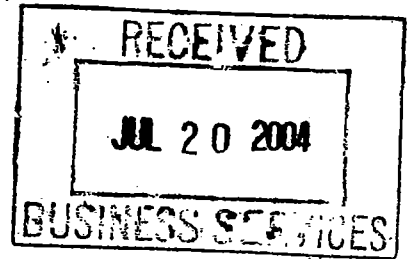
8-30-05

Date

Attachments:

Exhibit "A" SCO Legal Counsel's Letter of June 15, 2004
Exhibit "B" Parameters and Guidelines as amended May 25, 1989
Exhibit "C" Controller's Claiming Instructions September 1997
Exhibit "D" SCO Audit Report date April 27, 2004
Exhibit "E" Claimant's Letter dated February 23, 2005
Exhibit "F" Chancellor's Letter dated March 5, 2001

Exhibit A



STEVE WESTLY
California State Controller

July 15, 2004

Mike Brandy, Vice Chancellor
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos, CA 94022

Re: Foothill-De Anza Community College District Audit

Dear Mr. Brandy:

This is in response to your letter to me dated May 13, 2004, concerning the Controller's Audit of the Health Fee claim.

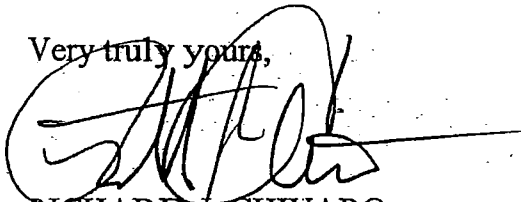
The Controller's informal audit review process was established to resolve factual disputes where no other forum for resolution, other than a judicial proceeding, is available.

The proper forum for resolving issues involving mandated cost programs is through the incorrect reduction process through the Commission on State Mandates. As such, this office will not be scheduling an informal conference for this matter.

However, in light of the concerns expressed in your letter concerning the auditors assigned and the validity of the findings, I am forwarding your letter to Vince Brown, Chief Operating Officer, for his review and response.

If you have any questions you may contact Mr. Vince Brown at (916) 445-2038.

Very truly yours,



RICHARD J. CHIVARO
Chief Counsel

RJC/st

cc: Vincent P. Brown, Chief Operating Officer, State Controller's Office
Jeff Brownfield, Chief, Division of Audits, State Controller's Office

Exhibit B

Adopted: 8/27/87
Amended: 5/25/89

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

I. SUMMARY OF MANDATE

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

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

II. COMMISSION ON STATE MANDATES' DECISION

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

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

III. ELIGIBLE CLAIMANTS

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

IV. PERIOD OF REIMBURSEMENT

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

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

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

V. REIMBURSABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

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

ACCIDENT REPORTS

APPOINTMENTS

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

ASSESSMENT, INTERVENTION & COUNSELING

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

EXAMINATIONS (Minor Illnesses)

Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

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

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

Diphtheria/Tetanus
Measles/Rubella
Influenza
Information

INSURANCE

On Campus Accident
Voluntary
Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE

Inquiry/Interpretation
Pap Smears

PHYSICALS

Employees
Students
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)

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

PARKING CARDS/ELEVATOR KEYS

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

REFERRALS TO OUTSIDE AGENCIES

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

TESTS

Blood Pressure
Hearing
Tuberculosis
 Reading
 Information
Vision
Glucometer
Urinalysis

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

MISCELLANEOUS

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

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

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

A. Description of Activity

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

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

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no

less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

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

and

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

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

Exhibit C

HEALTH FEE ELIMINATION

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

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

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

2. Eligible Claimants

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

3. Appropriations

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

4. Types of Claims

A. Reimbursement and Estimated Claims

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

B. Minimum Claim

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

5. Filing Deadline

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

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

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

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

6. Reimbursable Components

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

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

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

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

7. Reimbursement Limitations

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

8. Claiming Forms and Instructions

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

A. Form HFE-2, Health Services

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

B. Form HFE-1.1, Claim Summary

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

C. Form HFE-1.0, Claim Summary

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

D. Form FAM-27, Claim for Payment

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

Illustration of Claim Forms

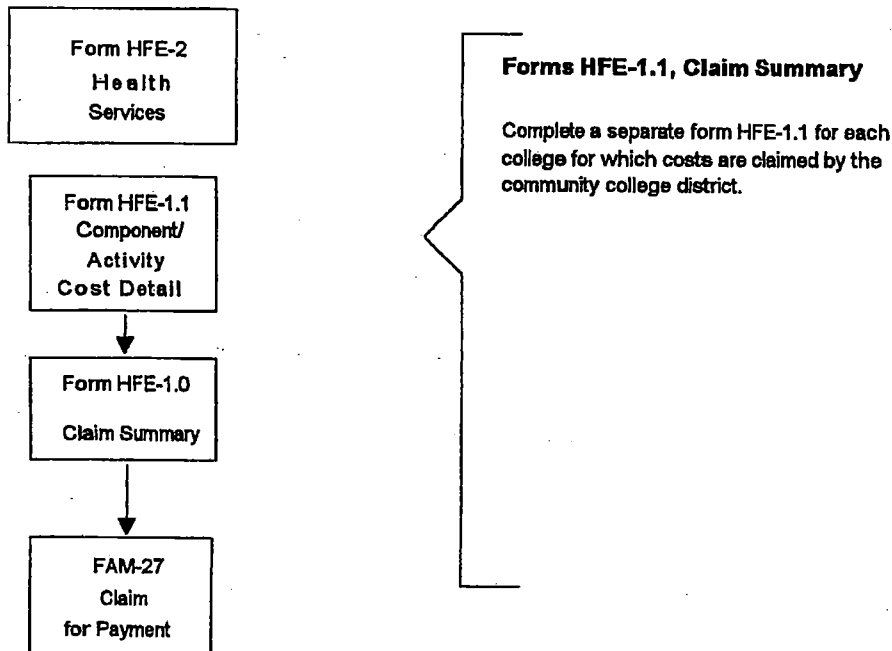


Exhibit D

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HUMAN RESOURCES

LONG BEACH COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2001, through June 30, 2003



STEVE WESTLY
California State Controller

April 2005



STEVE WESTLY
California State Controller

April 27, 2005

Jan Kehoe, Ed.D.
Superintendent-President
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Dear Dr. Kehoe:

The State Controller's Office audited the claims filed by Long Beach Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health service fees, and claimed unallowable costs. The State paid the district \$25,457. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at COSM's Web site at www.csm.ca.gov (Guidebook link), and obtain IRC forms by telephone at (916) 323-3562 or by e-mail at csminfo@csm.ca.gov.

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

Sincerely,

A handwritten signature in cursive script that reads "Vincent P. Brown".

VINCENT P. BROWN
Chief Operating Officer

VPB:JVB/ams

cc: Irma Ramos
Administrative Dean
Human Resources
Long Beach Community College District
Ed Monroe, Program Assistant
Fiscal Accountability Section
Chancellor's Office
California Community Colleges
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the claims filed by Long Beach Community College District for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003. The last day of fieldwork was October 14, 2004.

The district claimed \$516,978 for the mandated program. The audit disclosed that \$50,349 is allowable and \$466,629 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health services fees, and claimed unallowable costs. The State paid the district \$25,457. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

Background

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

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

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

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

Parameters and Guidelines establishes state mandate and defines reimbursement criteria. COSM adopted *Parameters and Guidelines* on August 27, 1987, and amended it on May 25, 1989. In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for mandated programs, to assist school districts in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003.

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

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of *Government Code* Section 17558.5. We did not audit the district's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

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

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures, as recommended by *Government Auditing Standards*. However, the district declined our request.

Conclusion

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

For the audit period, Long Beach Community College District claimed \$516,978 for Health Fee Elimination Program costs. Our audit disclosed that \$50,349 is allowable and \$466,629 is unallowable.

For FY 2001-02, the State paid the district \$25,457. Our audit disclosed that \$50,349 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,892, contingent upon available appropriations.

For FY 2002-03, the State made no payment to the district. The audit disclosed that none of the costs claimed is allowable.

**Views of
Responsible
Official**

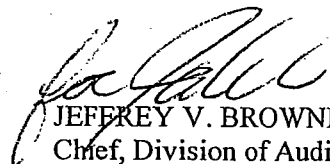
We issued a draft audit report on February 4, 2005. Irma Ramos, Administrative Dean, Human Resources, responded by letter dated February 23, 2005 (Attachment), disagreeing with the audit results. The final audit report includes the district's response.

Based on the district's response, Finding 1 reported in the draft report for \$9,222 has been removed from this final report. Consequently, Findings 1 through 5 in the draft report have been renumbered as Findings 1 through 4.

Finding 1 stated that pregnancy testing claimed during the audit period was not offered during the FY 1996-97 base year and, therefore, the costs were unallowable. The finding was supported by the district's "Fall 1991 LAC Health Services Semester Report" that stated pregnancy testing was "now" offered, among other services. Additional evidence was not available to support that pregnancy testing was not offered in the FY 1996-97 base year.

Restricted Use

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



JEFFREY V. BROWNFIELD
Chief, Division of Audits

**Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2003**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Salaries and benefits	\$ 318,568	\$ 318,568	\$ —	
Services and supplies	98,913	90,493	(8,420)	Findings 1, 4
Subtotal	417,481	409,061	(8,420)	
Indirect costs	149,291	75,424	(73,867)	Findings 1, 2, 4
Total health expenditures	566,772	484,485	(82,287)	
Less authorized health fees	(321,995)	(432,828)	(110,833)	Finding 3
Less offsetting savings/reimbursements	—	(837)	(837)	Finding 4
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Total costs	\$ 244,306	50,349	\$ (193,957)	
Less amount paid by the State		(25,457)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,892		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries and benefits	\$ 342,109	\$ 342,109	\$ —	
Services and supplies	96,417	87,780	(8,637)	Finding 1
Subtotal	438,526	429,889	(8,637)	
Indirect costs	148,836	77,522	(71,314)	Findings 1, 2
Total health expenditures	587,362	507,411	(79,951)	
Less authorized health fees	(313,843)	(531,252)	(217,409)	Finding 3
Less offsetting savings/reimbursements	(847)	(847)	—	
Total costs	272,672	(24,688)	(297,360)	
Adjustment to eliminate negative balance	—	24,688	24,688	
Net allowable costs	\$ 272,672	—	\$ 272,672	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ —		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>Summary: July 1, 2001, through June 30, 2003</u>				
Salaries and benefits	\$ 660,677	\$ 660,677	\$ —	
Services and supplies	195,330	178,273	(17,057)	Findings 1, 4
Subtotal	856,007	838,950	(17,057)	
Indirect costs	298,127	152,946	(145,181)	Findings 1, 2, 4
Total health expenditures	1,154,134	991,896	(162,238)	
Less authorized health fees	(635,838)	(964,080)	(328,242)	Finding 3
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Less offsetting savings/reimbursements	(847)	(1,684)	(837)	Finding 4
Total costs	516,978	25,661	(491,317)	
Adjustment to eliminate negative balance	—	24,688	24,688	
Net allowable costs	\$ 516,978	50,349	\$ (466,629)	
Less amount paid by the State		(25,457)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,892		

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Unallowable services
and supplies costs**

The district overclaimed services and supplies costs totaling \$17,894 during the audit period. The related unallowable indirect costs totaled \$6,241, based on claimed indirect cost rates.

The district overclaimed insurance premiums paid for student basic and catastrophic coverage by \$11,869, because it included unallowable premiums paid for athletic insurance. In addition, the district inadvertently claimed \$6,025 twice for services and supplies.

The following table summarizes the audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Student insurance premiums	\$ (5,857)	\$ (6,012)	\$ (11,869)
Costs claimed twice	(3,400)	(2,625)	(6,025)
Total direct costs	(9,257)	(8,637)	<u>\$ (17,894)</u>
Indirect cost rate claimed	× 35.76%	× 33.94%	
Related indirect costs	(3,310)	(2,931)	\$ (6,241)
Total direct costs (from above)	(9,257)	(8,637)	(17,894)
Audit adjustment	<u>\$ (12,567)</u>	<u>\$ (11,568)</u>	<u>\$ (24,135)</u>

Parameters and Guidelines states that the cost of insurance is reimbursable for the following activities: (1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.

Education Code Section 76355(d) (formerly Section 72246(2)) states that athletic insurance is not an authorized expenditure for health services.

Parameters and Guidelines also states that all costs claimed must be traceable to source documentation that shows evidence of the validity of such costs.

Recommendation

We recommend the district ensure that it claims only costs for health services that are reimbursable under the mandate program. In addition, the district should ensure that all costs claimed are supported by source documentation.

District's Response

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

SCO's Comment

The finding and recommendation remain unchanged. The district did not provide any additional information supporting the allowability of insurance costs claimed.

**FINDING 2—
Overstated indirect
cost rates claimed**

The district overstated its indirect cost rates, thus overstating its indirect costs by \$139,093 for the audit period.

The district claimed indirect costs based on indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its ICRPs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions. The calculated indirect costs rates did not support the indirect cost rates claimed. The audited and claimed indirect cost rates are summarized as follows.

	Fiscal Year	
	2001-02	2002-03
Allowable indirect cost rate	18.23%	17.96%
Less claimed indirect cost rate	(35.76)%	(33.94)%
Unsupported indirect cost rate	(17.53)%	(15.98)%

Based on these unsupported indirect cost rates, we made the following audit adjustments.

	Fiscal Year		Total
	2001-02	2002-03	
Allowable costs originally claimed	\$ 403,367	\$ 427,927	
Unsupported indirect cost rate	×(17.53)%	×(15.98)%	
Audit adjustment	\$ (70,710)	\$ (68,383)	\$ (139,093)

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO claiming instructions. Those instructions require that districts obtain federal approval of ICRPs prepared according to Office of Management and Budget (OMB) Circular A-21. As an alternative, districts may use form FAM-29C to compute indirect cost rates. Form FAM-29C uses total expenditures reported in the *California Community College Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)*.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO claiming instructions. The district should obtain federal approval for ICRPs prepared in accordance with OMB Circular A-21. As an alternative, the district should use Form FAM-29C to prepare ICRPs based on the methodology allowed in the SCO claiming instructions.

District's Response

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law,

that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

SCO's Comment

The finding and recommendation remain unchanged.

Parameters and Guidelines states that indirect costs may be claimed in the manner described in the SCO's claiming instructions. Therefore, the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of *Parameters and Guidelines*. The SCO's claiming instructions state that community colleges have the option of using a federally approved rate prepared in accordance with OMB Circular A-21 or the SCO's alternate methodology using Form FAM-29C. In this case, the district chose to use indirect cost rates not approved by a federal agency, which is not an option provided by the SCO's claiming instructions.

**FINDING 3—
Understated
authorized health fee
revenues claimed**

For the audit period, the district understated authorized health service fees by \$217,409. The district reported actual revenue received rather than health fees the district was authorized to collect.

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as district-prepared reports indicating the number of students who received fee waivers.

Using the student enrollment and exemption data, we calculated the health fees the district was authorized to collect, as shown in the following table.

	<u>Fall</u>	<u>Spring</u>	<u>Summer</u>	<u>Total</u>
<u>Fiscal Year 2001-02</u>				
Student enrollment	\$ 23,157	\$ 27,910	\$ 14,823	
Less allowable health fee exemptions	<u>(11,295)</u>	<u>(11,206)</u>	<u>(4,819)</u>	
Subtotal	11,862	16,704	10,004	
Authorized student health fee	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$(142,344)</u>	<u>\$(200,448)</u>	<u>\$(90,036)</u>	<u>\$(432,828)</u>
<u>Fiscal Year 2002-03</u>				
Student enrollment	\$ 29,273	\$ 28,939	\$ 16,941	
Less allowable health fee exemptions	<u>(11,499)</u>	<u>(11,991)</u>	<u>(4,209)</u>	
Subtotal	17,774	16,948	12,732	
Authorized student health fee	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$(213,288)</u>	<u>\$(203,376)</u>	<u>\$(114,588)</u>	<u>\$(531,252)</u>

The following table summarizes the resulting audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Health fee claimed	\$ 321,995	\$ 313,843	\$ 635,838
Less authorized health service fees	(432,828)	(531,252)	(964,080)
Audit adjustment	\$ (110,833)	\$ (217,409)	\$ (328,242)

Parameters and Guidelines requires that the district deduct authorized health fees from claimed costs. *Education Code* Section 76355(c) authorizes health fees for all students except those students who: (1) depend exclusively on prayer for healing; (2) attend a community college under an approved apprenticeship training program; or (3) demonstrate financial need. (*Education Code* Section 76355(a) increased authorized health fees by \$1 effective with the Summer 2001 session.)

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

Recommendation

We recommend that the district deduct authorized health service fees from allowable health service program costs on the mandate claim. The district should maintain records to support its calculation of authorized health service fees. This includes records that identify actual student enrollment and students exempt from health fees pursuant to *Education Code* Section 76355(c).

District’s Response

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest “authorized” rate. The State Controller does not provide the factual basis for the calculation of the “authorized” rate, nor provide any reference to the “authorizing” source, nor the legal right of any state entity to “authorize” student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the “authorizing” state agency.

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

to pay. The governing board may decide whether the fee shall be mandatory or optional. (Emphasis supplied in both instances)

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. This Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to maintain that level of service" will exceed the statutory limit for the student health fees.

SCO's Comment

The finding and recommendation remain unchanged.

As mentioned above, the district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as district-prepared reports indicating the number of students who received fee waivers.

We agree that community college districts may choose not to levy a health services fee. This is true even if *Education Code* Section 76355 provides the districts with the authority to levy such fees. However, the effect of not imposing the health services fee is that the related health services costs do not meet the requirement for mandated costs as defined by *Government Code* Section 17514. Health services costs recoverable through an authorized fee are not costs that the district is required to incur. *Government Code* Section 17556 states that COSM shall not find costs mandated by the State as defined in *Government Code* Section 17514 if the district has authority to levy fees to pay for the mandated program or increased level of service.

**FINDING 4—
Understated
expenditures and
offsetting
reimbursements**

The district underclaimed services and supplies by \$837 in FY 2001-02. The related indirect costs totaled \$153, based on the allowable indirect cost rate claimed for that fiscal year. The district also underclaimed offsetting revenues received in reimbursement of the \$837 expenditure noted above.

The health center expended \$837 to provide TB (tuberculosis) tests for the health center staff, and this amount was reimbursed by the district. The reimbursement was improperly recorded as an offset to expenditures (cost applied) rather than recorded as revenue for services rendered.

The following table summarizes the resulting audit adjustment.

	Fiscal Year 2001-02
Underclaimed services and supplies	\$ 837
Allowable indirect cost rate	× 18.23%
Related indirect costs	153
Total underclaimed services and supplies (from above)	<u>837</u>
Audit adjustment, total health expenditures	\$ 990
Audit adjustment, offsetting reimbursements	<u>\$ (837)</u>

Parameters and Guidelines states that eligible community college districts shall be reimbursed for the costs of providing a health services program. *Parameters and Guidelines* also requires the districts to list the cost of materials that have been consumed or expended specifically for the purpose of this mandate.

Parameters and Guidelines states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) shall be identified and deducted from this claim.

Recommendation

We recommend the district include the expenditure of \$837 for providing TB tests for the health center staff in the direct costs of providing a health services program during FY 2001-02. In addition, the \$837 reimbursement received from the district should be shown as offsetting revenue.

District's Response

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

SCO's Comment

The finding and recommendation remain unchanged. The district agrees with the net audit adjustment.

**OTHER ISSUE—
Statute of limitations**

The district's response included comments regarding our authority to audit costs claimed for FY 2001-02. The district's response and the SCO's comment follow.

District's Response

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

SCO's Comment

Government Code Section 17558.5(a), in effect during the audit period, states that a district's reimbursement claim is subject to an audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The claim was filed in December 2002. The audit was initiated on August 18, 2004, which is prior to the statutory deadline of December 2004.

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



5611: 2-27-05
Board of Trustees
Dr. Thomas J. Clark
Jeffrey A. Kellogg
Dianne Theil McNinch
Douglas W. Otto
Roberto Uranga

Superintendent-President
E. Jan Kehoe, Ph.D.

Long Beach City College • Long Beach Community College District
4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
State Controller's Audit
Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy *services* were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of *services* which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory *test* constitutes a different level of *service* from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2)). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

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The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

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

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

C05-MCC-001



Exhibit E



Pos	Fax Note	7671	Date	2-23-05	# of pages	1
To	Keith Peterson		From	Jennifer Bartz		
Co./Dept.	Six Ten		Co.	LBCC		
Phone #	858 514 4605		Phone #	562 938 4572		
Fax #	858 514 8645		Fax #	562 938 4364		

Board of Trustees
 Dr. Thomas J. Clark
 Jeffrey A. Kellogg
 Glanice Thiel McIninch
 Douglas W. Orr
 Roberto Uranga

Superintendent-President
 E. Jan Kehoe, Ph.D.

Will go out in tomorrow's mail. *Jim*

Up

Long Beach City College • Long Beach Community College District
 4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
 Health Fee Elimination
 State Controller's Audit
 Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy services were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of services which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory test constitutes a different level of service from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

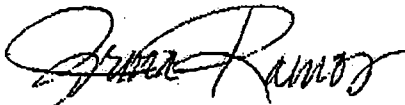
Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

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The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

Exhibit F

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU



March 5, 2001

To: Superintendents/Presidents
Chief Business Officers
Chief Student Services Officers
Health Services Program Directors
Financial Aid Officers
Admissions and Records Officers
Extended Opportunity Program Directors

From: Thomas J. Nussbaum
Chancellor

Subject: Student Health Fee Increase

Education Code Section 76355 provides the governing board of a community college district the option of increasing the student health services fee by the same percentage as the increase in the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar above the existing fee, the fee may be increased by \$1.00.

Based on calculations by the Financial, Economic, and Demographic Unit in the Department of Finance, the Implicit Price Deflator Index has now increased enough since the last fee increase of March 1997 to support a one dollar increase in the student health fees. Effective with the Summer Session of 2001, districts may begin charging a maximum fee of \$12.00 per semester, \$9.00 for summer session, \$9.00 for each intersession of at least four weeks, or \$9.00 for each quarter.

For part-time students, the governing board shall decide the amount of the fee, if any, that the student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

The governing board operating a health services program must have rules that exempt the following students from any health services fee:

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

- Students who are attending a community college under an approved apprenticeship training program.
- Students who receive Board of Governors Enrollment Fee Waivers, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

All fees collected pursuant to this section shall be deposited in the Student Health Fee Account in the Restricted General Fund of the district. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors. Allowable expenditures include health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both. Allowable expenditures exclude athletic-related salaries, services, insurance, insurance deductibles, or any other expense that is not available to all students. No student shall be denied a service supported by student health fee on account of participation in athletic programs.

If you have any questions about this memo or about student health services, please contact Mary Gill, Dean, Enrollment Management Unit at 916.323.5951. If you have any questions about the fee increase or the underlying calculations, please contact Patrick Ryan in Fiscal Services Unit at 916.327.6223.

CC: Patrick J. Lenz
Ralph Black
Judith R. James
Frederick E. Harris

I:\Fisc\FiscUnit\01StudentHealthFees\01StuHealthFees.doc

Exhibit G

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use only (19) Program Number 00029 (20) Date File ___/___/___ (21) LRS Input ___/___/___
--	--

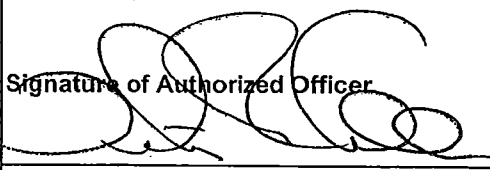
(01) Claimant Identification Number: S-19250	Reimbursement Claim Data	
(02) Mailing Address:	(22) HFE - 1.0, (04)(b)	\$ 244,306
Claimant Name Long Beach Community College District	(23)	
County of Location Los Angeles	(24)	
Street Address 4901 East Carson Street	(25)	
City State Zip Code Long Beach CA 90808	(26)	
Type of Claim (03) Estimated <input checked="" type="checkbox"/> (04) Combined <input type="checkbox"/> (05) Amended <input type="checkbox"/>	Reimbursement Claim (09) Reimbursement <input checked="" type="checkbox"/> (10) Combined <input type="checkbox"/> (11) Amended <input type="checkbox"/>	
	(27)	
	(28)	
Fiscal Year of Cost 2002-2003	(12) 2001-2002	(31)
Total Claimed Amount \$ 265,000	(13) \$ 244,306	(32)
Less: 10% Late Penalty, but not to exceed \$1000	(14) \$ -	(33)
Less: Estimate Claim Payment Received	(15) \$ 25,457	(34)
Net Claimed Amount	(16) \$ 218,849	(35)
Due from State \$ 265,000	(17) \$ 218,849	(36)
Due to State	(18) \$ -	(37)

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, set forth on the attached statements.

 Signature of Authorized Officer <hr/> Victor R. Collins Type or Print Name	Date NOV 13 2002 Victor Collins Executive Vice-President, Human Resources Title
--	---

(39) Name of Contact Person or Claim

SixTen and Associates

Telephone Number **(858) 514-8605**

E-Mail Address **kbsixten@aol.com**



**MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY**

**FORM
HFE-1.0**

(01) Claimant:	(02) Type of Claim:	Fiscal Year
Claimant Name	Reimbursement <input checked="" type="checkbox"/>	
Long Beach Community College District	Estimated <input type="checkbox"/>	2001-2002

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

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$ 244,305.53
2.	\$ -
3.	\$ -
4.	\$ -
5.	\$ -
6.	\$ -
7.	\$ -
8.	\$ -
9.	\$ -
10.	\$ -
11.	\$ -
12.	\$ -
13.	\$ -
14.	\$ -
15.	\$ -
16.	\$ -
17.	\$ -
18.	\$ -
19.	\$ -
20.	\$ -
1.	\$ -
(04) Total Amount Claimed	\$ 244,306

Fiscal Year 029	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
---------------------------	--	-------------------------------

(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2001-2002
--	---	------------------------------

(03) Name of College Long Beach City College

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

LESS SAME MORE

	Direct Cost	Indirect Cost of: 35.76%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 417,480	\$ 149,291	\$ 566,771
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87	\$ 346.86	\$ 124	\$ 471
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]	\$ 417,134	\$ 149,167	\$ 566,301

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

Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) *Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester	1,247	11,984		\$ -		\$ -	\$ -
2. Per spring semester	3,006	15,131		\$ -		\$ -	\$ -
3. Per summer session	1,570	9,486		\$ -		\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected *(ACTUAL per ledger general ledger attached)	\$ 321,995
(10) Sub-total [Line (07) - line (09)]	\$ 244,306

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ -
(13) Total Amount Claimed [Line (10) - (line (11) + line (12))]	\$ 244,306

**LONG BEACH COMMUNITY COLLEGE DISTRICT
CALCULATION OF INDIRECT COST RATE,
FISCAL YEAR
2000-2001**

*FOR 01-02
CLAIMS*

REFERENCE (CCFS 311)	DESCRIPTION	2000-2001
INSTRUCTIONAL ACTIVITY		
	Instructional Costs	
	Instructional Salaries and Benefits	37,398,743
	Instructional Operating Expenses	1,772,057
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	7,195
	TOTAL INSTRUCTIONAL COSTS 1	39,177,995
	Non-Instructional Costs	
	Non-Instructional Salaries and Benefits	3,056,277
	Instructional Admin. Salaries and Benefits	2,633,275
	Instructional Admin. Operating Expenses	491,553
	Auxiliary Classes Non-Inst. Salaries and Benefits	756,406
	Auxiliary Classes Operating Expenses	589,740
	TOTAL NON-INSTRUCTIONAL COSTS 2	7,527,251
	TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)	46,705,246
DIRECT SUPPORT ACTIVITY		
	Direct Support Costs	
	Instructional Support Services Non Inst. Salaries and Benefits	2,240,408
	Instructional Support Services Operating Expenses	233,963
	Admissions and Records	1,626,697
	Counseling and Guidance	4,232,273
	Other Student Services	4,952,083
	TOTAL DIRECT SUPPORT COSTS 4	13,285,424
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)		59,990,670
	Indirect Support Costs	
	Operation and Maintenance of Plant	6,528,323
	Planning and Policy Making	3,517,094
	General Instructional Support Services	11,407,189
	TOTAL INDIRECT SUPPORT COSTS 6	21,452,606
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS		81,443,276
SUPPORT COSTS ALLOCATION RATES		
Indirect Support Costs Allocation Rate =	Total Indirect Support Costs (6)	35.76%
	Total Instructional Activity Costs and Direct Support Costs (5)	
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4)	28.45%
	Total Instructional Activity Costs (3)	
Total Support Cost Allocation		64.21%

Long Beach Community College District
Health Fee Elimination
Summary -2001-2002

Student Health Costs, shown in G/L - YTD	\$418,317.55
Less: Income reimbursement for Staff TB tests Included as expenses in G/L above See HFE 1.8 submitted by district	-837.12
Adjusted 2001-2002 Health Fee Expenses	<u>\$417,480.43</u>

Costs of 2001-02 Vaccine given to students - Not Given in 1986-87

Fall 2001	17 Vaccines Given	
R.N. Cost 5.67 hrs @ \$46.86 (Cindi Blomberg)		265.90
Supplies Safety Syringes 17@ .58		9.86
Gloves 17x2@.12		4.08
Alcohol Wipes 17x2@.03		1.02
Spring 2002	4 Vaccines Given	
R.N. Cost 1.34 hrs @ \$46.86 (Cindi Blomberg)		62.48
Supplies Safety Syringes 4 @ .58		2.32
Gloves 4x2@.12		0.96
Alcohol Wipes 4x2@.03		0.24
2001-02 Costs in excess of level in 86/87		<u>346.86</u>

LONG BEACH COMMUNITY COLLEGE DISTRICT
 ADOPTED BUDGET 2002-2003
 REVENUE OF GENERAL FUND 01

DESCRIPTION	ADOPTED BUDGET 2001-2002	ACTUAL 2001-2002	ADOPTED BUDGET 2002-2003
OTHER STATE REVENUE (CONTINUED)			
Other State Revenue - Unrestricted	0	0	0
Center for International Trade	294,875	258,412	331,338
Mandated Cost Reimbursement	634,385	499,025	500,000
TOTAL OTHER STATE REVENUE	\$ 16,980,944	\$ 19,221,606	\$ 18,131,806
LOCAL REVENUE			
Gifts and Endowments	1,400	1,414	1,400
American Language and Culture Institute Fees	187,000	128,286	130,000
Johns Hopkins University	151,140	59,892	0
Use of Facilities, Custodial and Technician Services, Stadium	0	54,564	55,000
City of Long Beach Assessment	126,564	120,337	99,063
Sale of Publications	51,800	70,000	70,000
Veterans' Stadium Concessions	93,000	103,934	104,000
Veterans' Stadium Parking Lot Rental	787,000	816,086	820,000
Community Services Leases and Rentals	107,000	158,828	160,000
Rent, PCH/Walnut Property	12,200	12,100	13,000
Veterans' Stadium Rental	59,000	76,840	76,000
Interest - TRANS	351,000	211,676	200,000
Interest - Other	650,000	450,167	450,000
Community Services - Community Education and Events	127,549	119,018	120,000
Community Services - Recreation	117,150	48,800	50,000
Community Services - Senior Classes	14,823	16,877	16,000
Community Services - Summer Academy (Fasttrak)	0	24,021	50,000
Senior Studies Trip Fees	24,000	27,154	27,000
Student Health Fees	834,801	321,995	325,000
Materials Fees	86,000	95,887	97,000
Transcript Fees	78,000	79,095	80,000
Nonresident Tuition	240,000	186,154	185,000
Parking Fees	600,000	609,578	610,000
Foreign Students Fees	1,090,000	1,340,894	1,400,000

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

Year: 2002 : Period - 12 (06/30/2002)
644000 Health Services Fylpaa, J.

NT NUMBER PROG	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE BAL.		
							BAL. TTD	PCT	
	100000 Academic Salaries								
	<i>act</i>								
0 0490	Acad Sal NI RS Supv/Coord Physical/Mental Health	0.00	0.00	0.00	0.00	31,028.44	-31,028.44	0.0	0.0
Total		0.00	0.00	0.00	0.00	31,028.44	-31,028.44	0.0	0.0
Total	Noninstr Sal, Contr/Reg Status	0.00	0.00	0.00	0.00	31,028.44	-31,028.44	0.0	0.0
0 0490	Acad Sal NI SS Hrly Physical/Mental Health	1,500.00	1,500.00	0.00	0.00	0.00	1,500.00	100.0	100.0
Total		1,500.00	1,500.00	0.00	0.00	0.00	1,500.00	100.0	100.0
0 0490	Acad Sal NI SS RS W/SS Assign Physical/Mental Health	0.00	0.00	0.00	0.00	1,513.23	-1,513.23	0.0	0.0
Total		0.00	0.00	0.00	0.00	1,513.23	-1,513.23	0.0	0.0
246	Acad Sal NI SS RS W/SS Assign	0.00	0.00	0.00	0.00	1,513.23	-1,513.23	0.0	0.0
0 00	Acad Sal NI Other Hourly Physical/Mental Health	23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	40.2
Total		23,100.00	23,100.00	0.00	0.00	13,814.57	9,285.43	40.2	40.2
Total	Noninstruc Salaries, Other	24,600.00	24,600.00	0.00	0.00	15,327.80	9,272.20	37.7	37.7
Total	100000 Academic Salaries	24,600.00	24,600.00	0.00	0.00	46,356.24	-21,756.24	-88.4	-88.4
	200000 Classified/Oth Academic Salar								
0 0490	Cl Sal NI RS Clerical Physical/Mental Health	64,084.00	64,084.00	0.00	0.00	71,581.21	-7,497.21	-11.7	-11.7
Total		64,084.00	64,084.00	0.00	0.00	71,581.21	-7,497.21	-11.7	-11.7
0 0490	Cl Sal NI RS Other Physical/Mental Health	92,392.00	92,392.00	0.00	0.00	101,321.25	-8,929.25	-9.7	-9.7
Total		92,392.00	92,392.00	0.00	0.00	101,321.25	-8,929.25	-9.7	-9.7
Total	Noninstr Salaries, Reg Status	156,476.00	156,476.00	0.00	0.00	172,902.46	-16,426.46	-10.5	-10.5
0 0490	Cl Sal NI H Clerical Sub Pd Lv Physical/Mental Health	0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	0.0
Total		0.00	0.00	0.00	0.00	1,068.40	-1,068.40	0.0	0.0

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

FY Year 2002 : Period - 12 (06/30/2002)

644000 - Health Services

Fy1paa,J.

UNT. NUMBER PROG	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE BAL.TTD	BAL. PCT
200000 Classified/Oth NAcademic Salar								
00 0490	C1 Sal NI H Non Clerical Physical/Mental Health	38,598.00	38,598.00	0.00	0.00	20,846.93	17,751.07	46.0
Total		38,598.00	38,598.00	0.00	0.00	20,846.93	17,751.07	46.0
Total	Noninstr Salaries, Other	38,598.00	38,598.00	0.00	0.00	21,915.33	16,682.67	43.2
Total	200000 Classified/Oth NAcademic Salar	195,074.00	195,074.00	0.00	0.00	194,817.79	256.21	0.1
300000 Employee Benefits								
00 0490	Staff Benefits Gen, NInstruct Physical/Mental Health	78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
Total		78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
Total	Other Benefits	78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
Total	300000 Employee Benefits	78,234.00	78,234.00	0.00	0.00	77,393.97	840.03	1.1
400000 Supplies and Materials								
00 0490	Duplicating Non Instr (Pulse) Physical/Mental Health	1,320.00	1,320.00	0.00	0.00	647.41	672.59	51.0
Total		1,320.00	1,320.00	0.00	0.00	647.41	672.59	51.0
00 0490	NI Supplies & Materials Physical/Mental Health	12,316.00	11,791.00	-92.00	149.37	10,759.54	974.09	8.3
Total		12,316.00	11,791.00	-92.00	149.37	10,759.54	974.09	8.3
Total	NI Supplies & Materials	12,316.00	11,791.00	-92.00	149.37	10,759.54	974.09	8.3
Total	Non. Instr Supplies & Materials	13,636.00	13,111.00	-92.00	149.37	11,406.95	1,646.68	12.6
Total	400000 Supplies and Materials	13,636.00	13,111.00	-92.00	149.37	11,406.95	1,646.68	12.6
500000 Other Operating Exp/Services								
00 0490	Pers Srv or Firm & Advertising Physical/Mental Health	23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3
Total		23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3
Total	Pers Srv or Firm & Advertising	23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

Sit ID: LBOGL004 Group D

By:
Fiscal Year 2002 : Period - 12 (06/30/2002)

644000 - Health Services Fy1paas,J.

CUNT NUMBER F - PROG	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE BAL.TTD	BAL. PCT
Total	Contract Services	23,150.02	23,150.04	0.00	20,525.00	22,150.00	-19,524.96	-84.3
200 0490	Conferences Academic Physical/Mental Health	500.00	500.00	0.00	0.00	395.00	105.00	21.0
Total	Conferences Academic	500.00	500.00	0.00	0.00	395.00	105.00	21.0
500 0490	Conferences Classified Physical/Mental Health	642.00	0.00	0.00	0.00	0.00	0.00	0.0
Total	Conferences Classified	642.00	0.00	0.00	0.00	0.00	0.00	0.0
000 0490	Staff Development Activities Physical/Mental Health	108.00	108.00	0.00	0.00	0.00	108.00	100.0
Total	Staff Development Activities	108.00	108.00	0.00	0.00	0.00	108.00	100.0
000 0490	Travel/Conf/Oth Exp Reimbursed	1,250.00	608.00	0.00	0.00	395.00	213.00	35.0
Total	Memberships/Fees/Dues Physical/Mental Health	475.00	0.00	0.00	0.00	0.00	0.00	0.0
Total	Memberships/Fees/Dues	475.00	0.00	0.00	0.00	0.00	0.00	0.0
Total	Dues and Memberships	475.00	0.00	0.00	0.00	0.00	0.00	0.0
0490	Other Insurance Physical/Mental Health	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0
Total	Other Insurance	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0
Total	Insurance	57,526.01	57,526.01	0.00	0.00	57,526.00	0.01	0.0
000 0490	Equip Repairs NI Physical/Mental Health	500.00	500.00	0.00	0.00	0.00	500.00	100.0
Total	Equip Repairs NI	500.00	500.00	0.00	0.00	0.00	500.00	100.0
Total	Contracts Rents/Leases/Equip Rp	500.00	500.00	0.00	0.00	0.00	500.00	100.0
Total	500000 Other Operating Exp/Services	82,901.03	81,784.05	0.00	20,525.00	80,071.00	-18,811.95	-23.0
	600000 Capital Outlay							

LONG BEACH COMMUNITY COLLEGE DISTRICT
ACTIVITY SUMMARY FUND 01 GENERAL FUND

FY: Year 2002 : Period - 12 (06/30/2002)

644000 - Health Services

Fylpaas, J.


INT NUMBER PROC	ACCOUNT DESCRIPTION	BUDGET APPROP.	CURRENT APPROP.	PRE-ENCUMB TTD	ENCUMB. TTD	EXPEND. TTD	AVAILABLE		BAL. PCT
							BAL.	TTD	
	600000 Capital Outlay								
100490	Equip Non-Inst \$200-\$999.99 Physical/Mental Health	7,000.00	6,800.00	0.00	568.31	7,011.57	-779.88	-11.5	
Total		7,000.00	6,800.00	0.00	568.31	7,011.57	-779.88	-11.5	
0490	Equip Non-Inst \$1,000 & Up Physical/Mental Health	0.00	1,842.00	0.00	1,260.03	1,260.03	-678.06	-36.8	
Total		0.00	1,842.00	0.00	1,260.03	1,260.03	-678.06	-36.8	
Total		7,000.00	8,642.00	0.00	1,828.34	8,271.60	-1,457.94	-16.9	
Total	600000 Capital Outlay	7,000.00	8,642.00	0.00	1,828.34	8,271.60	-1,457.94	-16.9	
	700000 Other Outgo								
100490	Reserves Physical/Mental Health	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.0
Total		0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.0
Total	Reserve for Contingencies	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.0
Total	700000 Other Outgo	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.0
Total	Health Services	401,445.03	401,445.05	-92.00	22,502.71	418,317.55	39,283.21	-9.8	

418,317.55

OK

Jean
DIT Remb
For STAFF TB
Techs
832.15
2417, 480.43 net ALS
cont

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
) Claimant Long Beach Community College District		Fiscal Year 2001-2002	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim	
Accident Reports	X	X	
Appointments			
College Physician, surgeon			
Dermatology, Family practice			
Internal Medicine			
Outside Physician			
Dental Services			
Outside Labs, (X-ray, etc.,)			
Psychologist, full services	X	X	
Cancel/Change Appointments	X	X	
Registered Nurse	X	X	
Check Appointments	X	X	
Assessment, Intervention and Counseling			
Birth Control	X	X	
Lab Reports	X	X	
Nutrition	X	X	
Test Results, office	X	X	
Venereal Disease	X	X	
Communicable Disease	X	X	
Upper Respiratory Infection	X	X	
Eyes, Nose and Throat	X	X	
Eye/Vision	X	X	
Dermatology/Allergy	X	X	
Gynecology/Pregnancy Service	X	X	
Neuralgic	X	X	
Orthopedic	X	X	
Genito/Urinary	X	X	
Dental	X	X	
Gastro-Intestinal	X	X	
Stress Counseling	X	X	
Crisis Intervention	X	X	
Child Abuse Reporting and Counseling	X	X	
Substance Abuse Identification and Counseling	X	X	
Eating Disorders	X	X	
Weight Control	X	X	
Personal Hygiene	X	X	
Burnout	X	X	
Other Medical Problems, list Diabetes	X	X	
Examinations, minor illnesses			
Recheck Minor Injury			
Health Talks or Fairs, Information			
Sexually Transmitted Disease	X	X	
Drugs	X	X	
Acquired Immune Deficiency Syndrome	X	X	
Child Abuse	X	X	

	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1
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) Claimant Long Beach Community College District	Fiscal Year 2001-2002
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(O3) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		X
Influenza	X	X
Information		
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students	X	X
Athletes		
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops		
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list--> Ibuprofen		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key	X	X
Parking Inquiry		
Elevator Passes	X	X
Temporary Handicapped Parking Permits		

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
1) Claimant		Fiscal Year	
Long Beach Community College District		2001-2002	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies Private Medical Doctor Health Department Clinic Dental Counseling Centers Crisis Centers Transitional Living Facilities, battered/homeless women Family Planning Facilities Other Health Agencies		X X X X X X X X X	X X X X X X X X X
Tests Blood Pressure Hearing Tuberculosis Reading Information Vision Glucometer Urinalysis Hemoglobin EKG Strep A Testing PG Testing Monospot Hemacult Others, list		X X X X X X X X X X X X X X	X X X X X X X X X X X X X X
Miscellaneous Absence Excuses/PE Waiver Allergy Injections Band-aids Booklets/Pamphlets Dressing Change Rest Suture Removal Temperature Weigh Information Report/Form Wart Removal Others, list Cold Packs, Hot Packs		X X X X X X X X X X X X X X X	X X X X X X X X X X X X X X
Committees Safety Environmental Disaster Planning Skin Rash Preparations Eye Drops		X X X X X	X X X X X

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

For State Controller Use only
 (19) Program Number 00029
 (20) Date File ___/___/___
 (21) LRS Input ___/___/___

Program
029

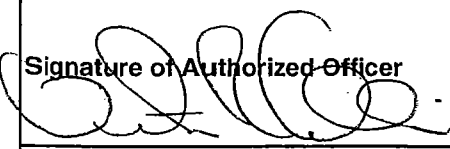
1) Claimant Identification Number: L S19250			Reimbursement Claim Data	
(02) Mailing Address: A B E L Long Beach Community College District			(22) HFE - 1.0, (04)(b)	\$ 272,672
Claimant Name L Long Beach Community College District			(23)	
County of Location H Los Angeles			(24)	
Street Address E R 4901 East Carson Street			(25)	
City E Long Beach	State CA	Zip Code 90808	(26)	
Type of Claim	Estimated Claim	Reimbursement Claim	(27)	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(28)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(30)	
Fiscal Year of Cost	(06) 2003-2004	(12) 2002-2003	(31)	
Total Claimed Amount	(07) \$ 275,000	(13) \$ 272,672	(32)	
Less: 10% Late Penalty, but not to exceed \$1000		(14) \$ -	(33)	
Less: Estimate Claim Payment Received		(15) \$ -	(34)	
Net Claimed Amount		(16) \$ 272,672	(35)	
Due from State	(08) \$ 275,000	(17) \$ 272,672	(36)	
Due to State		(18) \$ -	(37)	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984, and Chapter 1118, Statutes of 1987, set forth on the attached statements.

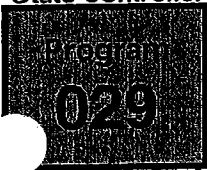


 Victor R. Collins
 Type or Print Name

Date
 1-9-04

 Executive Vice-President, Human Resources
 Title

9) Name of Contact Person or Claim
 SixTen and Associates
 Telephone Number (858) 514-8605
 E-Mail Address kbpsixten@aol.com




**MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY**

**FORM
HFE-1.0**

(01) Claimant:	(02) Type of Claim:	Fiscal Year
Claimant Name	Reimbursement <input checked="" type="checkbox"/>	
Long Beach Community College District	Estimated <input type="checkbox"/>	2002-2003

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

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$ 272,671.72
2.	\$ -
3.	\$ -
4.	\$ -
5.	\$ -
6.	\$ -
7.	\$ -
8.	\$ -
9.	\$ -
10.	\$ -
11.	\$ -
12.	\$ -
13.	\$ -
14.	\$ -
15.	\$ -
16.	\$ -
17.	\$ -
18.	\$ -
19.	\$ -
20.	\$ -
21.	\$ -
(04) Total Amount Claimed	\$ 272,672

	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
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(03) Name of College Long Beach City College

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

LESS SAME MORE

	Direct Cost	Indirect Cost of: 33.94%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 438,526	\$ 148,836	\$ 587,362
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87		\$ -	\$ -
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]	\$ 438,526	\$ 148,836	\$ 587,362

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

Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester				\$ -		\$ -	\$ -
2. Per spring semester				\$ -		\$ -	\$ -
3. Per summer session				\$ -		\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected	[Line (8.1g) + (8.2g) +(8.6g)]	\$ 313,843
(10) Sub-total	[Line (07) - line (09)]	\$ 273,519

Cost Reduction		
(11) Less: Offsetting Savings, if applicable		\$ -
(12) Less: Other Reimbursements, if applicable		\$ 847.00
(13) Total Amount Claimed	[Line (10) - (line (11) + line (12))]	\$ 272,672

**LONG BEACH COMMUNITY COLLEGE DISTRICT
CALCULATION OF INDIRECT COST RATE,
FISCAL YEAR
2001-2002**

For 02-09 classes

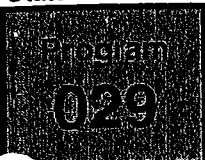
REFERENCE (CCFS 311)	DESCRIPTION	2001-2002
INSTRUCTIONAL ACTIVITY		
	Instructional Costs	
	Instructional Salaries and Benefits	44,670,763
	Instructional Operating Expenses	1,557,892
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	0
	TOTAL INSTRUCTIONAL COSTS 1	46,228,655
	Non-Instructional Costs	
	Non-Instructional Salaries and Benefits	0
	Instructional Admin. Salaries and Benefits	2,857,705
	Instructional Admin. Operating Expenses	392,783
	Auxiliary Classes Non-Inst. Salaries and Benefits	946,883
	Auxiliary Classes Operating Expenses	579,448
	TOTAL NON-INSTRUCTIONAL COSTS 2	4,776,819
	TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)	51,005,474
DIRECT SUPPORT ACTIVITY		
	Direct Support Costs	
	Instructional Support Services Non Inst. Salaries and Benefits	2,850,939
	Instructional Support Services Operating Expenses	242,783
	Admissions and Records	1,766,898
	Counseling and Guidance	5,340,780
	Other Student Services	6,094,425
	TOTAL DIRECT SUPPORT COSTS 4	16,295,825
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)		67,301,299
	Indirect Support Costs	
	Operation and Maintenance of Plant	7,368,294
	Planning and Policy Making	3,504,511
	General Instructional Support Services	11,972,136
	TOTAL INDIRECT SUPPORT COSTS 6	22,844,941
TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS		90,146,240
SUPPORT COSTS ALLOCATION RATES		
Indirect Support Costs Allocation Rate =	Total Indirect Supports Costs (6) Total Instructional Activity Costs and Direct Support Costs (5)	33.94%
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4) Total Instructional Activity Costs (3)	31.95%
Total Support Cost Allocation		65.89%



**MANDATED COSTS
HEALTH FEE ELIMINATION
COMPONENT/ACTIVITY COST DETAIL**

**FORM
HFE-2.1**

) Claimant Long Beach Community College District	Fiscal Year 2002-2003	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)		
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X



**MANDATED COSTS
HEALTH FEE ELIMINATION
COMPONENT/ACTIVITY COST DETAIL**

**FORM
HFE-2.1**

) Claimant Long Beach Community College District	Fiscal Year 2002-2003	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		
Information	X	X
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops		
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits	X	X

Program 029	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1
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1) Claimant	Fiscal Year
Long Beach Community College District	2002-2003

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

	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis		
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin		
EKG		
Strep A Testing	X	X
PG Testing		
Monospot		
Hemacult		
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections		
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form		
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental		
Disaster Planning	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, President
3270 Arena Blvd. Suite 400-363
Sacramento, CA 95834
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Fax: (858) 514-8645

August 10, 2009



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

RE: Health Fee Elimination, 05-4206-I-03
Long Beach Community College District
Fiscal Years: 2001-02 and 2002-03
Incorrect Reduction Claim

Dear Ms. Higashi:

This letter is in rebuttal to the State Controller's Office response dated December 16, 2008, to the Incorrect Reduction Claim of Long Beach Community College District (District) submitted on September 1, 2005.

Part I. Mr. Silva's Transmittal Letter

Mr. Silva's transmittal letter, dated December 16, 2008, contains factual and legal allegations regarding the District's Incorrect Reduction Claim. However, it was not signed under the penalty of perjury. The conclusions and assertions contained in the letter should be disregarded by the Commission due to this lack of certification.

A. CONTROLLER'S AUDIT AUTHORITY

The District does not dispute the Controller's authority to audit claims for mandated costs and to reduce those costs that are excessive or unreasonable. This authority is expressly contained in Government Code Section 17561. Government Code Section 17564 identifies the minimum amount of costs required to file a claim and the manner of claiming costs to be reimbursed. Thus, it is unclear to the District why Mr. Silva's

letter, at footnote one, cites Section 17564 in support of the Controller's authority to audit mandated costs. Similarly, the Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District, cited at footnote two, is superfluous because it simply restates the statutory authority without elaboration. The District is unable to respond to these two citations without further elaboration from the Controller as to their intended relevance, since none is readily apparent.

B. BURDEN OF PROOF

Mr. Silva's letter erroneously asserts that the burden of proof is upon the District to establish that the Controller's adjustments were incorrect. The letter's reliance on Evidence Code Section 500 is misplaced because that Section is not applicable to administrative hearings, such as those conducted by the Commission.

California Code of Regulations Section 1187.5(a) states expressly that Commission "hearings will not be conducted according to technical rules relating to evidence and witnesses." The evidentiary standard for matters before the Commission, stated in that Section, is "[a]ny relevant non-repetitive evidence . . . [that] is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." Further, Evidence Code Section 300 specifies that the Evidence Code is applicable only to actions before the California courts. There is no statute or regulation that makes the Evidence Code applicable to proceedings before the Commission, and therefore the Controller cannot rely on Section 500 to shift the burden of proof onto the District.

The Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District that is cited in footnote three of Mr. Silva's letter relied on *Honeywell, Inc. v. State Board of Equalization*¹ for the proposition that the Claimant had the burden of proof in showing that it did not experience offsetting savings. The decision was supported by "common sense" in that the burden of proof should rest with the party having "the power to create, maintain, and provide the evidence."

In this Incorrect Reduction Claim, the issue is not the District's original reimbursement claims, but the Controller's methods for determining adjustments. The Controller is the party with the power to create, maintain, and provide evidence regarding its auditing methods and procedures, as well as the specific facts relied upon for its audit findings. Thus, by Mr. Silva's own reasoning, the burden is upon the Controller to demonstrate that the auditors' methods were in compliance with applicable law.

Finally, the Controller must meet the burden of going forward. "Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the [party requesting review] has no duty to rebut the allegations or otherwise respond." (*Daniels*

¹*Honeywell v. State Board of Equalization* (1982) 128 Cal.App.3d 739, 744.

v. Department of Motor Vehicles (1983) 33 Cal.3d 532, 536). Therefore, the Controller must first provide evidence as to the propriety of its audit findings because it bears the burden of going forward and because it is the party with the power to create, maintain, and provide this evidence.

C. INDIRECT COST RATE

Mr. Silva's letter asserts that the Controller's Office substituted its own indirect cost rate because the District used an "unapproved" rate. There is no requirement that the indirect cost rate be "approved" by any agency. The District calculated its indirect cost rate using the same source document (CCFS-311) as the Controller. It also used the FAM-29C method, but corrected for instances where the Controller did not follow the CCFS-311 determination of direct and indirect costs. The characterization of the indirect cost rate used by the District in Mr. Silva's letter is misleading and misstates the requirements of the Parameters and Guidelines.

D. AUTHORIZED HEALTH SERVICES FEES

The District did not "confuse" health services fees that were authorized and those that were collected, as claimed in Mr. Silva's letter. Further, his statement of the Parameters and Guidelines is out of context and misleading. The authorized health services fees are to be included in "reimbursement for this mandate received from any source" as stated in the Parameters and Guidelines. The District complied with Generally Accepted Accounting Principles (GAAP) and the Parameters and Guidelines when it properly reported, as offsetting revenue, health service fees that were received.

Although the Parameters and Guidelines clearly state that claimants must report revenue that is received, Mr. Silva's letter asserts that the amount authorized is relevant due to "mandate law in general, and specific case law on point." The District cannot properly respond to "mandate law in general" because it is completely unsupported, and references no particular statute, regulation, or court decision as its basis. The reliance on *Connell v. Santa Margarita Water District*, at footnote five, as "specific case law on point," is misplaced because the Court in that case determined only that approval of the test claim in question was in violation of Government Code Section 17556(d), which prohibits approval of a test claim when there are offsetting savings sufficient to fully fund it. The Court makes absolutely no finding regarding offsetting revenue in the Parameters and Guidelines or the reimbursement process.

E. STATUTE OF LIMITATIONS

Mr. Silva's letter asserts that "the audit of the fiscal year 2000-01 was proper, even under the 1996 version of Section 17558.5." However, this conclusion is based on the assumption that the audit initiation date is somehow relevant to the period of time that a claim is "subject to audit." Mr. Silva's letter provides no support for this assumption,

and, as discussed more thoroughly below, it is not supported by the plain language of Government Code Section 17558.5.

The letter claims that the FY 2001-02 reimbursement claim was subject to the amended version of Government Code Section 17558.5 that went into effect on January 1, 2003, because it was still subject to audit on that date under the previous version of this Section. However, the claim was subject only to the version of Section 17558.5 in effect at the time it was filed, and any subsequent amendment had no effect on the time limitation established for audit.

“The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred.” (*Evelyn, Inc. v. California Emp. Stab. Com.* (1957) 48 Cal.2d 588, 592). According to the court in *Evelyn*, “[t]his is on the theory that the legislation affects only the remedy and not a right.” This theory is inapplicable to Section 17558.5 because the time limitation it contains is not a true statute of limitations since it does not concern “the statutory period within which an action must be brought.”

Section 17558.5 is governed by the general principles of statutory construction, and not those principles specific to statutes of limitations, because it is merely a condition for the payment of a reimbursement claim and does not concern a court action. “Statutes of limitations are distinguished from procedural limits governing the time in which parties must do an act because they fix the time for commencing suit.” (*Life Savings Bank v. Wilhelm* (2000) 84 Cal.App.4th 174, 177). The limitation in Section 17558.5 does not limit the time in which suit may be brought, or even govern any court action. Rather, it specifies the time in which the Controller may audit a reimbursement claim.

The time limitation for audit is a condition for payment of the claim. In other words, a reimbursement claim may be paid with the condition that it is subject to audit for a particular period of time. Section 17558.5 also acts to restrict the Controller’s statutory authority to audit the disbursement of all state funds.

Since Section 17558.5 is merely a restriction on a statutory right to payment of a reimbursement claim, it is governed by the well-established rule that “legislation is deemed to operate prospectively only, unless a clear contrary intent appears.” (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 953). There is no indication in the 2002 amendment to Section 17558.5 that it is to operate retroactively on claims already filed. Therefore, the amendment had only prospective effect on claims filed after its effective date of January 1, 2003.

Further, the Controller has not taken a consistent position. The Controller’s response of December 16, 2008, which consists of a transmittal letter signed by Mr. Silva and a response signed by Mr. Spano, does not advocate applying one version of Section 17558.5. Instead, Mr. Silva’s letter argues in favor of the 2003 version while Mr.

Spano's response (Tab 2; p. 11-12) accepts the District's position by applying the 1996 version of Section 17558.5.

Part II. State Controller's Office Analysis and Response to the Incorrect Reduction Claim by Long Beach Community College District (Spano Response)

RE: II. UNALLOWABLE SERVICES AND SUPPLIES

The Controller disallowed \$17,894 of direct and \$6,241 of indirect services and supplies cost. Of the total adjustment, \$11,869 is applicable to student health insurance premiums. Mr. Spano's response (Tab 2; p. 4) incorrectly asserts that "[t]he district does not dispute this adjustment." In fact, the District's Incorrect Reduction Claim disputed the portion of this adjustment that represents disallowed costs for athletic insurance premiums at page nine.

The auditor's decision to disallow these costs is based on the erroneous conclusion, stated in Mr. Spano's response (Tab 2; p. 4), that premiums for athletic insurance are not reimbursable because they are not an authorized expenditure under Education Code Section 76355(d). Education Code Section 76355, subdivision (a), permits the collection of student fees for health services. Subdivision (d)(1) requires that these fees, if collected, be deposited in a designated fund and be expended only as authorized. Subdivision (d)(2) prohibits expenditures *from the fund* for physical examinations for intercollegiate athletics or the salaries of health professionals for athletic events. The prohibition only applies to the expenditure of funds from the special account into which the student fees are deposited. The District's costs for the mandate program exceed the fees collected for health services, therefore the District filed the claims that are the subject of this audit. The athletic insurance premiums claimed are a part of the excess costs that make up the District's claims, and as such, were not paid for with student fees *from the fund*. Therefore, the athletic insurance costs claimed by the District are not subject to the prohibition of Section 76355(d).

The Parameters and Guidelines control the scope of reimbursement under the Health Fee Elimination mandate, and they expressly include student insurance costs, so long as these services were available in the base year. Therefore, a restriction on the use of fees collected cannot be used to support an adjustment that is in direct contradiction with the Parameters and Guidelines.

RE: III. OVERSTATED INDIRECT COST RATES CLAIMED

The Controller determined that the District overstated indirect costs by \$139,093 for the audit period. Mr. Spano's response (Tab 2; p. 7) claims that it found the District's indirect cost rate to be excessive because the rate was not federally approved. The Controller continues to insist that any indirect cost rate not derived from one of the three

methods described in its claiming instructions must be excessive, regardless of the reasonableness of the rate used. However, the Controller's claiming instructions are not laws or regulations, and therefore are not enforceable.

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

In an attempt to defend the arbitrariness of the choice to apply its own FAM-29C method, the Controller points out (Tab 2; p. 6) that the method is one of three that a *claimant may choose* to use under the parameters and guidelines for nine other mandate programs. However, there is no mention of the Controller's FAM-29C method in the parameters and guidelines adopted for *this* mandate program. Further, the fact that the claimants in those other mandate programs may choose one of three methods, with potentially widely divergent results, demonstrates that the Controller's choice to simply pick its own method and substitute it for the one used by the District was an arbitrary preference.

Further evidence of the arbitrary nature of the Controller's determination of the "allowable" indirect cost rate is found in its sudden and unsupported determination that federally approved rates are no longer permissible. The audit report for Yosemite Community College District, issued April 30, 2009, states on page eight: "[f]or FY 2004-05, FY 2005-06, and FY 2006-07, the parameters and guidelines and the SCO's claiming instructions do not provide districts the option of using a federally approved rate."

There is absolutely no basis in law for the Controller to make this change in policy. There was no amendment to the Parameters and Guidelines - the language regarding indirect cost rates remains exactly the same as it was prior to FY 2004-05. The Controller simply decided to stop accepting federally approved rates, after years of accepting them, with absolutely no justification or opportunity for public comment. This is in direct violation of the Administrative Procedure Act, and illustrates the unilateral and arbitrary method the Controller uses in determining "allowable" indirect cost rates for this mandate program.

No particular indirect cost rate calculation is required by law. The Controller insists that the rate be calculated according to the claiming instructions. The Parameters and

Guidelines state that “[i]ndirect costs *may be claimed* in the manner described by the State Controller in his claiming instructions.” (Emphasis added). The District claimed these indirect costs “in the manner” described by the Controller. The correct forms were used and the claimed amounts were entered at the correct locations. Further, “may” is not “shall”; the Parameters and Guidelines do not *require* that indirect costs be claimed in the manner described by the Controller.

Further, it should be noted that the Controller did not determine that the District’s rate was excessive or unreasonable, only that the District’s rate was not supported by the Controller’s FAM-29C method. Mr. Spano’s response (Tab 2; p. 7) asserts that because the District’s rate was not the same as that derived from the FAM-29C method, it must be excessive. This is merely a restatement of the Controller’s conclusion and cannot be the basis for a finding.

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

Finally, Mr. Spano’s response (Tab 2; p. 6) notes that no district requested a review of the claiming instructions pursuant to Title 2, California Code of Regulations, Section 1186. The claiming instructions are not properly adopted regulations or standards. Thus, the fact that no review was requested by any of the claimants is not determinative of their validity or force.

RE: IV. UNDERSTATED AUTHORIZED HEALTH FEE REVENUES CLAIMED

The Controller determined that revenue offsets were understated by \$217,409 for the audit period. This adjustment is due to the fact that the District collected and claimed fees that were lower than those “authorized” by Education Code Section 76355(a). Mr. Spano’s response (Tab 2; p. 7) asserts that the recalculation of the health fee revenue offset was at the District’s recommendation. This is an impermissible assertion of fact because it is unsupported and therefore should be disregarded by the Commission.

The Controller may not make assertions of fact without supporting documentary evidence. Title 2, California Code of Regulations, Section 1185.1(b) governs the manner in which the Controller may reply to a claimant’s incorrect reduction claim. Section 1185.1(b) provides:

If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the

response.

Since no documentary evidence was supplied in the Controller's response to support the assertion that auditors acted on a District recommendation regarding enrollment data, the assertion should be disregarded by the Commission. Regardless, the enrollment data is irrelevant since the calculation of "collectible" student health service fee revenue is inappropriate for purposes of offsetting total program costs.

The District is not required to charge a health fee, and must only claim offsetting revenue it actually experiences. Education Code Section 76355 gives the governing board the discretion to determine if any fee should be charged, and subsection (b) specifically permits the governing board to make a separate determination regarding part-time students.

The Controller continues to rely on Government Code Section 17556(d), as amended by Statutes of 1989, Chapter 589, while neglecting its context and omitting a crucial clause. Section 17556(d) does specify that the Commission on State Mandates shall not find costs mandated by the state if the local agency has the authority to levy fees, but only if those fees are "*sufficient to pay for the mandated program.*" (Emphasis added). Section 17556 pertains specifically to the Commission's determination on a test claim, and does not concern the development of parameters and guidelines or the claiming process. The Commission has already found state-mandated costs for this program, and the Controller cannot substitute its judgment for that of the Commission.

The two court cases Mr. Spano's response (Tab 2; p. 10) relies upon (*County of Fresno v. California* (1991) 53 Cal.3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are similarly misplaced. Both cases concern the approval of a test claim by the Commission. They do not address the issue of offsetting revenue in the reimbursement stages, only whether there is fee authority *sufficient to fully fund* the mandate that would prevent the Commission from approving the test claim.

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

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

had been in violation of Section 17556(d).

Mr. Spano's response (Tab 2; p. 9) notes that health service fees were included in the Parameters and Guidelines as a possible source of offsetting savings, and then concludes that fees authorized by Education Code Section 76355 *must* be deducted because "[t]o the extent districts have the authority to charge a fee, they are not required to incur a cost." The Parameters and Guidelines actually state:

Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)².

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

Mr. Spano's response (Tab 2; p. 9) claims that it is "clear" that the Commission's intent was for claimed costs to be reduced by fees authorized, rather than fees received as stated in the Parameters and Guidelines. It is true that the Department of Finance proposed, as part of the amendments that were adopted on May 25, 1989, that a sentence be added to the offsetting savings section expressly stating that if no health service fee was charged, the claimant would be required to deduct the amount authorized.

However, the Commission declined to add this requirement and adopted the Parameters and Guidelines without this language. The fact that the Commission staff and the California Community College Chancellor's Office agreed with the Department of Finance's interpretation does not negate the fact that the Commission adopted parameters and guidelines that *did not* include the additional language. The Commission intends the language of the parameters and guidelines to be construed as written, and only those savings that are *experienced* are to be deducted.

Finally, Mr. Spano's response (Tab 2; pg. 10) states that the auditor used the District's enrollment and Board of Governor Grant records to calculate authorized health service

² Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

fees, and then claims that the District is "responsible" for providing this information. This is not a requirement of the Parameters and Guidelines, and there is no other statutory requirement that the District provide this information to the Controller.

The District complied with the Parameters and Guidelines when it did not report health service fee revenue it never received. As discussed, there is no basis in law for the Controller's finding that the District was required to reduce its claimed costs by "authorized" health service fees. Therefore, the adjustments that result from this finding should be reversed.

RE: VI. STATUTE OF LIMITATIONS FOR AUDIT

The District asserts that FY 2001-02 claim was beyond the statute of limitations for audit when the Controller completed its audit on April 27, 2005. As Mr. Spano's response (Tab 2; p. 12) correctly points out, the phrase "subject to" places a claimant "under the power or authority of" the Controller in respect to audits. Therefore, once the FY 2001-02 claim was no longer subject to audit on December 31, 2004, the Controller's authority to audit came to an end, along with the authority to make adjustments based on this audit. If the Controller had failed to make any adjustments by issuing a final audit report, then it does not get to extend the time limitation simply because it had begun the audit process.

A key tenet of statutory interpretation is that "statutes must be given a reasonable and common sense construction . . . that will lead to a wise policy rather than to mischief or absurdity." (City of Costa Mesa v. McKenzie (1973) 30 Cal.App.3d 763, 770). If the Controller's interpretation was correct (i.e., so long as an audit was begun before the time limitation ran out then it could be completed at any later time), then there would be the absurd result that the Controller could issue its final audit report years or decades later and be entitled to the adjustments it contained.

The claimant would be in a state of limbo, not knowing whether the audit had been abandoned or the Controller's Office was simply taking its time. As the process currently stands, several months can pass between the exit conference, issuance of the draft audit report, and issuance of the final audit report. The Controller is also free to abandon an audit at any point in the process, and there is no requirement that the claimant be notified of this. Thus, there is a very real possibility for this type of uncertainty to arise if the Controller's interpretation were correct.

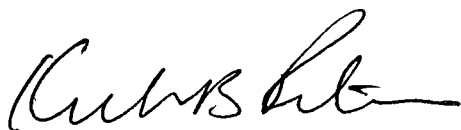
Among the important purposes of statutes of limitations are protecting settled expectations, giving stability to transactions, and encouraging the prompt enforcement of substantive law. (Marin Healthcare Dist. v. Sutter Health (2002) 103 Cal.App.4th 861, 872). The Controller's interpretation of Section 17558.5 frustrates these important purposes by creating uncertainty and giving the Controller the ability to indefinitely delay the completion of an audit.

Therefore, the reasonable interpretation is that the reimbursement claim is only subject to any adjustments that are the result of an audit if the audit is completed before the statute of limitations has run out. In this case, that would mean that the FY 2001-02 claim was beyond the statute of limitations when the Controller completed its audit by issuing the final audit report on April 27, 2005, and any resulting adjustments are void.

Part III. Certification

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

Executed on August 10, 2009, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Attachments:

- Exhibit "A" *Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532
- Exhibit "B" *Evelyn, Inc. v. California Emp. Stab. Com.* (1957) 48 Cal.2d 588
- Exhibit "C" *Life Savings Bank v. Wilhelm* (2000) 84 Cal.App.4th 174
- Exhibit "D" *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942
- Exhibit "E" SCO Mandated Cost Manual for Community Colleges, September 30, 2003 update
- Exhibit "F" Yosemite CCD Health Fee Elimination Audit Report issued April 30, 2009
- Exhibit "G" *City of Costa Mesa v. McKenzie* (1973) 30 Cal.App.3d 763
- Exhibit "H" *Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861

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

Jim Spano, Chief, Mandated Cost Audits Bureau
State Controller's Office

1 **DECLARATION OF SERVICE**

2
3 Re: Incorrect Reduction Claim 05-4206-I-03
4 Long Beach Community College District
5 Health Fee Elimination
6

7 I declare:

8
9 I am employed in the office of SixTen and Associates, which is the appointed
10 representative of the above-named claimant. I am 18 years of age or older and not a
11 party to the entitled matter. My business address is 3270 Arena Boulevard, Suite 400-
12 363, Sacramento, CA 95834.
13

14 On the date indicated below, I served the attached letter dated August 10, 2009, to
15 Paula Higashi, Executive Director, Commission on State Mandates, to:

16
17 Paula Higashi, Executive Director
18 Commission on State Mandates
19 980 Ninth Street, Suite 300
20 Sacramento, CA 95814
21

22
23 Jim Spano, Chief
24 Mandated Cost Audits Bureau
25 State Controller's Office (B-08)
26 300 Capitol Mall, Suite 518
27 Sacramento, CA 95814

28
29 Ann-Marie Gabel, Vice President
30 Long Beach Community College District
31 4901 East Carson Street
32 Long Beach, CA 90808
33

34 **U.S. MAIL:** I am familiar with the business
35 practice at SixTen and Associates for the
36 collection and processing of
37 correspondence for mailing with the
38 United States Postal Service. In
39 accordance with that practice,
40 correspondence placed in the internal mail
41 collection system at SixTen and
42 Associates is deposited with the United
43 States Postal Service that same day in the
44 ordinary course of business.

45 **FACSIMILE TRANSMISSION:** On the
46 date below from facsimile machine
number (858) 514-8645, I personally
transmitted to the above-named person(s)
to the facsimile number(s) shown above,
pursuant to California Rules of Court
2003-2008. A true copy of the above-
described document(s) was(were)
transmitted by facsimile transmission and
the transmission was reported as
complete and without error.

47 **OTHER SERVICE:** I caused such
48 envelope(s) to be delivered to the office of
49 the addressee(s) listed above by:

50 A copy of the transmission report issued
51 by the transmitting machine is attached to
52 this proof of service.

(Describe)

PERSONAL SERVICE: By causing a true
copy of the above-described document(s)
to be hand delivered to the office(s) of the
addressee(s).

47 I declare under penalty of perjury under the laws of the State of California that the
48 foregoing is true and correct and that this declaration was executed on August 10, 2009,
49 at Sacramento, California.
50

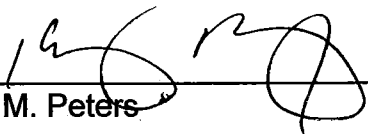
51 
52 _____
Kyle M. Peters

Exhibit A



FindLaw > FindLaw California > Case Law > California Case Law > 33 Cal.3d 532



Do Another California Case Law Search
Cases Citing This Case

Daniels v. Department of Motor Vehicles (1983) 33 Cal.3d 532 , 189 Cal.Rptr. 512; 658 P.2d 1313

[L.A. No. 31586. Supreme Court of California. March 10, 1983.]

WILFRED ANTHONY DANIELS, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent

(Opinion by Broussard, J., expressing the unanimous views of the court.) [33 Cal.3d 533]

COUNSEL

James Gaus for Plaintiff and Appellant.

George Deukmejian, Attorney General, and Thomas Scheerer, Deputy Attorney General, for Defendant and Respondent.

OPINION

BROUSSARD, J.

In this appeal we consider whether an accident report filed pursuant to Vehicle Code section 16000 fn. 1 is sufficient without additional evidence to support the suspension of a driver's license in a formal Department of Motor Vehicles (D.M.V.) hearing.

In May 1979, the D.M.V. received what is known as an SR 1 report fn. 2 completed and signed by Carlita Lynn Dorham. The report described an accident [33 Cal.3d 535] that allegedly occurred April 25, 1979, involving a vehicle owned and operated by Dorham and another vehicle owned and operated by licensee Daniels.

In October 10, 1979, the D.M.V. issued an order of suspension of Daniels' driver's license for his failure to file an accident report and proof of financial responsibility. Daniels requested a formal hearing pursuant to section 16075. At the hearing, the referee produced and received into evidence the SR 1 report. The attorney for Daniels objected to the report on the grounds that it contained hearsay and that it had not been authenticated. The objection was overruled on the theory that the report was admissible under section 14108, which provides that at formal hearings "... the department shall consider its official records and may receive sworn testimony"

Daniels was called as a witness by the referee, but on advice of counsel, refused to respond when asked whether he was involved in the accident. He asserted that testifying would tend to incriminate him in the commission of a crime.

The referee found that Daniels had been in an accident involving property damage in excess of \$350, and that he did not have insurance or other type of financial responsibility covering the accident in effect at the time that it occurred.

Following the recommendation of the referee, the D.M.V. issued its order of suspension January 28, 1980. Daniels' petition for writ of mandate was denied by the superior court. The Court of Appeals **273** reversed.

The events underlying the companion case of Himelspach v. Department of Motor Vehicles (1983) post, at page 542 [189 Cal.Rptr. 518, 658 P.2d 1319], are procedurally similar except that Himelspach did not personally attend the formal hearing. However, she was represented by counsel who, coincidentally, is the same attorney who represents Daniels. The Court of Appeal affirmed the superior court's denial of a petition for writ of mandate. We granted a hearing to resolve the conflicting decisions of the Courts of Appeal.

The California Financial Responsibility Law (Veh. Code, § 16000 et seq.) requires drivers of motor vehicles to be self-insured, to have insurance, or to be otherwise financially responsible for damages caused by accidents. A driver involved in an accident causing property damage over \$500 (formerly \$350) or death or personal injury must report such accident to the D.M.V. on an approved SR 1 report form. Failure to report an accident covered by section 16000 results in a notice of intent to suspend. The notice advises the driver or owner of his or her right to a formal or an informal hearing on the matter. (See §§ 14100 et seq. and 16075.) Those sections provide the procedural parameters [33 Cal.3d 536] for the hearing. Those procedural matters not covered by the Vehicle Code are governed by the Administrative Procedure Act (Gov. Code, § 11500 et seq.; see Veh. Code, § 14112). The question in issue here is whether the procedure whereby the D.M.V. bases its order suspending a license solely on the SR 1 report is authorized by statute and complies with the dictates of due process. For the reasons that follow, we conclude that, when the licensee requests a hearing, the use of the SR 1 report as the sole basis for suspension of a license under the Financial Responsibility Law is not authorized by statute. Because we so conclude, we do not decide whether the procedure of basing suspensions solely on the SR 1 report violates due process.

[1] When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation. Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond. *La Prade v. Dept. of Water & Power* (1945) 27 Cal.2d 47, 51 [162 P.2d 13]; *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113 [179 Cal.Rptr. 351]; *Martin v. State Personnel Bd.* (1972) 26 Cal.App.3d 573 [103 Cal.Rptr. 306]. [2] The mere fact that the licensee has the right to subpoena witnesses (§ 14104.5) does not relieve the D.M.V. of meeting its burden of producing competent evidence supporting a suspension. Thus, in this case, the licensee had no duty to testify or otherwise rebut the allegations at the hearing until the D.M.V. made a prima facie showing by competent evidence that the licensee was involved in an accident that required the filing of an SR 1 report.

[3] It is well recognized that the private interest at stake in this case -- the right to retain a driver's license absent competent proof of a violation of the law -- is a substantial one. (*Burkhart v. Department of Motor Vehicles* (1981) 124 Cal.App.3d 99, 108 [177 Cal.Rptr. 175]; see *Dixon v. Love* (1977) 431 U.S. 105 [52 L.Ed.2d 172, 97 S.Ct. 1723].) Nevertheless, the D.M.V. contends that the societal interest in having an expeditious and inexpensive hearing outweighs the interest of the licensee. Whatever the weight given to the interest in an expeditious hearing, it is not so great as to allow the deprivation of a property interest absent a showing by substantial competent evidence of facts supporting a suspension.

On this point, the United States Supreme Court has noted that the "assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence." (*Edison Co. v. Labor Board* (1938) 305 U.S. 197, 230 [83 L.Ed. 126, 140, 59 S.Ct. 206].) This court has also taken the position that "[t]here must be substantial evidence to support such a board's ruling, and hearsay, unless [33 Cal.3d 537] specially permitted by statute, is not competent evidence to that end. [Citations.]" (*Walker v. City of San Gabriel* (1942) 20 Cal.2d 879, 881 [129 P.2d 349, 142 A.L.R. 1383].) Thus, the suspension in this case is invalid unless it can be said that the evidence produced at the hearing was legally sufficient to support the findings.

[4] In this regard, two theories are advanced by the D.M.V. to support the use of the SR 1 report as the sole basis for findings justifying a suspension. First, it is argued that the evidence falls within a statutory exception to the hearsay rule. Second, even if the report is hearsay that would be inadmissible over objection in a civil action, it is specially permitted by statute in suspension hearings.

"Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) Unless otherwise provided by law, hearsay evidence is inadmissible. (Evid. Code, § 1200, subd. (b).) There is no dispute that the SR 1 report constitutes hearsay and that it would be inadmissible in a civil action unless it meets the requirements of a recognized exception to the hearsay rule. The D.M.V. asserts that the report falls within the business record exception provided by Evidence Code section 1271. That statute makes admissible evidence of a writing made as a record of an event when (a) the writing was made in the regular course of business; (b) the writing was made at or near the time of the act, condition or event, (c) the custodian or other qualified witness testifies to its identity and the mode of its preparation, and (d) the source of information and method and time of preparation were such as to indicate its trustworthiness.

Two of the four requirements of Evidence Code section 1271 are met in this case. The report was made shortly after the accident, and the fact that the report is made under penalty of perjury and pursuant to a legal duty tends to indicate its trustworthiness. However, the D.M.V. as custodian, upon receipt of the form, is in no position to testify to its identity and the mode of its preparation. Most significant, though, is the fact that the report is not made in the regular course of business.

The D.M.V. argues that the report is made in the regular course of business because it is required by law (§ 16000) and "it is the regular course of business for the Department of Motor Vehicles to receive such reports." This argument, however, misconstrues the nature of the first requirement of the business records exception. Although it may be the regular course of business for the D.M.V. to receive the report, it undoubtedly is not in the regular course of business for the citizen author to make to make such a report. And, it is this aspect of the report that bears on the trustworthiness factor contemplated by this [33 Cal.3d 538] exception to the hearsay rule. Thus, we conclude that the SR 1 report does not meet the requirements of the business record exception to the hearsay rule.

The D.M.V. argues, however, that even if the report is hearsay that would be inadmissible in a civil proceeding, the SR 1 is an official record of the D.M.V. and that its admission in the suspension hearing is specially provided by statute.

The D.M.V. contends that the specific authority for use of the SR 1 report in a suspension hearing is found in the sections of the Vehicle Code dealing with the procedure to be followed in formal and informal hearings. In particular, the D.M.V. contends that the matter of admission of the SR 1 report is "covered" by section 14108, which provides in pertinent part that at formal hearings "... the department shall consider its official records and may receive sworn testimony" Section 14112, provides that "[a]ll matters in a formal hearing not covered by this chapter shall be governed, as far as applicable, by the provisions of the Government Code relating to administrative hearings"

If the matter is not "covered" by the Vehicle Code, the D.M.V. appears to concede that the issue is governed by Government Code section 11513, which provides in relevant part that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

The question thus becomes whether the language "shall consider its official records" is a clear legislative authorization to allow use of the report as the sole basis to support a license suspension. We conclude that section 14108, while allowing consideration of the official records of the D.M.V., does not provide authority for allowing the SR 1 to form the sole basis for a license suspension. fn. 3

The legislative mandate of Government Code section 11513 against sole reliance on hearsay evidence is emphatic; the language of section 14108 fails to express a clear legislative intent to supersede section 11513. fn. 4 Unlike statutes [33 Cal.3d 539] that clearly authorize exceptions to the hearsay rule, fn. 5 section 14108 does not reflect any factors providing the necessary competency, reliability, and trustworthiness that would transform the SR 1 report into legally sufficient evidence. That the report is made an "official record" of the D.M.V. does not suffice to create a greater degree of competency, reliability or trustworthiness in the preparation of the report. Particularly in this case, the form, as filed, lacks the requisite assurance of reliability that must be demanded before it will support a finding. In this case, for example, there is no claim of bodily injury. The section of the form providing for a "Cost Estimate by a Garageman" is incomplete. The estimate by the author is of \$400 damage, but there is no mention of any expert opinion or other basis for concluding that there was in fact that amount of damage. The amount of property damage is crucial because no duty arises to prepare the report or otherwise rebut the claim of facts authorizing suspension unless, in the absence of bodily injury, the amount of damages exceeds the statutory trigger point.

The D.M.V. contends that the rationale of *Burkhart v. Department of Motor Vehicles*, supra, 124 Cal.App.3d 99, supports reliance solely on the SR 1 report. In *Burkhart* the court held that the police officer's written statement admitted in a license suspension hearing under the implied consent law (§ 13353) [33 Cal.3d 540] was sufficient in itself to support a finding of failure to complete a chemical test, and that the procedure did not violate due process. *Burkhart* was arrested for driving under the influence of alcohol. (§ 23102, subd. (a).) On the same date the arresting officer executed a sworn statement under section 13353 to the effect that *Burkhart* had refused to take any chemical test as required by that section. Upon notice of intent to suspend his license, *Burkhart* requested a hearing pursuant to section 14107. The hearing was postponed twice because of the failure of the arresting officer to appear, and finally an informal hearing was held without the presence of the officer. At the hearing, the referee introduced the officer's sworn statement over objection of *Burkhart*'s counsel. *Burkhart* and his wife contested several portions of the officer's statement; nevertheless, the referee found against *Burkhart*. The superior court held that the officer's statement was not sufficient prima facie evidence of any matter as to which there is conflicting evidence. In holding to the contrary, the Court of Appeals recognized that due process required a balancing test of the various interests involved, but concluded that the presence of the officer would not substantially enhance the reliability

of the hearing process, and the governmental interest and fiscal and administrative burdens involved outweighed requiring the state to produce the officer at the hearing.

In reaching that conclusion, Burkhart relied on Fankhauser v. Orr (1968) 268 Cal.App.2d 418 [74 Cal.Rptr. 61]. The Fankhauser court held that the report of the officer in an implied consent hearing was hearsay but that it was made admissible by section 14108. However, Fankhauser was a case where the licensee testified at the hearing, and his testimony supported the officer's written statement regarding probable cause to stop him and did not controvert the other averments of the officer's sworn statement. (268 Cal.App.2d at p. 423.) In addition, Burkhart specifically recognized but refused to follow contrary authority that declined to elevate the officer's written statement to the status of prima facie evidence if objected to or in conflict with other evidence. (See August v. Department of Motor Vehicles (1968) 264 Cal.App.2d 52 [70 Cal.Rptr. 172]; Fallis v. Department of Motor Vehicles (1968) 264 Cal.App.2d 373 [70 Cal.Rptr. 595].)

The court in August found that there was no dispute as to the existence of the facts upon which the D.M.V. suspended August's license under section 13353, and that August had failed to object to the introduction of the officer's report or request cross-examination of the officer at the informal hearing. Nevertheless, the court suggested that due process required providing the right to cross-examination when the licensee requests a hearing and contests the evidence presented by the agency. (264 Cal.App.2d at p. 60.) A stronger case for the right to cross-examine exists where, as here, the suspension is based on the uncorroborated report of a citizen who by chance happens to be involved in an accident. [33 Cal.3d 541]

Assuming, arguendo, the viability of the conclusion of Burkhart in the implied consent context, that case does not necessarily dispose of the question in this case. The result in Burkhart could be justified under the theory that the report filed by an officer under section 13353 would qualify under Evidence Code section 1271 as a business record or under Evidence Code section 1280 as an official record. Unlike the driver involved in an automobile accident, the statement under section 13353 is made by the officer in the regular course of his or her "business." In addition, the officer's report is a writing "made by and within the scope of duty of a public employee," and meets the other criteria of Evidence Code section 1280, and would thus qualify under that statutory exception to the hearsay rule as well. Whether these distinctions justify sole reliance on the officer's report in an implied consent hearing we need not now decide.

The SR 1 report filed in this case does not in itself reflect the competency, reliability, and trustworthiness necessary to permit use of the report as the sole basis for a finding supporting a license suspension. In view of the importance of the right affected and the lack of legislative authorization allowing sole reliance on the SR 1 report, we hold that, when the licensee requests a hearing, the SR 1 report is in itself insufficient to establish a prima facie showing of the facts supporting the suspension of a driver's license.

The judgment of the trial court is reversed and the cause is remanded to the trial court with directions to grant Daniels' petition and issue a peremptory writ commanding the D.M.V. to set aside its order of suspension and proceed in accordance with the views expressed herein.

Bird, C. J., Mosk, J., Richardson, J., Kaus, J., Reynoso, J., and Dalsimer, J., concurred.

FN 1. All statutory references are to the Vehicle Code unless otherwise noted. At the time of the accident, section 16000 provided: "The driver of a motor vehicle which is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway which accident has resulted in damage to the property of any one person in excess of three hundred fifty dollars (\$350) or in bodily injury or in the death of any person shall within 15 days after the accident, report the accident on a form approved by the department to the office of the department of Sacramento, subject to the provisions of this chapter. A report shall not be required in the event that the motor vehicle involved in the accident was owned or leased by or under the direction of the United States, this state, or any political subdivision of this state or municipality thereof." Since the accident, the minimum monetary amount has been increased to \$500.

FN 2. The report required to be filed by section 16000 is designated by the D.M.V. as an SR 1 report, and for convenience shall be referred to as such in this opinion.

FN 3. The mere admissibility of evidence does not necessarily confer the status of "sufficiency" to support a finding absent other competent evidence. "Admissibility is not the equivalent of evaluation; the former makes certain concessions in the interest of full and complete discovery while the latter, in the interest of fairness, withholds legal sanction to evidence found not to be trustworthy. Unlike the common practice in judicial proceedings, the fact that evidence may be admissible does not therefore guarantee the sufficiency of such evidence to sustain a finding." (Collins, Hearsay and the Administrative Process: A Review and Reconsideration of the State of the Law of Certain Evidentiary Procedures Applicable in California Administrative Proceedings (1976) 8 Sw.U.L.Rev. 577, 591 (hereafter cited as Hearsay and the Administrative Process).)

FN 4. Other statutory schemes authorizing admission of hearsay evidence in administrative hearings do so unequivocally. For example, the statutes governing procedure in a workers' compensation hearing quite specifically authorize the admission and sufficiency of certain evidence. Labor Code section 5703 provides: "The appeals board may receive evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

"(a) Reports of attending or examining physicians.

"(b) Reports of special investigators appointed by the appeals board or a referee to investigate and report upon any scientific or medical question.

"(c) Reports of employers, containing copies of timesheets, book accounts, reports, and other records properly authenticated.

"(d) Properly authenticated copies of hospital records of the case of the injured employee.

"(e) All publications of the Division of Industrial Accidents.

"(f) All official publications of state and United States governments.

"(g) Excerpts from expert testimony received by the appeals board upon similar issues of scientific fact in other cases and the prior decisions of the appeals board upon such issues." (Italics added.)

Labor Code section 5708 provides: "All hearings and investigations before the appeals board or a referee are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter." (Italics added.)

Labor Code section 5709 provides: "No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure." (Italics added.) Even in this context, however, the "use" of hearsay evidence does not necessarily sanction sole reliance on uncorroborated hearsay. (See Hearsay and the Administrative Process, *supra*, fn. 132 at p. 603.)

FN 5. See, for example, Evidence Code section 1271 (business records); Evidence Code section 1280 (official records); Evidence Code section 1220 (admissions of a party); Evidence Code section 1240 (spontaneous statements).

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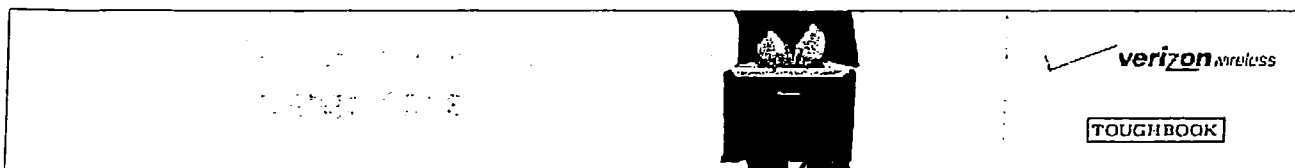
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Evelyn, Inc., v. California Emp. Stab. Com. , 48 Cal.2d 588

[Sac. No. 6673. In Bank. May 24, 1957.]

EVELYN, INCORPORATED (a Corporation) et al., Appellants, v. CALIFORNIA EMPLOYMENT STABILIZATION COMMISSION et al., Respondents.

COUNSEL

Homer E. Geis and Robert A. Waring for Appellants.

Edmund G. Brown, Attorney General, Irving H. Perluss, Assistant Attorney General, and William L. Shaw, Deputy Attorney General, for Respondents.

OPINION

SHENK, J.

This is an appeal by the plaintiffs from a judgment for the defendants in an action to recover unemployment insurance taxes paid under protest.

The plaintiff corporation, Evelyn, Incorporated, was organized in 1939 and the plaintiffs Evelyn Morris and Ernest Goveia became the sole stockholders. Thereafter, and during [48 Cal.2d 590] the years involved, 1942 through 1945, they conducted a dry cleaning business. They were elected as officers of the corporation and operated and managed the business by mutual consent, but the usual corporate meetings were not held, nor were the usual corporate records maintained. However, the corporate franchise tax and both state and federal corporate income taxes were paid each year. No salaries or dividends were officially declared, but the stockholders withdrew profits on an agreed basis and advanced personal funds when necessary to maintain the business. Both business and personal bills were paid from the business income. A payroll account was kept but the names of neither Ernest Goveia nor Evelyn Morris appeared thereon. However, in filing federal income withholdings and social security returns, the corporation made payments in behalf of Mr. Goveia and Mrs. Morris as if they were employees.

Prior to 1946 the corporation made no state unemployment insurance tax returns, but beginning that year returns were made in which Mr. Goveia and Mrs. Morris were named as employees. In 1950 a deficiency assessment was imposed by the defendant California Employment Stabilization Commission for unemployment insurance contributions for the years 1942 through 1945. During the entire period involved an employer must have had a minimum of four employees in order to be subject to the provisions of the Unemployment Insurance Law. (Unemployment Insurance Act, § 9, as amended Stats. 1937, ch. 740, § 1, p. 2055; Stats. 1945, ch. 545, § 1, p. 1082, ch. 942, § 1, p. 1776.) Unless Mr. Goveia and Mrs. Morris are to be considered as employees during that period the corporation did not have four employees and the assessment was improperly levied.

[1] The trial court found that "each of Goveia and Morris received compensation from the corporation for their services; that such compensation received by Goveia and Morris from the corporation is wages. ..." This finding is supported by substantial evidence and the court properly concluded that the compensation received constituted "wages with reference to the provisions of the Unemployment Insurance Act and subject to tax or contribution under the said Act." To hold now as a matter of law that Mr. Goveia and Mrs. Morris were not employees would be to disregard the corporate entity to suit the convenience and purpose of the stockholders. [2] Certainly they should not be permitted to assert the employer-employee

relationship in seeking benefits conferred by law, including coverage under the federal social security program [48 Cal.2d 591] and at the same time to deny the existence of such a relationship in order to avoid obligations imposed by other laws. (See *Higgins v. Smith*, 308 U.S. 473, 477 [60 S.Ct. 355, 84 L.Ed. 406]; *California Emp. Com. v. Butte County etc. Assn.*, 25 Cal.2d 624, 636- 637 [154 P.2d 892].)

The plaintiffs next contend that the assessment or at least a portion thereof was barred by the statute of limitations. As stated, the tax was assessed in 1950 for taxes due for the years 1942 through 1945. The law in effect prior to September 15, 1945, provided for an assessment against employer units which had failed to make the required returns, but limited such assessments as follows: "... provided, that in the absence of an intent to evade the provisions of this act such assessment must be made and notification given to the employer as hereinafter provided within three years from the date on which the contribution liability included in the assessment became due." (Gen. Laws, Act 8780d, § 45.5; Stats., 1943, p. 3054.) In 1945 section 45.5 was amended, effective September 15, 1945, to provide in subparagraph (f) as follows: "Except in the case of failure without good cause to file a return, fraud or intent to evade this act or the authorized rules and regulations, every notice of assessment shall be made within three years. ..." (Stats. 1945, p. 1097.)

As no intent to evade was put in issue it appears that under the 1943 Act a three year statute of limitation would have been in effect. [3] But under the 1945 Act there is no limitation on assessments for those delinquencies due, among other things, to a "failure without good cause to file a return." In the present case the trial court expressly found that there was no good cause why the plaintiff corporation failed to file a return. The plaintiffs contend that good cause exists for their failure and they refer to decisions which define "good cause" as to applications such as here not involved. The record in this case reveals no set of circumstances which would justify a finding of good cause for failure to file the returns. A bona fide but mistaken belief that the law does not require a particular course of conduct does not constitute good cause for a failure to comply therewith.

From the foregoing it is apparent that if the 1943 Act is applicable to any portion of the period in question, the assessment cannot be enforced as to that portion. But if the 1945 Act is applicable to all or any portion of the period, that portion of the assessment to which the act applies can and should be enforced. [48 Cal.2d 592]

Under the provisions of the acts both before and after September 15, 1945, the contributions required from an employer subject to the tax became due on the first day of the calendar month following the close of each calendar quarter. (Stats. 1943, p. 3037; Stats. 1945, p. 1095.) It is clear, therefore, that the contribution becoming due on the first day of October, 1945, for the third calendar quarter in 1945, and the contribution becoming due on the first day of January, 1946, for the fourth calendar quarter of 1945, were subject to the 1945 act and the assessment was properly levied as to those contributions.

The theory by which the defendants seek to make the 1945 act applicable to the remainder of the assessment is that before any action is barred by the statute the Legislature has the power to extend the period prescribed therein. [4] The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432 [90 P. 1062].) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463 [183 P.2d 10]; *Davis & McMillan v. Industrial Acc. Com.* 198 Cal. 631 [246 P. 1046, 46 A.L.R. 1095]; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472 [183 P.2d 16]), against an individual for personal income taxes (*Mudd v. McColgan*, supra, 30 Cal.2d 463), and against a judgment debtor (*Weldon v. Rogers*, supra, 151 Cal. 432). [5] It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan*, supra, 30 Cal.2d 463.)

The foregoing statement of the law is not disputed by the plaintiffs. They contend, however, that the change was more than a mere extension of the period of time in which an assessment might be levied; that the change required that the corporation be able to establish that it had good cause for not filing a return; that while it might have been able to show good cause had it been required to do so during the period in question it could not conveniently do so at the time of the assessment and after the events which gave rise to the obligation; that the change therefore constituted the creation of new [48 Cal.2d 593] obligations and the imposition of new duties, the exaction of new penalties not specifically provided for in the new legislation and the impairment of vested rights which they might assert in an action for the recovery of the assessment.

It should be borne in mind that the obligation which the commission sought to enforce was not one which arose out of the 1945 Act in altering the applicable statute of limitations, but rather one which arose out of provisions of the Unemployment Insurance Act existing at the time the corporation failed to comply therewith. [6] And where, as here, the Legislature properly could have extended the period of limitations as to all obligations surviving on September 15, 1945, certainly it could have imposed a less onerous burden on those obligors by providing a means of escape to those who had good cause

for their failure to comply with existing law. The plaintiffs cannot be heard to complain that because they now can make no showing of good cause they have thus been deprived of vested rights which would enable them to successfully maintain this action. They were never possessed of rights, vested or otherwise, which were entitled to the protection asserted by the plaintiffs. Furthermore, no showing is made by them as to the manner in which the corporation's failure to comply with the law might have been justified at the time the obligations were incurred, or why such a showing became an added burden by lapse of time.

The plaintiffs seek to establish the impropriety of the assessment for the first two calendar quarters of 1942 for an additional reason. They contend that the contributions for those quarters became due on the first days of April and July of that year. (See Stats. 1943, p. 3037.) It may be assumed that in such a case the three year period of limitations would have run prior to the effective date of the 1945 Act on September 15 of that year and the collection of the amounts due would have been barred. [7] The commission contends, however, that the contributions for those two calendar quarters did not become due until after the 15th day of September, 1942, and that the obligations still survived at the time the period was extended on the 15th day of September, 1945. This contention is based on provisions of the law which define employers subject to the Unemployment Insurance Act, and it is claimed that the plaintiff corporation did not become subject to the act until the 20th of September, 1942, for all prior contributions otherwise due for the year 1942. [48 Cal.2d 594]

Section 9 of the Unemployment Insurance Act as it read prior to September 15, 1945, provided that " 'Employer' means: (a) Any employing unit, which for some portion of a day, ... in each of twenty different weeks, whether or not such weeks are or were consecutive, has within the current calendar year or had within the preceding calendar year in employment four or more individuals, irrespective of whether the same individuals are or were employed in each such day. ..." (Stats. 1937, p. 2055.) It appears from the record that the plaintiff corporation completed its 20th week of qualifying employment on September 20, 1942. There is nothing to indicate that prior to that time the corporation was an employer subject to the tax. Accordingly, it could not have incurred any tax liability prior to that time, and on the first days of the months following the first two calendar quarters in 1942 no tax could have become due and payable on which the statute might have run. The plaintiffs claim that the corporation was qualified from the beginning of the year 1942 because of its employment record in the prior calendar year. But there is no evidence to show the corporation's employment record in 1941, and the plaintiffs were required to make such a showing if reliance were to be placed thereon as controlling.

It is contended by the plaintiffs that the provision relied on by the commission is one dealing only with the definition of "employer" and has no bearing on the question of when a contribution becomes due and payable. The contention may not be sustained. Obviously a contribution cannot become due and payable from a corporation before it qualifies as an employer. A construction in accord with this view was incorporated by the Employment Commission in its rule 37.6, wherein it was provided: "An employing unit upon becoming a subject employer during any calendar year shall file with the Commission within fifteen days thereafter, quarterly contributions and earnings reports for each completed quarter in that calendar year.

"Contributions for these quarters are due at the end of the quarter in which the employer became subject. ..." (Rules and Regulations on the California Unemployment Insurance Act, Rule 37.6 [1940].) The Employment Commission was expressly authorized to "adopt, amend or rescind regulations for the administration of this act. ..." (Stats. 1939, p. 3007.) The foregoing rule would appear to be within the power thus granted.

In recognition of the weight which may be accorded administrative [48 Cal.2d 595] interpretations and practices, as well as the plain meaning of the statutory language itself, it must be concluded that contributions from the plaintiff corporation for the first two calendar quarters of 1942 did not become due and payable until after the 20th of September, 1942; that the three-year period of the statute of limitations had not expired on the 15th day of September, 1945, as to those contributions, and that the period was properly extended as to contributions for those quarters as well as all other quarters involved in the assessment.

The judgment is affirmed.

Gibson, C.J., Carter, J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.

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Life Savings Bank v. Wilhelm (2000) 84 Cal.App.4th 174 , 100 Cal.Rptr.2d 657

[No. E025950. Fourth Dist., Div. Two. Oct. 13, 2000.]

LIFE SAVINGS BANK, Plaintiff and Appellant, v. TOM F. WILHELM et al., Defendants and Respondents.

(Superior Court of Riverside County, No. 91285, Lawrence W. Fry, Judge.)

(Opinion by Ramirez, P. J., with McKinster and Gaut, JJ., concurring.)

COUNSEL

Hemar & Rousso and Kenneth G. Lau for Plaintiff and Appellant.

Law Offices of Thurman W. Arnold III, Thurman W. Arnold III; and Timothy L. Ewanyshyn for Defendants and Respondents. [84 Cal.App.4th 175]

OPINION

RAMIREZ, P. J.-

Plaintiff Life Savings Bank (Life) appeals from an order of the trial court denying its request for relief from mistake, inadvertence [84 Cal.App.4th 176] and/or excusable neglect under Code of Civil Procedure section 473. fn. 1 Life missed the filing deadline provided in section 726, subdivision (b), for its application for a hearing to determine the fair value of real property after a foreclosure sale in order to obtain a money judgment for the deficiency. Concurrently with filing its late application, Life filed a motion under section 473 for relief from its tardy filing. The trial court held that section 726, subdivision (b)'s three-month period for filing an application for a fair value hearing is essentially a statute of limitations and therefore relief under section 473 was not available. The trial court refused to hear Life's section 473 motion for relief on its merits and, finding it moot, declined to hear the application for a fair value hearing. Life appeals, claiming that the trial court erred in refusing to hear its motion for relief under section 473 on its merits, because section 726, subdivision (b) is merely a procedural time line and does not act as a statute of limitations.

Facts and Procedural History

On November 25, 1992, Life entered into two promissory notes with defendants Tom F. Wilhelm and Teresa A. Felix Wilhelm (the Wilhelms), whereby Life agreed to loan them a total of \$184,000. Each loan was secured by a deed of trust on a separate parcel of improved real property. The Wilhelms defaulted on their notes and Life filed an action for judicial foreclosure on September 6, 1996. On December 16, 1997, the parties entered into a stipulation for entry of judgment of judicial foreclosure. The trial court entered judgment based upon the stipulation the same day. Both the stipulation and the judgment indicate that the Wilhelms agree that they are personally liable for the payment of the amounts secured by the deeds of trust and that a deficiency judgment may be ordered against them.

On July 14, 1998, Life filed a writ of sale for the real property. Then, on April 8, 1999, the sheriff's sale took place. Life was the highest bidder and obtained the properties for a total of \$170,000. On July 19, 1999, Life concurrently filed a motion to allow it to have a hearing on its tardy application for a fair value hearing, as well as the application for the fair value hearing itself. As indicated above, the trial court found that because section 726, subdivision (b) imposed a statute of limitations,

Life could not seek relief under section 473. The trial court therefore declined to rule on the merits of the section 473 motion and declined to rule on the application for a fair value hearing. This appeal followed.

Discussion

[1a] Section 473 allows a court, in its discretion, to relieve a party from "a judgment, dismissal, order, or other proceeding taken against him or her [84 Cal.App.4th 177] through his or her mistake, inadvertence, surprise, or excusable neglect." (*Id.*, subd. (b).) However, section 473 does not provide relief from such errors that result in the running of the applicable statute of limitations. (*Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1279 [80 Cal.Rptr.2d 601]; *Castro v. Sacramento County Fire Protection Dist.* (1996) 47 Cal.App.4th 927, 929, 934 [55 Cal.Rptr.2d 193].)

Section 726, subdivision (b) provides, in part, that "[i]n the event that a deficiency is not waived or prohibited and it is decreed that any defendant is personally liable for the debt, then upon application of the plaintiff filed at any time within three months of the date of the foreclosure sale and after a hearing thereon at which the court shall take evidence and at which hearing either party may present evidence as to the fair value of the real property or estate for years therein sold as of the date of sale, the court shall render a money judgment against the defendant or defendants for the amount by which the amount of the indebtedness with interest and costs of levy and sale and of action exceeds the fair value of the real property or estate for years therein sold as of the date of sale." It is undisputed that Life did not file its application for a fair value hearing until July 19, 1999, some 11 days after the expiration of the three-month period allowed by section 726. The sole issue on appeal is whether the three-month period acts as a statute of limitations such that no relief can be had under section 473 for mistake, inadvertence or excusable neglect. This being a pure question of law, we review the trial court's decision de novo. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699 [170 Cal.Rptr. 817, 621 P.2d 856]; *Diamond Benefits Life Ins. Co. v. Troll* (1998) 66 Cal.App.4th 1, 5 [77 Cal.Rptr.2d 581].)

[2] A statute of limitation prescribes the time period beyond which suit may not be brought. (*Utah Property & Casualty Ins. etc. Assn. v. United Services Auto. Assn.* (1991) 230 Cal.App.3d 1010, 1025 [281 Cal.Rptr. 917].) Statutes of limitations are distinguished from procedural limits governing the time in which parties must do an act because they fix the time for commencing suit. (3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 418, p. 527.) [1b] The question we must consider, therefore, is whether section 726, subdivision (b) fixes the time in which a party may bring an action. Our reading of the plain language of the statute causes us to conclude that it does. A party who is entitled to seek a deficiency judgment must file an application within three months of the foreclosure sale or no money judgment for a deficiency can be obtained. (§ 726, subd. (b).)

In reaching our conclusion we are supported by cases that have interpreted section 580a as constituting a statute of limitations. (See, e.g., *Citrus State Bank v. McKendrick* (1989) 215 Cal.App.3d 941, 943 [263 Cal.Rptr. 781]; *California Bank v. Stimson* (1949) 89 Cal.App.2d 552 [201 P.2d 39]; *Ware v. Heller* (1944) 63 Cal.App.2d 817, 823-825 [148 P.2d 410].) As does section 726, subdivision (b), which applies to judicial foreclosures, section 580a provides that in the case of nonjudicial foreclosures, a creditor seeking a money judgment for a deficiency must bring an action seeking a deficiency judgment within three months of the sale of the security. (See *Citrus State Bank v. McKendrick*, *supra*, 215 Cal.App.3d at p. 945 [§§ 580a and 726 both limit the time in which to seek a deficiency judgment to three months after foreclosure sale] and *Coppola v. Superior Court* (1989) 211 Cal.App.3d 848, 863, fn. 8 [259 Cal.Rptr. 811] [time bar in § 580a for nonjudicial foreclosure has its equivalent for judicial foreclosure in § 726, subd. (b)].) Further, the fact that the policies behind the two sections, and indeed the entire statutory scheme regarding the foreclosure of mortgages, are the same, bolsters the conclusion that they should be interpreted in a similar fashion. Essentially they both seek to lighten the burden of trust debtors and to prevent excessive recoveries by secured creditors. (*Kirkpatrick v. Westamerica Bank* (1998) 65 Cal.App.4th 982, 986-987 [76 Cal.Rptr.2d 876]; *Citrus State Bank v. McKendrick*, *supra*, 215 Cal.App.3d at p. 947; *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, 40 [27 Cal.Rptr. 873, 378 P.2d 97]; *California Bank v. Stimson*, *supra*, "89 Cal.App.2d at pp. 554-555.)

Thus, we conclude that section 726, subdivision (b) provides a three-month statute of limitations in which a party seeking a deficiency judgment must file an application for a fair value hearing and a determination of the amount of the deficiency. The trial court did not err in holding that Life was not entitled to seek relief under section 473 for its failure to meet the three-month deadline.

Life argues that section 726, subdivision (b) cannot be construed as a statute of limitations because a judgment in a judicial foreclosure is a multipart judgment comprised of both the judgment for the sale of the security and the judgment for the deficiency. Therefore, the three-month period is merely "intended to provide administrative convenience and expediency to the process of completing an already pending judicial foreclosure action" (*Italics omitted.*) Life argues that this distinguishes section 726, subdivision (b) from section 580a, because the latter applies to the initial court action, while the former applies when an action for foreclosure has already been initiated. We disagree.

Rather than comprising separate "judgments" to a single action, we hold that, for purposes of the statutes of limitations that apply to them, a judgment for judicial foreclosure, which includes a determination that a party has the [84 Cal.App.4th 179] right to seek a deficiency, and the deficiency judgment itself are the product of separate actions. Indeed, contrary to Life's argument, a deficiency judgment is not a necessary part of an action for judicial foreclosure. (See, e.g., *Ware v. Heller*, supra, 63 Cal.App.2d at p. 823 [while action to recover deficiency is founded on instrument secured by a deed of trust, action to recover deficiency may not be maintained until after security is exhausted].) A deficiency judgment need only be sought if the proceeds of the judicial foreclosure are insufficient to cover the secured obligation. Logically then, an action seeking a deficiency is separate from an action seeking the sale of security through judicial foreclosure.

Life cites *Korea Exchange Bank v. Yang* (1988) 200 Cal.App.3d 1471 [246 Cal.Rptr. 619] in support of its claim that an action for a deficiency is not a separate action. While the court in that case did refer to the deficiency action as a "motion," and concluded that notice of the deficiency "motion" need not be given to debtors whose default was taken in the foreclosure action, it did not hold that the deficiency action was part of the judicial foreclosure action, nor did it hold that section 726, subdivision (b) was not a statute of limitations.

Life also cites *United California Bank v. Tijerina* (1972) 25 Cal.App.3d 963 [102 Cal.Rptr. 234], wherein the court referred to actions under section 726 as two-stage proceedings. In that case, a debtor failed to disclose the existence of additional security in the foreclosure action and the creditors obtained a judgment indicating they were entitled to seek a deficiency judgment. The court held that the debtor was precluded from asserting the defense of failure to exhaust all security first in the deficiency action because the issues of waiver and the creditor's right to seek a deficiency had already been adjudicated in the foreclosure action. (*Id.* at pp. 968-969.) Again however, that court did not hold that the action for the deficiency judgment was part of the foreclosure action and did not consider, and thus reached no conclusion on whether section 726, subdivision (b) acts as a statute of limitations on obtaining a deficiency judgment.

Life also argues that the fact that the trial court retains jurisdiction during the period authorized for a redemption under section 729.010 et seq. necessarily requires us to find that the three-month limit was not meant to be a statute of limitations. We are not persuaded. The debtor's right to redeem is a right related to the foreclosure sale and is entirely separate from the creditor's right to obtain a deficiency judgment. Life has provided no authority, nor are we aware of any, for the proposition that the court cannot maintain jurisdiction over the former, yet lose jurisdiction over matters concerning the latter. [84 Cal.App.4th 180]

Life argues that section 726, subdivision (b) cannot be a statute of limitations because the court in *Florio v. Lau* (1998) 68 Cal.App.4th 637 [80 Cal.Rptr.2d 409] held that it was superseded by another conflicting statute. To the contrary, the court in *Florio* did not find the relevant statutes to be in conflict. Rather, it held that in cases involving mixed collateral of both personal and real property, the three-month limitation period in section 726, subdivision (b) does not apply at all. (68 Cal.App.4th at pp. 646-653.)

Finally, both Life and the Wilhelms advance several equitable points, which they argue support a finding in their favor. However, these equitable considerations do not apply in determining whether or not the three-month period in section 726, subdivision (b) is a statute of limitations. They would only apply if we determined that it was necessary to remand the case for a hearing on Life's motion for relief under section 473, and then would have to be determined by the trial court. Having determined that Life is not entitled to seek relief under section 473, there is no need for us to remand the case to the trial court, and no reason for us to consider the equitable arguments further.

Disposition

The trial court's order is affirmed. Defendants to recover their costs on appeal.

McKinster, J., and Gaut, J., concurred.

FN 1. All further statutory references are to the Code of Civil Procedure.

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City of Long Beach v. Department of Industrial Relations (2004)34 Cal.4th 942 , -- Cal.Rptr.3d --; -- P.3d --

[No. S118450. Dec. 20, 2004.]

CITY OF LONG BEACH, Plaintiff and Respondent, v. DEPARTMENT OF INDUSTRIAL RELATIONS, Defendant and Appellant.

(Superior Court of Los Angeles County, No. BS072516, David P. Yaffe, Judge.)

(The Court of Appeal, Second Dist., Div. Seven, No. B159333, [110 Cal.App.4th 636](#).)

(Opinion by Chin, J., with George, C. J., Baxter, J., Werdegar, J., Brown, J., and Moreno, J., concurring. Dissenting opinion by Kennard, J. (see p. 954).)

COUNSEL

John M. Rea, Chief Counsel, Vanessa L. Holton, Acting Chief Counsel, Steven A. McGinty, Assistant Chief Counsel, Sarah L. Cohen, Acting Assistant Chief Counsel, and Anthony Mischel, Staff Counsel, for Defendant and Appellant.

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Cox, Castle & Nicholson, John S. Miller, Jr., and Dwayne P. McKenzie for Center for Contract Compliance as Amicus Curiae on behalf of Defendant and Appellant.

Weinberg, Roger & Rosenfeld, Sandra Rae Benson, Ellyn Moscowitz and M. Suzanne Murphy for California Apprenticeship Coordinators Association, et al., as Amici Curiae on behalf of Defendant and Appellant.

Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, Andrea Lynn Hoch, Chief Assistant Attorney General, Louis R. Mauro, Assistant Attorney General, and Douglas J. Woods, Deputy Attorney General, as Amici Curiae on behalf of Defendant and Appellant.

Simpson, Garrity & Innes, Paul V. Simpson and Ronald A. Johnstone for Engineering & Utility Contractors Association as Amicus Curiae on behalf of Defendant and Appellant.

Robert E. Shannon, City Attorney, Daniel S. Murphy, Principal Deputy City Attorney, and Michelle Gardner, Deputy City Attorney, for Plaintiff and Respondent.

Rutan & Tucker, M. Katherine Jenson and Mark J. Austin for 44 California Cities and The League of California Cities as Amici Curiae on behalf of Plaintiff and Respondent.

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Davis, Cowell & Bowe, John J. Davis, Jr., and Andrew J. Kahn for Northern California Mechanical Contractors Association, Los Angeles Chapter National Electrical Contractors Association, Air Conditioning, Refrigeration and Mechanical Contractors Association of Southern California, California Plumbing and Mechanical Contractors Association, California Sheet Metal Contractors National Association and Associated Plumbing and Mechanical Contractors Association as Amici Curiae. [34 Cal.4th 946]

OPINION

CHIN, J.-

[1] In this case, we address the application of the state's prevailing wage law (PWL; see Lab. Code, § 1770 et seq.) fn. 1 to private construction of a \$ 10 million animal control facility in Long Beach (the City). The Society for the Prevention of Cruelty to Animals of Los Angeles (SPCA-LA) built the facility, but it was partly funded by a \$ 1.5 million grant from the City that was expressly limited to project development and other *preconstruction* expenses. Section 1771 requires that "workers employed on public works" be paid "not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed"

When the present contract was executed in 1998, "public works" was defined as including "[c]onstruction, alteration, demolition, or repair work done under contract and *paid for in whole or in part out of public funds ...*" (§ 1720, subd. (a), italics added.) As we observe, *after* the agreement was executed, and *after* the City's grant money was used for preconstruction expenses, a 2000 amendment to section 1720, subdivision (a)(1), was adopted to include within the word "construction" such activities as "the design and preconstruction phases of construction," including "inspection and land surveying work," items the City partly funded in this case.

[2] We first consider whether the project here is indeed a "public work" within the meaning of section 1771 and former section 1720. We will conclude, contrary to the Court of Appeal, that under the law in effect when the contract at issue was executed, a project that *private* developers build solely with *private* funds on land leased from a public agency remains private. It does not become a *public* work subject to the PWL merely because the City had earlier contributed funds to the owner/lessee to assist in [34 Cal.4th 947] defraying such "preconstruction" costs or expenses as legal fees, insurance premiums, architectural design costs, and project management and surveying fees.

This conclusion completely disposes of this case. We leave open for consideration at another time important questions raised by the parties, including (1) whether, assuming the project indeed was a "public work" under section 1771, it should be deemed a "municipal affair" of a charter city and therefore exempt from PWL requirements, and (2) whether the PWL is a matter of such "statewide concern" that it would override a charter city's interests in conducting its municipal affairs. Resolution of these important issues is unnecessary and inappropriate here because the present project was not a public work subject to the PWL.

FACTS

The following uncontested facts are largely taken from the Court of Appeal opinion in this case. The Department of Industrial Relations (Department) appeals from a judgment granting a petition for writ of mandate filed by the City. The City had sought to overturn the Department's determination that an animal shelter project financed in part with City funds and built on City lands was subject to the PWL.

In 1998, the City entered into an agreement with SPCA-LA, under which the City agreed to contribute \$ 1.5 million to assist in the development and preconstruction phases of a facility within City limits that would serve as an animal shelter and SPCA-LA's administrative headquarters. It would also provide kennels and office space for the City's animal control department. The agreement required the City's funds to be placed in a segregated account and used only for expenses related to project development, such as SPCA-LA's "investigation and analysis" of the property on which the shelter was to be built, "permit, application, filing and other fees and charges," and "design and related preconstruction costs." SPCA-LA was specifically precluded from using any of the City's funds "to pay overhead, supervision, administrative or other such costs" of the organization.

The City owned the land on which the facility was to be built, but leased it to SPCA-LA for \$ 120 per year. The City in turn agreed to pay SPCA-LA \$ 60 a year as rent for the space occupied **291** its animal control department. The agreement further

provided it was "interdependent," with lease and lease-back agreements between the parties with respect to the City land on which the project would be built. The agreement further stated that "[i]f either the lease or lease-back is terminated then this agreement shall automatically terminate, without notice." Finally, the agreement provided "[i]f there is a [34 Cal.4th 948] claim relating to the payment of wages arising from the construction described herein," the City shall pay 95 percent of "all costs, expenses, penalties, payments of wages, interest, and other charges related to the claim, including attorneys' fees and court or administrative costs and expenses[.]"

The record shows a portion of the City's financial contribution was spent on such preconstruction expenses as architecture and design (\$ 318,333), project management (\$ 440,524), legal fees (\$ 16,645), surveying (\$ 14,500), and insurance (\$ 23,478). The City estimated that an additional \$ 152,000 in architectural, legal, development and insurance expenses would be required for completion. The dissent observes that some of these additional funds may have been spent after actual construction began. The dissent cites a letter from the City indicating that by the time construction began, some additional funds "had yet to be spent." (Dis. opn., *post*, at p. 958.) The record is unclear, however, if or when such funds were actually paid. But as we previously noted, the City's agreement with SPCA-LA required the City's funds to be used only for project development, design and related preconstruction costs, and the issue before us is whether the term "construction" includes such activities. Assuming some limited City funds were spent *during* construction, the record fails to demonstrate they were used *for* construction.

The project itself was completed in 2001 at a cost of approximately \$ 10 million. Evidence obtained from the SPCA-LA showed the project was intended to serve all of Los Angeles County and parts of Orange County. Animals from all these areas, not just from Long Beach, would be housed at the shelter. In addition, the facility would also house the SPCA-LA's headquarters.

[3] Section 1771 states in relevant part: "[N]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed ... shall be paid to all workers employed on public works." In 1998, when the present contract was executed, "public works" was defined as "[c]onstruction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds" (§ 1720, subd. (a), italics added.) The term "construction" was undefined. As discussed below, a 2000 amendment to section 1720, subdivision (a), adopted several years after the City executed its contract with SPCA-LA and made its limited contribution, now includes within "construction" such activities as "the design and preconstruction phases of construction," including inspection and surveying.

Acting on an inquiry by a labor organization, the Department began an investigation to determine whether the project was a "public work" under former section 1720 and was therefore subject to the prevailing wage rates [34 Cal.4th 949] that section 1771 mandated. The City argued that the project was not a public work, but even if it was, the prevailing wage law did not apply because it was strictly a charter city's "municipal affair." The Department concluded the project was a public work and the city's status as a charter city did not exempt it from the PWL. This determination was affirmed on an administrative appeal. The City filed a petition for a writ of mandate under Code of Civil Procedure section 1085 challenging the Department's decision that the PWL applied to the shelter project. The trial court granted the writ, and the Department filed a timely appeal. The Court of Appeal reversed, concluding that (1) the project was a public work under former section 1720 and section 1771, (2) the project was not a municipal affair exempt from the PWL, and (3) even if the project was a municipal affair, the PWL was a matter of statewide concern, precluding exemption under the municipal affairs doctrine. Concluding the shelter project was not a public work as then defined, we will reverse the judgment of the Court of Appeal.

DISCUSSION

[4] Before proceeding with our analysis, we set out some established principles that will help guide our decision. In *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976 [4 Cal. Rptr. 2d 837, 824 P.2d 643] (*Lusardi*), we spoke regarding the PWL's general intent and scope. We observed that "[t]he Legislature has declared that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." [Citation.] [¶] The overall purpose of the prevailing wage law is to protect and benefit employees *on public works projects*. [Citation.] (*Lusardi, supra*, 1 Cal.4th at p. 985, italics added.)

Lusardi continued by observing that "[t]his general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees. [Citations.]" (*Lusardi, supra*, 1 Cal.4th at p. 987.)

[5] In conducting our review, we must exercise our independent judgment in resolving whether the project at issue constituted a "public work" within the meaning of the PWL. (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1583-1584 [18 Cal. Rptr. 2d 680] (*McIntosh*)). We have acknowledged [34 Cal.4th 950] that the PWL was enacted to protect and benefit workers and the public and is to be liberally construed. (See *Lusardi, supra*, 1 Cal.4th at p. 985.) The law does, however, permit public agencies to form alliances with the private sector and allows them to enter into leases of public lands and to give financial incentives to encourage private, nonprofit construction projects that provide public services at low cost (see Gov. Code, § 26227; *McIntosh, supra*, 14 Cal.App.4th at p. 1587; *International Brotherhood of Electrical Workers v. Board of Harbor Commissioners* (1977) 68 Cal. App. 3d 556, 562 [137 Cal. Rptr. 372] [lease to private developer to construct oil and gas facilities and pay city-lessor royalties not "public work" under former section 1720]).

[6] "Courts will liberally construe prevailing wage statutes [citations], but they cannot interfere where the Legislature has demonstrated the ability to make its intent clear and chosen not to act [citation]." (*McIntosh, supra*, 14 Cal.4th at p. 1589.) Here, we must determine whether the City's contract with SPCA-LA truly involved "construction" that was paid for in part with public funds.

The City observes that its \$ 1.5 million donation to SPCA-LA was neither earmarked nor used for actual construction of the facility. The City's agreement with SPCA-LA specifically designated the contributed funds for preconstruction costs. Those funds were in fact spent on architectural design, project management, legal fees, surveying fees, and insurance coverage. The City contends that, when the agreement was executed in 1998, "construction" meant only the actual physical act of building the structure.

The City notes that only in 2000, several years *after* the agreement was signed and *after* the City had contributed its funds to the project, did the Legislature amend section 1720, subdivision (a), by adding a sentence stating: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work." (Stats. 2000, ch. 881, § 1.) The City views the foregoing amendment as a prospective *change* in the law, not a simple restatement of existing law.

The Department, on the other hand, argues that the term "construction" would encompass the planning, design, and "pre-building" phases of a project, which would include architectural design, project management, and surveying. The City's financial contribution to the project paid for all these items. In the Department's view, the 2000 amendment to section 1720, subdivision (a), merely clarified existing law. As will appear, we think the City's argument makes more sense. [34 Cal.4th 951]

The Court of Appeal observed that the "[Department's] position is supported by the common meaning of the word 'construction' ..., " citing a dictionary that defines construction as "[t]he act or *process* of constructing." (American Heritage Dict. (2d college ed. 1982) p. 315, italics added; see also *Priest v. Housing Authority* (1969) 275 Cal. App. 2d 751, 756 [80 Cal. Rptr. 145] [construction ordinarily includes "the entire process" required in order to erect a structure, including basements, foundations, and utility connections].) But that definition begs the question whether the construction "process" includes the preconstruction activities involved here. Other dictionaries give the word a more literal interpretation.

[7] For example, Webster's Third New International Dictionary (2002), page 489, gives a primary definition of "construction" as "[t]he act of putting parts together to form a complete integrated object." 3 Oxford English Dictionary (2d ed. 1989), page 794, defines the word as "the action of framing, devising, or forming, by the putting together of parts; erection, building." Thus, contrary to the Court of Appeal's statement, dictionary definitions do not strongly support the Department's position.

The Court of Appeal also relied on the Department's own regulations and rulings interpreting and implementing the PWL. It noted that the Department has defined "construction" as including "[f]ield survey work traditionally covered by collective bargaining agreements," when such surveying is "integral to the specific public works project in the design, preconstruction, or construction phase." (Cal. Code Regs., tit. 8, § 16001, subd. (c).) The total project cost was approximately \$ 10 million. The record does not clearly show whether the minimal (\$ 14,500) surveying work paid for out of the City's donation met the "collective bargaining" and "integral work" elements of the Department regulation. Neither the Court of Appeal nor the briefs explore these aspects of the regulation.

[8] In any event, assuming that regulation applies here, although we give the Department's interpretation great weight (e.g., *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 309 [58 Cal. Rptr. 2d 855, 926 P.2d 1042]), this court bears the ultimate responsibility for construing the statute. "When an administrative agency construes a statute in adopting a regulation or formulating a policy, the court will respect the agency interpretation as one of several interpretive tools that may be helpful. In the end, however, [the court] must ... independently judge the text of the statute." (*Agnew v. State Bd. of*

Equalization (1999) 21 Cal.4th 310, 322 [87 Cal. Rptr. 2d 423, 981 P.2d 52], quoting *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8 [78 Cal. Rptr. 2d 1, 960 P.2d 1031].) [34 Cal.4th 952]

[9] The Court of Appeal also relied on the Attorney General's opinion citing the Department regulation with apparent approval. (70 Ops.Cal.Atty.Gen. 92, 93-94 (1987).) But the question whether that regulation comported with the PWL was not before the Attorney General, who was asked only whether the PWL applied to engineering firm employees whom the city hired to perform services that the city engineer ordinarily performed. That issue involved determining whether the work was "performed under contract" or "carried out by a public agency with its own forces." (§ 1771.) As the opinion recites, "The inquiry assumes that the work in question is a 'public work' within the meaning" of former section 1720 and section 1771. (70 Ops.Cal.Atty.Gen., *supra*, at p. 93.) Indeed, the Attorney General's conclusion was that the PWL applied to the engineering firm's employees "except with respect to such duties which do not qualify as a public work." (*Id.* at p. 98, italics added.) Thus, the opinion seems inconclusive for our purposes. In any event, as with the Department's own regulations, the Attorney General's opinions are entitled to "considerable weight," but are not binding on us. (E.g., *State of Cal. ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71 [44 Cal. Rptr. 2d 399, 900 P.2d 648].)

As noted, the City relies in part on the 2000 postagreement amendment to section 1720, subdivision (a), defining "construction" to include work performed during the project's design and preconstruction phases. The City views the amendment as a change in existing law. It relies on an August 30, 2000, letter from the amendment's author, Senator John Burton, seeking to respond to interested parties' "concerns" regarding its operation. The letter recites that the amendment was "intended only to operate prospectively and therefore will only apply to contracts for public works entered into on and after the effective date of the legislation which will be January 1, 2001." (4 Sen. J. (1999-2000 Reg. Sess.) p. 6371.) The present contract was executed in 1998.

Although letters from individual legislators are usually given little weight unless they reflect the Legislature's *collective* intent (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45-46, fn. 9 [77 Cal. Rptr. 2d 709, 960 P.2d 513]; *Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1425-1426 [96 Cal. Rptr. 2d 314]), the Burton letter was presented, *prior* to the bill's enactment, to the full Senate, which carried his motion to print it in the Senate Daily Journal. Indeed, the letter is printed and included under the notes to section 1720 in West's Annotated Labor Code. (Historical and Statutory Notes, 44A West's Ann. Lab. Code (2003 ed.) foll. § 1720, p. 7.) Under these circumstances, we think the letter carries more weight as indicative of probable legislative intent. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377-378 [20 Cal. Rptr. 2d 330, 853 P.2d 496]; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 590-591 [128 Cal. Rptr. 427, 546 P.2d 1371].) [34 Cal.4th 953]

[10] Moreover, Senator Burton's remarks conform to the well-established rule that legislation is deemed to operate prospectively only, unless a clear contrary intent appears (e.g., *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840-841 [123 Cal. Rptr. 2d 40, 50 P.3d 751]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207-1209 [246 Cal. Rptr. 629, 753 P.2d 585], and cases cited). We find in the available legislative history no indication of an intent to apply the amendment retroactively.

The Department, on the other hand, relies on an Assembly Committee on Labor and Employment report indicating, "The bill [amending section 1720] codifies current Department practice by including inspectors and surveyors among those workers deemed to be employed upon public works and by insuring that workers entitled to prevailing wage during the construction phase of a public works project will get prevailing wage on the design and pre-construction phases of a project." (Assem. Com. on Labor and Employment, Rep. on Sen. Bill No. 1999 (1999-2000 Reg. Sess.) as amended Aug. 18, 2000, p. 3.) This language is inconclusive. Although it indicates the proposed legislation will now adopt the Department *practice* as to inspectors and surveyors, it fails to state that such adoption reflects *existing law* or should be applied retroactively to preexisting contracts. Moreover, the same Assembly Committee report notes that "in its current form, this bill also *expands* the definition of 'public works' to include architects, engineers, general contractors and others in their employ *who have not previously been subject to the prevailing wage laws.*" (*Ibid.*, italics added.) This language strongly indicates that the 2000 amendment was more than a simple restatement of existing law.

We also note that the Legislative Counsel's digest to the bill explains that it would "*revise* the definition of public works by providing that 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work." (Legis. Counsel's Dig., Sen. Bill No. 1999 (1999-2000 Reg. Sess.), Stats. 2000, ch. 881, italics added.) The Legislative Counsel also evidently believed that the revision might impose new costs on local government. (*Ibid.*)

[11] The City observes that the United States Secretary of Labor has defined "construction," for purposes of the *federal* prevailing wage law (40 U.S.C. §§ 3141-3148) as: "All types of work done on a particular building or work at the site thereof ... by laborers and mechanics employed by a construction contractor or construction subcontractor" (29 C.F.R. § 5.2(j)(1) (2004).) "Laborers and mechanics" generally include "those workers whose duties are manual or physical in nature

(including those workers who use tools or who are performing the work of a trade), as distinguished [34 Cal.4th 954] from mental or managerial." (29 C.F.R. § 5.2(m) (2004).) This definition seemingly would not cover work done by surveyors, lawyers, project managers, or insurance underwriters, who function before actual construction activities commence.

We have found no case deciding whether surveyors' work constitutes "construction" under federal regulations. California's prevailing wage law is similar to the federal act and shares its purposes. (*Southern Cal. Lab. Management etc. Committee v. Aubry* (1997) 54 Cal.App.4th 873, 882 [63 Cal. Rptr. 2d 106].) Although the Legislature was free to adopt a broader definition of "construction" for projects that state law covers, certainly the fact that federal law generally confines its prevailing wage law to situations involving actual construction activity is entitled to some weight in construing the pre-2000 version of the statute.

The Court of Appeal concluded that the broader interpretation of "construction" in former section 1720, subdivision (a), is "most consistent" with the PWL's purpose, to protect employees and the public. But, of course, no one suggests that had SPCA-LA, a private charitable foundation, funded the entire project, the PWL, which applies only to projects constructed in whole or in part with *public funds*, would nonetheless cover it. Does it make a difference that SPCA-LA received City funds for designing, surveying and insuring, and otherwise managing the project at the preconstruction phase? For all the reasons discussed above, we conclude the project falls outside the PWL's scope. Our conclusion makes it unnecessary to reach the City's alternative contention that the present project was not "done under contract" within the PWL's meaning. (See § 1720, subd. (a).)

CONCLUSION

The PWL does not apply in this case because no publicly funded construction was involved. The judgment of the Court of Appeal is reversed.

George, C. J., Baxter, J., Werdegar, J., Brown, J., and Moreno, J., concurred.

DISSENTING OPINION:

KENNARD, J., Dissenting.--When a construction project is funded in whole or in part by a public entity, California law requires that the workers be paid the local prevailing wage. Here, a city and a charity entered into a contract for construction of a building, and agreed that the city would pay for certain expenses essential to the overall project but would not pay for erection of the building itself. The majority concludes the project was not a public work and therefore not subject to the prevailing wage. I disagree. [34 Cal.4th 955]

I

In 1998, the City of Long Beach (City) contracted with the Society for the Prevention of Cruelty to Animals, Los Angeles (SPCA-LA) for the latter to construct a building that was to contain an animal shelter as well as the SPCA-LA's headquarters and the City's animal control department. The City agreed to contribute \$ 1.5 million to the project (which ultimately cost approximately \$ 10 million) and to lease to the SPCA-LA, at a nominal fee, the six and one-half acres of land on which the facility was to be built.

In December 1999, just after ground was broken and the actual building had begun, a local newspaper reported on the project. This prompted a labor organization to ask the state Department of Industrial Relations (DIR) to investigate whether the project was a public work and therefore subject to the prevailing wage law. In response to the DIR's inquiry, the City explained in a letter written in September 2000 that the SPCA-LA had placed the City's \$ 1.5 million contribution in a segregated account; that roughly \$ 1 million was being used to pay the architects, project managers, lawyers, and surveyors, as well as the insurance costs; the rest would be used for advertising, fundraising, and "startup costs" such as furniture and equipment; and that none of the City's money would be used to pay for the building itself. The City asserted that because its financial contribution would not be used to pay for the building itself, the project was not a public work. The DIR, however, determined that the project was a public work and therefore subject to the prevailing wage law; that ruling was affirmed on administrative appeal. The City challenged that decision in a petition for writ of mandate in the superior court. The court granted the writ, and the DIR appealed. The Court of Appeal reversed the superior court, concluding that the project was a public work.

II

Labor Code section 1771 fn. 1 provides that "all workers employed on public works" costing more than \$ 1,000 must be paid "the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed" When the City and the SPCA-LA contracted to build the animal control facility in question, the version of section 1720, subdivision (a) (former section 1720(a)) then in effect defined "public works" in these words: "*Construction,*

alteration, demolition, or repair work done under contract and *paid for in whole or in part out of public funds ...*." (Stats. 1989, ch. 278, § 1, p. 1359, italics added.) At issue here is what the Legislature meant by the term "construction." That term, which has been in section 1720 since its enactment in 1937, is ambiguous. In a narrow sense it [34 Cal.4th 956] could mean--as the majority concludes--erection of the actual building only. In a broader sense it could mean--as the Court of Appeal concluded--the entire construction project, including the architectural, project management, insurance, surveying, and legal costs paid for by the City here. The parties furnish no legislative history bearing on the intent of the Legislature in 1937, when it used the word "construction" in former section 1720(a). But two principles of statutory interpretation provide guidance, as discussed below.

In construing an ambiguous statute, courts generally defer to the views of an agency charged with administering the statute. "While taking ultimate responsibility for the construction of a statute, we accord 'great weight and respect to the administrative construction' thereof. ... [¶] Deference to administrative interpretations always is 'situational' and depends on 'a complex of factors' ..., but where the agency has special expertise and its decision is carefully considered by senior agency officials, that decision is entitled to correspondingly greater weight" (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436 [2 Cal. Rptr. 3d 699, 73 P.3d 554], citations & fn. omitted (*Sharon S.*); see also *Styne v. Stevens* (2001) 26 Cal.4th 42, 53 [109 Cal. Rptr. 2d 14, 26 P.3d 343]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-15 [78 Cal. Rptr. 2d 1, 960 P.2d 1031].)

The Legislature has given the Director of the DIR "plenary authority to promulgate rules to enforce the Labor Code," including "the authority to make regulations governing coverage" under the prevailing wage law. (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 989 [4 Cal. Rptr. 2d 837, 824 P.2d 643].) When, as here, the meaning of a statutory term is ambiguous and there is no indication of the Legislature's intent regarding its meaning, this court should defer to the DIR's determination based on its "special expertise" (*Sharon S.*, *supra*, 31 Cal.4th at p. 436), so long as that determination was "carefully considered by senior agency officials" (*ibid.*) and is consistent with the DIR's previous decisions (*Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th at p. 13 [courts should not defer to an administrative agency that has taken a "vacillating position" as to the meaning of the statute in question]).

Here, in a 13-page decision signed by DIR Director Stephen Smith, the DIR concluded that this project was a public work. The DIR's regulations have long stated that surveying work, which the City paid for here, comes within the definition of the term "construction" under former section 1720(a), whether or not it occurs before the actual building process begins, so long as it is "integral to" the project. (Cal. Code Regs., tit. 8, § 16001, subd. (c).) The City does not deny that the work performed by the architect and the project manager--also paid for by the City--was integral to the construction project here. Thus, the DIR's determination that the construction project in question [34 Cal.4th 957] is a public work was carefully considered by a senior agency official and is consistent with the agency's regulations. Therefore, that decision commands great deference.

Also lending support to my conclusion is California's long-standing policy that prevailing wage laws are to be liberally construed in favor of the worker. (*Walker v. County of Los Angeles* (1961) 55 Cal.2d 626, 634-635 [12 Cal. Rptr. 671, 361 P.2d 247]; *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1589 [18 Cal. Rptr. 2d 680]; *Union of American Physicians v. Civil Service Com.* (1982) 129 Cal. App. 3d 392, 395 [181 Cal. Rptr. 93]; *Melendres v. City of Los Angeles* (1974) 40 Cal. App. 3d 718, 728 [115 Cal. Rptr. 409]; *Alameda County Employees' Assn. v. County of Alameda* (1973) 30 Cal. App. 3d 518, 531 [106 Cal. Rptr. 441].) When, as here, a term in the prevailing wage law can plausibly be construed in two ways, one broad and one narrow, and there is no evidence that the Legislature intended the term's narrow meaning, this court should adopt the term's broader meaning. The Legislature's objectives in enacting the prevailing wage law were these: "to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees." (*Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at p. 987.) These purposes will be implemented by applying the prevailing wage law to the project here.

For the reasons given above, the word "construction" in former section 1720(a) refers to work that, in the Court of Appeal's words, is "integrally connected to the actual building and without which the structure could not be built." That includes the costs of surveying, architectural design and supervision, and project management paid for by the City here.

III

The majority acknowledges the two rules of statutory interpretation I just discussed. As applied here, those rules require a broad reading of the word "construction" in former section 1720(a). Yet the majority construes the term narrowly, holding that it does not encompass the expenses paid for by the City here. The majority's reasons are unpersuasive.

The majority repeatedly characterizes as "preconstruction" costs the expenses the City paid for architectural design and supervision, project management, insurance, surveying, and legal services. (Maj. opn., *ante*, at pp. 946, 947, 950, 951, 954.)

To label these expenses as "preconstruction" is [34 Cal.4th 958] misleading. The term implies that all these expenses were incurred *before* the building of the facility began. But, as explained below, that view finds no support in the record.

True, the *surveying* expenses were most likely incurred at the outset of the project, as is customarily the case. But that is not true of the project's management and architectural costs. The SPCA-LA's contract with project manager Pacific Development Services said the latter's duties included "Construction Management of *all phases of construction of the Project.*" (Italics added.) And the SPCA-LA's contract with the architectural firm of Warren Freedendfeld & Associates provided that the firm would "be a representative of and shall advise and consult with the owner *during construction,*" would "visit the site at intervals appropriate to the stage of construction," would "keep the Owner informed of the progress and quality of the Work," and would attempt to "guard the Owner against defects and deficiencies in the Work" as it progressed. (Italics added.) Indeed, the City's September 2000 letter to the DIR (see p. 955, *ante*) when the building phase of the project was well under way, said that of the approximately \$ 540,000 of the City's contribution that was budgeted for project management, \$ 100,000 had yet to be spent; and that of the \$ 360,000 of the City's contribution that was budgeted for architectural fees, \$ 40,000 had yet to be spent. The City's letter also mentioned that smaller portions of the legal and insurance costs had yet to be paid. Thus, the contracts with the project manager and the architect, as well as the City's letter, demonstrate that the City did not pay merely for "preconstruction" costs but also for expenses incurred while the facility was being constructed.

The majority talks at length about an amendment to section 1720(a) that the Legislature enacted in 2000, stating that the term "construction," as used in that section, includes "the design and preconstruction phases of construction." After a thorough review of the legislative history pertaining to the 2000 amendment, the majority concludes that the Legislature did not intend the amendment to apply retroactively. Right. So what? Retroactivity of the 2000 amendment is not at issue here; therefore, the intent of the 2000 Legislature has no bearing here. What is at issue is the intent of the Legislature back in 1937, when it first used the word "construction" to define public works in former section 1720(a). It is the duty of this court, not the 2000 Legislature, to determine the 1937 Legislature's intent, and the views of the 2000 Legislature on the subject are not controlling. As this court said less than two months ago: "[T]he Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative [34 Cal.4th 959] authority simply to say what it *did* mean." (*McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 473 [20 Cal. Rptr. 3d 428, 99 P.3d 1015].)

IV

I would uphold the Court of Appeal's decision that the project here was a public work and thus subject to the prevailing wage law. The majority concludes to the contrary and sees no need to resolve the remaining two issues on which this court granted review: (1) whether the project is a "municipal affair" exempt from the prevailing wage law, and (2) whether the prevailing wage law is a matter of statewide concern that overrides the municipal affair exemption. These are difficult and important questions. I would retain the case to decide them.

FN 1. Further statutory references are to this code unless otherwise indicated.

FN 1. All further statutory citations are to the Labor Code.

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Exhibit E

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

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

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

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

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

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SECTION 3 State Mandated Cost Programs

Program Name	Chapter/Statute	Program Number
Absentee Ballots	Ch. 777/8	231
Collective Bargaining	Ch. 961/75	232
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	233
Health Fee Elimination	Ch. 1/84	234
Investment Reports	Ch. 783/95	235
Law Enforcement College Jurisdiction Agreements	Ch. 284/98	212
Law Enforcement Sexual Harassment Training	Ch. 126/93	236
Mandate Reimbursement Process	Ch. 486/75	237
Open Meetings Act /Brown Act Reform	Ch. 641/86	238
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REIMBURSABLE STATE MANDATED COST PROGRAMS

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

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

APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR

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

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

FILING A CLAIM

1. Introduction

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

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

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

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

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

2. Types of Claims

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

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

A. Reimbursement Claim

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

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

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

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

B. Estimated Claim

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

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

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

C. Entitlement Claim

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

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

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

3. Minimum Claim Amount

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

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

4. Filing Deadline for Claims

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

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

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

5. Payment of Claims

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

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

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

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

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

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

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

6. State Mandates Apportionment System (SMAS)

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

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

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

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

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

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

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

School Mandates Included In SMAS

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

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

7. Direct Costs

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

(1) Employee Wages, Salaries, and Fringe Benefits

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

(a) Productive Hourly Rate Options

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

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

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

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

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

(b) Compute a Productive Hourly Rate

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

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

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

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

Table 2 Productive Hourly Rate, Percent of Salary Method

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

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

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

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

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

(c) Calculating an Average Productive Hourly Rate

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

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

(d) Employer's Fringe Benefits Contribution

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

For example:

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

(e) Materials and Supplies

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

(f) Calculating a Unit Cost for Materials and Supplies

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

Table 1 Calculating A Unit Cost for Materials and Supplies

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

Table 2 Calculating a Unit Cost for Materials and Supplies

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

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

(g) Contract Services

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

(h) Equipment Rental Costs

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

(i) Capital Outlay

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

(j) Travel Expenses

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

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

(k) Documentation

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

8. Indirect Costs

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

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

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

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

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

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

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

Table 4 Indirect Cost Rate for Community Colleges

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

Table 4 Indirect Cost Rate for Community Colleges (continued)

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

Table 4 Indirect Cost Rate for Community Colleges (continued)

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

9. Offset Against Mandated Claims

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

Example 1:

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

Table 5 Offset Against State Mandates, Example 1

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

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

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

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

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

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

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

Example 2:

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

Table 6 Offset Against State Mandates, Example 2

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

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

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

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

Federal and State Funding Sources

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

Governing Authority

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

10. Notice of Claim Adjustment

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

11. Audit of Costs

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

Pursuant to Government Code (GC) Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, must be

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

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

12. Source Documents

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

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

13. Claim Forms and Instructions

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

A. Form-2, Component/Activity Cost Detail

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

B. Form-1, Claim Summary

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

Community colleges have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21) or form FAM-29C.

C. Form FAM-27, Claim for Payment

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

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

If delivered by
U.S. Postal Service:

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

If delivered by
Other delivery services:

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

14. RETENTION OF CLAIMING INSTRUCTIONS

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

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

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

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

Exhibit F

YOSEMITE COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2002, through June 30, 2007



JOHN CHIANG
California State Controller

April 2009



JOHN CHIANG
California State Controller

April 30, 2009

Anne DeMartini, Board Chair
Board of Trustees
Yosemite Community College District
2201 Blue Gum Avenue
Modesto, CA 95358

Dear Ms. DeMartini:

The State Controller's Office audited the costs claimed by Yosemite Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2007.

The district claimed \$1,203,995 (\$1,213,995 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$752,122 is allowable and \$451,873 is unallowable. The costs are unallowable because the district claimed understated services and supplies costs, overstated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district \$273,783. Allowable costs claimed exceed the amount paid by \$478,339.

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

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Teresa Scott, Executive Vice Chancellor
Yosemite Community College District
Kuldeep Kaur, Specialist
Fiscal Planning and Administration
California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Yosemite Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2007.

The district claimed \$1,203,995 (\$1,213,995 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$752,122 is allowable and \$451,873 is unallowable. The costs are unallowable because the district claimed understated services and supplies costs, overstated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district \$273,783. Allowable costs claimed exceed the amount paid by \$478,339.

Background

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

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

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

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

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

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2002, through June 30, 2007.

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

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

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

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

Conclusion

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

For the audit period, Yosemite Community College District claimed \$1,203,995 (\$1,213,995 less a \$10,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that \$752,122 is allowable and \$451,873 is unallowable.

For the FY 2002-03 claim, the State paid the district \$39,067. Our audit disclosed that the claimed costs are unallowable. The State will offset \$39,067 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

For the FY 2003-04 claim, the State made no payment to the district. Our audit disclosed that \$70,158 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the district. Our audit disclosed that \$268,128 is allowable. The State will that amount, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that \$230,962 is allowable. The State will that amount, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district \$234,716. Our audit disclosed that \$182,874 is allowable. The State will offset \$51,842 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

**Views of
Responsible
Official**

We issued a draft audit report on March 12, 2009. Teresa Scott, Executive Vice Chancellor, responded by letter dated March 24, 2009 (Attachment), disagreeing with the audit results except for Findings 1 and 3. This final audit report includes the district's response.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

April 30, 2009

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2007**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries	\$ 248,395	\$ 248,395	\$ —	
Benefits	77,779	77,779	—	
Services and supplies	70,613	70,613	—	
Total direct costs	396,787	396,787	—	
Indirect costs	95,030	84,206	(10,824)	Finding 2
Total direct and indirect costs	491,817	480,993	(10,824)	
Less authorized health service fees	(446,250)	(490,194)	(43,944)	Finding 4
Less offsetting savings/reimbursements	(6,500)	(21,458)	(14,958)	Finding 5
Subtotal	39,067	(30,659)	(69,726)	
Audit adjustments that exceed costs claimed	—	30,659	30,659	
Total program costs	<u>\$ 39,067</u>	—	<u>\$ (39,067)</u>	
Less amount paid by the State		(39,067)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (39,067)</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 264,370	\$ 264,370	\$ —	
Benefits	116,417	116,417	—	
Services and supplies	89,423	90,508	1,085	Finding 1
Total direct costs	470,210	471,295	1,085	
Indirect costs	118,916	89,621	(29,295)	Finding 2
Total direct and indirect costs	589,126	560,916	(28,210)	
Less authorized health service fees	(431,580)	(442,899)	(11,319)	Findings 3, 4
Less offsetting savings/reimbursements	(6,500)	(47,859)	(41,359)	Finding 5
Total program costs	<u>\$ 151,046</u>	70,158	<u>\$ (80,888)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 70,158</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 303,647	\$ 303,647	\$ —	
Benefits	141,296	141,296	—	
Services and supplies	73,063	73,237	174	Finding 1
Total direct costs	518,006	518,180	174	
Indirect costs	180,680	187,633	6,953	Finding 2
Total direct and indirect costs	698,686	705,813	7,127	
Less authorized health service fees	(411,492)	(416,184)	(4,692)	Finding 4
Less offsetting savings/reimbursements	(6,500)	(21,501)	(15,001)	Finding 5
Total program costs	\$ 280,694	268,128	\$ (12,566)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 268,128		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 344,990	\$ 344,990	\$ —	
Benefits	159,108	159,108	—	
Services and supplies	99,407	107,911	8,504	Finding 1
Total direct costs	603,505	612,009	8,504	
Indirect costs	219,555	203,371	(16,184)	Finding 2
Total direct and indirect costs	823,060	815,380	(7,680)	
Less authorized health service fees	(402,179)	(554,058)	(151,879)	Finding 4
Less offsetting savings/reimbursements	(7,557)	(30,360)	(22,803)	Finding 5
Total program costs	\$ 413,324	230,962	\$ (182,362)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 230,962		
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 453,320	\$ 453,320	\$ —	
Benefits	187,474	187,474	—	
Services and supplies	105,929	105,929	—	
Total direct costs	746,723	746,723	—	
Indirect costs	306,679	259,188	(47,491)	Finding 2
Total direct and indirect costs	1,053,402	1,005,911	(47,491)	
Less authorized health service fees	(709,335)	(774,633)	(65,298)	Finding 4
Less offsetting savings/reimbursements	(14,203)	(38,889)	(24,686)	Finding 5
Less late filing penalty ²	(10,000)	(9,515)	485	
Total program costs	\$ 319,864	182,874	\$ (136,990)	
Less amount paid by the State		(234,716)		
Allowable costs claimed in excess of (less than) amount paid		\$ (51,842)		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 1,614,722	\$ 1,614,722	\$ —	
Benefits	682,074	682,074	—	
Services and supplies	438,435	448,198	9,763	
Total direct costs	2,735,231	2,744,994	9,763	
Indirect costs	920,860	824,019	(96,841)	
Total direct and indirect costs	3,656,091	3,569,013	(87,078)	
Less authorized health service fees	(2,400,836)	(2,677,968)	(277,132)	
Less offsetting savings/reimbursements	(41,260)	(160,067)	(118,807)	
Less late filing penalty ²	(10,000)	(9,515)	485	
Subtotal	1,203,995	721,463	(482,532)	
Audit adjustments that exceed costs claimed	—	30,659	30,659	
Total program costs	<u>\$ 1,203,995</u>	752,122	<u>\$ (451,873)</u>	
Less amount paid by the State		<u>(273,783)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 478,339</u>		

¹ See the Findings and Recommendations section.

² The district incorrectly self-assessed a \$10,000 late claim penalty. The correct penalty amount is \$9,515.

Findings and Recommendations

**FINDING 1—
Understated services
and supplies**

The district understated services and supplies by \$9,763 for the audit period. The district accounted for most health services-related revenues and expenses in its Fund 14 accounts. The district claimed costs based on its Fund 14 accounts. However, the district separately accounted for some student fee revenue and related materials and supplies expenses in separate Fund 12 accounts that the district did not include in claimed costs. This finding reports an audit adjustment for the understated services and supplies. We reported an audit adjustment for the associated understated revenue in Finding 5 of our report.

The following table summarizes the audit adjustment.

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Audit adjustment	\$ 1,085	\$ 174	\$ 8,504	\$ 9,763

The parameters and guidelines state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that the district claim health services costs that its accounting records support.

District's Response

The District does not dispute this finding.

SCO's Comment

Our finding and recommendation are unchanged.

**FINDING 2—
Overstated indirect costs**

The district overstated indirect costs by \$96,841 for the audit period. The district overstated or understated indirect costs for each fiscal year.

For fiscal year (FY) 2002-03 and FY 2003-04, the district claimed indirect costs based on indirect cost rates prepared using the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget Circular A-21). The district also had separate federally-approved rates. The district claimed indirect costs using indirect cost rates that did not agree with its federally-approved rate. We calculated allowable indirect costs based on the district’s federally-approved rate. We applied the district’s federally-approved rate to allowable salaries and wages, which is the direct cost base identified in the federal approval letter.

For FY 2004-05, FY 2005-06, and FY 2006-07, the parameters and guidelines and the SCO’s claiming instructions do not provide districts the option of using a federally-approved rate. The district claimed indirect costs based on indirect cost rates it prepared using the FAM-29C methodology allowed by the parameters and guidelines and the SCO’s claiming instructions. However, the district did not allocate direct and indirect costs as specified in the claiming instructions. We recalculated the rates and applied the allowable indirect cost rates to allowable direct costs.

The following table summarizes the audit adjustment:

	Fiscal Year					Total
	2002-03	2003-04	2004-05	2005-06	2006-07	
Allowable salaries and wages	\$ 248,395	\$ 264,370	\$ —	\$ —	\$ —	
Allowable direct costs	—	—	518,180	612,009	746,723	
Allowable indirect cost rate	× 33.90%	× 33.90%	× 36.21%	× 33.23%	× 34.71%	
Allowable indirect costs	84,206	89,621	187,633	203,371	259,188	
Less indirect costs claimed	(95,030)	(118,916)	(180,680)	(219,555)	(306,679)	
Audit adjustment	<u>\$ (10,824)</u>	<u>\$ (29,295)</u>	<u>\$ 6,953</u>	<u>\$ (16,184)</u>	<u>\$ (47,491)</u>	<u>\$ (96,841)</u>

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

For FY 2002-03 and FY 2003-04, the SCO’s claiming instructions state:

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

For FY 2004-05 forward, the SCO’s claiming instructions state:

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

Because the Health Fee Elimination Program's parameters and guidelines do not specifically allow for a federally-approved rate, the district's federally-approved rates are irrelevant for FY 2004-05, FY 2005-06, and FY 2006-07.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions. For the Health Fee Elimination Program, the district should prepare its indirect cost rate proposals using SCO's FAM-29C methodology.

District's Response

FY 2002-03 and FY 2003-04

Since federally approved rates are an acceptable alternative method, the District does not dispute this audit finding as to FY 2002-03 and FY 2003-04.

FY 2004-05 and FY 2005-06

The draft audit report is factually in error when it states that the District prepared indirect cost rate proposals for FY 2004-05 and FY 2005-06 in accordance with OMB A-21. No proposal was made to any state or federal agency for an "approved" indirect cost rate. The District used the same FAM-29C method based on the CCFS-311 as the auditor, but made different allocations of indirect costs. The principal difference is that the District used the capital costs stated in the CCFS-311, whereas the Controller deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements.

FY 2006-07

The District used the same FAM-29C method based on the CCFS-311 as did the auditor. . . . The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of differences in how some of the indirect costs were treated.

Parameters and Guidelines

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state that: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Prior Year CCFS-311

The draft audit report did not disclose that for FY 2004-05, FY 2005-06, and FY 2006-07, the audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of how unjustifiable the Controller's position is on prior year CCFS-311 reports, note that the federally approved indirect cost rates (such as the federal rate the audit used for FY 2002-03 and FY 2003-04) are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five years prior to the last year in which the federal rate is used.

SCO's Comment

We modified our audit finding slightly for clarification. Our audit adjustment and recommendation are unchanged. Our comments to the district's response are as follows:

FY 2004-05 and FY 2005-06

The district inaccurately states "No proposal was made to any state or federal agency for an 'approved' indirect cost rate." On March 25, 2004, the U.S. Department of Health and Human Services approved the district's indirect cost rate for FY 2004-05 through FY 2007-08. However, the district did not use these federally approved rates to claim mandate-related indirect costs. We modified our audit finding to state that the district submitted indirect cost rate proposals using FAM-29C methodology for FY 2004-05 and FY 2005-06. In its response, the district states that it did not adhere to the SCO's claiming instructions because it "made different allocations of indirect costs." The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

FY 2006-07

The district did not provide its FY 2006-07 ICRP in time for inclusion in the draft report. Therefore, our draft audit report stated that the district did not provide its FY 2006-07 ICRP. We modified our audit finding to state that the district prepared its FY 2006-07 ICRP using FAM-29C methodology.

The district did not allocate direct and indirect costs as specified in the SCO's claiming instructions.

Parameters and Guidelines

The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district misinterprets the phrase "may be claimed" by concluding that compliance with the claiming instructions is voluntary. The district's assertion is invalid, as it would allow districts to claim indirect costs in whatever manner they choose. Instead, "may be claimed" simply permits the district to claim indirect costs. However, if the district claims indirect costs, then the district must comply with the SCO's claiming instructions.

Neither this district nor any other district requested that the Commission on State Mandates (CSM) review the SCO's claiming instructions pursuant to Title 2, *California Code of Regulations* (CCR), Section 1186. Furthermore, the district may not now request a review of the claiming instructions applicable to the audit period. Title 2 CCR 1186(j)(2) states, "A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

The district contends that "The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute..." Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, Government Code section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is without merit.

Nevertheless, the SCO did conclude that the district's FY 2005-06 and FY 2006-07 indirect cost rates were excessive. (The SCO concluded that the district understated its FY 2004-05 indirect cost rate. The district did not explain why it is contesting an audit adjustment in its favor.) "Excessive" is defined as "exceeding what is usual, *proper*, necessary, or normal... Excessive implies an amount or degree too great to be reasonable or acceptable... [emphasis added]."¹ The SCO calculated indirect cost rates using the alternative methodology identified in the SCO's claiming instructions. The alternative methodology indirect cost rates did not support the rates that the district claimed; thus, the claimed rates were excessive.

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

Prior Year CCFS-311

The district states, “The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year.” Although this is how the district used its data, there are no mandate-related authoritative criteria supporting this methodology. Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. In addition, the parameters and guidelines require the district to report actual costs. For each fiscal year, “actual costs” are costs of the current fiscal year, not costs from a prior fiscal year.

The parameters and guidelines and the SCO’s claiming instructions do not allow districts to claim indirect costs based on federally approved rates in FY 2004-05, FY 2005-06, and FY 2006-07. Therefore, the district’s comments regarding federally approved rates are irrelevant.

**FINDING 3—
Offsetting savings/
reimbursements
incorrectly reported as
authorized health
service fees**

The district incorrectly reported offsetting savings/reimbursements totaling \$39,090 as authorized health service fees in FY 2003-04. This amount included interest revenue, duplicate staff charges that the district also claimed as offsetting savings/reimbursements, and miscellaneous student fees that the district recognized when it converted from cash to accrual-basis accounting.

The following table summarizes the audit adjustment and the adjusted authorized health service fees claimed:

	Fiscal Year 2003-04
Interest	\$ 12,625
Staff charges	6,500
Miscellaneous student fees	<u>19,965</u>
Audit adjustment	39,090
Authorized health service fees claimed	<u>(431,580)</u>
Adjusted authorized health service fees claimed	<u><u>\$(392,490)</u></u>

The parameters and guidelines state, “Reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.” The SCO’s claiming instructions direct claimants to separately report authorized health service fees and other reimbursements. Except for the duplicate staff charges, we recognized these revenues in our audit adjustment for understated offsetting savings/reimbursements in Finding 5.

Recommendation

We recommend that the district properly claim revenue as offsetting savings/reimbursements when the revenue is unrelated to the authorized student health fee.

District's Response

The District does not dispute this finding.

SCO's Comment

Our finding and recommendation are unchanged.

**FINDING 4—
Understated
authorized health
service fees**

The district understated authorized health service fees by \$316,222 for the audit period. The district understated these fees because it reported actual receipts rather than authorized fees and because it did not charge students the full authorized fee amount in FY 2005-06 and FY 2006-07.

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

For the audit period, Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. The California Community Colleges Chancellor's Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). For FY 2002-03 and FY 2003-04, the authorized fees were \$12 per semester and \$9 per summer session. For FY 2004-05, the authorized fees were \$13 per semester and \$10 per summer session. For FY 2005-06, the authorized fees were \$14 per semester and \$11 per summer session. For FY 2006-07, the authorized fees were \$15 per semester and \$12 per summer session.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. CCCCCO identified the district's enrollment based on CCCCCO's MIS data element STD7, codes A through G. CCCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, CCCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. The district does not have an apprenticeship program and it did not identify any students that it excluded from the health service fee pursuant to Education Code section 76355, subdivision (c)(1).

The following table shows the authorized health service fee calculation and audit adjustment:

	Semester			Total
	Summer	Fall	Spring	
<u>Fiscal Year 2002-03</u>				
Number of enrolled students	10,568	24,587	22,472	
Less number of BOGG recipients	<u>(2,694)</u>	<u>(6,214)</u>	<u>(5,901)</u>	
Subtotal	7,874	18,373	16,571	
Authorized health fee rate	× \$ (9)	× \$(12)	× \$(12)	
Authorized health service fees	<u>\$ (70,866)</u>	<u>\$(220,476)</u>	<u>\$(198,852)</u>	\$(490,194)
Less authorized health service fees claimed				<u>446,250</u>
Audit adjustment				<u>(43,944)</u>
<u>Fiscal Year 2003-04</u>				
Number of enrolled students	9,580	22,631	22,031	
Less number of BOGG recipients	<u>(2,569)</u>	<u>(6,486)</u>	<u>(6,526)</u>	
Subtotal	7,011	16,145	15,505	
Authorized health fee rate	× \$ (9)	× \$(12)	× \$(12)	
Authorized health service fees	<u>\$ (63,099)</u>	<u>\$(193,740)</u>	<u>\$(186,060)</u>	(442,899)
Less adjusted authorized health service fees claimed (Finding 3)				<u>392,490</u>
Audit adjustment				<u>(50,409)</u>
<u>Fiscal Year 2004-05</u>				
Number of enrolled students	9,865	21,620	20,839	
Less number of BOGG recipients	<u>(3,734)</u>	<u>(7,672)</u>	<u>(7,489)</u>	
Subtotal	6,131	13,948	13,350	
Authorized health fee rate	× \$(10)	× \$(13)	× \$(13)	
Authorized health service fees	<u>\$ (61,310)</u>	<u>\$(181,324)</u>	<u>\$(173,550)</u>	(416,184)
Less authorized health service fees claimed				<u>411,492</u>
Audit adjustment				<u>(4,692)</u>
<u>Fiscal Year 2005-06</u>				
Number of enrolled students	10,127	21,763	21,020	
Less number of BOGG recipients	<u>(4,007)</u>	<u>(8,016)</u>	—	
Subtotal	6,120	13,747	21,020	
Authorized health fee rate	× \$(11)	× \$(14)	× \$(14)	
Authorized health service fees	<u>\$ (67,320)</u>	<u>\$(192,458)</u>	<u>\$(294,280)</u>	(554,058)
Less authorized health service fees claimed				<u>402,179</u>
Audit adjustment				<u>(151,879)</u>
<u>Fiscal Year 2006-07</u>				
Number of enrolled students	10,579	22,214	20,965	
Authorized health fee rate	× \$(12)	× \$(15)	× \$(15)	
Authorized health service fees	<u>\$ (126,948)</u>	<u>\$(333,210)</u>	<u>\$(314,475)</u>	(774,633)
Less authorized health service fees claimed				<u>709,335</u>
Audit adjustment				<u>(65,298)</u>
Total audit adjustment				<u>\$(316,222)</u>

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G. The district should eliminate duplicate entries for students who attend more than one of the district's colleges. In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district denies health services to any portion of its student population, it should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the District and independently audited each year. However, since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller's audit adjustment rationale.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" rate other than the amounts stated in Education Code Section 76355. The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest authorized rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Optional Fee

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

Government Code Section 17514

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

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

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenue to increased cost, or any language that describes the legal effect of fees collected.

Government Code Section 17556

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

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

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.” The parameters and guidelines do not allow the Controller to reduce claimed costs by revenue never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

SCO's Comment

Our finding and recommendation are unchanged. The district states, "The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the District. . . ." This is the district's own data. In addition, the district implies that the SCO used data that is somehow different from "enrollment data maintained by the District." Our audit used data retrieved from the California Community Colleges Chancellor's Office (CCCCO). The CCCCCO data is extracted directly from enrollment information that the district submitted. Districts are required to submit this data to the CCCCCO within one month after each term ends; thus, the district has its fiscal year enrollment data available approximately seven months before its mandated program claims are due to the state.

The district also states, "Since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller's audit adjustment rationale." We disagree; this is a district annual claim issue. For its FY 2002-03 claim, the district reported inaccurate student enrollment. For its FY 2003-04 through FY 2006-07 claims, the district failed to follow specific SCO claiming instructions. The district did not report student enrollment and did not calculate the total health fees that could have been collected.

"Authorized" Fee Amount

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

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

The CCCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Optional Fee

We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district's decision to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy the fee.

Government Code Section 17514

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

Government Code Section 17556

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

Two court cases addressed the issue of fee authority.² Both cases concluded that “costs” as used in the constitutional provision, exclude “expenses that are recoverable from sources other than taxes.” In both cases, the source other than taxes was fee authority.

² *County of Fresno v. California* (1991) 53 Cal. 3d 482; *Connell v. Santa Margarita* (1997) 59 Cal. App. 4th 382.

Parameters and Guidelines

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

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

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

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

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

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

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

The district states that "such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched." This statement is presented out of context; generally accepted accounting principles are not controlling criteria in identifying authorized health fee revenues attributable to the Health Fee Elimination mandated program. If a district voluntarily assesses less than the authorized health service fees, or fails to collect fees assessed, it is the district's responsibility to "match" health service expenditures with other district revenue sources.

**FINDING 5—
Understated offsetting
savings/reimbursements**

The district understated offsetting savings/reimbursements by \$118,807 for the audit period.

The district did not report offsetting savings/reimbursements for interest, student fees, and other miscellaneous revenue documented in its accounting records. The district charged students a separate fee for various health services that it provided. In FY 2003-04, the district also recognized miscellaneous revenue as it converted from a cash to accrual basis accounting system.

The following table summarizes the audit adjustment:

	Fiscal Year					Total
	2002-03	2003-04	2004-05	2005-06	2006-07	
Interest	\$ (16,890)	\$ (12,625)	\$ (13,216)	\$ (17,014)	\$ (24,686)	\$ (84,431)
Student fees and other miscellaneous revenue	1,932	(28,734)	(1,785)	(5,789)	—	(34,376)
Audit adjustment	<u>\$ (14,958)</u>	<u>\$ (41,359)</u>	<u>\$ (15,001)</u>	<u>\$ (22,803)</u>	<u>\$ (24,686)</u>	<u>\$ (118,807)</u>

The parameters and guidelines state:

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Recommendation

We recommend that the district report all offsetting savings/reimbursements on its mandated cost claims.

District's Response

Finding 5 offsets \$84,431 of interest income against the claimed cost of the student health services program. . . . The interest income is paid by the Stanislaus County Treasurer where the District deposits its cash in a pooled investment fund. The District allocates the total investment income reported by the County to its various funds.

The draft audit report characterizes the interest income offset as an "offsetting savings/reimbursement". . . .

The parameters and guidelines criteria for offsetting savings and reimbursements do not apply to interest income. First, the interest income is not generated "as a direct result of" Education Code 76355, the statutory basis for the student health services program. Indeed, since the student health service program operates at a loss (the reason for the annual mandate claim for excess costs), the student health service program cannot generate investment principal. Second, the interest income is neither state nor federal reimbursement for providing the student health service program. Third, the interest income is not fees paid by others for services not included in the student health service program.

SCO's Comment

The parameters and guidelines state, "Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed." In its response, the district confirms that it received pooled investment fund income attributable to its health services fund. The health services fund and its associated revenues exist specifically because of Chapter 1118, Statutes of 1987, which authorized districts to assess a health service fee.

The district states, "Indeed, since the student health service program operates at a loss . . . the student health service program cannot generate investment principal." The district's response fails to consider basic cash flow principles. Each term, districts collect health fee revenue at the beginning of the term. This revenue is available for deposit in the county pooled investment fund and is depleted during the term as the district incurs health service program expenses. The revenue earns interest until such time that it is depleted.

During our exit conference conducted January 23, 2009, the district's consultant stated to district personnel that the district's mistake was that it posted interest revenue to the health services fund. We strongly recommend that the district continue to allocate interest earned on pooled investment funds according to generally accepted accounting principles.

**OTHER ISSUE—
FY 2006-07 amounts
paid**

The district's response included comments regarding FY 2006-07 amounts paid. The district's response and SCO's comment are as follows:

District's Response

The draft audit report states that the District was paid \$234,716 on the FY 2006-07 annual claim. The last remittance advice (March 12, 2007) received by the District for this fiscal year indicates that the amount paid was \$263,110.

SCO's Comment

The Summary of Program Costs (Schedule 1) is unchanged. The district is contesting a reported amount that is in its favor. The district's response fails to disclose that the district re-paid the SCO \$28,394, as documented by the SCO's remittance advice dated April 23, 2008. Thus, the net amount that the State paid to the district is \$234,716.

**OTHER ISSUE—
FY 2006-07 late claim
filing penalty**

The district's response included comments regarding the FY 2006-07 late claim penalty. The district's response and SCO's comment are as follows:

District's Response

On February 6, 2009, the District submitted an amended FY 2006-07 claim in the amount of \$329,864 that incorporates some of the audit adjustments presented at the January 23, 2009, exit conference. Since this amended claim is a late claim, it is subject to a late filing penalty of 10% of the amount claimed up to \$10,000. The draft audit report adjusts the late filing penalty to \$9,515 for the audited allowed "total program costs" of \$192,389. Ten percent of \$192,389 is not \$9,515. It appears the late filing penalty should be \$10,000.

SCO's Comment

The Summary of Program Costs (Schedule 1) is unchanged. Again, the district is contesting an adjustment in its favor. Nevertheless, the district is in error. The district erroneously equates an "amended claim" with a "late claim." When a district amends its claim after the claim filing date established by Government Code section 17560, only the additional claimed costs are subject to the late claim penalty assessment (i.e., the original amount claimed is not late; only the new, additional costs are filed late). The district's amended claim increased total claimed costs by \$95,148, from \$234,716 to \$329,864. The SCO correctly applied a 10% late penalty assessment to the \$95,148 increase pursuant to Government Code section 17568. Allowable costs are irrelevant to the late claim penalty assessment.

**OTHER ISSUE—
Statute of limitations**

The district's response included comments related to the statute of limitations applicable to the district's FY 2002-03 and FY 2003-04 mandated cost claims. The district's response and SCO's comment are as follows:

District's Response

Government Code Section 17558.5, as amended effective January 1, 2003, requires the Controller to initiate an audit within three years after a claim is filed. The District's FY 2002-03 claim was filed on January 12, 2004. The District's FY 2003-04 claim was filed on January 10, 2005. The entrance conference date for the audit was March 24, 2008, which is after the three-year period to commence the audit for those two fiscal years had expired.

SCO's Comment

Our findings and recommendations are unchanged. The district cited only a portion of Government Code section 17558.5, subdivision (a), which actually states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.

However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim [emphasis added].

For its FY 2002-03 claim, the district received its initial payment on October 25, 2006. Pursuant to Government Code section 17558.5, subdivision (a), the SCO had until October 24, 2009, to initiate an audit of this claim. For its FY 2003-04 claim, the district received no payment. Pursuant to the same statutory language, the time for the SCO to initiate an audit has not yet commenced. Therefore, the SCO properly initiated an audit of these claims within the statutory time allowed.

**OTHER ISSUE—
Public records request**

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

District's Response

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

SCO's Comment

The SCO provided the district the requested records by separate letter dated April 7, 2009.

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



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March 24, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

**Re: Chapter 1, Statutes of 1984
Health Fee Elimination
Yosemite Community College District
Fiscal Years: 2002-03, 2003-04, 2004-05, 2005-06, and 2006-07 (amended)**

Dear Mr. Spano:

This letter is the response of the Yosemite Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated March 12, 2009, and received by the District on March 13, 2009.

Finding 1: Understated services and supplies

This District does not dispute this finding. See Finding 5.

Finding 2: Overstated indirect costs

<u>Fiscal Year</u>	<u>Indirect Cost Rates Claimed and Audited</u>				<u>Audit Report Source</u>
	<u>As Claimed</u>	<u>Claimed Source</u>	<u>As Audited</u>		
2002-03	23.95%	CCFS-311	33.90%		"Federally approved rate"
2003-04	25.29%	CCFS-311	33.90%		"Federally approved rate"
2004-05	34.88%	CCFS-311	36.21%		CCFS-311 and depreciation
2005-06	36.38%	CCFS-311	33.23%		CCFS-311 and depreciation
2006-07 (amended)	41.07%	CCFS-311 and depreciation	34.71%		CCFS-311 and depreciation

The Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government.

CHOICE OF METHODS

The draft audit report states that the District prepared its indirect cost rates for the fiscal years 2002-03 through 2005-06 as "proposals" in accordance with OMB A-21 that were not federally approved.

FY 2002-03 and FY 2003-04

The District had an "approved" federal rate for FY 2002-03 and FY 2003-04 that was used for the audit adjustment. Since federally approved rates are an acceptable alternative method, the District does not dispute this audit finding as to FY 2002-03 and FY 2003-04.

FY 2004-05 and FY 2005-06

The draft audit report is factually in error when it states that the District prepared indirect cost rate proposals for FY 2004-05 and FY 2005-06 in accordance with OMB A-21. No proposal was made to any state or federal agency for an "approved" indirect cost rate. The District used the same FAM-29C method based on the CCFS-311 as the auditor, but made different allocations of indirect costs. The principal difference is that the District used the capital costs stated in the CCFS-311, whereas the Controller deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements.

FY 2006-07

On February 6, 2009, the District submitted an amended FY 2006-07 claim. The District used the same FAM-29C method based on the CCFS-311 as did the auditor. The District deleted the capital costs stated in the CCFS-311 and substituted the depreciation expense as reported in the District's annual financial statements. The District was not on notice of this method of treating depreciation costs at the time the FY 2004-05 and FY 2005-06 annual claims were timely filed. The audit report uses this method retroactively to FY 2004-05. The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of differences in how some of the indirect costs were treated.

Parameters and Guidelines

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state that: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

PRIOR YEAR CCFS-311

The draft audit report did not disclose that for FY 2004-05, FY 2005-06, and FY 2006-07, the audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of how unjustifiable the Controller's position is on prior year CCFS-311 reports, note that the federally approved indirect cost rates (such as the federal rate the audit used for FY 2002-03 and FY 2003-04) are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five years prior to the last year in which the federal rate is used.

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

Finding 3: Offsetting savings/reimbursements incorrectly reported as authorized health service fees

This District does not dispute this finding. See Finding 5.

Finding 4: Understated authorized health service fees

The draft audit report concludes that the student health service fee revenue offsets were understated for the five-year audit period. The difference between the claimed amount and the audited amount is that the District utilized actual revenues received rather than a calculation of the student health service fees potentially collectible. The auditor calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable to all eligible students, rather than the full-time or part-time student health service fee actually charged by the District to the students not exempted by state law or District policy (e.g., BOGG waiver students).

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate

or superior to enrollment data maintained by the District and independently audited each year. However, since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller's audit adjustment rationale.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" rate other than the amounts stated in Education Code Section 76355. The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest authorized rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Optional Fee

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

Government Code Section 17514

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

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

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenue to increased cost, or any language that describes the legal effect of fees collected.

Government Code Section 17556

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

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

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

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

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: "Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)." The use of the term "any offsetting savings" further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are "offsetting savings" that were not "experienced." The parameters and guidelines do not allow the Controller to reduce claimed costs by revenue never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

Since the draft audit report has stated no legal basis to disallow actual revenues as the amount of the offsetting revenue, the adjustments should be withdrawn.

Finding 5: Understated offsetting savings/reimbursements

Findings 1, 3, and 5 are connected by their content.

“FUND 12”

In accordance with governmental accounting practices, the District separately accounted for some costs and revenues (e.g., clinical services) in a fund (Fund 12) separate from the student health service center fund (Fund 14). Finding 1 merges those costs (\$9,763) and revenue (\$34,376 located in Finding 5) with Fund 14 which is consistent with the cost accounting practice of matching costs and revenues. The District does not dispute Finding 1.

FY 2003-04 CORRECTIONS

Finding 3 properly reverses \$39,090 in revenue reductions to the FY 2003-04 claimed costs that were either duplicated from Fund 12 or the result of changes in accruals. The District does not dispute Finding 3.

INTEREST INCOME

Finding 5 offsets \$84,431 of interest income against the claimed cost of the student health services program. Of this amount, \$12,625 was properly added back to the program costs in Finding 3 for FY 2003-04. The interest income is paid by the Stanislaus County Treasurer where the District deposits its cash in a pooled investment fund. The District allocates the total investment income reported by the County to its various funds.

The draft audit report characterizes the interest income offset as an “offsetting savings/reimbursement.” The draft audit report cites only a portion of the parameters and guidelines for this proposition. The entire relevant citation is:

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code Section 72246(a). This shall also include payments (fecs) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

The parameters and guidelines criteria for offsetting savings and reimbursements do not apply to interest income. First, the interest income is not generated “as a direct result of”

Education Code 76355, the statutory basis for the student health services program. Indeed, since the student health service program operates at a loss (the reason for the annual mandate claim for excess costs), the student health service program cannot generate investment principal. Second, the interest income is neither state nor federal reimbursement for providing the student health service program. Third, the interest income is not fees paid by others for services not included in the student health service program.

Since interest income does not meet the parameters and guidelines criteria for offsetting savings and reimbursements and the draft audit report has stated no other basis for this finding, the adjustments should be withdrawn.

Other Issues

FY 2006-07 Amounts Paid

The draft audit report states that the District was paid \$234,716 on the FY 2006-07 annual claim. The last remittance advice (March 12, 2007) received by the District for this fiscal year indicates that the amount paid was \$263,110.

FY 2006-07 Late Claim Filing Penalty

On February 6, 2009, the District submitted an amended FY 2006-07 claim in the amount of \$329,864 that incorporates some of the audit adjustments presented at the January 23, 2009, exit conference. Since this amended claim is a late claim, it is subject to a late filing penalty of 10% of the amount claimed up to \$10,000. The draft audit report adjusts the late filing penalty to \$9,515 for the audited allowed "total program costs" of \$192,389. Ten percent of \$192,389 is not \$9,515. It appears the late filing penalty should be \$10,000.

Statute of Limitations

<u>Fiscal Year</u>	<u>Date Submitted to SCO</u>	<u>SOL to audit expires</u>
FY 2002-03	January 12, 2004	Audit must start by January 12, 2007
FY 2003-04	January 10, 2005	Audit must start by January 10, 2008

Government Code Section 17558.5, as amended effective January 1, 2003, requires the Controller to initiate an audit within three years after a claim is filed. The District's FY 2002-03 claim was filed on January 12, 2004. The District's FY 2003-04 claim was filed on January 10, 2005. The entrance conference date for the audit was March 24, 2008, which is after the three-year period to commence the audit for those two fiscal years had expired.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

Public Records Request

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

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

O O O

The District requests that the audit report be changed to comply with the appropriate application of the parameters and guidelines regarding allowable activity costs and the Government Code sections concerning audits of mandate claims.

Sincerely,



Teresa Scott
Executive Vice Chancellor

TMS/KP/cs

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

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

S08-MCC-029

Exhibit G

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City of Costa Mesa v. McKenzie , 30 Cal.App.3d 763

[Civ. No. 12096. Court of Appeals of California, Fourth Appellate District, Division Two. February 22, 1973.]

CITY OF COSTA MESA, Plaintiff and Appellant, v. ARTHUR R. McKENZIE, Defendant and Respondent

(Opinion by Tamura, J., with Kerrigan, Acting P. J., and Gabbert, J., concurring.) [30 Cal.App.3d 764]

COUNSEL

Roy E. June, City Attorney, and Ellis J. Horvitz for Plaintiff and Appellant.

Barnes, Schag, Johnson & Kennedy and William S. Hunter for Defendant and Respondent. [30 Cal.App.3d 766]

OPINION

TAMURA, J.

This is an action for declaratory relief by the City of Costa Mesa against defendant McKenzie, a retired city employee, for a judicial declaration respecting the city's obligation to pay a disability retirement allowance under city Ordinance No. 64-45. The case was tried on an agreed statement of facts and resulted in a judgment decreeing that McKenzie is entitled to monthly disability benefits under the ordinance in the amount of \$1,109 in addition to \$664.51 per month under the city's retirement plan and \$227.50 per month in workmen's compensation benefits for a total sum of \$2,001.01 per month. The city appeals from the judgment.

The facts are as follows:

Nine years after its incorporation in 1953 as a general law city, Costa Mesa through its city council created an actuarially sound retirement plan for city employees pursuant to Government Code sections 45341-45345. [fn. 1](#)

As adopted, the plan only provided for retirement benefits based upon length of service and a specified retirement age. It covered only those employees who volunteered to contribute 7 percent to 10 percent of their monthly wages. Under the plan the monthly benefit was, and remains 1 1/2 percent of the final average salary [fn. 2](#) for each year of service prior to the adoption of the plan and 2 percent for each year of service thereafter. [30 Cal.App.3d 767]

A year later the plan was amended by the addition of a provision for retirement for disability whether work related or otherwise. Monthly benefits under the disability retirement provision were the same as for service retirement except that the salary in effect on the date of disability is used in computing benefits instead of the final average salary. Participation in this portion of the plan was only available to present members of the plan and to future members after five years membership. Only about 100 of the city's 300 employees were covered by the disability provision.

Sometime prior to September 1964 a Newport Beach police officer was killed in the course of his employment and much publicity was given to the financial plight of his widow and children who suffered because of an alleged lack of adequate benefits. Numerous City of Costa Mesa employees informed the defendant, who at the time was city director of public safety, of their concern about the adequacy of benefits payable in the event of death or disability incurred in the course of employment and expressed their belief that disability benefits in such circumstances should be as close as possible to the

current take-home pay of the employee at the date of disability or retirement. Defendant recommended to the city manager that Costa Mesa adopt a disability plan to bring about the payment of such benefits to its employees.

Thereafter the city council enacted Ordinance No. 64-45 which provides in relevant part: "On and after September 21, 1964, in all cases where sickness, injury or death is incurred in the performance of duty, full time employees shall be entitled to the following benefits beyond the periods provided for in Sections 2730 through 2735 [of the Municipal Code of Costa Mesa] hereof: [¶] (a) Injury on Duty -- Disability. A monthly allowance will be paid if a disability is determined by the Injury on Duty Accident Committee and the City Physician to be incurred in the performance of duty. The allowance shall be fifty per cent (50%) of the employee's final compensation (based on current monthly salary). This allowance shall continue during the lifetime of the employee, or until it has been determined by the Injury on Duty Accident Committee and the City Physician that the employee is physically able to return to duty. [¶] (b) Injury on Duty -- Death. A monthly allowance will be paid to the widow, or if there is no widow, to the employee's children under the age of 18. Such sum shall be paid until the youngest surviving child reaches 18 years of age. If death is determined by the Injury on Duty Accident Committee and the City Physician to have arisen out of an injury or disability incurred in the performance of duty, the allowance shall be fifty per cent (50%) of the employee's final compensation (based on his current monthly salary), and is payable to his widow until death or remarriage. In the event of death or remarriage of the widow, the [30 Cal.App.3d 768] allowance will be paid to the surviving children. [¶] Section 2. This Ordinance is hereby declared to be an urgency ordinance immediately necessary for the preservation of the public welfare and shall become effective upon its adoption. The facts constituting the urgency are as follows: More than two hundred employees to the City are without protection in the event of injury or death in the performance of duty."

Two years after enactment of the ordinance, the defendant (who by now was city manager) upon being informed that the city's potential liability under the ordinance was unfunded, commissioned an actuarial study to recommend a method of adequate funding. The result of the study was a recommendation that the injury section of the ordinance be funded by long term disability insurance coverage. Pursuant to the recommendation, the city authorized Prudential Insurance Company to prepare a master contract for insurance coverage of the disability section of the ordinance, and in November 1967 the policy was issued. By its terms the policy provides that a scheduled benefit of 65 percent of the employee's monthly earnings up to a maximum of \$1,000 will be paid monthly for life in the case of disability and to age 65 for sickness, fn. 3 and that Prudential may take certain offsetting credits against any payment under the policy for other benefits paid by the city to the employee by reason of his disability. On the basis of salary levels and the fact that only one-third of its 300 employees participated in the retirement plan, the city calculated that at the time of initial funding defendant was the only city employee who could have a disability claim under Ordinance No. 64-45 for an amount larger than the maximum benefit of \$1,000 payable under the policy. fn. 4 The city determined to self-insure its liability under the death benefits section of Ordinance No. 64-45, allocating a sufficient amount of its own money to provide adequate funding.

On March 1, 1970, after 17 years of employment with the city, the defendant suffered a stroke, and was advised by his doctor not to return to work. The city determined that he was totally disabled and that the disability was incurred in the line of duty. [30 Cal.App.3d 769]

Defendant contended that he was entitled to (1) \$664.51 per month under the retirement plan, (2) \$1,109 per month under Ordinance No. 64-45, and (3) \$227.50 per month under workmen's compensation for a total of \$2,001.01 per month. The city contended that defendant is entitled to total benefits of not more than \$1,000 per month allocated as follows: Monthly benefits of \$664.51 under the retirement plan, \$227.50 per month in workmen's compensation benefits, and \$107.99 under Prudential's policy. The \$107.99 is computed by subtracting from Prudential's maximum liability of \$1,000 the \$664.51 payable under the retirement plan and the \$227.50 workmen's compensation benefits.

There exists a retirement trust fund accumulated by contributions under the retirement plan sufficient to pay all claims of the defendant. However, it was stipulated that based upon actuarial assumptions underlying the plan, payment out of the fund of benefits not provided for in the plan, such as benefits under the ordinance, would impair the adequacy of the fund to finance benefits under the plan.

The trial court decreed that the city was obligated to pay retirement and disability benefits in the sum of \$1,773.51 per month (\$664.51 under the retirement plan and \$1,109 under Ordinance No. 64-45) without any offset for workmen's compensation benefits, resulting in total benefits of \$2,001.01 per month.

On appeal the city contends that Ordinance No. 64-45 was not intended to provide for disability benefits in addition to benefits under the retirement plan and workmen's compensation benefits but to assure minimum long term disability benefits equal to 50 percent of the employee's compensation during his disability. It is urged that the interpretation placed upon Ordinance No. 64-45 by the court as reflected by the decree would render the retirement plan actuarially unsound and violative of Government Code sections 45342 and 45343. It is further urged that the construction placed upon the ordinance

by the trial court could result in an employee recovering greater benefits for disability retirement than the compensation he would have received had he kept working.

I

Fundamentally, our objective in this case is to ascertain the intention of the city council in enacting Ordinance No. 64-45, a task made difficult by the patchwork character of the city's retirement scheme. We are guided in our efforts, however, by several basic rules of statutory interpretation. [1] First, "[t]he fundamental rule of statutory construction is that the [30 Cal.App.3d 770] court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (Select Base Materials v. Board of Equal., 51 Cal.2d 640, 645 [335 P.2d 672]; People v. Superior Court, 70 Cal.2d 123, 132 [74 Cal.Rptr. 294, 449 P.2d 230].) [2] Secondly, "[s]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers -- one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity." [Citation.] [3] "[I]n construing a statute the courts may consider the consequences that might flow from a particular interpretation. They will construe the statute with a view to promoting rather than to defeating its general purposes and the policy behind it." (Anaheim Union Water Co. v. Franchise Tax Bd., 26 Cal.App.3d 95, 105 [102 Cal.Rptr. 692]; Bush v. Bright, 264 Cal.App.2d 788, 792 [71 Cal.Rptr. 123].) Finally, there is a presumption that the Legislature does not intend to enact legislation in contravention of existing public policy. (Interinsurance Exchange v. Ohio Cas. Ins. Co., 58 Cal.2d 142, 152 [23 Cal.Rptr. 592, 373 P.2d 640].)

[4a] The application of these rules leads to the conclusion that by enacting Ordinance No. 64-45 the Costa Mesa City Council did not intend a disabled city employee to receive maximum benefits under the ordinance in addition to disability benefits under the city's retirement plan but rather only intended to provide that any employee whose disability was incurred in the performance of duty would receive city paid disability benefits equal to but not more than 50 percent of his salary. This interpretation comports with both the historical background of the ordinance and common sense.

It appears from the agreed statement of facts that Ordinance No. 64-45 was enacted to arrest the fear of city employees that in the event they became disabled or died in the line of duty their families would be left without an adequate source of income. It is reasonable to assume that the disability benefits provided by Ordinance No. 64-45 in the amount of 50 percent of final salary and the generous monthly allowance of 50 percent of final salary to the survivors in the event of death were sufficient to allay that fear. Even defendant, who concedes that employees who are not retirement plan members would be entitled only to that amount in the event of disability incurred in the line of duty nowhere attacks the sum as inadequate.

Defendant urges that since employees requested disability benefits as nearly equal to take home pay as possible and since defendant proposed to the council that it enact a plan to provide for such benefits we must assume the council acted accordingly. As the city correctly points out, however, it [30 Cal.App.3d 771] is the intent of the city council and not the intent of the city's employees or its then director of public safety that is controlling.

Concededly, cumulative benefits for those disabled employees who were also retirement plan members would provide a greater income to the employee and his family. However, cumulating the retirement plan and ordinance disability benefits would result in several consequences which the city council could not have intended. For example, under the interpretation urged by the defendant an employee who had worked for the city and been a member of its retirement plan for 30 years and who retired by reason of work-connected disability would be entitled to 60 percent of his final salary under the retirement plan and an additional sum equal to 50 percent of his final salary under Ordinance No. 64-45. The employee would thus receive disability retirement benefits greater than his salary while employed. [5] The purpose of disability benefits, however, is to "minimize the total economic loss to the employer, the employee or the public, by restoring [the employee] to productive life quickly through prompt medical treatment and the incentive to return to service." (City etc. of San Francisco v. Workmen's Comp. App. Bd., 2 Cal.3d 1001, 1012 [88 Cal.Rptr. 371, 472 P.2d 459].) (Italics supplied.) [4b] That purpose would be frustrated if the employee's disability benefits were greater than the salary he would have received while working.

Defendant argues that when the ordinance was enacted the maximum disability benefit payable to one who would have then been compelled to retire for disability under the retirement plan would have been 17 1/2 percent which when combined with the 50 percent payable under the ordinance to an employee disabled in the line of duty would have yielded a maximum benefit of 67 1/2 percent of final salary and thus there was then no danger any employee would receive more while disabled than when employed. We cannot attribute such shortsightedness to the city council. It would have been readily apparent that under defendant's interpretation of the ordinance benefits payable in the case of a work-related disability would have drastically increased in a matter of a few years.

Defendant's interpretation of the ordinance would also give rise to the anomaly of a short term employee retiring for on the job disability receiving a larger income than a long term employee who retired for service. A new employee could join the city's retirement plan and after five years enjoy eligibility for disability retirement under the plan. If immediately thereafter he becomes disabled while in the performance of duty, he would receive 10 percent of his final salary under the plan in

addition to 50 percent of his final salary under Ordinance No. 64-45. However, in order for an employee to [30 Cal.App.3d 772] receive an equivalent retirement for service, he would have to work for the city for at least 30 years. fn. 5 It is inconceivable that the city council intended such a disparity.

Finally, should the defendant's interpretation of Ordinance No. 64-45 prevail, the city's retirement plan could be rendered actuarially unsound. Government Code section 45342 fn. 6 requires that any pension or retirement system be on a sound actuarial basis. [6] To be actuarially sound a retirement plan should take into consideration such factors as age at time of entry into service, salary, experience and life expectancy. (48 Ops.Cal.Atty.Gen. 124, 128.) [4c] Although it is apparent from the agreed statement of facts that those factors were considered when Costa Mesa established its retirement plan, there is no showing that actuarial factors were taken into account when Ordinance No. 64-45 was passed. To the extent disability benefits payable under the ordinance are paid from the fund established to finance the retirement plan, fn. 7 factors other than those taken into account when the fund was established will be involved. The interpretation advanced by defendant could render the fund inadequate to pay benefits under the plan. fn. 8

The trial judge determined that sections 45300-45345 of the Government Code provided only an "alternative procedure" for the establishment of a retirement system; that the disability plan provided by Ordinance No. 64-45 was not adopted under the Government Code sections; and that, therefore, it was not subject to section 45342's requirement of actuarial soundness. Government Code section 45316 relied upon by the trial judge provides: "This article [art. 1 of tit. 4, div. 5 of the code] provides an alternative procedure for the establishment of retirement systems in cities." (Italics supplied.) Government Code section 45342, however, is in Article 2 of title 4, division 5 of the Government Code and provides that: "Any pension or retirement [30 Cal.App.3d 773] system adopted shall be on a sound actuarial basis" (Italics supplied.) Thus a municipal retirement plan whether enacted under Government Code sections 45300-45345 or pursuant to "an alternative procedure" must be on a sound actuarial basis. Under defendant's interpretation of Ordinance No. 64-45, Costa Mesa's retirement scheme might not be.

Defendant urges, however, that the effect payment of benefits under Ordinance No. 64-45 would have upon the actuarial soundness of the retirement fund is irrelevant in that the city has the obligation to pay retirement benefits regardless of adequate funding, citing *Bellus v. City of Eureka*, 69 Cal.2d 336 [71 Cal.Rptr. 135, 444 P.2d 711]; *England v. City of Long Beach*, 27 Cal.2d 343 [163 P.2d 865]; and *Crowley v. Board of Supervisors*, 88 Cal.App.2d 988 [200 P.2d 107]. We are not persuaded. In *Bellus* and *England* there was no dispute about who was entitled to benefits under the particular municipal retirement system involved. The question was whether a municipality was obligated to pay pension benefits clearly owing from sources other than a retirement fund where the fund was inadequate. Both courts answered in the affirmative, largely on the basis that the pension plans there involved acted as an inducement for municipal officers to enter into and continue in the service of the city. As stated by the *Bellus* court: "[W]hen the ordinance establishing the pension plan can reasonably be construed to guarantee full payment to those entitled to its benefits regardless of the amount in the fund established by the pension plan, then 'we are, of course, required to construe the provisions liberally in favor of the applicant so as to carry out their beneficent policy.' [Citations.]" (Italics supplied.) (*Bellus v. City of Eureka*, supra, 69 Cal.2d 336, 351.) *Crowley*, supra, was a proceeding in mandamus to compel the County of Los Angeles to levy a property tax in order to make up a deficit in a police retirement fund. The court denied the writ although it did recognize that under the plan (which like the plans in *Bellus* and *England* left no doubt as to who would receive benefits) no retiring police officer should receive less than the full amount of his retirement allowance. While the three cases hold that pension benefits unequivocally granted must be paid regardless of the source of payment, they do not support the proposition that the actuarial soundness of a pension plan is irrelevant in ascertaining the extent of benefits intended to be provided where the pension ordinance is unclear. If Ordinance No. 64-45 were construed to provide disability benefits in addition to those payable under the retirement plan, the retirement fund would be actuarially unsound. It is not reasonable to assume that the city intended to establish an actuarially unsound retirement system contrary to the provisions of Government Code section 45342.

Defendant cites *City of Palo Alto v. Industrial Acc. Com.*, 232 Cal.App. [30 Cal.App.3d 774] 2d 305 [42 Cal.Rptr. 822]; *Thurston v. County of Los Angeles*, 117 Cal.App.2d 618 [256 P.2d 588]; *Holt v. Board of Police etc. Commrs.*, 86 Cal.App.2d 714 [196 P. d 94]; *Larson v. Board of Police etc. Commrs.*, 71 Cal.App.2d 60 [162 P.2d 33]; and *Vero v. Sacramento City E.R. System*, 41 Cal.App.2d 482 [107 P.2d 82], and urges that limitations on municipal pension benefits, including the deduction of one benefit from another is impermissible unless such limitations are clearly expressed in the ordinance. Insofar as the contention refers to the obligation of the city of pay maximum cumulative benefits under both the retirement plan and Ordinance No. 64-45 it misses the mark. *Vero*, *Larson*, *Holt* and *City of Palo Alto* all dealt with the failure of a city to pay retirement benefits in addition to workmen's compensation benefits. While relevant to McKenzie's workmen's compensation award, discussed *infra*, the cases do not deal with a municipality's obligation to pay cumulative benefits under a municipal retirement scheme. *Thurston*, supra, simply dealt with the statutory right of an employee to transfer from one retirement plan to another; it did not involve overlapping payments.

Defendant also contends that the city's argument, if accepted, will discourage employees from participating in the retirement plan since they would have to contribute to the plan for 25 years in order to obtain the same disability benefits which would be immediately available without cost to the employee under Ordinance No. 64-45.

While Ordinance No. 64-45 does provide substantial disability benefits at no cost to the employee, we doubt this fact would significantly discourage participation in the retirement plan. Before disability benefits are payable under the ordinance, the city must find that the employee's illness, injury or death was incurred in the performance of duty. Under the plan, benefits are payable whether or not the illness, injury or death is work related. Under the plan a participating employee may retire for service after reaching a specified age; under the ordinance an employee or his family may not recover except for disability or death arising out of the employment.

Finally, McKenzie argues that the city's interpretation of Ordinance No. 64-45 would violate the vested rights of retirement plan participants since part of their contribution pays for disability benefits and under the city's interpretation those disability benefits would be offset against benefits paid under the ordinance. The argument is specious. Ordinance No. 64-45 was not designed to take away disability benefits accumulated under the retirement plan, but rather was intended to supplement them up to 50 percent of the employee's final salary. If the employee accumulated disability benefits under the plan in excess of 50 percent of final average salary, Ordinance No. [30 Cal.App.3d 775] 64-45 does not require him to surrender the excess nor does the city so contend. Rather, if the employee's disability benefits under the plan exceed 50 percent of his final salary, Ordinance No. 64-45 would simply be inoperative.

We conclude that in enacting Ordinance No. 64-45 the Costa Mesa City Council only intended to insure a total disability retirement benefit for an employee injured in the performance of duty of 50 percent of final salary.

II

[7a] We turn to a consideration of the workmen's compensation benefits.

In its argument, the city never explicitly distinguishes workmen's compensation benefits from benefits payable under its retirement plan, but instead assumes that since double recoveries are abhorrent to the courts, so are triple recoveries, and if retirement plan benefits are to be deducted from benefits payable under Ordinance No. 64-45 so should workmen's compensation payments. The reasoning is erroneous.

[8] Workmen's compensation and retirement programs are based upon entirely different considerations. (*Larson v. Board of Police etc. Commrs.*, supra, 71 Cal.App.2d 60, 63-64.) The former is compulsory under state law and may not be subsidized by any contributions or exactions from employees while the latter is voluntary and subject to employee-employer contractual arrangements. (*City etc. of San Francisco v. Workmen's Comp. App. Bd.*, supra, 2 Cal.3d 1001, 1010.) Where a retirement system grants a definite allowance, unless provision is expressly made for a pro tanto deduction for workmen's compensation benefits, such reduction cannot be made. (*Holt v. Board of Police etc. Commrs.*, supra, 86 Cal.App.2d 714, 719-720; *Johnson v. Bd. of Police etc. Pen. Commrs.*, 74 Cal.App.2d 919, 921-922 [170 P.2d 48]; *Larson v. Board of Police etc. Commrs.*, 71 Cal.App.2d 60, 64 [162 P.2d 33]; *Vero v. Sacramento City E. R. System*, supra, 41 Cal.App.2d 482, 486; see *Stafford v. L. A. etc. Retirement Board*, 42 Cal.2d 795, 799-800 [270 P.2d 12].) [7b] Since Ordinance No. 64-45 is devoid of any indication that workmen's compensation benefits are to be deducted from disability benefits payable under the ordinance, no such deduction is permissible. (*Herrera v. Workmen's Comp. App. Bd.*, 71 Cal.2d 254 [78 Cal.Rptr. 497, 455 P.2d 425]; *City of Los Angeles v. Industrial Acc. Com.*, 63 Cal.2d 242 [46 Cal.Rptr. 97, 404 P.2d 801]; and *City etc. of S. F. v. Workmen's Comp. App. Bd.*, 267 Cal.App.2d 771 [73 Cal.Rptr. 429], cited by the city for the contrary position are distinguishable. Each involved either a city charter provision or Labor Code section which expressly precluded [30 Cal.App.3d 776] recovery of both wage payments or retirement benefits and workmen's compensation benefits. *Evans v. Los Angeles Ry. Corp.*, 216 Cal. 495 [14 P.2d 752], also cited, did not involve the payment of workmen's compensation.

The city urges that the Prudential insurance policy used to fund Ordinance No. 64-45 should be treated as a contemporaneous administrative construction of the ordinance (*Rivera v. City of Fresno*, 6 Cal.3d 132, 140 [98 Cal.Rptr. 281, 490 P.2d 793]), and therefore compel a different result. We disagree. Under the "offset provisions" section of the policy, Prudential is entitled to offset from its obligation "[p]eriodic benefits for loss of time on account of disability, under or by reason of -- (3) any state, ... or other Federal law of the United States ..." While this indicates that Prudential may deduct workmen's compensation payments from its obligation under the policy, it in no way supports the proposition that the city may make a similar deduction from its obligation under Ordinance No. 64-45. The gist of city's argument is that since it intended to fully fund its obligation under Ordinance No. 64-45 through the Prudential policy, if the policy provides for an offset for workmen's compensation benefits the city council must have intended such an offset under the ordinance. We cannot agree. Even if the Prudential policy be deemed contemporaneous with the enactment of Ordinance No. 64-45, fn. 9 plaintiff's argument must fail since the premise upon which it is based -- that the policy was designed to insure against the

city's potential liability under the ordinance -- is erroneous. Under the policy benefits for an employee's total disability due to sickness are payable only to age 65, but under the ordinance the city is obligated to pay such benefits for life. Under the ordinance the city is obligated to pay 50 percent of the disabled employee's final salary whether or not the benefits exceed \$1,000 but Prudential's obligation is limited to \$1,000.

Nor are we so certain as plaintiff that simply authorizing purchase of an insurance policy constituted an administrative construction of the ordinance. In *Rivera v. City of Fresno*, supra, 6 Cal.3d 132, and the cases cited therein, the administrative constructions given great weight by the courts took the form of either continuous administrative applications of the statute or a declaration of policy to be followed in the administration of the statute. The Prudential insurance policy is neither a direct application of Ordinance No. 64-45 nor a statement of the city's policy. At best, it is a collateral agreement entered into three years later and its terms may have been largely dictated by the cost of premiums. To accept plaintiff's argument would permit the city to amend its pension ordinance by an insurance policy. [30 Cal.App.3d 777]

Finally, our conclusion that workmen's compensation payments and benefits payable under Ordinance No. 64-45 are cumulative is compatible with the considerations which supported the city's argument regarding the relationship of the retirement plan and the ordinance. Since workmen's compensation coverage must be entirely subsidized by tax moneys without direct or indirect contribution or exactions from employees (*City etc. of San Francisco v. Workmen's Comp. App. Bd.*, supra, 2 Cal.3d 1001, 1010), payment of cumulative benefits will not jeopardize the actuarial stability of the retirement fund. Nor given the relatively modest size of workmen's compensation payments, fn. 10 is it likely that long term employees such as the defendant will be able to retire on more than they earned while employed.

Disposition

We conclude that the total disability benefits payable to defendant under the plan and the ordinance should equal but not exceed 50 percent of his final salary without any offset for workmen's compensation benefits.

The judgment is reversed with directions to enter judgment in accordance with this opinion.

Kerrigan, Acting P. J., and Gabbert, J., concurred.

FN 1. Government Code sections 45341-45345 read as follows:

"45341. The legislative body may establish a pension plan and provide retirement and death benefits for city employees in order to effect economy and efficiency in the public service and provide a means by which employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees.

"45342. Any pension or retirement system adopted shall be on a sound actuarial basis and provide for contributions by both the city and the employee members of the system which shall be based on percentages of pay roll to be changed only by adjustments on account of experience under the system.

"45343. Contributions shall be in amounts which will accumulate at retirement a fund sufficient to carry out the promise to pay benefits to the individual on account of his service as a member of the system, without further contributions from any source.

"45344. Benefits based on service rendered prior to membership in the system shall be met by additional contributions of the employer. Such prior service liability may be funded over a fixed period of years.

"45345. As an alternate method of providing a retirement system, the city may contract with the Board of Administration of the State Employees' Retirement System and enter all or any portion of its employees under such system pursuant to law and under the terms and conditions of such contract."

FN 2. "Final Average Salary" is the average salary of the employee during the three years preceding retirement or the average during any five consecutive years, whichever is higher.

FN 3. It is not clear from the record what percentage of final salary is actually paid to a disabled employee -- 50 percent under Ordinance No. 64-45 or 65 percent under the policy. The city fails to mention the discrepancy. McKenzie urges the additional 15 percent payable under the policy was possibly included so that the net amount due an employee under the policy (after deductions were taken for benefits under the retirement plan) would be close to the 50 percent of salary payable under Ordinance No. 64-45. Considering, however, that relatively few city employees were members of the retirement plan and that even fewer were entitled to benefits thereunder of 15 percent, a flat payment of 65 percent of salary to all employees is an expensive and highly inexact means of bringing about such a result.

FN 4. It was stipulated by the parties that due to salary increases since 1967, eight city employees might now have claims under the ordinance exceeding the policy limits.

FN 5. Since its enactment in 1962 benefits payable under the city's retirement plan accumulate at the rate of 2 percent per year: $2\% (X) = 60\%/yr.$; $X = 30$ yrs.

FN 6. Government Code section 45342 provides: "Any pension or retirement system adopted shall be on a sound actuarial basis and provide for contributions by both the city and the employee members of the system which shall be based on percentages of pay roll to be changed only by adjustments on account of experience under the system."

FN 7. We are not told what source would be used to pay excess benefits (those not covered by the Prudential policy) under Ordinance No. 64-45, however, since both parties urge the ordinance and the retirement plan be treated as a single retirement scheme, it is not unreasonable to assume they would be financed by the same source, namely, the retirement fund.

FN 8. It is apparent that even under our interpretation of Ordinance No. 64-45 not all of the benefits payable thereunder to defendant will be funded by the Prudential insurance policy. To the extent city is obligated to pay excess benefits such payment must come from a source other than the retirement fund.

FN 9. The Prudential policy was issued three years after the enactment of Ordinance No. 64-45.

FN 10. Labor Code section 4658 provides for a weekly benefit amount of 65 percent of the employee's average weekly earnings. Labor Code section 4453 provides that in cases of permanent disability, average weekly earnings shall be not more than \$107.69.

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Marin Healthcare Dist. v. Sutter Health (2002) 103 Cal.App.4th 861 , 127 Cal.Rptr.2d 113

[No. C034127. Third Dist. Nov. 14, 2002.]

MARIN HEALTHCARE DISTRICT, Plaintiff and Appellant, v. SUTTER HEALTH et al., Defendants and Respondents.

(Superior Court of Sacramento County, No. 97AS05803, John R. Lewis, Judge.)

(Opinion by Kolkey, J., with Blease, Acting P. J., and Raye, J., concurring.)

COUNSEL

Steeffel, Levitt & Weiss, Stephen S. Mayne and David T. Vanalek for Plaintiff and Appellant.

McDonough, Holland & Allen and Richard E. Brandt for Defendant and Respondent Sutter Health.

Keegin, Harrison, Schoppert & Smith, Jeffrey S. Schoppert and Wendy L. Wyse for Defendants and Respondents Marin General Hospital and Marin Community Health. [103 Cal.App.4th 866]

OPINION

KOLKEY, J.—

In this action, we must determine whether the judicially created doctrine enunciated in *Hoadley v. San Francisco* (1875) 50 Cal. 265 (*Hoadley*)-that the statute of limitations does not apply to actions by the state to recover property dedicated for public use against an adverse possessor-should be extended to bar the application of the statute of limitations to the state's action to void a *lease* of public-use property. Because the purpose of the *Hoadley* doctrine is to prevent public-use property that the state cannot directly alienate from being indirectly alienated through the passage of time-that is, through the statute of limitations-we conclude that the doctrine has no application to a lease of property which the state is authorized to make.

In this case, the plaintiff, Marin Healthcare District (the District), a political subdivision of the state, brought suit to recover possession of a publicly owned hospital and related assets that it had leased and transferred [103 Cal.App.4th 867] in 1985 to defendant Marin General Hospital (Marin General) fn. 1 pursuant to the terms of the Local Health Care District Law (Health & Saf. Code, § 32000 et seq.). The District's complaint alleges that the 1985 agreements are void because its chief executive and legal counsel had a financial interest in the agreements at the time of their execution, in violation of Government Code section 1090, which prohibits state employees from having any financial interest in any contract made by them or by any body of which they are members. fn. 2 But because the action was filed 12 years after the agreements were signed, the trial court concluded that the suit was time-barred.

The District contends here-as it did in the trial court-that under the California Supreme Court's decision in *Hoadley*, "a suit by a governmental entity to recover public-use property from a private party to whom it was illegally or invalidly transferred is *never* barred by *any* statute of limitations."

We conclude, to the contrary, that *Hoadley* stands for the more narrow rule that "property held by the state in trust for the people cannot be lost through adverse possession." (*People v. Shirokow* (1980) 26 Cal.3d 301, 311 [162 Cal.Rptr. 30, 605 P.2d 859].) Other cases have only extended the doctrine to prevent the statute of limitations from barring the recovery of public-use property that the state had no authority to alienate. (E.g., *Sixth District etc. Assoc. v. Wright* (1908) 154 Cal. 119, 129-130 [97 P. 144].) The doctrine has no application to the lease of property into which the state is authorized by law to enter (and which property the state will recover at the end of the lease term).

Extension of the *Hoadley* doctrine here would conflict with the Legislature's determination to apply statutes of limitations to actions brought by the state, including the type pleaded here. Specifically, ever since the first session of the California Legislature, "[t]he general legislative policy of California [has been] that the state shall be bound by its statute of limitations with respect to the bringing of actions for the enforcement of any and all such rights as may accrue to the state." (*People v. Osgood* (1930) 104 [103 Cal.App.4th 868] Cal.App. 133, 135 [285 P. 753].) While there are good policy reasons both for and against subjecting void leases of public property to the statute of limitations, we must defer to the Legislature's determination that the state, like other parties, is bound by the statute of limitations. We shall therefore affirm the judgment barring this 12-year-delayed suit from unsettling the balance of Marin General's lease term.

Factual and Procedural Background

The facts underlying this action are undisputed.

The District, a political subdivision of the State of California, is a local health care district organized and operating under the provisions of the Local Health Care District Law (Health & Saf. Code, § 32000 et seq.). The District owns an acute care hospital facility located in Marin County.

The statutory scheme governing local health care districts permits such districts to delegate pursuant to a lease of up to 30 years the responsibility of operating and maintaining a district-owned hospital (Health & Saf. Code, § 32126), and authorizes them to transfer the assets to a nonprofit corporation "to operate and maintain the assets" (Health & Saf. Code, § 32121, subd. (p)(1)). *fn.* 3 "The Legislature's stated reason for allowing such transfers [was] to permit local hospital districts 'to remain competitive in the ever changing health care environment' (Stats. 1985, ch. 382, § 5, p. 1556.)" (*Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 746 [238 Cal.Rptr. 502].)

In or about November 1985, pursuant to those statutory provisions, the District leased the hospital's facilities and transferred certain of the District's assets used in the operation of the hospital, including cash, accounts receivable, and inventory, to defendant Marin General, a nonprofit public benefit corporation. The relevant agreements included a 30-year lease agreement and an agreement for transfer of assets (collectively, the 1985 contracts). Marin General has continuously operated the hospital facility since 1985.

At the time the 1985 contracts were entered, the District's chief executive officer was Henry J. Buhmann. However, while Buhmann was still employed as the District's chief executive officer, he became president and chief executive officer of Marin General and signed the 1985 contracts on [103 Cal.App.4th 869] behalf of *Marin General*. Two of the District's directors executed the contracts on the District's behalf. Moreover, the District's legal counsel, Quentin L. Cook, became legal counsel to Marin General before the 1985 contracts were executed. And when Marin General later combined to form another health care entity, Cook became chief executive officer of that entity.

In November 1997, nearly 12 years after the 1985 contracts were signed, the District filed the instant action against Marin General and the affiliated defendants, Marin Community Health and Sutter Health. (See *fn.* 1, *ante.*) The operative (first amended) complaint alleges that at the time the 1985 contracts were entered, Buhmann's and Cook's simultaneous employment by Marin General and the District created a prohibited financial interest in those contracts within the meaning of Government Code section 1090. That statute prohibits state, county, district, and city officers or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." (*Ibid.*) *fn.* 4 And because the 1985 contracts were purportedly made in violation of Government Code section 1090, the complaint alleges that the contracts are void under Government Code section 1092. *fn.* 5

The first and second causes of action of the complaint seek a declaration that the 1985 contracts are void by virtue of Buhmann's or Cook's alleged financial interest in the contracts and that therefore the District is entitled to recover the assets transferred by the 1985 contracts. The District also seeks to impose a constructive trust on all hospital assets (the fifth cause of action), to conduct an accounting of the assets transferred under the 1985 contracts and their proceeds (the sixth cause of action), and to direct defendants to deliver the assets to the District (the seventh cause of action). *fn.* 6

Defendants admitted the existence of a controversy concerning the District's claim that the 1985 contracts are void, denied

any wrongdoing, and alleged that the causes of action based on the purported invalidity of the 1985 contracts (the first, second, fifth, sixth, and seventh causes of action) were barred by the applicable statutes of limitations. [103 Cal.App.4th 870]

Defendants then brought a motion for summary adjudication with respect to the first, second, fifth, sixth, and seventh causes of action on the grounds that they were barred by all applicable statutes of limitations. *fn. 7* In support of their motion, defendants argued that the gravamen of the District's complaint was a claim that the 1985 contracts were void in violation of Government Code section 1092. As such, they claimed that the suit was an action "other than for the recovery of real property" within the meaning of Code of Civil Procedure section 335 et seq. and was barred by the applicable statutes of limitations.

The District, in turn, moved for summary adjudication of, among other things, "defendants' affirmative defense of the statute of limitations." Relying on the common law principle adopted by the California Supreme Court in *Hoadley, supra*, 50 Cal. 265, the District argued, both in support of its motion and in opposition to defendants' motion, that under settled case law, "a suit by a governmental entity to recover public-use property from a private party to whom it was illegally or invalidly transferred is *never* barred by *any* statute of limitations."

The trial court rejected the District's purported application of *Hoadley* and granted defendants' motions. In its tentative decision, which was subsequently incorporated into the judgment, the trial court opined in part that the "contracts here are fundamentally different from those in the *Hoadley* line of cases. The 1985 lease and sale of assets were legitimate contracts. Violation of [Government Code] Section 1090 can result in them being declared void. This is not like the *Hoadley* line of cases where the orig[i]nal transactions had no legitimacy. Statutes of limitations do attach to claims seeking to have contracts declared void based on the nature of the claim asserted.... The issue here then is what limitations period applies to actions brought under [Government Code] Section 1090. *Schaeffler v. Berinstein* [(1960) 180 Cal.App.2d 107 [4 Cal.Rptr. 236], disapproved on another point in *Jefferson v. J. E. French Co.* (1960) 54 Cal.2d 717, 719-720 [7 Cal.Rptr. 899, 355 P.2d 643]] is on point and stands for the proposition that the nature of the underlying right sued on will determine the applicable statute." (Italics added.)

The trial court then concluded that the appropriate statute of limitations for the District's claims concerning the validity of the 1985 contracts under Government Code section 1092 was the four-year catchall provision of [103 Cal.App.4th 871] Code of Civil Procedure section 343, and applying that statute, ruled that the District's claims were time-barred.

The parties thereafter settled the remaining claims in the complaint and stipulated to entry of judgment incorporating the trial court's ruling on the statute of limitations.

Discussion

I. Standard of Review

[1] "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. [Fn. omitted.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 [107 Cal.Rptr.2d 841, 24 P.3d 493].) We review independently an order granting summary judgment or summary adjudication of issues. (*Id.* at p. 860; *Hernandez v. Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274, 1279 [48 Cal.Rptr.2d 229].)

[2] Although resolution of a statute of limitations defense normally poses a factual question reserved to the trier of fact, summary adjudication will nonetheless be proper "if the court can draw only one legitimate inference from uncontradicted evidence regarding the limitations question." (*City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 582 [35 Cal.Rptr.2d 876]; *FNB Mortgage Corp. v. Pacific General Group* (1999) 76 Cal.App.4th 1116, 1126 [90 Cal.Rptr.2d 841].) This is such a case.

II. The Causes of Action are Subject to the Statute of Limitations

The gravamen of the District's claims is that the 1985 contracts are void as a matter of law because its chief executive officer and counsel each had a financial interest in the contracts in violation of Government Code section 1090. It is settled that "a contract in which a public officer is interested is *void*, not merely voidable. [Citations.]" (*Thomson v. Call* (1985) 38 Cal.3d 633, 646, *fn. 15* [214 Cal.Rptr. 139, 699 P.2d 316].)

But the District refrained from filing suit for the first 12 years of its 30-year lease. It argues that "under the rule confirmed in [*Hoadley*], a conveyance of public-use property that was not valid and effective when it was made can be attacked, and the

property reclaimed by the public, regardless of how much time has passed."

[3] There are certainly good policy arguments both for and against applying a limitations period to an action to void a lease of public property. [103 Cal.App.4th 872] On the one hand, "[t]he purpose of statutes of limitations is to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1387 [49 Cal.Rptr.2d 166], citing *Telegraphers v. Ry. Express Agency* (1944) 321 U.S. 342, 348-349 [64 S.Ct. 582, 586, 88 L.Ed. 788, 792]; accord, *Wood v. Elling Corp.* (1977) 20 Cal.3d 353, 362 [142 Cal.Rptr. 696, 572 P.2d 755].) Statutes of limitations also serve many other salutary purposes-some of which are relevant to this case-including protecting settled expectations; giving stability to transactions; promoting the value of diligence; encouraging the prompt enforcement of substantive law; avoiding the retrospective application of contemporary standards; and reducing the volume of litigation. (*Board of Regents v. Tomanio* (1980) 446 U.S. 478, 487 [100 S.Ct. 1790, 1796-1797, 64 L.Ed.2d 440, 449]; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395-396 [87 Cal.Rptr.2d 453, 981 P.2d 79]; *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 899 [218 Cal.Rptr. 313, 705 P.2d 886]; Ochoa & Wistrich, *The Puzzling Purposes of Statutes of Limitation* (1997) 28 Pacific L.J. 453.)

On the other hand, courts have noted that cases should be decided on their merits (see *Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th at p. 396) and that "[t]he public is not to lose its rights through the negligence of its agents" in failing to bring suit promptly. (*Board of Education v. Martin* (1891) 92 Cal. 209, 218 [28 P. 799].)

However, as a court, we must defer to the Legislature's judgment on which of these two policies to adopt. As our Supreme Court stated in a somewhat similar circumstance, "[t]o establish any particular limitations period under any particular statute of limitations entails the striking of a balance between the two [policies]. To establish any such period under any such statute belongs to the Legislature alone [citation], subject only to constitutional constraints [citation]." (*Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th at p. 396.)

As shown below, the Legislature has expressly addressed the application of statutes of limitations to actions brought by the state or its agencies.

A. The Application of Statutes of Limitations to a Public Entity

The parties agree that the District is a political subdivision of the state. We thus first turn to whether the Legislature intended to apply a statute of limitations to a suit by a state entity to void a contract in violation of Government Code section 1092. [103 Cal.App.4th 873]

"The rule quod nullum tempus occurrit regi-that the sovereign is exempt from the consequences of its laches, and from the operation of statutes of limitations-appears to be a vestigial survival of the prerogative of the Crown," but is nowadays premised on considerations of public policy. (*Guaranty Trust Co. v. U.S.* (1938) 304 U.S. 126, 132 [58 S.Ct. 785, 788, 82 L.Ed. 1224, 1227-1228].) "The true reason ... is to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." (*Ibid.*)

[4] Accordingly, "the implied immunity of the domestic 'sovereign,' state or national, has been universally deemed to be an exception to local statutes of limitations where the government, state or national, is not expressly included" (*Guaranty Trust Co. v. U.S.*, *supra*, 304 U.S. at p. 133 [58 S.Ct. at p. 789, 82 L.Ed. at p. 1228].)

This is the rule in California: The rights of the sovereign "are not barred by lapse of time unless by legislation the immunity is expressly waived." (*City of L. A. v. County of L. A.* (1937) 9 Cal.2d 624, 627 [72 P.2d 138, 113 A.L.R. 370].) fn. 8

But sections 315 and 345 of the Code of Civil Procedure fn. 9 expressly waive the state's legislative immunity by applying statutes of limitations to various types of actions by the state and its agencies. "That it is not the policy of this commonwealth not to be bound by any statute of limitations is made clear by certain enactments which date back to the first session of the state legislature. (Code Civ. Proc., [§§] 315, 317, 345.) ... 'The general legislative policy of California is that the state shall be bound by its statute of limitations with respect to the bringing of actions for the enforcement of any and all such rights as may accrue to the state.' " (*People v. Osgood*, *supra*, 104 Cal.App. at p. 135.)

Title 2 of part 2 (commencing with § 312) addresses general statutes of limitations. Section 312, which is part of chapter 1 of title 2, reflects the Legislature's historical preference for limiting the time within which civil actions may be initiated: "Civil actions, *without exception*, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute." (Italics added.) Chapter 2 of title 2 addresses [103 Cal.App.4th 874] the time for commencing actions for the recovery of real property (§ 315 et seq.),

while chapter 3 (§ 335 et seq.) addresses the time for commencing actions other than for the recovery of real property. In both cases, the Legislature has expressly subjected the state to the limitations periods.

With respect to actions for the recovery of real property, section 315 provides that "[t]he people of this State will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless: [¶] 1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced" "The words 'right or title' in this passage are to be construed to mean 'cause of action.'" (*People v. Kings Co. Development Co.* (1918) 177 Cal. 529, 534 [171 P. 102]; accord, *People v. Chambers* (1951) 37 Cal.2d 552, 556 [233 P.2d 557] (*Chambers*)).

[5a] Thus, if the present action is deemed to seek the recovery of real property under chapter 2 of title 2 "by reason of the right or title of the people to the same," this 12-year-delayed action, brought by a state entity, would be subject to (and as we shall show, barred by) the 10-year limitations period specified in section 315.

On the other hand, if this action is deemed other than for the recovery of real property, it comes under chapter 3 of title 2 (commencing with section 335). fn. 10 But section 345 expressly waives the state's immunity from *any* of the relevant statutes of limitations in that chapter: "The limitations prescribed in this chapter apply to actions brought in the name of the state or county or for the benefit of the state or county, in the same manner as to actions by private parties" (§ 345.)

Accordingly, we next address whether one of the statutes of limitations that the Legislature has expressly made applicable to the state applies to the claim here.

B. Determination of the Applicable Statute of Limitations

[6] "To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action. [Citations.] '[T]he nature of the right sued upon and not the form of action nor the relief demanded determines the [103 Cal.App.4th 875] applicability of the statute of limitations under our code.' [Citation.]" (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23 [32 Cal.Rptr.2d 244, 876 P.2d 1043], citing *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 214 [1 Cal.Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803], and *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 733 [146 P.2d 673, 151 A.L.R. 1062]; see also Note, *Developments in the Law-Statutes of Limitations* (1950) 63 Harv. L.Rev. 1177, 1192, 1195-1198.)

Put another way, "[w]hat is significant for statute of limitations purposes is the primary interest invaded by defendant's wrongful conduct. [Citation.]" (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1207 [51 Cal.Rptr.2d 328]; see *Day v. Greene* (1963) 59 Cal.2d 404, 410-411 [29 Cal.Rptr. 785, 380 P.2d 385, 94 A.L.R.2d 802] [although a complaint may be styled as a breach of contract action, if the gravamen of the claim is fraud, the three-year period prescribed in § 338 governs, rather than the period applicable to contracts]; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 474, p. 599 ["If the 'gravamen' of the action is held to be tort, the action, though in form one for breach of contract, is subject to the tort limitation period"].)

Thus, for example, in *Leeper v. Beltrami*, supra, 53 Cal.2d 195, the California Supreme Court held that an action to set aside a deed and to quiet title to real property was barred by the three-year limitation period for fraud actions under section 338, rather than the five-year period under section 318 fn. 11 applicable to the recovery of real property, because the plaintiffs' recovery depended upon their right to avoid a contractual obligation, which, in turn, depended upon a finding of duress, a type of fraud. (*Leeper*, at pp. 213-214.) Based on its conclusion that "the modern tendency is to look beyond the relief sought, and to view the matter from the basic cause of action giving rise to the plaintiff's right to relief" (*id.* at p. 214), the state Supreme Court analyzed the case as follows: "Quieting title is the relief granted once a court determines that title belongs in plaintiff. In determining that question, where a contract exists between the parties, the court must first find something wrong with that contract. In other words, in such a case, the plaintiff must show he has a substantive right to relief before he can be granted any relief at all. Plaintiff must show a right to rescind before he can be granted the right to quiet his title." (*Id.* at p. 216.) Accordingly, the court applied the three-year limitation period for fraud actions to the quiet title action. [103 Cal.App.4th 876]

[5b] Here, the gravamen of the District's first and second causes of action, seeking to declare the 1985 contracts void, is its claim that these agreements are unlawful under Government Code section 1090, and therefore void under Government Code section 1092. Indeed, the operative complaint styles both the first and second causes of action "[f]or a Declaration Against All Defendants that the 1985 Contracts Were Made in Violation of Government Code § 1090." While the form of the pleading is not determinative of the issue (*Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 65-66 [72 Cal.Rptr.2d 359]), none of the allegations in either cause of action hint at another basis for the District's claim for relief. And the other causes of action subject to defendants' summary adjudication motion—imposition of a constructive trust over the transferred assets,

an accounting of the transferred assets, and an injunction to return the transferred assets-are fairly described as ancillary to the first two.

Thus, the nature of the right sued on here is the public's right to be free of a government contract made under the influence of a financial conflict of interest. Accordingly, the applicable statute of limitations is the statute applicable to a claim under Government Code sections 1090 and 1092, not a claim for the recovery of real property-although that is the ultimate relief the declaration seeks.

C. Claims Under Government Code Section 1092 Are Subject to the Limitations Periods Under Chapter 3

Neither Government Code sections 1090 and 1092, nor the statutory scheme of which they are a part, specifies a limitations period for actions brought to void a contract entered in violation of Government Code section 1092.

Accordingly, the limitations periods under title 2 of part 2 apply (commencing with § 312) because section 312 provides that "[c]ivil actions, *without exception*, can only be commenced within the periods prescribed in this title ... unless where, in special cases, a different limitation is prescribed by statute." (Italics added.)

And since the nature of the right sued on here is the public's right to be free of a government contract made under the influence of a financial conflict of interest, this is an action "other than for the recovery of real property," and is thus covered by chapter 3 of title 2 of part 2 (commencing with § 335). And "[t]he limitations prescribed in [that] chapter apply to actions brought in the name of the State ... or for the benefit of the State" (§ 345.) [103 Cal.App.4th 877]

However, no case has squarely addressed the applicable statute of limitations for suits to void a contract in violation of Government Code section 1092, although various decisions have applied statutes of limitations to cases raising a financial conflict of interest under Government Code section 1090 or its predecessor statute. (See, e.g., *People v. Honig* (1996) 48 Cal.App.4th 289, 304, fn. 1 [55 Cal.Rptr.2d 555] [applying the three-year limitations period to penal actions under Gov. Code, § 1097 for violations of Gov. Code, § 1090]; *County of Marin v. Messner* (1941) 44 Cal.App.2d 577, 591 [112 P.2d 731] [action to recover money paid without authority under predecessor statute to Gov. Code, § 1090 is subject to three-year limitations period for liability created by statute]; *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278, 294, 297 [295 P.2d 113] [when gravamen of taxpayer's action is fraud against the city based, in part, on violation of Gov. Code, § 1090, three-year statute applies].)

Accordingly, as we noted, to determine the applicable statute of limitations, we must look to the " 'nature of the right sued upon and not ... the relief demanded.' " (*Hensler v. City of Glendale, supra*, 8 Cal.4th at p. 23.) Government Code section 1090 prohibits state, county, district, and city officers or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." And under Government Code section 1092, "[e]very contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein." [7] "California courts have generally held that a contract in which a public officer is interested is *void*, not merely voidable." (*Thomson v. Call, supra*, 38 Cal.3d at p. 646, fn. 15.) Moreover, a governmental agency "is entitled to recover any consideration which it has paid, without restoring the benefits received under the contract." (*Id.* at p. 647.) The California Supreme Court has ruled that this remedy results "in a substantial forfeiture" and provides "public officials with a strong incentive to avoid conflict-of-interest situations scrupulously." (*Id.* at p. 650.)

In this light, the one-year limitations period under section 340, subdivision (1), could be argued to apply to the District's claims to declare the 1985 contracts void and to repossess the transferred assets because it applies to "[a]n action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation." [8] A forfeiture is "[t]he divestiture of property without compensation" or "[t]he loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty." (Black's Law Dict. (7th ed. 1999) p. 661, col. 1.) Government Code section 1092, which voids contracts in which a state employee has a financial conflict of interest without regard to the restoration of benefits, certainly would appear to effect a forfeiture. [103 Cal.App.4th 878]

[5c] However, we need not decide whether section 340, subdivision (1), applies in this case. Even if an action under Government Code section 1092 is not deemed a claim based on a statute for a forfeiture, the District's causes of action-brought 12 years after it entered the purportedly void agreements-would be time-barred under the four-year limitations period under the catchall provision of section 343. Section 343, which is also part of chapter 3 (which applies to all actions brought by the state [§ 345]), provides: "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued."

[9] As the California Supreme Court long ago explained, "[t]he legislature has ... specified the limitations applicable to a wide variety of actions, and then to rebut the possible inference that actions not therein specifically described are to be regarded as exempt from limitations, it has specified a four-year limitation upon "an action for relief not hereinbefore provided for" (§ 343); and where it has intended that an action shall be exempt from limitations it has said so in clear and unmistakable language. [Citations.]" (*Moss v. Moss* (1942) 20 Cal.2d 640, 645 [128 P.2d 526, 141 A.L.R. 1422], quoting *Bogart v. George K. Porter Co.* (1924) 193 Cal. 197, 201 [223 P. 959, 31 A.L.R. 1045].)

[5d] Applying section 343 to this action to void the 1985 contracts on the ground of illegality would certainly be consistent with existing case authority. (E.g., *Moss v. Moss*, *supra*, 20 Cal.2d at pp. 644-645 [holding that cause of action for cancellation of an agreement is governed by § 343, in part because there is "no section of the code that expressly limits the time within which an action must be brought for cancellation of an instrument because of its illegality"]; *Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725 [161 P.2d 677] ["[o]rdinarily a suit to set aside and cancel a void instrument is governed by section 343 of the Code of Civil Procedure" unless, for example "the gravamen of the cause of action stated involves fraud or a mistake"]; see also *Piller v. Southern Pac. R.R. Co.* (1877) 52 Cal. 42, 44 ["the four years' limitation of [section] 343 applies to all suits in equity not strictly of concurrent cognizance in law and equity"]; *Dunn v. County of Los Angeles* (1957) 155 Cal.App.2d 789, 805 [318 P.2d 795] [action to set aside deed on the ground of coercion is governed by § 343].)

[10] In any event, we reject the District's contention that the gravamen of its causes of action is possession of real property or ejection. First, possession of real property is the ultimate relief sought (following a declaration to that effect), not the nature of the right sued upon, which controls the selection of the statute of limitations. (See *Leeper v. Beltrami*, *supra*, 53 103 Cal.App.4th 879 Cal.2d at pp. 213-214.) *fn. 12* Instead, the District's right to recover the hospital facility from defendants depends wholly upon its establishing that Buhrmann and Cook were "financially interested" in the 1985 contracts so as to render those agreements void under Government Code section 1092. Second, only one of the two 1985 contracts that the District seeks to void pertains to real property. The agreement for transfer of assets cannot be founded on a claim to recover real property; therefore, this portion of the claim must surely be premised on chapter 3 of title 2 of part 2 of the Code of Civil Procedure addressing actions other than for the recovery of real property.

Nor does the fact that the contracts are claimed void avoid the statute of limitations. Actions to void contracts are nonetheless subject to the statute of limitations. (E.g., *Smith v. Bach* (1921) 53 Cal.App. 63 [199 P. 1106]; 3 Witkin, Cal. Procedure, *supra*, Actions § 507, p. 640.)

[5e] Finally, even if the gravamen of the District's causes of action was deemed to be for the recovery of real property under chapter 2 of title 2 (commencing with § 315), the District's 12-year delayed action would be barred because it would be subject to the 10-year limitations period under section 315 for actions by the people of this state "in respect to any real property" by reason of "the right or title of the people to the same."

D. Accrual of the District's Causes of Action

[11] As a general rule, a statute of limitations accrues when the act occurs which gives rise to the claim (*Myers v. Eastwood Care Center, Inc.* (1982) 31 Cal.3d 628, 634 [183 Cal.Rptr. 386, 645 P.2d 1218]), that is, when "the plaintiff sustains actual and appreciable harm. [Citation.] Any 'manifest and palpable' injury will commence the statutory period. [Citation.]" (*Garver v. Brace* (1996) 47 Cal.App.4th 995, 1000 [55 Cal.Rptr.2d 220].)

[5f] Assuming for the sake of argument that the 1985 agreements were made in violation of Government Code section 1090, the District sustained a "manifest and palpable" injury no later than November 1985. That is when it entered a contract influenced by a financial conflict of interest-the harm the statute seeks to avoid.

[12] After all, "Government Code section 1090 codified the common law prohibition of public officials having a financial interest in contracts 103 Cal.App.4th 880 they make in their official capacities." (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1230 [97 Cal.Rptr.2d 467].) Because "it is recognized 'that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government' " [citations], "the objective of the conflict of interest statutes "is to remove or limit the *possibility* of any personal influence, either directly or indirectly which might bear on an official's decision" [Citations.]" (*People v. Honig*, *supra*, 48 Cal.App.4th at p. 314.) Accordingly, Government Code section 1090 has been interpreted to prohibit a financially interested employee from participating in the "planning, preliminary discussion, compromises, drawing of plans and specifications and solicitation of bids that [lead] up to the formal making of the contract." (*People v. Honig*, *supra*, 48 Cal.App.4th at pp. 314-315, citing *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 571 [25 Cal.Rptr. 441, 375 P.2d 289]; see also *Thomson v. Call*, *supra*, 38 Cal.3d at pp. 647-648.)

[5g] Based on the limited record before us, it is undisputed that Buhmann and Cook worked simultaneously for the District and Marin General before the 1985 contracts were executed in November 1985. Hence, the harm that Government Code section 1090 seeks to avoid arose no later than November 1985 when the contracts were executed. Accordingly, the District's causes of action to declare the 1985 contracts void under Government Code section 1092 accrued no later than November 1985. And the District makes no allegation that the commencement of the running of the statute of limitations should be tolled, only that its action is exempt from the otherwise applicable statute of limitations. Thus, unless the *Hoadley* doctrine exempts this action from the statute of limitations, defendants have successfully established that this action, filed in 1997-12 years later-is untimely under either section 315, section 340, subdivision (1), or section 343.

III. *The District Has Not Established That Its Action Is Exempt from the Statute of Limitations*

[13] The District's opposition to defendants' motion for summary adjudication rests wholly upon its insistence that "under the rule confirmed in [*Hoadley*] a conveyance of public-use property that was not valid and effective when it was made can be attacked, and the property reclaimed by the public, regardless of how much time has passed."

As we shall explain, *Hoadley* does not stand for such a broad proposition. No published case has applied the holding of *Hoadley*, or its reasoning, to an action to set aside contracts allegedly made in violation of Government Code section 1090. **[103 Cal.App.4th 881]**

In *Hoadley*, the plaintiff sued the City of San Francisco to quiet title to two parcels of land, located in an area dedicated for use as city squares. He claimed that he had acquired title (1) by virtue of an ordinance and a confirmatory act, and (2) by adverse possession. (*Hoadley, supra*, 50 Cal. at pp. 271-272.)

After holding that the plaintiff did not acquire title to the public squares pursuant to the ordinance or the confirmatory act (*Hoadley, supra*, 50 Cal. at p. 273), the court in *Hoadley* considered whether the city was barred by the applicable statute of limitations from opposing the plaintiff's claim of adverse possession. First, the court ruled that adverse possession could not extinguish a public use to which the land had been dedicated: "The Statute of Limitations was not intended as a bar to the assertion by the public of rights of that character." (*Id.* at p. 275.) Next, it ruled that the city's legal title could not be extinguished by adverse possession: "That is to say, the title was granted to the city in trust, for public use; and the city had no authority ... to alienate or in any manner dispose of it, but only to hold it for the purposes expressed in the statute. It was granted to the city for public use, and is held for that purpose only. It cannot be conveyed to private persons, and is effectually withdrawn from commerce; and the city having no authority to convey the title, private persons are virtually precluded from acquiring it. The land itself, and not the use only, was dedicated to the public. Land held for that purpose, whether held by the State or a municipality, in our opinion, is not subject to the operation of the Statute of Limitations." (*Id.* at pp. 275-276.)

Thus, *Hoadley's* holding was premised on the governmental entity's lack of "authority ... to alienate" property held for public use (*Hoadley, supra*, 50 Cal. at p. 275) and the presumably concomitant inability of a private person to acquire it indirectly through the failure of the government to timely bring suit within the statute of limitations-quite unlike the instant case where the District had statutory authority to enter into a lease.

This is made more clear by *Hoadley's* reliance on the reasoning in *Commonwealth v. Alberger* (1836) 1 Whart. 469 (*Commonwealth*), among other cases, in coming to its conclusion. (*Hoadley, supra*, 50 Cal. at p. 275.) In *Commonwealth*, the Supreme Court of Pennsylvania held that William Penn's son had no authority to sell a portion of a public square in Philadelphia dedicated to public use by his father. In holding that the defendants were not "protected by the lapse of time" (*Commonwealth*, at p. 486), the Supreme Court of Pennsylvania opined: "It is well settled that lapse of time furnishes no defense for an encroachment on a public right; such as the erecting of an obstruction on a street or public square.... [¶] These **[103 Cal.App.4th 882]** principles are of universal application, and control the present case as well as others. There is no room for presumption since the grant itself is shown and proves defective; and if there were no grant shown, presumption will not be made to support a nuisance, by encroachment on a public right; and no statute of limitations bars the proceeding by indictment to abate it. These principles, indeed, pervade the laws of the most enlightened nations as well as our own code, and are essential to the protection of public rights, which would be gradually frittered away, if the want of complaint or prosecution gave the party a right. Individuals may reasonably be held to a limited period to enforce their right against adverse occupants, because they have interest sufficient to make them vigilant. But in public rights of property, each individual feels but a slight interest, and rather tolerates even a manifest encroachment, than seeks a dispute to set it right ... [citation]." (*Id.* at pp. 486, 488.)

Accordingly, based on this analysis, it is clear that *Hoadley* held that public-use property that cannot be alienated directly should not be alienated indirectly to an adverse possessor through the passage of time.

Indeed, *Hoadley's* holding that the statute of limitations does not bar the state's recovery of public-use property against a claim of adverse possession is simply the mirror image of the rule that a private party cannot acquire prescriptive title to public-use property through adverse possession: "[S]o far as the title to real property is concerned, prescription and limitation are convertible terms; and a plea of the proper statute of limitations is a good plea of a prescriptive right." (*Water Co. v. Richardson* (1887) 72 Cal. 598, 601 [14 P. 379]; see *People v. Shirokow*, *supra*, 26 Cal.3d at p. 311.) Thus, *Hoadley's* holding that property held by the state in trust cannot be lost through adverse possession is not so much a rule concerning the application of the statute of limitations as it is a substantive doctrine that a private party cannot acquire prescriptive title to public rights founded on adverse possession. Indeed, Civil Code section 1007 was amended in 1935 to codify this by prohibiting the acquisition of title by adverse possession of any public-use property, no matter how long the property is occupied. (Stats. 1935, ch. 519, § 1, p. 1592.) fn. 13 Hence, a statute now defines in more direct terms the common law exception that *Hoadley* established.

We thus face the question whether *Hoadley* should be *extended* beyond its codification to exempt any conveyance of public-use property from the [103 Cal.App.4th 883] statute of limitations, in the face of other statutory enactments that expressly apply limitations to actions brought by the state.

A. The Adverse Possession Cases

Hoadley has most commonly been cited as authority to bar an adverse possessor of public-use property from asserting the statute of limitations against the government's action to recover the property. (E.g., *Board of Education v. Martin*, *supra*, 92 Cal. 209 [the California Supreme Court relied upon *Hoadley* to hold that no statute of limitations bars an educational district from recovering lands taken by adverse possession]; *People v. Kerber* (1908) 152 Cal. 731, 733 [93 P. 878] [the statute of limitations does not apply to an action by the state to recover a portion of San Diego Bay tidelands purportedly acquired by adverse possession because tidelands "belong to the state by virtue of its sovereignty" and "constitute property devoted to public use, of which private persons cannot obtain title by prescription, founded upon adverse occupancy for the period prescribed by the statute of limitations"]; *County of Yolo v. Barney* (1889) 79 Cal. 375, 378-381 [21 P. 833] [no statute of limitations restricted ability of hospital district to quiet title to property claimed by adverse possession]; *San Leandro v. Le Breton* (1887) 72 Cal. 170, 177 [13 P. 405] [no statute of limitations bars city from recovering land marked for public use against a claim of adverse possession], disapproved on another ground in *People v. Reed* (1889) 81 Cal. 70, 79 [22 P. 474]; *Visalia v. Jacobs* (1884) 65 Cal. 434, 435-436 [4 P. 433] [no statute of limitations bars city from recovering a portion of a city street taken by adverse possession]; *Proctor v. City & County of San Francisco* (9th Cir. 1900) 100 Fed. 348, 350-351 ["It is ... settled by a series of decisions by the supreme court that the rights of municipal corporations in such property are not affected by adverse possession, however long continued"]; see 3 Witkin, Cal. Procedure, *supra*, Actions, § 456, p. 578 ["There can be no adverse possession of property devoted to a public use"].)

More recently, in *People v. Shirokow*, *supra*, 26 Cal.3d 301, the California Supreme Court characterized *Hoadley* in conformity with these cases as holding that property held in public trust cannot be lost through adverse possession: "More than a century ago, in *Hoadley* [supra], 50 Cal. [at pages] 274-276, we articulated the rule that property held by the state in trust for the people cannot be lost through adverse possession. The statute of limitations is of no effect in an action by the state to recover such property from an adverse possessor whose use of the property for private purposes is not [103 Cal.App.4th 884] consistent with the public use. [Citation.]" (*People v. Shirokow*, *supra*, 26 Cal.3d at p. 311.)

Accordingly, *Hoadley* has no application to the circumstances presented here for several reasons.

First, the instant case does not involve the application of the statute of limitations to a claim of adverse possession of public property.

Second, *Hoadley's* premise is that the passage of time cannot grant title to that which the government has no authority to alienate. Here, the District had authority to enter into a lease of the hospital. The issue in this case is not whether the public property could be leased, but whether it was leased in conformity with the law. For this reason, too, *Hoadley* does not apply.

Indeed, the California Supreme Court in *Ames v. City of San Diego* (1894) 101 Cal. 390 [35 P. 1005], distinguished *Hoadley* on precisely this ground: "[I]n case of lands, the legal title to which is vested in the city, and which may be alienated by it, the rule just stated [in *Hoadley*] in relation to land dedicated to the public use does not apply." (*Id.* at p. 394.)

Finally, *Hoadley* surely does not apply to that part of the District's claim that concerns property that could never be the subject of adverse possession, namely, the assets (including the cash, inventory, and accounts receivable) which were transferred under the 1985 contracts.

The District observes, however, that "the Supreme Court ... disposed of any notion that the *Hoadley* no-limitations rule was restricted to situations where public-use property had merely been seized and held by a private individual on a claim of adverse possession," since it has also been cited to defeat the application of the statute of limitations in actions for the recovery of public-use property that has been voluntarily transferred.

But a careful reading of the cases upon which the District relies demonstrates that they do not support its assertion that the "*Hoadley* rule" bars the application of the statute of limitations to *any* invalid, illegal, or "ineffective" transfer of a public-use asset, "*regardless* of the particular legal defect that rendered the original transfer invalid." Instead, these cases only extend *Hoadley* to bar the assertion of the statute of limitations with respect to the recovery of public-use property that the government had no authority to alienate. [103 Cal.App.4th 885]

In *Sixth District etc. Assoc. v. Wright, supra*, 154 Cal. 119 (*Sixth District*), for instance, the California Supreme Court cited *People v. Kerber, supra*, 152 Cal. 731 (an adverse possession case, which in turn relied upon *Hoadley*) to reject a statute of limitations defense to an action to recover a gift made in violation of the state Constitution's ban on gifts of public property. (*Sixth District, supra*, at p. 130.) In *Sixth District*, the governing board of an agricultural district conveyed to a private corporation all of the district's property in purported accordance with a statute expressly authorizing such transactions. (*Id.* at pp. 122-126.) However, the California Supreme Court held that the act purporting to authorize the transaction conflicted with a provision of the state Constitution barring gifts of public property (*id.* at pp. 128-129) and rejected the defendants' assertion of the statute of limitations: "[T]he property was held in trust by a state institution or public agency for a public use, which public use has not been discontinued or abandoned *by any lawful act of public authority*. As to such property it is well settled that the statute of limitations has no application." (*Id.* at p. 130, italics added.)

Thus, *Sixth District*, like *Hoadley*, was premised on public property held in trust that the government had no authority to alienate; thus, no limitation period could operate to alienate indirectly what could not be alienated directly.

The District also relies on *Chambers, supra*, 37 Cal.2d 552, for the proposition that no limitations period can bar a suit to retrieve public-trust property invalidly conveyed to a private party. But in *Chambers*, the state sought to quiet title on park land, which was mistakenly conveyed by a tax deed to a private party, *Chambers*. (*Id.* at p. 555.) Opposing the state's argument that the tax deed was void, *Chambers* defended on the basis of various statutes of limitations (*id.* at pp. 555-556), which the court rejected. First, the court found that the action was commenced *within* the 10-year period of section 315 for actions by the people of the state "in respect to any real property." (*Id.* at p. 556, quoting § 315.) And citing *Hoadley*, it noted that in any event, "neither section 315 of the Code of Civil Procedure nor the provisions on adverse possession ... apply to property owned by the state and devoted to a public use." (*Chambers*, at pp. 556-557.) Next, the court rejected *Chambers*'s assertion that the action was barred by the one-year limitations periods contained in the Revenue and Taxation Code, observing the general rule that "statutes of limitation do not apply against the state unless expressly made applicable" and ruling that "tax statutes do not apply against the state as to its property." (*Chambers, supra*, at p. 559.) It further reasoned that "it seems that if the statutes on adverse possession do not run against the property of the state which is dedicated to a public purpose (see authorities cited [including *Hoadley*]) the opposite result should not be reached, depriving the state of its property, by application to it of the [103 Cal.App.4th 886] provisions ... of the Revenue and Taxation Code. We hold therefore that they do not apply to the state." (*Id.* at p. 560, bracketed text added.)

Chambers, supra, 37 Cal.2d 552, does not assist the District. First and foremost, relying on the rule that statutes of limitations do not apply against the state unless made expressly applicable, *Chambers* merely construed the limitations periods in the tax statutes not to "apply against the state as to its property." (*Id.* at p. 559.) Second, although it suggested in dictum that section 315 does not apply to public-use property owned by the state, we do not rely on section 315 for the applicable limitations period in this case; thus, we have no need to rely on a construction of that section. Moreover, the cases that the Supreme Court cited for its dictum that section 315 does not apply to public-use property owned by the state (many of which we have cited here) do not so broadly hold. Third, regardless of the characterization of *Hoadley* in *Chambers*, the California Supreme Court's more recent characterization of *Hoadley* in *People v. Shirokow, supra*, 26 Cal.3d at page 311, more narrowly defines the doctrine to hold that the rule is "that property held by the state in trust for the people cannot be lost through adverse possession." The Supreme Court's holding in *Hoadley* and its most recent characterization of *Hoadley* would appear to be the most reliable expositions of the decision's scope. Fourth and finally, *Chambers* acknowledged that the limitations periods under *chapter 3* of title 2 of part 2 (which we have found applies here) are, in fact, applicable to actions brought by the state. (*Chambers, supra*, "37 Cal.2d at p. 559.)

The remainder of the cases relied upon by the District simply hold that the passage of time does not prevent the state from recovering public-use property that the state has no right to alienate. (*People v. California Fish Co.* (1913) 166 Cal. 576, 598-600, 611-612 [138 P. 79] [the state did not have the legal power to transfer certain coastal tidelands because, in part, "[a] patent for state land, issued by the officers in a case where there has been no valid application or survey approved nor any valid payment of the price, is, of course, void as against the state"; *California Trout, Inc. v. State Water Resources*

Control Bd. (1989) 207 Cal.App.3d 585, 631 [255 Cal.Rptr. 184] [licenses to validate diversion of water exceeded amount permitted under state law and thus action seeking rescission of licenses was not untimely because "[a]n encroachment on the public trust interest shielded by [statute] cannot ripen into a contrary right due to lapse of any statute of limitations"]; *Allen v. Hussey* (1950) 101 Cal.App.2d 457, 467-468, 473-475 [225 P.2d 674] [lucrative long-term lease of airport facilities, for which irrigation district received \$1 annual fee, was unauthorized breach of public trust and an unconstitutional gift of public funds].)

In contrast, the District here makes no allegation that it had "no authority" to effect a lease and transfer hospital assets on the terms provided. To the [103 Cal.App.4th 887] contrary, the provisions of the Local Health Care District Law then in effect expressly authorized such a lease and the other transfers involved. Nor does the District contend that the then-statutory framework permitting the transactions was unconstitutional or otherwise unlawful. The prohibition on conflicts of interest contained in Government Code section 1090 in no way prohibits the transfers authorized by the Local Health Care District Law (Health & Saf. Code, § 32000 et seq.), but instead directs individual government employees not to "hav[e] a financial interest in contracts they make in their official capacities." (*BreakZone Billiards v. City of Torrance, supra*, 81 Cal.App.4th at p. 1230.)

Accordingly, Government Code section 1090 does not deprive the government of authority to contract over, and thus the District had authority to lease, the public-use property. In contrast, all of the aforementioned cases that bar application of the statute of limitations are based on the premise that the passage of time cannot be permitted to indirectly alienate public-use property that the government is not authorized to alienate directly. Here, the District is entitled to lease the property, and just as importantly, the passage of time will not cause the District to lose the property. To the contrary, the lease will ultimately expire by its own terms, and the District will regain possession of the property. We thus decline to expand the holding of *Hoadley* to apply to a lease of public-use property and to the transfer of assets that the law authorizes the District to make.

IV. Conclusion

An action to void a contract under Government Code section 1092 comes within the limitations periods specified in chapter 3 of title 2 of part 2 of the Code of Civil Procedure. (§ 335 et seq.) And the Legislature has expressly applied all of the limitations periods in that chapter to actions brought in the name of the state. (§ 345.)

The public policy underlying *Hoadley, supra*, 50 Cal. 265-that "property held by the state in trust for the people cannot be lost through adverse possession" (*People v. Shirokow, supra*, 26 Cal.3d at p. 311)-is not furthered by extending it to allow an untimely suit to void a lease of public-use property, which will expire by its own terms and which the state is otherwise authorized to enter. Instead, *Hoadley* is meant to prevent public-use property that the state cannot directly alienate from being indirectly alienated by the passage of time. That is not the case with property that the state is authorized to lease and which the state will recover at the end of the lease term.

Moreover, even if the public policy under *Hoadley* was furthered by allowing an untimely suit to void a lease of public-use property, it is for the [103 Cal.App.4th 888] Legislature to weigh the competing public policies and so determine. Thus far, the Legislature has not created any exceptions to its subjection of the state to the limitation periods in chapter 3, and it has expressly codified *Hoadley* with respect to adverse possession claims.

Accordingly, we conclude that this action is time-barred. Defendants' uninterrupted operation of the hospital facility for nearly half of its 30-year lease before suit was brought certainly gave rise to a legitimate expectation that the 1985 contracts would not be challenged and that defendants could rely on those contracts in making investment decisions. Such expectations are precisely what the Legislature chose to protect when it expressly subjected the state to the same limitation periods that bind private parties' contract, tort, and statutory claims.

Disposition

The judgment is affirmed. Defendants are awarded their costs on appeal. (Cal. Rules of Court, rule 26(a).)

Blease, Acting P. J., and Raye, J., concurred.

Appellant's petition for review by the Supreme Court was denied February 25, 2003.

FN 1. Codefendant Marin Community Health is the sole member of defendant Marin General. After the agreements in issue were signed, another codefendant, Sutter Health, became the sole member of Marin Community Health.

FN 2. Government Code section 1090 provides: "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. [¶] As used in this article, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

FN 3. The applicable code provisions have been amended several times since 1985 when the lease here was entered. Health and Safety Code section 32121 was amended in 1986, 1988, 1989, 1990, 1992, 1993, 1994, 1995, 1996, and 1998; Health and Safety Code section 32126 was amended in 1992, 1993, 1994, and 1998. (See 41 West's Ann. Health & Saf. Code (1999 ed.) foll. §§ 32121, 32126, pp. 242, 257.)

FN 4. See footnote 2, *ante*, for the full text of Government Code section 1090.

FN 5. Government Code section 1092 states: "Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member."

FN 6. The District's other causes of action have been dismissed.

FN 7. Marin General and Marin Community Health filed a joint motion for summary adjudication; Sutter Health filed a separate motion. However, as the two motions raise essentially the same issues, we shall refer to the defendants' motions for summary adjudication in the singular.

FN 8. Some courts have somewhat broadened this standard and ruled that statutes of limitations do not bind the state and its agencies "unless they do so expressly *or by necessary implication*." (E.g., *Philbrick v. State Personnel Board* (1942) 53 Cal.App.2d 222, 228 [127 P.2d 634], italics added.)

FN 9. Unless otherwise designated, all further statutory references (including statutory references to chapters and title) are to the Code of Civil Procedure.

FN 10. Section 335 provides: "The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:"

The sections that follow section 335 then prescribe the limitations periods for various types of actions.

FN 11. Section 318 provides in pertinent part: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff ... was seized or possessed of the property in question, within five years before the commencement of the action."

FN 12. A contrary result was suggested in *People v. Kings Co. Development Co.*, *supra*, 177 Cal. at page 535, where the court found that an action by the state to cancel a land patent, issued by officers acting under the influence of fraud, was an action in respect to land and was governed by section 315 for actions to recover real property. But that case preceded *Leeper v. Beltrami*, *supra*, 53 Cal.2d 195, and *Hensler v. City of Glendale*, *supra*, 8 Cal.4th at pages 22-23, which so clearly held that the nature of the right sued upon controlled the determination of the applicable statute of limitations.

FN 13. Civil Code section 1007, following a further amendment in 1968, presently provides: "Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all, *but no possession by any person, firm or corporation no matter how long continued* of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof." (Civ. Code, § 1007, italics added, as further amended by Stats. 1968, ch. 1112, § 1, pp. 2125-2126.)

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August 1, 2014

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Ms. Jill Kanemasu
 State Controller's Office
 Accounting and Reporting
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Health Fee Elimination, 05-4206-I-03
 Education Code Section 76355
 Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
 Fiscal Years 2001-2002 and 2002-2003
 Long Beach Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **August 22, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, September 26, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about September 12, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Please contact Tyler Asmundson at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
 Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

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

Health Fee Elimination

Fiscal Years 2001-2002 and 2002-2003

05-4206-I-03

Long Beach Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses an incorrect reduction claim (IRC) filed by Long Beach Community College District (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2001-2002 and 2002-2003 under the *Health Fee Elimination* program.

The following issues are in dispute:

- The statute of limitations applicable to audits of reimbursement claims by the Controller;
- Reduction of costs for athletic insurance premiums based on the scope of the reimbursable activities under the parameters and guidelines;
- Reduction of indirect costs based on asserted faults in the development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

Health Fee Elimination Program

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

¹ Statutes 1993, chapter 8.

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

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

section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester).⁴

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁵ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987,⁶ the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁷ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.⁸ As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁹

Procedural History

On December 2, 2002, the claimant submitted its reimbursement claim for fiscal year 2001-2002.¹⁰ On January 9, 2004, claimant signed and dated its 2002-2003 claim form. On August 18, 2004, an entrance conference for the audit was held. The Controller issued the final audit report on April 27, 2005.

On September 6, 2005, claimant filed this IRC.¹¹ On December 16, 2008, the Controller filed comments on the IRC.¹² On August 11, 2009, claimant filed rebuttal comments.¹³

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

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

⁶ Statutes 1987, chapter 1118.

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

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

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

¹⁰ Exhibit A, Incorrect Reduction Claim, at p. 19.

¹¹ Exhibit A, Incorrect Reduction Claim, at p. 1.

¹² Exhibit B, Controller's Comments on IRC.

¹³ Exhibit C, Claimant's Rebuttal Comments.

Commission staff issued a draft proposed decision on the IRC on August 1, 2014.

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁴ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁵

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁶ The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹⁷ In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹⁸

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

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

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

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

¹⁸ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Claims

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

Issue	Description	Staff Recommendation
<p>Statute of limitations applicable to the audit of claimant's 2000-2001 reimbursement claim.</p>	<p>At the time the underlying reimbursement claims were filed, Government Code section 17558.5 stated: A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.</p> <p>Claimant asserts that the claim was no longer <i>subject to audit</i> at the time the final audit report was issued.</p>	<p>Deny – The audit for the 2001-2002 reimbursement claim was timely initiated within two calendar years after the end of the calendar year in which they were filed. Staff finds that the plain language of the statute of limitations pursuant to section 17558.5 in effect at the time the reimbursement claim was filed does not require the Controller to complete an audit within any specified period of time, and that a subsequent amendment to the statute demonstrates that “subject to audit” means “subject to the initiation of an audit.”</p>
<p>Reductions based on interpretation of parameters and guidelines finding athletic health insurance premiums non-reimbursable.</p>	<p>Claimant asserts that the Controller incorrectly reduced costs claimed for student health insurance premiums, on the theory that student athletes were inappropriately included in the general student health insurance premiums.</p>	<p>Deny – Staff finds that athletic insurance premiums are not included among the reimbursable services authorized in the parameters and guidelines and therefore such premiums are not reimbursable. Therefore this reduction is correct as a matter of law.</p>
<p>Reductions based on asserted flaws in the development of indirect cost rates.</p>	<p>The claimant asserts that the Controller incorrectly reduced indirect costs claimed, because claimant did not obtain federal approval for its indirect cost rate proposals. Claimant argues that there is no requirement that an indirect cost rate proposal be federally approved. Claimant further argues that the use of the alternative state method, the FAM-29C was arbitrary and capricious.</p>	<p>Deny – Staff finds that claimant did not comply with the requirements in the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate. Claimant used the OMB A-21 method, but did not obtain federal approval for its indirect costs,</p>

		as required by the OMB Circular A-21 method. Thus, the reduction is correct as a matter of law. Staff further finds that the Controller’s recalculation of indirect costs using the Form FAM-29C was consistent with the parameters and guidelines and the claiming instructions and, thus, the Controller’s recalculation of indirect costs was not arbitrary, capricious, or entirely lacking in evidentiary support.
Reductions based on understated offsetting revenues from student health fees.	Claimant asserts that the Controller incorrectly reduced costs claimed based on the Controller’s application of health service fees that the claimant was authorized to collect, but did not, as offsetting revenue.	Deny – Staff finds that the reduction is correct as a matter of law. This issue has been conclusively decided by <i>Clovis Unified School District v. Chiang</i> (2010) 188 Cal.App.4th 794, in which the court held that local government could choose not to exercise statutory fee authority to its maximum extent, but not at the state’s expense.

Staff Analysis

A. The Statute of Limitations Found in Government Code Section 17558.5 does not Bar the Controller’s Audit of the Claimant’s 2001-2002 Reimbursement Claim.

Government Code section 17558.5, as added by Statutes 1995, chapter 945 (operative July 1, 1996), provides that a reimbursement claim “is *subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.*”¹⁹ Claimant asserts that the fiscal year 2001-2002 claim was no longer subject to audit at the time the final audit report was completed and issued on April 27, 2005, based on filing date of December 2, 2002.

The Controller argues that section 17558.5 does not require an audit to be *completed* within two years; “subject to audit,” according to the Controller, means subject to *initiation* of an audit.

¹⁹ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

Staff agrees with this interpretation. A 2002 amendment to the relevant code section clarifies that reimbursement claims are subject to “the initiation of an audit” within a specified time.²⁰

Furthermore, the 2002 and 2004 amendments to section 17558.5 must be analyzed with respect to the subject claims and the audit because the audit was still pending on the effective dates of these amendments. The 2002 amendment expanded the statute of limitations to conduct an audit to “three years after the date that the actual reimbursement claim is filed or last amended.”²¹ The 2004 amendment established, for the first time, the requirement to “complete” an audit two years after the audit is commenced.²²

Generally, an expansion or contraction of a statute of limitations applies to pending claims unless a party’s rights would be unconstitutionally impaired. An expansion of a period of limitation will always apply to claims not yet barred, because no party has a vested right in the running of the statute prior to its expiration. A contraction of a period of limitation will apply to pending claims if to do so would not effectively deprive the affected party of the right to pursue its claim; in other words, there must be a reasonable time remaining under the new statute to satisfy due process considerations.²³ However, in the event that the *State* is the affected party, the courts have said that the Legislature may limit or extinguish the state’s right irrespective of any due process concerns.²⁴

Pursuant to the 2002 and 2004 amendments to section 17558.5, the audit of the claimant’s 2001-2002 reimbursement claim was required to be initiated within three years of the date the claim was filed or last amended, and required to be completed within two years after it was commenced.²⁵ The claim was filed on December 2, 2002, the audit was initiated on August 18, 2004, and the audit was completed April 27, 2005, well within the two year requirement.

Based on the plain language of the statute, beginning in 1995 and as amended, staff finds that the statute of limitations found in section 17558.5 does not bar the audit of the 2001-2002 reimbursement claim.

B. The Controller’s Reduction for Insurance Premiums is Consistent with the Parameters and Guidelines and Therefore Correct as a Matter of Law.

The Controller reduced amounts claimed for “services and supplies” by \$9,257 for fiscal year 2001-2002, and \$8,637 for fiscal year 2002-2003, on the ground that athletic insurance costs are beyond the scope of the mandate, and certain costs were “claimed twice.”²⁶ The total reduction

²⁰ Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

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

²² Statutes 2004, ch. 313 (AB 2224) (effective January 1, 2005).

²³ *Mudd v. McColgan* (1947) 30 Cal.2d 463, at p. 468; *Liptak v. Diane Apartments, Inc.* 109 Cal.App.3d 762, at p. 773 [citing *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122].

²⁴ *California Employment Stabilization Commission v. Payne*, (1948) 1931 Cal.2d 210, 215-216.

²⁵ Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834); Stats. 2004, ch. 313 (AB 2224)).

²⁶ Exhibit A, Incorrect Reduction Claim, at p. 50 [Controller’s Final Audit Report].

for direct costs for services and supplies for both fiscal years is \$17,894.²⁷ The claimant does not dispute the “duplicated charges of \$6,025 for services and supplied for both fiscal years.”²⁸

However, the claimant does dispute the reduction for health insurance premiums. What was originally unclear from the record was whether the parties were talking about the student athlete portion of the general student health insurance premiums for “(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration” which are reimbursable activities under the parameters and guidelines, or “athletic insurance,” which is not listed as a reimbursable activity. If the former, then under Education Code section 76355, this is a reimbursable cost, because the law provides that “no student shall be denied a service supported by student health fees on account of participation in athletic programs.”²⁹ Student athletes are not exempt from the requirement to pay the student health fee and are entitled to the services made available to the student body generally. However, athletic insurance premiums are not a reimbursable type of insurance based on the plain language of the parameters and guidelines, and if the claimed costs are for athletic insurance specifically, the disputed reduction would be consistent with the scope of reimbursable activities in the parameters and guidelines.³⁰

Based on admissions of the claimant in rebuttal comments, these costs were for athletic insurance. Therefore, staff finds that the reductions for insurance premiums are consistent with the parameters and guidelines and correct as a matter of law.

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

The Controller reduced indirect costs claimed by the claimant, by \$70,710 for fiscal year 2001-2002, and \$68,383 for fiscal year 2002-2003, on the ground that claimant did not utilize a federally approved indirect cost rate.³¹ Claimant argues that “[c]ontrary to the Controller’s ministerial preferences, there is no requirement in law that the district’s indirect cost rate must be ‘federally’ approved, and further the Controller has never specified the federal agencies which have the authority to approve indirect cost rates.”³²

However, the parameters and guidelines state “[i]ndirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The claiming instructions applicable to all community college district reimbursement claims in effect at the time this reimbursement claim was filed (*i.e.*, the general provisions of the School Mandated Cost Manual) specified as follows:

²⁷ *Ibid.*

²⁸ Exhibit A, Incorrect Reduction Claim, at pp. 11-12.

²⁹ Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46). See also former Education Code section 72246(e) (Stats. 1987, ch. 1118).

³⁰ Exhibit A, Incorrect Reduction Claim [Parameters and Guidelines, at pp. 30-33].

³¹ Exhibit A, Incorrect Reduction Claim, at p. 51.

³² Exhibit A, Incorrect Reduction Claim, at p. 12.

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 “Cost Principals for Educational Institutions,” or the Controller’s methodology outlined in the following paragraphs.³³ If a federal rate is used, it must be from the same fiscal year in which the costs were incurred.³⁴

The reference in the parameters and guidelines to the Controller’s claiming instructions necessarily includes the general provisions of the Mandated Cost Manual applicable at the time a reimbursement claim is filed. The manual provides general claiming instructions for a number of programs, including instructions for indirect cost rates. Therefore, claimant’s assertion that “[n]either State law or the parameters and guidelines made compliance with the Controller’s claiming instructions a condition of reimbursement” is clearly in error.

Staff finds that claimant did not comply with the requirements in the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate. Claimant used the OMB A-21 method, but did not obtain federal approval for its indirect costs, as required by the OMB Circular A-21 method. Thus, the reduction is correct as a matter of law.

In addition, due to the claimant’s failure to calculate its indirect cost rates in accordance with the claiming instructions, the Controller’s audit staff utilized the alternative state method, the FAM-29C, to recalculate indirect costs, and adjusted the claim accordingly. Controller’s recalculation of indirect costs using the Form FAM-29C was consistent with the parameters and guidelines and the claiming instructions and, thus, the Controller’s recalculation of indirect costs was not arbitrary, capricious, or entirely lacking in evidentiary support. Staff finds the Controller’s use of the Form FAM-29C was consistent with the parameters and guidelines and the claiming instructions. Therefore, the Controller’s reduction and recalculation of claimant’s indirect costs is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller’s Reductions for Understated Offsetting Revenues Pursuant to *Clovis Unified* and the Health Fee Rule were Correct as a Matter of Law.

The Controller reduced the reimbursement claims by \$217,409 for the two years at issue.³⁵ These reductions were made on the basis of the fee authority available to claimant, multiplied by the number of students subject to the fee, less any amount of offsetting revenue claimed.

Claimant disputed the Controller’s finding that offsetting revenues from student health fees had been understated in the relevant claim years. Claimant argued that the parameters and guidelines only require a claimant to declare offsetting revenues that the claimant “experiences,” and that while the fee amount that community college districts were authorized to impose may have increased during the applicable audit period, nothing in the Education Code made the increase of those fees mandatory. Claimant argues that the issue is the difference between fees collected and fees collectible.

³³ Note that the methodology later outlined is *the state Form FAM-29C*.

³⁴ Exhibit X, Mandated Cost Manual for Schools updated September 28, 2001.

³⁵ Exhibit A, Incorrect Reduction Claim, at p. 14.

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller’s practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.³⁶

The court in *Clovis Unified* upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

To the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.³⁷

The court also noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”³⁸ Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.³⁹

Based on the foregoing, staff finds that the Controller’s reduction of reimbursement to the extent of the fee authority found in Education Code section 76355 is correct as a matter of law.

Conclusion

Pursuant to Government Code section 17551(d), staff finds that the reductions to the following costs are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reduction for both fiscal years of \$11,869 for athletic insurance costs that are beyond the scope of the mandate.
- Reductions of indirect costs claimed of \$70,710 for fiscal year 2001-2002, and \$68,383 for fiscal year 2002-2003, based on the claimant’s failure to comply with the claiming instructions in the development of its indirect cost rate, and the Controller’s use of an alternative method to calculate indirect costs authorized by the parameters and guidelines and claiming instructions.

³⁶ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 811.

³⁷ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

³⁸ *Ibid.*

³⁹ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

- Reduction for both fiscal years of \$217,409 based on understated offsetting health fee revenues.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Former Education Code Section 72246
(Renumbered as 76355)⁴⁰

Statutes 1984, Chapter 1 (1983-1984 2nd Ex.
Sess.) (AB2X 1) and Statutes 1987, Chapter
1118 (AB 2336)

Fiscal Years 2001-2002 and 2002-2003

Long Beach Community College District,
Claimant.

Case No.: 05-4206-I-03

Health Fee Elimination

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

(Adopted September 26, 2014)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on September 26, 2014. [Witness list will be included in the adopted decision.]

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

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

Summary of the Findings

This analysis addresses an IRC filed by Long Beach Community College District (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2001-2002 and 2002-2003 under the *Health Fee Elimination* program. Over the two fiscal years in question, reductions totaling \$217,409 were made based on alleged understated offsetting health fees authorized to be collected, and additional reductions totaling \$156,987 were made based on disallowed indirect cost rates and unallowable services and supplies.

The Commission denies this IRC, finding that the statute of limitations pursuant to Government Code section 17558.5 does not bar the subject audit; and that the Controller's reduction of costs for services and supplies beyond the scope of the mandate, the reduction of indirect costs based on the claimant's failure to obtain federal approval for its indirect cost rate proposals, and the reduction in reimbursement based on the claimant's underreporting of health service fee revenue

⁴⁰ Statutes 1993, chapter 8.

authorized by statute, are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support.

COMMISSION FINDINGS

I. Chronology

12/02/2002 Claimant filed its fiscal year 2001-2002 reimbursement claim.⁴¹
01/09/2004 Claimant signed and dated its 2002-2003 claim form.
08/18/2004 An entrance conference for the audit was held.
04/27/2005 Controller issued its final audit report.
09/06/2005 Claimant filed this IRC.
12/16/2008 Controller submitted comments on the IRC.
08/10/2009 Claimant submitted rebuttal comments.
08/01/2014 Commission staff issued the draft proposed decision.

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers.⁴² In 1984, the Legislature repealed the community colleges' fee authority for health services.⁴³ However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester).⁴⁴

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁴⁵ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

⁴¹ Exhibit A, Incorrect Reduction Claim, at p. 19.

⁴² Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.].

⁴³ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

⁴⁴ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

⁴⁵ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

In 1987,⁴⁶ the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁴⁷ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.⁴⁸ As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services.⁴⁹ In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁵⁰

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

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

Controller's Audit and Summary of the Issues

The Controller reduced the reimbursement claims for costs allegedly incurred during fiscal years 2001-2002 and 2002-2003 under the *Health Fee Elimination* program, totaling \$466,629. The following issues are in dispute:

- The statute of limitations applicable to audits of reimbursement claims by the Controller;
- Reduction of costs for student health insurance based on the scope of reimbursement excluding student athletic costs.
- Reduction of indirect costs based on asserted faults in the development and application of indirect cost rates; and

⁴⁶ Statutes 1987, chapter 1118.

⁴⁷ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

⁴⁸ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

⁴⁹ In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar. (Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

⁵⁰ Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

- The amount of offsetting revenue to be applied from health service fee authority.

III. Positions of the Parties

Long Beach Community College District

The claimant asserts that the Controller incorrectly reduced costs claimed for fiscal years 2001-2002 and 2002-2003, totaling \$368,371. Specifically, claimant asserts that reduction of \$11,869 in athletic insurance costs was inappropriate, because the amounts claimed represented the district's basic and catastrophic coverage for the general student population, some of whom are also student athletes, but student athletes are also a part of the general student population for purposes of the general student population premium.⁵¹ In addition, claimant asserts that the reduction of \$139,093 in overstated indirect costs on the basis that "the district did not obtain federal approval for its [indirect cost rates,]" was incorrect. The claimant argues that "[c]ontrary to the Controller's ministerial preferences, there is no requirement in law that the district's indirect cost rate must be 'federally' approved," and the Controller did not make findings that the claimant's rate was excessive or unreasonable.⁵² And, claimant asserts that a reduction of its total claim in the amount of \$217,409, based on understated authorized health service fees, was incorrect, because the parameters and guidelines require claimants to state offsetting savings "experienced," and claimant did not experience offsetting savings for fees that it did not charge to students.⁵³ In addition, claimant asserts that the statute of limitations applicable to the Controller's audits of reimbursement claims barred auditing its fiscal year 2001-2002 reimbursement claim.

State Controller's Office

The Controller asserts that "athletic insurance is not an authorized expenditure" within the scope of the *Health Fee Elimination* mandate, and that "[t]he district did not provide any additional information supporting the allowability of insurance costs claimed."⁵⁴

The Controller further asserts that the claimant overstated its indirect costs, because claimant did not obtain federal approval for its indirect cost rate proposals, as required by the Controller's claiming instructions.⁵⁵ The Controller asserts that "[s]ince the Claimant did not have a current approved ICRP (via the OMB Circular A-21 method), the auditors utilized the FAM-29C and determined that the allowable rate was much less than claimed."⁵⁶

In addition, the Controller found that the claimant understated its authorized health service fees for the audit period in the amount of \$217,409. Using enrollment and exemption data, the Controller recalculated the health fees that the claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues.⁵⁷ The Controller argues that "[t]he

⁵¹ Exhibit A, Incorrect Reduction Claim, at p. 11.

⁵² Exhibit A, Incorrect Reduction Claim, at p. 12.

⁵³ Exhibit A, Incorrect Reduction Claim, at pp. 14-18.

⁵⁴ Exhibit A, Incorrect Reduction Claim, at p. 50 [Controller's Audit Report, at p. 6].

⁵⁵ Exhibit A, Incorrect Reduction Claim, at p. 51 [Controller's Audit Report, at p. 7].

⁵⁶ Exhibit B, Controller's Comments on IRC, at p. 2.

⁵⁷ Exhibit A, Incorrect Reduction Claim, at p. 52 [Controller's Audit Report, at p. 8].

relevant amount [of offsetting savings] is not the amount charged, nor the amount collected, rather it is the amount authorized.”⁵⁸

Finally, the Controller argues that the claimant “incorrectly applies the 1996 version of [the statute of limitations.]” The Controller explains that the prior version of section 17558.5 provided that a reimbursement claim is “subject to audit” for two years after the end of the calendar year in which the claim is filed, meaning that the claimant’s 2001-2002 claim, filed December 2, 2002, would be “subject to audit” through December 31, 2004. The Controller asserts that the audit in dispute in this IRC was initiated no later than August 18, 2004, “when the entrance conference was held,” and therefore the audit was proper. In addition, the Controller argues that the amendments to section 17558.5, which took effect January 1, 2003, expanded the statute of limitations, and that “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.” The amended statute provides that an audit must be initiated no later than *three* years after the claim is filed or last amended. The Controller argues that the expansion of the statute of limitations pursuant to section 17558.5, as amended by Statutes 2002, chapter 1128 (AB 2834) applies to the audit in dispute in this IRC, and therefore the audit was proper.⁵⁹

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁶⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶¹

⁵⁸ Exhibit B, Controller’s Comments on IRC, at p. 2.

⁵⁹ Exhibit B, Controller’s Comments on IRC, at pp. 2-3.

⁶⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶¹ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁶² Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”⁶³

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁶⁴ In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.⁶⁵

A. The Statute of Limitations Found in Government Code Section 17558.5 does not Bar the Controller's Audit of the Claimant's 2001-2002 Reimbursement Claim.

The statute of limitations applicable to mandate reimbursement claims is provided in Government Code 17558.5. Section 17558.5 was amended twice between the time the subject claims were filed and the final audit report was issued, and the parties take opposing views on what version of the statute to apply and the meaning given to the statutory language.

At the time claimant incurred the mandated costs in fiscal year 2001-2002 and filed its reimbursement claim on December 2, 2002, Government Code section 17558.5, as added in 1995, stated the following:

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

⁶² *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.

⁶³ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

⁶⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁶⁵ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.⁶⁶

Claimant asserts that “the first year of the two claims audited, FY 2001-02, is beyond the statute of limitations for audit when the Controller completed its audit on April 27, 2005.”⁶⁷ The claimant reasons that its fiscal year 2001-2002 reimbursement claim, submitted on December 2, 2002, was “subject to audit” until December 31, 2004. The claimant interprets “subject to audit” to require the *completion* of an audit within the two year period, and therefore concludes that pursuant to “the unmistakable language of Section 17558.5,” the Controller’s issuance of a final audit report on April 27, 2005 was beyond the statute of limitations.⁶⁸

The Controller argues that the claimant inappropriately relies on “the 1996 version of this statute,” but that “[e]ven under this inappropriate version, [the claimant’s] conclusion is based on an erroneous interpretation that attempts to rewrite that section, adding a deadline for completion of the audit where none exists.” The Controller argues that “[a]lthough there may be a dispute as to what constitutes the initiation of an audit, it is clear that the audit was initiated no later than August 18, 2004, when the entrance conference was held,” and that “[t]herefore, the audit of the fiscal year 2000-01 [reimbursement claim] was proper, even under the 1996 version of Section 17558.5.”⁶⁹ Alternatively, the Controller argues that a 2002 amendment to section 17558.5, which became effective on January 1, 2003, enlarges the statute of limitations to initiate an audit to three years, and that the later enacted statute applies here to grant the Controller additional time to initiate the audit, because the audit period for the 2001-2002 claim was still open. In addition, a 2004 amendment to section 17558.5 also applies, requiring that an audit be completed within two years of the date commenced.⁷⁰

The Commission finds that the audit of the 2001-2002 reimbursement claim was timely under Government Code section 17558.5, as added by Statutes 1995, chapter 945. In addition, when applying the 2002 and 2004 amendments to section 17558.5 the audit is also timely.

The plain language of Government Code section 17558.5, as added in 1995, provides that reimbursement claims are “subject to audit” no later than two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, when no funds are appropriated for the program, “the time for the Controller *to initiate an audit* shall commence to run from the date of initial payment of the claim.”⁷¹

⁶⁶ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

⁶⁷ Exhibit A, Incorrect Reduction Claim, at pp. 18-19.

⁶⁸ Exhibit A, Incorrect Reduction Claim, at pp. 19-23.

⁶⁹ Exhibit B, Controller’s Comments on IRC, at p. 2.

⁷⁰ Government Code section 17558.5, (Stats. 2004, ch. 313 (AB 2224)).

⁷¹ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

This interpretation is also consistent with the Legislature’s 2002 amendment to Government Code section 17558.5, clarifying that “subject to audit” means “subject to the initiation of an audit,” as follows in underline and strikeout:

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

And finally, section 17558.5 was amended again in 2004 to establish, for the first time, the requirement to “complete” an audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, the section provides as follows in underline and strikeout:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.⁷³

Each of these amendments must be analyzed, with respect to the subject claims and the audit because an expansion or contraction of a statute of limitations generally applies to pending claims unless a party’s rights would be unconstitutionally impaired.

In *Douglas Aircraft*,⁷⁴ cited in the Controller’s comments, the Court stated the general rule as follows:

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

⁷² Statutes 2002, chapter 1128 (AB 2834).

⁷³ Statutes 2004, chapter 313 (AB 2224).

⁷⁴ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462.

(*Weldon v. Rogers, supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan, supra*, 30 Cal.2d 463.)⁷⁵

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

It is settled law of this state that an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted. Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect. Because the operation is prospective rather than retrospective, there is no impairment of vested rights. [Citations.] Moreover, a party has *no vested right in the running of a statute of limitation prior to its expiration*. He is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay. In *Campbell v. Holt*, 115 U.S. 620, at page 628, it was said that statutes shortening the period or making it longer have always been held to be within the legislative power until the bar was complete.⁷⁶

And in *Liptak v. Diane Apartments, Inc.*,⁷⁷ the Second District Court of Appeal, relying in part on *Mudd, supra*, reasoned:

A party does not have a vested right in the time for the commencement of an action. (*Mill and Lumber Co. v. Olmstead* (1890) 85 Cal. 80, 84-85.) Nor does he have a vested right in the running of the statute of limitations prior to its expiration. (*Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Weldon v. Rogers* (1907) 151 Cal. 432, 434.) *A change in the statute of limitations merely effects a change in procedure and the Legislature may shorten the period, however, a reasonable time must be permitted for a party affected to avail himself of the remedy before the statute takes effect.* (*Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122; *Davis & McMillan v. Industrial Acc. Com.* (1926) 198 Cal. 631, 637; *Mill and Lumber Co. v. Olmstead, supra*, 85 Cal. at p. 84.)⁷⁸

Therefore, an expansion of a statute of limitations applies to matters pending but not already barred, based in part on the theory that a party has no vested right in the running of a statutory period prior to its expiration.⁷⁹ In addition, a contraction of a statute of limitations will generally apply to pending claims or matters as long as the party affected has a reasonable time to assert the claim.⁸⁰ However, the courts have also found that where an amended statute of limitations relinquishes a right previously held *by the state or one of its agencies*, a reasonable time to avail

⁷⁵ *Id.*, at p. 465.

⁷⁶ *Mudd v. McColgan* (1947) 30 Cal.2d 463, at p. 468 [emphasis added].

⁷⁷ 109 Cal.App.3d 762.

⁷⁸ *Id.*, at p. 773.

⁷⁹ *Mudd v. McColgan* (1947) 30 Cal.2d 463, at p. 468

⁸⁰ *Liptak v. Diane Apartments, Inc.* 109 Cal.App.3d 762, at p. 773 [citing *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122].

itself of the right is not required. In *California Employment Stabilization Commission v. Payne*, the Court stated the following:

Accordingly, the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. (See *Davis & McMillan v. Ind. Acc. Comm.*, 198 Cal. 631, 637.) This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state.⁸¹

Therefore the amendments to section 17558.5 discussed above, first expanding the time to initiate an audit (and clarifying the meaning of “subject to audit”),⁸² and then imposing a two year deadline for completion of an audit,⁸³ must be applied and analyzed as of their effective dates. As explained above, the claimant has no “vested right in the running of the statute of limitations prior to its expiration,”⁸⁴ and the Controller’s authority to audit can be impaired by the Legislature, as it was by the 2004 amendment to section 17558.5, without consideration of whether the agency has a reasonable time in which to avail itself of the “right.”⁸⁵

Here, the reimbursement claim filed for fiscal year 2001-2002 was subject to audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended;”⁸⁶ in this case, before December 31, 2004. Based on the interpretation urged by the Controller, which is consistent with the clarifying change made in the 2002 amendment, effective January 1, 2003, an audit initiated before December 31, 2004 would be timely. Here, an entrance conference was held on August 18, 2004, and while “there may be a dispute as to what constitutes the initiation of an audit,”⁸⁷ the Commission has previously found that an entrance conference is sufficient. Moreover, applying the expanded statute of limitations, effective January 1, 2003 (*i.e.*, effective before the time the audit would have been barred) the period during which the claim is “subject to the initiation of an audit” extends to December 2, 2005, based on the filing date of the claim.⁸⁸ Finally, the audit was commenced on August 18,

⁸¹ (1948) 31 Cal.2d 210, 215-216.

⁸² Statutes 2002, chapter 1128 (AB 2834).

⁸³ Statutes 2004, ch. 313 (AB 2224).

⁸⁴ *Liptak, supra*, 109 Cal.App.3d 762, at p. 773 [citing *Mudd, supra*, 30 Cal.2d 463, at p. 468].

⁸⁵ *California Employment Stabilization Commission v. Payne*, (1948) 1931 Cal.2d 210, 215-216.

⁸⁶ Government Code section 17558.5 (as added, Stats. 1995, ch. 945 (SB 11)).

⁸⁷ Exhibit B, Controller’s Comments, at p. 2.

⁸⁸ See Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)) [Audit must be initiated no later than *three years after reimbursement claim filed or last amended*].

2004, and completed April 27, 2005, well within the two-year time period required by Statutes 2004, ch. 313.⁸⁹

Based on the foregoing, the Commission finds that the audit of the claimant's reimbursement claims is not barred by the statute of limitations in Government Code section 17558.5.

B. The Controller's Reduction for Insurance Premiums is Consistent with the Parameters and Guidelines and Correct as a Matter of Law.

The Controller reduced amounts claimed for "services and supplies" by \$9,257 for fiscal year 2001-2002, and \$8,637 for fiscal year 2002-2003, on the grounds that athletic insurance costs are beyond the scope of the mandate, and certain costs were "claimed twice."⁹⁰ The total reduction for services and supplies for both fiscal years is \$17,894.⁹¹ The claimant does not dispute the "duplicated charges of \$6,025 for services and supplies for both fiscal years."⁹²

However, in its IRC filing, claimant asserts that the total amount includes "\$11,869 in "overclaimed athletic insurance costs," for both fiscal years,⁹³ which claimant disputes, arguing:

The District pays two types of student insurance premiums. The basic and catastrophic coverage for the general student population, and a separate premium amount for intercollegiate athletics. The Controller's adjustment improperly disallows a portion of the general population premium as somehow being related to intercollegiate athletics. The audit report does not describe how the disallowance was calculated. Regardless the reduction is inappropriate since student athletes are part of the student population for purpose of the general student population insurance premium. The insurance premiums for athletes pertains to coverage while participating in intercollegiate sports, not while they are attending class or on campus in their capacity [sic] as a member of the general student population.⁹⁴

The Controller asserts that claimant "overclaimed insurance premiums for student basic and catastrophic coverage by \$11,869, because it included unallowable premiums paid for athletic insurance." The Controller explains that the parameters and guidelines provide for reimbursement for the cost of insurance for "(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration." However, the Controller notes that "Education Code

⁸⁹ See, *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, where the court found that when state gives up a right previously possessed by it or one of its agencies, the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims.

⁹⁰ Exhibit A, Incorrect Reduction Claim, at p. 50.

⁹¹ *Ibid.*

⁹² Exhibit A, Incorrect Reduction Claim, at pp. 11-12.

⁹³ Exhibit A, Incorrect Reduction Claim, at pp. 11-12.

⁹⁴ Exhibit A, Incorrect Reduction Claim, at p. 11-12.

Section 76355(d) (formerly Section 72246(2)) states that athletic insurance is not an authorized expenditure for health services.”⁹⁵

What was initially unclear from the record was whether the parties were talking about health insurance premiums for “(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration” which premiums include coverage of student athletes as members of the student body, or whether the costs claimed were in fact for “athletic insurance.” If the former, then the costs are reimbursable because Education Code section 76355 provides that “no student shall be denied a service supported by student health fees on account of participation in athletic programs”⁹⁶ and student athletes are not exempt from the requirement to pay the student health fee. Student athletes are entitled to the same services as other students. However, if the latter, the cost is not a reimbursable type of insurance based on the plain language of the parameters and guidelines, and the disputed adjustment would therefore be a proper reduction.⁹⁷

Adding to the confusion is claimant’s statement in a letter to the Controller’s Audit Bureau that it “is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance.”⁹⁸ And later, in rebuttal comments, claimant asserted that the reductions were based on “the erroneous conclusion...that premiums for athletic insurance are not reimbursable.” Claimant states: “the athletic insurance premiums claimed are part of the excess costs that make up the District’s claims, and as such, were not paid for with the student [health] fees from the fund.”⁹⁹ It appears from these comments that claimant is arguing a mandate issue that was already decided in the test claim and parameters and guidelines: *i.e.*, that athletic insurance should be reimbursable.

However, that is not what the adopted parameters and guidelines provide. The only insurance premiums authorized for reimbursement under this program are “(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.”¹⁰⁰ The test claim decision and parameters and guidelines are final decisions of the Commission and they bind the parties. The Controller is required to follow the parameters and guidelines.¹⁰¹

The Commission finds that the rebuttal contains an admission from claimant that the costs were in fact for “athletic insurance” and not for the “(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration” insurance premiums which are included as reimbursable costs in the parameters and guidelines.¹⁰² Therefore, the Controller’s reduction of costs for

⁹⁵ Exhibit B, Controller’s Comments, at p. 13.

⁹⁶ Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

⁹⁷ Exhibit A, Incorrect Reduction Claim [Parameters and Guidelines, at pp. 30-33].

⁹⁸ Exhibit A, Incorrect Reduction Claim [Controller’s audit report, at p. 50].

⁹⁹ Exhibit C, Claimant’s Rebuttal Comments, at p. 5.

¹⁰⁰ Exhibit A, Incorrect Reduction Claim [Parameters and Guidelines, at p. 32].

¹⁰¹ Government Code 17558.

¹⁰² Exhibit C, Claimant’s Rebuttal Comments.

athletic insurance is correct based on the plain language of the parameters and guidelines. Based on the evidence in the record, the claimant has not demonstrated that the reduction was based on insurance costs for the general student population, rather than athletic insurance.

Based on the foregoing, the Commission finds that the reductions for insurance premiums are consistent with the parameters and guidelines and correct as a matter of law.

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

The Controller reduced indirect costs claimed by claimant, by \$70,710 for fiscal year 2001-2002, and \$68,383 for fiscal year 2002-2003, on the ground that claimant did not utilize a federally approved indirect cost rate.¹⁰³ Claimant argues that “[c]ontrary to the Controller’s ministerial preferences, there is no requirement in law that the district’s indirect cost rate must be ‘federally’ approved, and further the Controller has never specified the federal agencies which have the authority to approve indirect cost rates.”

The Commission finds that the parameters and guidelines require claimants to adhere to the claiming instructions when claiming indirect costs, and that the claimant here did not do so. Therefore, the reduction was correct as a matter of law. The Commission further finds that the Controller’s use of the alternative state method to calculate indirect costs was not arbitrary, capricious, or entirely lacking in evidentiary support.

1. *The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or by using the state Form FAM-29C.*

The claimant argues that “[n]o particular indirect cost rate calculation is required by law,” and that the parameters and guidelines “do not require that indirect costs be claimed in the manner described by the Controller.”¹⁰⁴ The claimant argues that the word “may” is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.¹⁰⁵

The claimant’s argument is unsound: the parameters and guidelines plainly state that “indirect costs *may be claimed in the manner described by the State Controller.*”¹⁰⁶ The interpretation that is consistent with the plain language of the parameters and guidelines is that “indirect costs may be claimed,” or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the Controller’s claiming instructions.

¹⁰³ Exhibit A, Incorrect Reduction Claim, at p. 51.

¹⁰⁴ Exhibit A, Incorrect Reduction Claim, at pp. 12-13.

¹⁰⁵ Exhibit A, Incorrect Reduction Claim, at p. 13.

¹⁰⁶ Exhibit A, Incorrect Reduction Claim, at p. 34.

The claiming instructions specific to the *Health Fee Elimination* mandate, included in the submissions of both claimant and of the Controller,¹⁰⁷ do not discuss specific rules or guidelines for claiming indirect costs with respect to this mandate. However, the School Mandated Cost Manual contains *general instructions* for school districts and community college districts seeking to claim indirect costs, and those instructions provide guidance to claimants for *all mandates*, absent specific provisions to the contrary.¹⁰⁸ The Controller submitted an excerpt of the School Mandated Cost Manual addressing indirect cost rates, revised September 2002, in response to the IRC.¹⁰⁹ The Controller also submitted an excerpt of the School Mandated Cost Manual revised September 1997, which contained the program-specific instructions for the *Health Fee Elimination* mandate.¹¹⁰

More recently the manuals for school districts and community college districts have been printed separately.¹¹¹ The Mandated Cost Manual for Community Colleges now contains general instructions for claiming under all mandates, with the suggestion that claimants refer to the parameters and guidelines and specific claiming instructions, as follows:

This manual is issued to assist claimants in preparing mandated cost claims for submission to the State Controller's Office (SCO). The information contained in this manual is based on the State of California's statutes, regulations, and the parameters and guidelines (P's & G's) adopted by the Commission on State Mandates (CSM). Since each mandate is unique, it is imperative that claimants refer to the claiming instructions and P's & G's of each program for updated data on established policies, procedures, eligible reimbursable activities, and revised forms.¹¹²

Therefore, the reference in the parameters and guidelines to the Controller's claiming instructions necessarily includes the general provisions of the School Mandated Cost Manual (and later the Mandated Cost Manual for Community Colleges), and the manual provides ample notice to claimants as to how they may properly claim indirect costs. Claimant's assertion that "[n]either applicable law nor the Parameters and Guidelines made compliance with the Controller's claiming instructions a condition of reimbursement"¹¹³ is therefore in error. The parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions.

Claimant also argues that "the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act," and therefore, claimant argues, "the

¹⁰⁷ Exhibit A, Incorrect Reduction Claim, at pp. 37-40; Exhibit B, Controller's Comments, at pp. 29-40.

¹⁰⁸ See Exhibit X, Mandated Cost Manual General Instructions Excerpt 1999-2000.

¹⁰⁹ Exhibit B, Controller's Comments, at pp. 24-27.

¹¹⁰ Exhibit B, Controller's Comments, at pp. 29-40.

¹¹¹ See, e.g., Exhibit X, Schools Mandated Cost Manual General Instructions revised September 29, 2000, and Mandated Cost Manual for Community Colleges, September 30, 2003.

¹¹² Exhibit X, Community College Mandated Cost Manual Foreword Revised 07/12.

¹¹³ Exhibit C, Claimant Rebuttal Comments, at p. 7.

claiming instructions are merely a statement of the ministerial interests of the Controller and not law.”¹¹⁴ In *Clovis Unified*, the Controller’s contemporaneous source document rule, or CSDR, was held to be an unenforceable underground regulation because it was applied generally against school districts and had never been adopted as a regulation under the APA.¹¹⁵ Here, claimant alleges, somewhat indirectly, the same fault in the claiming instructions with respect to indirect cost rates. But the distinction is that here the parameters and guidelines, which *were* duly adopted at a Commission hearing, require compliance with the claiming instructions on indirect cost rates.

The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or by using the state Form FAM-29C.

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

In the audit of the reimbursement claims for the period of July 1, 2001 through June 30, 2003, the Controller concluded that the claimed indirect costs were based on a rate not federally approved, and that the Controller’s calculated rates did not support the indirect cost rates claimed.¹¹⁶ Indirect costs in the amount of \$149,291 were claimed for fiscal year 2001-2002, against direct costs of \$417,010; and \$148,836 for fiscal year 2002-2003, against direct costs of \$437,679. Those indirect costs amount to rates of approximately 35.8 percent and 34 percent, respectively.

The claiming instructions provide two options for claiming indirect costs, one of which is using the OMB Circular A-21. However, to use this option, a claimant must obtain federal approval, which the claimant here did not do. The claiming instructions applicable at the time the subject reimbursement claims were filed stated:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 “Cost Principles for Educational Institutions,” or the Controller’s methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.¹¹⁷

Thus, the claimant did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rate to the direct costs claimed, and the Commission finds that the reduction is correct as a matter of law.

¹¹⁴ Exhibit A, Incorrect Reduction Claim, at p. 13.

¹¹⁵ *Clovis Unified School District v. State Controller* (2010) 188 Cal.App.4th, at p. 807.

¹¹⁶ Exhibit A, Incorrect Reduction Claim, at p. 51.

¹¹⁷ Exhibit X, School Mandated Cost Manual Excerpt, Revised 09/01; Mandated Cost Manual for Community Colleges, Revised 09/03.

The Controller, concluding that the rate was not approved, and therefore not supported consistently with the parameters and guidelines and the claiming instructions, recalculated the indirect cost rate using the alternative state procedure, the “FAM-29C method,” outlined in the School Mandated Cost Manual.¹¹⁸ Applying the FAM-29C methodology, the Controller reduced the claimed indirect costs to \$75,424 (an 18.23% rate) for fiscal year 2001-2002 and \$77,522 (a 17.96% rate) for fiscal year 2002-2003.¹¹⁹

Claimant argues that the Controller “made no determination as to whether the method used by the District was reasonable, but, merely substituted its FAM-29C method for the method reported by the District [*sic*].”¹²⁰

However, the Commission finds that because claimant failed to obtain federal approval of its OMB Circular A-21 indirect cost rate, the Controller acted reasonably in recalculating the rate using one of the options provided for in the claiming instructions. The Controller asserts that the parameters and guidelines require a claimant choosing to claim indirect costs to use one of the two options provided in the claiming instructions: “if the district chooses to claim indirect costs, then the district must comply with the [Controller]’s claiming instructions.”¹²¹ The Controller’s assertion is consistent with the plain language of the parameters and guidelines which state: “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.”¹²² Moreover, as claimant points out, “both the District’s method and the Controller’s method utilized the same source document, the CCFS-311 annual financial and budget report required by the state.”¹²³ Therefore, the Controller’s selection of the alternative state method was effectively the only valid alternative available, given that claimant failed to obtain federal approval in accordance with the other (OMB) option.

Accordingly, the Commission finds that the Controller’s reduction and recalculation of costs based on applying the Form FAM-29C calculation to provide an indirect cost rate is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller’s Reduction for Understated Offsetting Revenues Pursuant to the Health Fee Rule is Correct as a Matter of Law.

The Controller reduced the reimbursement claims by \$217,409 for the two years at issue.¹²⁴ These reductions were made on the basis of the fee authority available to claimant, multiplied by the number of students subject to the fee, less the amount of offsetting revenue claimed.

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require, a community college district to levy a health services fee, and that the parameters and guidelines require a community college district to deduct from its reimbursement claims

¹¹⁸ See Exhibit B, Controller’s Comments, at p. 16.

¹¹⁹ Exhibit A, Incorrect Reduction Claim, at pp. 48; 51.

¹²⁰ Exhibit A, Incorrect Reduction Claim, at p. 14.

¹²¹ Exhibit B, Controller Response to District IRC, Tab 2 at p. 15.

¹²² Exhibit B, Controller’s Comments on IRC [Parameters and Guidelines], at p. 110].

¹²³ Exhibit A, Incorrect Reduction Claim, at p. 12.

¹²⁴ Exhibit A, Incorrect Reduction Claim, at p. 14.

“[a]ny offsetting savings that the claimant experiences as a direct result of this statute...” Claimant argues that “[i]n order for the district to ‘experience’ these ‘offsetting savings’ the district must actually have collected these fees.” Claimant concludes that “[s]tudent fees actually collected must be used to offset costs, but not student fees that could have been collected and were not.”¹²⁵

The Commission finds that the correct calculation and application of offsetting revenue from student health fees has been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law.

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller’s practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.¹²⁶ (Underline in original.)

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

(a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).¹²⁷

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.¹²⁸ The Chancellor of the California Community Colleges issues a notice to the

¹²⁵ Exhibit A, *Incorrect Reduction Claim*, at pp. 14-15.

¹²⁶ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 811.

¹²⁷ Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

¹²⁸ See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually

governing boards of all community colleges when a fee increase is triggered.¹²⁹ Here, the Controller asserts that claimant should have collected an additional fee amount in accordance with the notices periodically issued by the Chancellor, stating that the Implicit Price Deflator Index had increased enough to support a one dollar increase in student health fees.¹³⁰ Claimant argues that “the Controller cannot rely on the Chancellor’s notice as a basis to adjust the claim for ‘collectible’ student health services fees,”¹³¹ because the fees levied on students are raised by action of the governing board of the community college district. But the *authority* to impose the health service fees increases automatically with the Implicit Price Deflator, as noticed by the Chancellor. Accordingly, the court in *Clovis Unified* upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

To the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.¹³²

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.’”¹³³ Additionally, in responding to claimant’s argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s”,¹³⁴ 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*.¹³⁵ (Italics added.)

Thus, pursuant to the court’s decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimant for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.¹³⁶ In addition, the *Clovis* decision is binding on the claimant

(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.

¹²⁹ See, e.g., Exhibit A, Incorrect Reduction Claim [Letter from Chancellor, at pp. 69-70].

¹³⁰ See Exhibit B, Controller’s Comments, at pp. 16-18; Exhibit A, Incorrect Reduction Claim, at pp. 69-70.

¹³¹ Exhibit A, Incorrect Reduction Claim, at pp. 17-18.

¹³² *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

¹³³ *Ibid.*

¹³⁴ *Ibid.* (Original italics.)

¹³⁵ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

¹³⁶ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

under principles of collateral estoppel.¹³⁷ Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.¹³⁸ Although the claimant to this IRC was not a party to the *Clovis* action, the claimant is in privity with the petitioners in *Clovis*. “A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party’s interest that the latter was the former’s virtual representative in the earlier action.”¹³⁹

Based on the foregoing the Commission finds that the Controller’s reduction of reimbursement to the extent of the fee authority found in Education Code section 76355 is correct as a matter of law.

V. Conclusion

Pursuant to Government Code section 17551(d) of the Commission’s regulations, the Commission concludes that the reductions to the following costs are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reduction for both fiscal years of \$11,869 for athletic insurance costs that are beyond the scope of the mandate.
- Reductions of indirect costs claimed of \$70,710 for fiscal year 2001-2002, and \$68,383 for fiscal year 2002-2003, based on the claimant’s failure to comply with the claiming instructions in the development of its indirect cost rate, and the Controller’s use of an alternative method to calculate indirect costs authorized by the parameters and guidelines and claiming instructions.
- Reduction for both fiscal years of \$217,409 based on understated offsetting health fee revenues.

Based on the foregoing, the Commission denies this IRC.

¹³⁷ The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

¹³⁸ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

¹³⁹ *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

COMMISSION ON STATE MANDATES

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Last Updated: 7/31/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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RECEIVED
August 05, 2014
Commission on
State Mandates

JOHN CHIANG
California State Controller

August 5, 2014

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Health Fee Elimination, 05-4206-I-03
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd E.S.; Statutes of 1987, Chapter 1118
Fiscal Years 2001-2002 and 2002-2003
Long Beach Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office has reviewed the Commission on State Mandates' draft proposed decision related to the above-referenced incorrect reduction claim filed by Long Beach Community College District and concurs with the conclusion and recommendation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano".

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

JLS/sk

14394

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On August 6, 2014, I served the:

SCO Comments

Health Fee Elimination, 05-4206-I-03

Education Code Section 76355

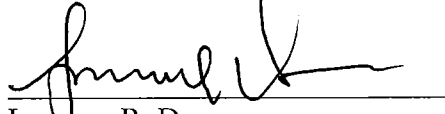
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2001-2002 and 2002-2003

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 6, 2014 at Sacramento, California.



Lorenzo R. Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/1/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Exhibit F

SixTen and Associates Mandate Reimbursement Services

RECEIVED
September 23, 2014
*Commission on
State Mandates*

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September 23, 2014

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

Dear Ms. Halsey:

RE: CSM 05-4206-I-03
Long Beach Community College District
Fiscal Years: 2001-02 and 2002-03
Health Fee Elimination
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd. E.S.
Statutes of 1987, Chapter 1118
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated August 1, 2014, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OF ANNUAL REIMBURSEMENT CLAIMS

1. Audit Initiation

The District concurs that the audit of the FY 2001-02 annual claim was commenced before the expiration of the statute of limitations to commence an audit.

2. Audit Completion

It is uncontested here that an audit is complete only when the final audit report is issued. The District asserts that the FY 2001-02 annual claim (filed December 6, 2002) was beyond the statute of limitations for completion of the audit (December 31, 2004) when the Controller completed its audit on April 27, 2005. To the contrary, the

Commission asserts (DPD, 17) that Government Code section 17558.5, as added by Statutes 1995, Chapter 945, operative July 1, 1996¹, “does not require the completion of the audit” at a time certain:

The plain language of Government Code section 17558.5, as added in 1995, provides that reimbursement claims are “subject to audit” no later than two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, when no funds are appropriated for the program, “the time for the controller *to initiate an audit* shall commence to run from the date of initial payment of the claim.”

There is no objective basis or evidence in the record to conclude that the period of time allowed to complete an audit is contingent on the notice provision as to when the audit can commence. The numerous cases cited by the Commission speak to the issue of commencing an audit and the extension of that time by future changes to the statute of limitations. These are not relevant to the issue of the completion of the audit. The Commission cites no cases contradicting the practical requirement that completion is measured by the date of the audit report.

Section 17558.5 was amended two more times after the FY 2001-02 annual claim was filed. As a matter of law, these amendments are not relevant to the determination of the FY 2001-02 annual claim statute of limitations issue, so reliance upon the language of the subsequent amendments as a declaration of retroactively consistent legislative policy or intent is without foundation. The adjudication of the issue should end with the 1995 version of Section 17558.5. Regardless, the Commission concludes that its interpretation of the significance of the second sentence in the 1995 version is

¹ First Amendment

Statutes of 1995, Chapter 945, Section 18, operative July 1, 1996, repealed and replaced Section 17558.5, changing only the period of limitations:

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

supported by the 2002 amendment to Section 17558.5² which extends the audit initiation period to three years. The 2002 amendment provides no new information about the audit completion date. The Commission findings then reference the 2004 amendment to Section 17558.5³ that establishes a two-year limit to complete a timely filed audit, but only for the purposes of excluding the new language from the 1995 analysis. Rather, the 2004 amendment to Section 17558.5 is definitive to the issue of when the audit completion period was first placed in statute.

If, as the Commission asserts, that the first amended version establishes no statutory time limit to complete a timely commenced audit, Section 17558.5 becomes absurd. Once timely commenced, audits could remain unfinished for years either by intent or

² Second Amendment

Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003, amended Section 17558.5 to state:

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

³ Third Amendment

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

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.”

neglect and the audit findings revised at any time. Thus, the claimant's document retention requirements would become open-ended and eventually punitive. Statutes of limitations are not intended to be open-ended; they are intended to be finite, that is, a period of time measured from an unalterable event, and in the case of the 1995 version of the code, it is the filing date of the annual claim.

As to the actual completion of the audit, the Commission (DPD, 21) ultimately incorrectly applies the 2004 two-year test. The statute of limitations to audit applicable to each annual claim is that limit which is the law when the annual claim is filed, not when the audit is completed, otherwise the concept of notice to claimants is invalidated.

PART B. DISALLOWANCE OF INSURANCE PREMIUMS

The audit disallowed \$17,894 of services and supplies direct cost and \$6,241 of related indirect costs. Of the total direct costs adjustment amount, \$11,869 is applicable to student health insurance premiums. The Commission concludes (DPD, 23) that, based on the evidence in the record, the District has not demonstrated that the reduction was based on student insurance costs rather than athletic insurance costs. As stated in the incorrect reduction claim, the audit report does not describe how the disallowance was calculated. Nor does the Controller's response of December 16, 2008, provide any explanation, probably due the misapprehension that these costs were no longer in dispute. To date, only the Controller has the documentary support as to how those premiums were reallocated by the adjustment. This allocation information is essential in order for the District to rebut the issue and for the Commission to make a fact-based finding.

PART C. APPLICATION OF AN INDIRECT COST RATE

The audit report asserts that the District overstated its indirect cost rates and costs in the amount of \$139,093 for both fiscal years. This finding is based upon the Controller's statement that the district did not obtain federal approval for its ICRPs, a stated requirement of the Controller's claiming instructions.

The threshold Commission conclusion is that claimants must comply with the Controller's claiming instructions and that the Controller's use of its own instructions and forms to recalculate the indirect cost rates was not arbitrary. The District asserts that the Controller's claiming instructions are not alone enforceable as a matter of law as they are not regulations nor were they adopted pursuant to the administrative rulemaking process required to enforce agency manuals and instructions, as did the *Clovis Court*.⁴

⁴ From the Clovis Appellate Court Decision (4):

The Controller has never asserted that its claiming instructions are alone legally enforceable, rather the Controller's "manual is issued to assist claimants" and that "The information contained in the manual is based on the State of California's statutes, regulations, and the parameters and guidelines . . ." (DPD, 24). Therefore, any documentation standards or cost accounting formulas published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions.

The Commission (DPD, 23) instead relies upon the "plain language" of the 1989 parameters and guidelines:

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

Claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather than the subsequent discretionary choice to use

"Once the Commission determines that a state mandate exists, it adopts regulatory "[P]arameters and [G]uidelines" (P&G's) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory "[C]laiming [I]nstructions" for each Commission-determined mandate; these instructions must derive from the Commission's test claim decision and its adopted P&G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs." Emphasis added.

From the Clovis Appellate Court Decision (15):

"Given these substantive differences between the Commission's pre-May 27, 2004 SDC P&G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P&G's for the SDC Program (§ 17558 [the Commission submits regulatory P&G's to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561, subd. (d)(2))." Emphasis added.

claiming instructions method is gratuitous.

Even though we have the permissive “may” language in the parameters and guidelines, coupled with claiming instructions that both the Controller and Commission characterize only as guidance, the Commission makes a jump to the conclusion that compliance with the claiming instructions is required (DPD 25):

The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or by using the state Form FAM-29C.

The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller’s claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller’s claiming instructions. The Controller’s use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an “underground regulation.” Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50).

Somehow the “assistance” provided by the claiming instructions has become a requirement even though the parameters and guidelines use the word “may.” The Commission now has concluded that the contents of the claiming instructions are as a matter of law derivative of the authority of the parameters and guidelines, without benefit of a legal citation for this leap of jurisprudence. Assuming for argument that the leap can be made, would that derivative authority continue for any changes made to the claiming instructions after the adoption of the 1989 parameters and guidelines, that is, an open-ended commitment of the Commission’s authority to the Controller who can make changes without reference to the Commission process? Is this derivative authority limited to Health Fee Elimination or applicable to all mandates?

Note that the Health Fee Elimination parameters and guidelines were amended on January 29, 2010. However, the indirect cost rate language remained the same:

3. Allowable Overhead Cost

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

The Commission has had numerous opportunities to clarify its intent and language regarding the indirect cost rate calculation methods and resolve or avoid the delegation and derivation issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their discretion and has utilized it in college parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code Section 17561. No particular indirect cost rate calculation method is required by law. Government Code

Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

The Commission (DPD, 26) concluded that "the Controller's selection of the alternative state method was effectively the only valid alternative available, given that claimant failed to obtain federal approval in accordance with the other (OMB) option." The Commission has it backwards. There is no rebuttable presumption for this mandate that the Controller's methods are per se the only reasonable method. The Controller made no determination as to whether the method used by the District was reasonable or not, but merely substituted the Controller's method for the method used by the Districts. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. In order to move forward with the adjustment, the burden of proof is on the Controller to prove that the District's calculation is unreasonable. Indeed, federally "approved" rates which the Controller will accept without further action, are "negotiated" rates calculated by the district and submitted for approval, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used. Neither the Commission nor the Controller can assume that the Controller's calculation methods are intrinsically more accurate and the Commission cannot shift that burden or create the presumption to the contrary where none is present in law.

PART D. UNDERSTATED OFFSETTING REVENUES

This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of \$217,409 for the two fiscal years. The Controller computed the total student health fees collectible based on state rates while the District reported actual fees collected.

The Commission (DPD, 27) finds that the correct calculation and application of offsetting revenue from student health fees have been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law:

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that

districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

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

The District agrees that claimants and state agencies are bound to apply the Health Fee Rule as decided law and that this extends to retroactive fiscal years still within the Commission's or Controller's jurisdiction.

On October 27, 2011, the Commission adopted a consolidated statement of decision for seven Health Fee Elimination incorrect reduction claims. The statement of decision for these seven districts included issues presented in this current incorrect reduction claim. The application of the Health Fee Rule, as determined by the Commission's October 27, 2011, statement of decision, however, involves two factual elements: the number of exempt students and the specific enrollment statistics for each semester. That decision approved the Controller's use of specific Community College Chancellor's MIS data to obtain these enrollment amounts. That approved method is stated in the more recent HFE audits as:

FINDING— Understated authorized health service fees

We obtained student enrollment data from the CCCCCO. The CCCCCO identified enrollment data from its management information system (MIS) based on student data that the district reported. CCCCCO identified the district's enrollment based on its MIS data element STD7, codes A through G. CCCCCO eliminated any duplicate students based on their Social Security numbers. *Cited from the October 19, 2012 HFE Audit Report for State Center CCD. Available at the Controller's web site.*

For the audit of this District, completed before the October 27, 2011, Commission decision, the statistics used by the auditor were different:

FINDING 3— Understated authorized health fee revenues claimed

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as

district-prepared reports indicating the number of students who received fee waivers. *April 27, 2005 HFE Audit Report. P. 8*

Therefore, to properly implement the Health Fee Rule, it will be necessary for the Controller to utilize the statistics approved by the October 27, 2011, decision. Until then, the Commission's ultimate conclusion that the adjustments here are not arbitrary or lacking in evidentiary support is unfounded.

E. REVISED AUDIT REPORT

The Controller issued a revised audit report for Fiscal Years 2001-02 and 2002-03, dated October 11, 2012, which is now submitted for the record of this incorrect reduction claim as an attachment to this letter. (The revised audit report is not posted on the Controller's web site).

The purpose of the revised audit report is stated in Mr. Brownfield's transmittal letter:

This revised final report supersedes our previous report dated April 27, 2005. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, this revised report corrects a mathematical error in calculating unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period.

The exclusion of the athlete physicals costs from the offset of student health service revenues increases reimbursement by \$3,459 for FY 2002-03. The District concurs with this correction that is required as a matter of law by prior commission action. The Commission can take notice of this correction without a revised incorrect reduction claim.

The mathematical correction to the indirect cost rate calculation reduced reimbursement by \$1,166. This correction is de minimus and subsumed within the scope of findings for the indirect cost rate calculation issue.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the

best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on September 23, 2014, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

Attachment:

Revised Controller's Audit Report dated October 11, 2012

LONG BEACH COMMUNITY COLLEGE DISTRICT

Revised Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2001, through June 30, 2003



JOHN CHIANG
California State Controller

October 2012



JOHN CHIANG
California State Controller

October 11, 2012

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

Dear Mr. Uranga:

The State Controller's Office audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

This revised final report supersedes our previous report dated April 27, 2005. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, this revised report corrects a mathematical error in calculating unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health service fees, and claimed unallowable costs. The State paid the district \$24,892. The State will pay allowable costs claimed that exceed the amount paid, totaling \$28,064, contingent upon available appropriations.

The district previously filed an Incorrect Reduction Claim (IRC) on August 30, 2005. The district may file an amended IRC with the CSM based on this revised final audit report. The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's website at www.csm.ca.gov/docs/IRCForm.pdf.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: Eloy Oakley, Superintendent – President
Long Beach Community College District
Ann-Marie Gabel, Vice President, Administrative Services
Long Beach Community College District
John Thompson, Director, Fiscal Services
Long Beach Community College District
Christine Atalig, Specialist
College Finance and Facilities Planning
California Community Colleges Chancellor's Office
Ed Hanson, Principal Program Budget Analyst
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Revised Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health services fees, and claimed unallowable costs. The State paid the district \$24,892. The State will pay allowable costs claimed that exceed the amount paid, totaling \$28,064, contingent upon available appropriations.

Background

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

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

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

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

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

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003.

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

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

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

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

Conclusion

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

For the audit period, Long Beach Community College District claimed \$516,978 for Health Fee Elimination Program costs. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable.

For the FY 2001-02 claim, the State paid the district \$24,892. Our audit disclosed that \$49,497 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,605, contingent upon available appropriations.

For the FY 2002-03 claim, the State made no payment to the district. Our audit disclosed that \$3,459 is allowable. The State will pay that amount, contingent upon available appropriations.

**Views of
Responsible
Officials**

We issued a draft audit report on February 4, 2005. Irma Ramos, former Administrative Dean, Human Resources, responded by letter dated February 23, 2005 (Attachment), disagreeing with the audit results.

Based on the district's response, we eliminated Finding 1, totaling \$9,222, from the draft audit report. Consequently, draft report Findings 1 through 5 were renumbered to Findings 1 through 4. We issued our original final audit report on April 27, 2005.

On October 27, 2011, the CSM issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. Therefore, we revised our final report to offset authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, we revised our final report to correct a mathematical error in our calculation of unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period. On September 21, 2012, we notified Ann-Marie Gabel, Vice President, Administrative Services; John Thompson, Director, Fiscal Services; and other district staff of the final audit report revisions.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

October 11, 2012

**Revised Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2003**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 1,927	\$ 1,927	\$ —	
Services and supplies	1,145	1,145	—	
Total direct costs	3,072	3,072	—	
Indirect costs	1,099	560	(539)	Finding 2
Total program costs, athlete physicals	4,171	3,632	(539)	
All other health services:				
Direct costs:				
Salaries and benefits	316,641	316,641	—	
Services and supplies	97,768	89,348	(8,420)	Findings 1, 4
Total direct costs	414,409	405,989	(8,420)	
Indirect costs	148,192	74,012	(74,180)	Findings 1, 2, 4
Total direct and indirect costs	562,601	480,001	(82,600)	
Less authorized health service fees	(321,995)	(432,828)	(110,833)	Finding 3
Less offsetting savings/reimbursements	—	(837)	(837)	Finding 4
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Total program costs, all other health services	240,135	45,865	(194,270)	
Total program costs	\$ 244,306	49,497	\$ (194,809)	
Less amount paid by the State		(24,892)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,605		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 1,888	\$ 1,888	\$ —	
Services and supplies	1,045	1,045	—	
Total direct costs	2,933	2,933	—	
Indirect costs	995	526	(469)	Finding 2
Total program costs, athlete physicals	3,928	3,459	(469)	
All other health services:				
Direct costs:				
Salaries and benefits	340,221	340,221	—	
Services and supplies	95,372	86,735	(8,637)	Finding 1
Total direct costs	435,593	426,956	(8,637)	
Indirect costs	147,841	76,682	(71,159)	Findings 1, 2
Total direct and indirect costs	583,434	503,638	(79,796)	
Less authorized health service fees	(313,843)	(531,252)	(217,409)	Finding 3
Less offsetting savings/reimbursements	(847)	(847)	—	
Audit adjustments exceeding claimed costs	—	28,461	28,461	
Total program costs, all other health services	268,744	—	(268,744)	
Total program costs	\$ 272,672	3,459	\$ (269,213)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 3,459		

Revised Schedule 1 (continued)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>	<u>Reference¹</u>
<u>Summary: July 1, 2001, through June 30, 2003</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 3,815	\$ 3,815	\$ —	
Services and supplies	2,190	2,190	—	
Total direct costs	6,005	6,005	—	
Indirect costs	2,094	1,086	(1,008)	
Total program costs, athlete physicals	8,099	7,091	(1,008)	
All other health services:				
Direct costs:				
Salaries and benefits	656,862	656,862	—	
Services and supplies	193,140	176,083	(17,057)	
Total direct costs	850,002	832,945	(17,057)	
Indirect costs	296,033	150,694	(145,339)	
Total direct and indirect costs	1,146,035	983,639	(162,396)	
Less authorized health service fees	(635,838)	(964,080)	(328,242)	
Less offsetting savings/reimbursements	(847)	(1,684)	(837)	
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Audit adjustments exceeding claimed costs	—	28,461	28,461	
Total program costs, all other health services	508,879	45,865	(463,014)	
Total program costs	\$ 516,978	52,956	\$ (464,022)	
Less amount paid by the State		(24,892)		
Allowable costs claimed in excess of (less than) amount paid		\$ 28,064		

¹ See the Revised Findings and Recommendations section.

Revised Findings and Recommendations

**FINDING 1—
Unallowable services
and supplies costs**

The district overclaimed services and supplies costs totaling \$17,894 during the audit period. The related unallowable indirect costs totaled \$6,241, based on claimed indirect cost rates.

The district overclaimed insurance premiums paid for student basic and catastrophic coverage by \$11,869, because it included unallowable premiums paid for athletic insurance. In addition, the district inadvertently claimed \$6,025 twice for services and supplies.

The following table summarizes the audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Student insurance premiums	\$ (5,857)	\$ (6,012)	\$ (11,869)
Costs claimed twice	(3,400)	(2,625)	(6,025)
Total direct costs	(9,257)	(8,637)	\$ (17,894)
Indirect cost rate claimed	× 35.76%	× 33.94%	
Related indirect costs	(3,310)	(2,931)	\$ (6,241)
Total direct costs (from above)	(9,257)	(8,637)	(17,894)
Audit adjustment	\$ (12,567)	\$ (11,568)	\$ (24,135)

The program’s parameters and guidelines state that the cost of insurance is reimbursable for the following activities: (1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.

Education Code section 76355, subdivision (d)(2) (formerly section 72246, subdivision (2)) states that athletic insurance is not an authorized expenditure for health services.

The parameters and guidelines also state that all costs claimed must be traceable to source documentation that shows evidence of the validity of such costs.

Recommendation

We recommend the district ensure that it claims only costs for health services that are reimbursable under the mandate program. In addition, the district should ensure that all costs claimed are supported by source documentation.

District’s Response

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

SCO’s Comment

The finding and recommendation remain unchanged. The district did not provide any additional information supporting the allowability of insurance costs claimed.

**FINDING 2—
Overstated indirect
cost rates claimed**

The district overstated its indirect cost rates, thus overstating its indirect costs by \$140,259 for the audit period.

The district claimed indirect costs based on indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its ICRPs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions. The calculated indirect costs rates did not support the indirect cost rates claimed. The following table summarizes the allowable and claimed indirect cost rates:

	Fiscal Year	
	2001-02	2002-03
Allowable indirect cost rate	18.23%	17.96%
Less claimed indirect cost rate	(35.76)%	(33.94)%
Unsupported indirect cost rate	(17.53)%	(15.98)%

Based on these unsupported indirect cost rates, we made the following audit adjustments:

	Fiscal Year		Total
	2001-02	2002-03	
Athlete physicals:			
Direct costs claimed	\$ 3,072	\$ 2,933	
Unsupported indirect cost rate	× (17.53)%	× (15.98)%	
Audit adjustment, athlete physicals	(539)	(469)	
All other health services:			
Direct costs claimed	414,409	435,593	
Less unallowable costs, Finding 1	(9,257)	(8,637)	
Allowable direct costs claimed	405,152	426,956	
Unsupported indirect cost rate	× (17.53)%	× (15.98)%	
Audit adjustment, all other health services	(71,023)	(68,228)	
Total audit adjustment	\$ (71,562)	\$ (68,697)	\$ (140,259)

The parameters and guidelines state that indirect costs may be claimed in the manner described in the SCO claiming instructions. Those instructions require that districts obtain federal approval of ICRPs prepared according to Office of Management and Budget (OMB) Circular A-21. As an alternative, districts may use form FAM-29C to compute indirect cost rates. Form FAM-29C uses total expenditures that the district reports to the California Community College Chancellor’s Office (CCCCO) in its Annual Financial and Budget Report (CCFS-311).

Recommendation

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

District's Response

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d) (2)). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

SCO's Comment

In our revised final audit report, we corrected a mathematical error in the audit adjustment calculation. The original final audit report incorrectly identified the allowable direct costs originally claimed. The corrected calculation increased the audit adjustment by \$1,166. We also revised the recommendation to eliminate reference to ICRPs calculated in accordance with OMB Circular A-21. The current claiming instructions applicable to the Health Fee Elimination Program do not allow districts to claim indirect costs based on indirect cost rates prepared in accordance with OMB Circular A-21.

The parameters and guidelines state that indirect costs may be claimed in the manner described in the SCO's claiming instructions. Therefore, the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of the parameters and guidelines. The SCO's claiming instructions, effective for the audit period, state that community college districts have the option of using a federally-approved rate prepared in accordance with OMB Circular A-21 or the SCO's alternate methodology using Form FAM-29C. In this case, the district chose to use indirect cost rates that were not approved by a federal agency, which is not an option provided by the SCO's claiming instructions.

FINDING 3— Understated authorized health fee revenues claimed

For the audit period, the district understated authorized health service fees by \$217,409. The district reported actual revenue received rather than health fees the district was authorized to collect.

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the CCCCCO's website, as well as district-prepared reports indicating the number of students who received fee waivers.

Using the student enrollment and exemption data, we calculated the health fees the district was authorized to collect, as shown in the following table.

	Fall Semester	Spring Semester	Summer Session	Total
<u>Fiscal Year 2001-02</u>				
Student enrollment	23,157	27,910	14,823	
Less allowable health fee exemptions	(11,295)	(11,206)	(4,819)	
Subtotal	11,862	16,704	10,004	
Authorized health fee rate	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (142,344)</u>	<u>\$ (200,448)</u>	<u>\$ (90,036)</u>	<u>\$ (432,828)</u>
<u>Fiscal Year 2002-03</u>				
Student enrollment	29,273	28,939	16,941	
Less allowable health fee exemptions	(11,499)	(11,991)	(4,209)	
Subtotal	17,774	16,948	12,732	
Authorized health fee rate	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (213,288)</u>	<u>\$ (203,376)</u>	<u>\$ (114,588)</u>	<u>\$ (531,252)</u>

The following table summarizes the resulting audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Authorized health service fees	\$ (432,828)	\$ (531,252)	\$ (964,080)
Less authorized health service fees claimed	321,995	313,843	635,838
Audit adjustment	<u>\$ (110,833)</u>	<u>\$ (217,409)</u>	<u>\$ (328,242)</u>

The parameters and guidelines require that the district deduct authorized health fees from claimed costs. Education Code section 76355, subdivision (c), effective for the audit period, authorizes health fees for all students except those students who: (1) depend exclusively on prayer for healing; (2) attend a community college under an approved apprenticeship training program; or (3) demonstrate financial need.

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

Recommendation

We recommend that the district:

- Deduct authorized health service fees from mandate-related costs claimed. The district routinely reports student enrollment data to the CCCCCO. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G.

- Identify the number of apprenticeship program enrollees, if any, based on data elements SB23, code 1, and STD7, codes A through G.
- Maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1).
- Charge students the authorized fee amount for each school term.
- Waive the health service fee only for those students specified in Education Code section 76355, subdivision (c).

District's Response

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "*Any* offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. This Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to maintain that level of service" will exceed the statutory limit for the student health fees.

SCO's Comment

The finding and recommendation remain unchanged.

As mentioned above, the district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the CCCCO's website, as well as district-prepared reports indicating the number of students who received fee waivers.

We agree that community college districts may choose not to levy a health services fee. This is true even if Education Code section 76355 provides the districts with the authority to levy such fees. However, the effect of not imposing the health services fee is that the related health services costs do not meet the requirement for mandated costs as defined by Government Code section 17514. Health services costs recoverable through an authorized fee are not costs that the district is required to incur. Government Code section 17556 states that the CSM shall not find costs mandated by the State as defined in Government Code section 17514 if the district has authority to levy fees to pay for the mandated program or increased level of service.

**FINDING 4—
Understated
expenditures and
offsetting
reimbursements**

The district underclaimed services and supplies by \$837 in FY 2001-02. The related indirect costs totaled \$153, based on the allowable indirect cost rate claimed for that fiscal year. The district also underclaimed offsetting revenues received in reimbursement of the \$837 expenditure noted above.

The health center expended \$837 to provide TB (tuberculosis) tests for the health center staff, and this amount was reimbursed by the district. The reimbursement was improperly recorded as an offset to expenditures (cost applied) rather than recorded as revenue for services rendered.

The following table summarizes the resulting audit adjustment.

	Fiscal Year 2001-02
Underclaimed services and supplies	\$ 837
Allowable indirect cost rate	× 18.23%
Related indirect costs	153
Total underclaimed services and supplies (from above)	<u>837</u>
Audit adjustment, total health expenditures	\$ 990
Audit adjustment, offsetting reimbursements	<u>\$ (837)</u>

The parameters and guidelines state that eligible community college districts shall be reimbursed for the costs of providing a health services program. The parameters and guidelines also require the district to list the cost of materials that have been consumed or expended specifically for the purpose of this mandate.

The parameters and guidelines state that reimbursement for this mandate received from any source (e.g., federal, state, etc.) shall be identified and deducted from this claim.

Recommendation

We recommend the district include the expenditure of \$837 for providing TB tests for the health center staff in the direct costs of providing a health services program during FY 2001-02. In addition, the \$837 reimbursement received from the district should be shown as offsetting revenue.

District's Response

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

SCO's Comment

The finding and recommendation remain unchanged. The district agrees with the net audit adjustment.

OTHER ISSUE— Statute of limitations

The district's response included comments regarding our authority to audit costs claimed for FY 2001-02. The district's response and the SCO's comment follow.

District's Response

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

SCO's Comment

Government Code section 17558.5, subdivision (a), in effect during the audit period, states that a district's reimbursement claim is subject to an audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The claim was filed in December 2002. The audit was initiated on August 18, 2004, which is prior to the statutory deadline of December 2004.

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



Board of Trustees
Dr. Thomas J. Clark
Jeffrey A. Kelllogg
Dianne Thiel McNamee
Douglas W. Otto
Roberto Chang

Superintendent/President
E. Jim Schuss, Ph.D.

Long Beach City College • Long Beach Community College District
4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
State Controller's Audit
Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy services were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of services which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory test constitutes a different level of service from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

¹ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

○ ○ ○

The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

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

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 23, 2014, I served the:

Claimant Comments

Health Fee Elimination, 05-4206-I-03

Education Code Section 76355

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

Fiscal Years 2001-2002 and 2002-2003

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 23, 2014 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csminfo.ca.gov



October 3, 2014

Jim L. Spano
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

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

Re: **Request for Additional Information**
Incorrect Reduction Claim
Health Fee Elimination 05-4206-I-03
Education Code Section 76355
Statutes 1984, chapter 1; Statutes 1987, chapter 1118
Long Beach Community College District, Claimant

Dear Mr. Spano:

Commission staff requests additional information and evidence from the Controller's Office regarding Finding 1 of the audit for the above entitled matter. Specifically, the audit identifies a reduction totaling \$11,869 for fiscal years 2001-2002 and 2002-2003 for athletic insurance premiums that were not provided for in the parameters and guidelines. In comments on the draft proposed decision, the claimant disputes this finding, and asserts that the Controller has not "described how the disallowance was calculated" and that "only the Controller has the documentary support to show how these costs were reallocated".

The evidence in the record does not support this audit finding and the Commission therefore requests additional information regarding the evidentiary basis for this reduction.

Commission staff requests that the Controller provide a response to these questions posed above on or before **October 20, 2014**.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On October 3, 2014, I served the:

Request for Additional Information

Health Fee Elimination, 05-4206-I-03

Education Code Section 76355

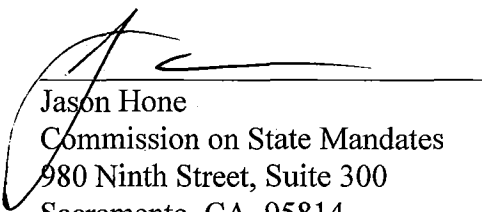
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2001-2002 and 2002-2003

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 3, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Claimant Representative
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Dennis Speciale, *State Controller's Office*

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DSpeciale@sco.ca.gov



RECEIVED
October 13, 2014
Commission on
State Mandates

JOHN CHIANG
California State Controller

October 10, 2014

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

Re: Request for Additional Information

Incorrect Reduction Claim (IRC)
Health Fee Elimination, 05-4206-I-03
Education Code section 76355
Statutes 1984, chapter 1, 2nd E.S.; Statutes 1987, chapter 1118
Fiscal Years: 2001-2002 and 2002-2003
Long Beach Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the Commission's October 3, 2014 Request for Additional Information on the above-entitled IRC.

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

Sincerely,

A handwritten signature in black ink that reads "Jim L. Spano".

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

JLS/sk

14647

**STATE CONTROLLER'S OFFICE RESPONSE TO
TO THE COMMISSION ON STATE MANDATES
REQUEST FOR ADDITIONAL INFORMATION
DATED OCTOBER 3, 2014**

Incorrect Reduction Claim (IRC)
Health Fee Elimination, 05-4206-I-08
Education Code section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
For Fiscal Year (FY) 2001-02 and FY 2002-03
Long Beach Community College District, Claimant

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State Controller's Office Response to Commission's Request for Additional Information....	Tab 2
Documentation Supporting Adjustment to Athletic Insurance Premiums.....	Tab 3

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

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

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

8
9 **INCORRECT REDUCTION CLAIM ON:**

No.: CSM 05-4206-I-3

10 *Health Fee Elimination Program*

AFFIDAVIT OF BUREAU CHIEF

11 Education Code section 76355
12 Statutes 1984, chapter 1, 2nd E.S.;
13 Statutes 1987, chapter 1118

14 Long Beach Community College District,
Claimant

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

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

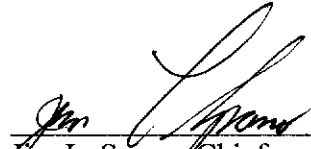
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7) A field audit was performed of claims filed by Long Beach Community College District for fiscal year (FY) 2001-02 and FY 2002-03.

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

Date: October 10, 2014

OFFICE OF THE STATE CONTROLLER

By: 

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

Tab 2

**STATE CONTROLLER'S OFFICE RESPONSE TO
TO THE COMMISSION ON STATE MANDATES
REQUEST FOR ADDITIONAL INFORMATION
DATED OCTOBER 3, 2014**

Incorrect Reduction Claim (IRC)
Health Fee Elimination, 05-4206-I-08
Education Code section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
For Fiscal Year (FY) 2001-02 and FY 2002-03
Long Beach Community College District, Claimant

SUMMARY

The following is the State Controller's Office's (SCO) response to the Commission's October 3, 2014 Request for Additional information relative to the above-entitled IRC.

I. Request for Additional Information

Commission's Request

Commission staff requests additional information and evidence from the Controller's Office regarding Finding 1 of the audit for the above entitled matter. Specifically, the audit identifies a reduction totaling \$11,869 for fiscal years 2001-2002 and 2002-2003 for athletic insurance premiums that were not provided for in the parameters and guidelines. In comments on the draft proposed decision, the claimant disputes this finding, and asserts that the Controller has not "described how the disallowance was calculated" and that "only the Controller has the documentary support to show how these costs were reallocated".

The evidence in the record does not support this audit finding and the Commission therefore requests additional information regarding the evidentiary basis for this reduction. Commission staff requests that the Controller provide a response to these questions posed above on or before **October 20, 2014**.

SCO's Comments

Our audit report identifies unallowable costs totaling \$11,869 for insurance premiums paid by the district for athletic insurance (\$5,857 for FY 2001-02 and \$6,012 for FY 2002-03).

To determine how insurance premiums were divided, we contacted Marie Rosa Martinelli, Vice-President of Student Insurance Company. Student Insurance Company provided student health insurance coverage to the district during the audit period. In an email dated September 13, 2004, Ms. Martinelli provided information showing how the district's insurance premiums were applied for FY 2001-02 and FY 2002-03. Based on this information, we prepared a worksheet titled "Audit Review of Student Insurance Costs" showing the difference between the claimed and audited amounts for "Basic Student Coverage." The audit finding is the difference between the claimed amounts of \$56,276 and \$57,964, and the audited amounts of \$50,419 and \$51,952 for FY 2001-02 and FY 2002-03 respectively. The audited amounts are based on the information provided by Ms. Martinelli.

This response includes our summary of a discussion held with district representatives on September 24, 2004, when we discussed the audit finding for athletic insurance. We provided a copy of the adjustment schedule to the district during the audit, that detailed the audit adjustment. We informed the district that the actual student insurance information was obtained from Maria Martinelli. Documentation supporting our audit finding is attached (**Tab 3**).

C. CERTIFICATION

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

Executed on October 10, 2014, at Sacramento, California, by:



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

Tab 3

Oct 10/14

Close



From: Marie Martinelli [SMTP:marie@studentinsuranceagency.com]

To: jchan@sco.ca.gov

Cc:

Subject: Long Beach

Sent: 9/13/04 1:39 PM

Importance: Normal

Dear Janny, Please forgive the delay, but this job is so tedious to do that I really need Gaby's help to get me through. Hope this helps; let me know if I can be of further assistance.

Sincerely,

Marie Rosa Martinelli
(310) 826-5688

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.760 / Virus Database: 509 - Release Date: 9/10/2004

Doc1.doc

2001-2002 SF
Oct 10/3/17

2001-2002

TOTAL PREMIUM	\$84,414
(*) TOTAL PREMIUM FOR SUMMER AND REGULAR STUDENTS	\$50,419
TOTAL SUMMER AND REGULAR STUDENTS (33,896)	(EC STUDENT \$1.49)
TOTAL CLASS I SPORTS PREMIUM	\$14,156
TOTAL CLASS I SPORTS PLAYERS (each Class I Sport Players \$140.20)	140
TOTAL CLASS II SPORTS PREMIUM (each Class II Sport Players \$85.14)	\$19,838
TOTAL CLASS II SPORTS PLAYERS	240

2002-2003

TOTAL PREMIUM	\$87,946
(*) TOTAL PREMIUM FOR SUMMER AND REGULAR STUDENTS	\$51,952
TOTAL SUMMER AND REGULAR STUDENTS (34,661)	(EC STUDENT \$1.50)
TOTAL CLASS I SPORTS PREMIUM	\$16,263
TOTAL CLASS I SPORTS PLAYERS (each Class I Sport Players \$140.20)	116
TOTAL CLASS II SPORTS PREMIUM (each Class II Sport Players \$85.14)	\$18,731
TOTAL CLASS II SPORTS PLAYERS	220

to SF

To: Student 31 11

STUDENT INSURANCE - ALL FORMS
Athletic & Football Coverage
University Accident & Health Insurance
College Accident & Health Insurance
Church Groups & Associations
Recreation & Club Insurance

William F. Hooper, President

STUDENT INSURANCE

Lic. No. 0386216

Established 1950

www.studentinsuranceagency.com

E-mail: SiLegal@studentinsuranceagency.com

TEL (310) 826-5688

FAX (310) 826-1601

11661 San Vicente Boulevard, Suite 200, Los Angeles, California 90049-5103

PROPOSED CERTIFICATE OF INSURANCE BINDER: 2001-2002

INSURED: LONG BEACH CITY COLLEGE
4904 East Carson Street
Long Beach, CA 90808

CONTACT: John R. Fylpaa, Ed.D.
Dean of Student Affairs
(562) 938-4155

BASIC COVERAGE: 1 Year Incurring Period
COMPANY: Blue Cross - Plan B
TYPE/COVERAGE: Students/Intercollegiate Athletes
PREMIUM: \$84,414.00

POLICY NO.
EFFECTIVE DATE:
8/1/01 - 8/1/02

SUPER CATASTROPHIC COVERAGE: Intercollegiate Athletes
COMPANY: AIG
COVERAGE LIMITS: \$1,000,000.00
EFFECTIVE DATE: 8/01/10-8/1/02

POLICY NO.
DEDUCTIBLE: \$25,000.00
PREMIUM: \$3,010.00

*** CATASTROPHIC COVERAGE:** Students Only
COMPANY: AIG
COVERAGE LIMITS: \$1,000,000.00
EFFECTIVE DATE: 8/01/01-8/01/02

POLICY NO.
DEDUCTIBLE: \$50,000.00
*** PREMIUM:** \$1,250.00

BASIC COVERAGE LIMITS

Per Accident Deductibles	\$ 50.00	Students
	\$100.00	Class I Athletes
	\$ 50.00	Class II Athletes
Co-Insurance Percentage	100%	PPO
	60%	Non-PPO
Per Accident Maximum	\$25,000.00	Athletes
	\$50,000.00	Students
	\$ 500.00	Emergency Illness Benefit
	\$ 1,000.00	Official Visitors
	\$ 1,000.00	Dental Maximum
	\$ 1,000.00	Prosthetic Devices
	\$ 2,000.00	Rental Durable Medical Equipment
	\$25,000.00	Expanded Medical/Intercollegiate Athletes
AD&D Benefits	Loss of Life	\$1,500.00
	Dismemberment	(Single: \$1,000.00/Double: \$5,000.00)

BLUE CROSS CLASS I SPORTS: Football, Gymnastics, Skiing (snow), Soccer, Surfing and Wrestling

Physical Therapy: Limited to 24 visits per calendar year per injury; additional visits available if approved by Blue Cross.

NON-PPO: Benefit will not exceed \$25.00 per visit.

Non-Duplication of Benefits Exercised on **ALL CLAIMS.**

THIS IS A BRIEF DESCRIPTION OF BENEFITS. THE MASTER POLICY CONTAINS COMPLETE DETAILS OF THE PROVISIONS, LIMITATIONS, EXCLUSIONS AND WILL PREVAIL AT ALL TIMES.

31 San Vicente Blvd., Suite 200
 Los Angeles, CA 90049
 (310) 826-5688
 (310) 826-1601 Fax

University Accident & Health Insurance
 College Accident & Health Insurance
 Church Groups & Associations
 Recreation & Club Insurance
 International Student Insurance
 Lic No. 0386216

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 Sacramento, CA 95841
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 (310) 826-1601 Fax

AG 10/17



www.studentinsuranceagency.com

E-mail: SiLegal@studentinsuranceagency.com

CERTIFICATE OF INSURANCE BINDER: 2002-2003

INSURED: LONG BEACH CITY COLLEGE
 4901 East Carson Street
 Long Beach, CA 90808

CONTACT: John R. Fylpaa
 Dean of Student Affairs
 (562) 938-4155

BASIC COVERAGE: 1 Year Incurring Period
 COMPANY: Blue Cross - Plan B
 TYPE/COVERAGE: Students/Intercollegiate Athletes
 PREMIUM: **\$86,946.00** *3/4/03*

POLICY NO. TBD
 EFFECTIVE DATE: 8/01/02-8/01/03
GROUP #
1157 RA
Blue Cross

SUPER CATASTROPHIC COVERAGE: Intercollegiate Athletes
 COMPANY: AIG
 COVERAGE LIMITS: \$1,000,000.00
 EFFECTIVE DATE: 8/01/02-8/01/03

POLICY NO. TBD
 DEDUCTIBLE: \$25,000.00
 PREMIUM: **\$3,462.00** *3/4/03*

*** CATASTROPHIC COVERAGE:** Students Only
 COMPANY: PENDING
 COVERAGE LIMITS: \$1,000,000.00
 EFFECTIVE DATES: 8/01/02-8/01/03

POLICY NO. TBD
 DEDUCTIBLE \$50,000.00
*** PREMIUM: \$1,438.00** *3/4/03*

BASIC COVERAGE LIMITS

Per Accident Deductibles \$ 50.00
 \$100.00
 \$ 50.00
 Co-Insurance Percentage 100%
 60%
 Per Accident Maximum \$25,000.00
 \$50,000.00
 \$ 500.00
 \$ 1,000.00
 \$ 1,000.00
 \$ 1,000.00
 \$ 2,000.00
 \$25,000.00

Students
 Class I Athletes
 Class II Athletes
 PPO
 Non-PPO
 Athletes
 Students
 Emergency Illness Benefit
 Official Visitors
 Dental Maximum
 Prosthetic Devices
Rental Durable Medical Equipment
 Expanded Medical/Intercollegiate Athletes

AD&D Benefits Loss of Life \$1,500.00
 Dismemberment (Single: \$1,000.00/Double: \$5,000.00)

BLUE CROSS CLASS I SPORTS: Football, Gymnastics, Skiing (snow), Soccer, Surfing and Wrestling
Physical Therapy: Limited to 24 visits per calendar year per injury; additional visits available if approved by Blue Cross.
NON-PPO: Benefit will not exceed \$25.00 per visit.
 Non-Duplication of Benefits Exercised on **ALL CLAIMS.**

THIS IS A BRIEF DESCRIPTION OF BENEFITS. THE MASTER POLICY CONTAINS COMPLETE DETAILS OF THE PROVISIONS, LIMITATIONS, EXCLUSIONS AND WILL PREVAIL AT ALL TIMES.

Associate Member of: California Community Colleges association, California Association of School Business Officials, School Service Membership Association of California School Administrators, California Association of Directors of Activities, NAFSA (National Association of Foreign Student Advisers)

Long Beach Community College District
 Health Fee Elimination Program
 Audit Review of Student Insurance Costs
 July 1, 2001 through June 30, 2003
 C05-MCC-0001

at 10/1/03

Fiscal Year 2001-02

Fiscal Year 2002-03

Per Claim	Basic	Cat	Total
Basic			\$ 84,414
catastrophic			3,010
catastrophic			1,250
Total			\$ 88,674

Per Claim	Basic	Cat	Total
Basic			\$ 86,946
catastrophic			3,482
catastrophic			1,438
Total			\$ 91,846

Per Actual Student Insurance Coverage			
			Total
Basic coverage			
Student			\$ 50,419
Class I athletes			14,156
Class II athletes			19,839
Subtotal			\$ 84,414
Catastrophic coverage			
Student			\$ 1,250
intercollegiate athletes			3,010
Subtotal			\$ 4,260
Total insurance			\$ 88,674

Per Actual Student Insurance Coverage			
			Total
Basic coverage			
Student			\$ 51,952
Class I athletes			16,263
Class II athletes			18,731
Subtotal			\$ 86,946
Catastrophic coverage			
Student			\$ 1,438
intercollegiate athletes			3,482
Subtotal			\$ 4,900
Total insurance			\$ 91,846

Per Claim			
			Total
Basic coverage			
Student			\$ 56,276
Catastrophic coverage			
Student			1,250
Total student coverage			\$ 57,526

Per Claim			
			Total
Basic coverage			
Student			\$ 57,964
Catastrophic coverage			
Student			1,438
Total insurance			\$ 59,402

Per Audit			
			Total
Basic coverage			
Student			\$ 50,419
Catastrophic coverage			
Student			1,250
Total student coverage			\$ 51,669

Per Audit			
			Total
Basic coverage			
Student			\$ 51,952
Catastrophic coverage			
Student			1,438
Total insurance			\$ 53,390

Unallowable Costs			
			Total
Basic coverage			
Student			(5,857)
Subtotal			\$ (5,857)
Catastrophic coverage			
Student			-
Subtotal			\$ -
Total overclaimed			\$ (5,857)

Unallowable Costs			
			Total
Basic coverage			
Student			(6,012)
Subtotal			\$ (6,012)
Catastrophic coverage			
Student			-
Subtotal			\$ -
Total athletic coverage			\$ (6,012)

Purpose

To review the student insurance costs claimed for the audit period

Source

1. FY 2001/02 and FY 2002/03 Health Fee Elimination Program claims
2. Actual insurance coverage from Marie Rosa Martinelli, Student Insurance (310) 626-5688
3. Certificate of Insurance Binder - FY 2001/02 & FY 2002/03.

Scope

1. Summarized the total student insurance claimed for the audit period
2. Summarized the actual student coverage based on the additional information provided by the insurance company
3. Compared the claimed amount with the audited amount

Conclusion

The district overstated the student insurance costs:

FY 2001/02	\$ (5,857)
FY 2002/03	(6,012)
\$	(11,869)

W/P Section 10 Page 11
Prepared by JC Date 8/24/04
Reviewed by JA Date 10/2/04

LONG BEACH COMMUNITY COLLEGE DISTRICT
Health Fee Elimination Program
Record of Contacts
July 1, 2001 through June 30, 2003
C05-MCC-0001

DATE: August 24, 2004

AUDITOR: Janny Chan

AGENCY CONTACT: Marie Rosa Martinelli, Vice President
Student Insurance Co.

AGENCY PHONE#: (310) 826-5688
FAX (310) 826-1601

DISCUSSED THE FOLLOWING ITEMS:

E-mailed her for the detailed computation of the student premium for Long Beach
CCD- student insurance

LONG BEACH COMMUNITY COLLEGE DISTRICT
HEALTH FEE ELIMINATION PROGRAM

09/24/04 **PRE-EXIT CONFERENCE** - Discussed w/ Jennifer Bartz
July 1, 2001 through June 30, 2003
C05-MCC-0001

-
4. Health Services – disallowed the costs pertaining to services not available in FY 86/87.

FY 2001/02 \$(11,690)
2002/03 (~~7,208~~) ²⁶
revised (6,026)

5. Health Fees – pending additional inf. From Toni Dubois, Financial Aid . Our preliminary review disclosed that the district under-reported the health fee could have been collected. Will e-mail Jennifer the adjustment schedule next week.

Comments

1. Salaries – Jennifer is aware of the inconsistency timekeeping records.
2. Services & Supplies –

Duplicated claiming - \$(2,625) and \$(3,400)
9/23/04 discussed with Cindy Baker, supervisor of Fiscal Operations, she agreed with the finding.

Student insurance - \$(5,857) and \$(6,012)

Told Jennifer, the actual student insurance information is provided by Maria of Student Insurance Co.

3. Health Services ^(6,026) \$(11,690) & ~~\$(7,208)~~

Adjustment is based on the 86/87 catalog, 1991 semester report and statistical reports. Unallowable percentages are computed by dividing the unallowable services (total of visits) over the total visits. The percentages then applied to the total audited direct costs.

4. Indirect costs ^(73,326) \$76,383 & ~~\$(73,533)~~

Based on our re-calculated indirect cost rates, we computed the adjustment

5. Health Fees

Schedule of the adjustment will e-mail Jennifer next week.

Chan, Janny

10/1
10
J. Uba
Art 10/3/07

From: Chan, Janny
Sent: Wednesday, September 29, 2004 7:32 AM
To: 'jbartz@lbcc.edu'
Cc: Luna, Art
Subject: Recap of our 9/24 meeting

Area discussed:

1. Salary/benefits - no variance was noted
Recommendation - better timekeeping records.

2. Services/Supplies

Duplicated claiming \$(2,625) Family Services of LB
(3,400) Dr. Uba

(discussed with Cindy Baker, Fiscal operations, in our previous meeting
and she agreed with the overclaimed amount)

Student insurance - overclaimed

FY 2001/02 \$(5,867)

2002/03 (6,012)

Copy of the adjustment schedule is provided to the district.

3. Indirect costs - overclaimed

FY 2001/02 \$(76,383)

2002/03 (73,533)

Copy of the audited indirect cost rate schedule is provided to the district.

4. Health Services - unallowable costs pertaining to services not available in FY 86/87

FY 2001/02 \$(11,690)

2002/03 (7,260)

5. Health Fees - pending additional inf. from Toni Dubois, Financial Aid. Our preliminary review disclosed that the district under-reported the health fee that could have been collected.

6. Management letter - district is requested to type the letter in the district letterhead and bring it to the exit conference

310
To collect
Oct 10/18/04

LONG BEACH COMMUNITY COLLEGE DISTRICT

Health Fee Elimination Program
2nd exit - October 14, 2004
July 1, 2001 through June 30, 2003
C05-MCC-0001

ic/11
A/11/04

PURPOSE

To document the issues discussed in this second meeting (The first exit was held on October 8, 2004).

SOURCE

See sign-in sheet for the district and SCO personnel.

Jennifer Bantz, MC Specialist
Toni DuBois, Dean, Financial Aid
John, Dean, Physical Ed/Ath.
Caroline Yousef, Six Ten & Assoc.
Joanne Tyler, Coordinator Student Health & Psych. Services

SCOPE

1. Documented the discussion regarding the audit findings
2. Revised the audit adjustments

DISCUSSION

1. Unallowable health services

Physical examination costs of athletes - the district provided additional information to show that the examination is provided to all students. The audit finding will be deleted.

Glucose and cholesterol testing - the district provided additional information to show that the supplies were funded by the Foundation grant, and the services were provided by volunteers. The audit finding will be deleted.

Pregnancy test- the district did not provided other documents to show that the test was offered also in FY 86/87. The audit finding is unchanged.

2. Unallowable services and supplies

Athletic insurance costs- the district could only provide their own calculation of the distribution method between student and athletes. We will apply the information from the Student Insurance co. The audit finding is unchanged.

Other services /supplies - the district agreed with the finding. The audit finding is Unchanged.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On October 14, 2014, I served the:

SCO's Response to Commissions Request for Additional Information

Health.Fee Elimination, 05-4206-I-03

Education Code Section 76355

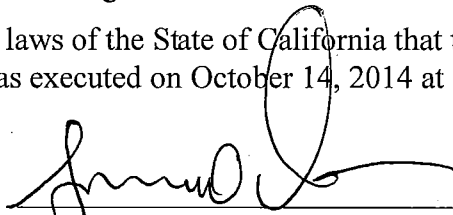
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2001-2002 and 2002-2003

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 14, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Phone: (916) 445-0328
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kbsixten@aol.com

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jspano@sco.ca.gov

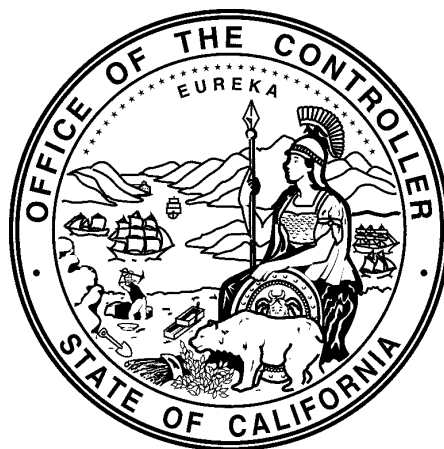
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DSpeciale@sco.ca.gov

Received
August 2, 2013
Commission on
State Mandates

MANDATED COST MANUAL FOR SCHOOL DISTRICTS

STATE OF CALIFORNIA



KATHLEEN CONNELL
STATE CONTROLLER

FOREWORD

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

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

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

Prepared by the State Controller's Office
Updated September 30, 2002

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	Annual Parent Notification III	Ch. 448/75	221
	Caregiver Affidavits	Ch. 98/94	172
	Charter Schools	Ch. 781/92	140
	COE Fiscal Accountability Reporting	Ch. 917/87	209
	Collective Bargaining	Ch. 961/75	11
	County Treasury Oversight Committee	Ch. 784/95	206
	Criminal Background Checks	Ch. 588/97	183
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	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91

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Schoolsite Discipline Rules	Ch. 87/86	146
Scoliosis Screening	Ch. 1347/80	58
Sex Offenders: Disclosure by Law Enforcement Officers	Ch. 908/96	216
Standardized Testing and Reporting	Ch. 828/97	208
Threats Against Peace Officers	Ch. 1249/92	163

SECTION 4 Appendix

- A. State Mandates Apportionment System
- B. State of California Travel Expense Guidelines
- C. Government Code Sections 17500 - 17616

APPROPRIATIONS FOR THE 2002-03 FISCAL YEAR

Source of State Mandated Cost Appropriations

Schedule	Program	Amount Appropriated
Chapter 379/02, Item 6110-295-0001		
(1)	Chapter 448/75 Annual Parent Notification III	\$3,664,000
(2)	Chapter 77/78 Absentee Ballots	0 ¹
(3)	Chapter 87/86 School Site Discipline Rules	0 ¹
(4)	Chapter 98/94 Caregiver Affidavits	395,000
(5)	Chapter 160/93 School District of Choice	0 ¹
(6)	Chapter 134/87 Pupil Suspension: District Employee Reports	1,000 ²
(7)	Chapter 161/93 Intradistrict Attendance	1,000
(8)	Chapter 172/86 Interdistrict Attendance	1,000
(9)	Chapter 172/86 Interdistrict Attendance: Parent's Employment	1,000
(10)	Chapter 486/75 Mandate Reimbursement Process	1,000
(11)	Chapter 498/83 Graduation Requirements	14,204,000
(12)	Chapter 498/83 Notification of Truancy	8,150,000
(13)	Chapter 498/83 Pupil Expulsion/Expulsion Appeals	2,480,000 ²
(14)	Chapter 624/92 School Bus Safety	0 ⁴
(15)	Chapter 641/86 Open Meetings Act/Brown Act Reform	3,470,000
(16)	Chapter 668/78 Pupil Exclusions	396,000
(17)	Chapter 781/92 Charter Schools	611,000
(18)	Chapter 783/95 Investment Reports	160,000
(19)	Chapter 799/80 PERS Increased Death Benefits	788,000 ³
(20)	Chapter 818/91 AIDS Prevention Instruction	3,187,000
(21)	Chapter 961/75 Collective Bargaining	41,424,000 ²
(22)	Chapter 965/77 Pupil Classroom Suspension	1,833,000
(23)	Chapter 1208/76 Pupil Health Screenings	3,283,000
(24)	Chapter 975/95 Physical Performance Tests	1,202,000
(25)	Chapter 1423/84 Juvenile Court Notices II	343,000
(26)	Chapter 1107/84 Removal of Chemicals	1,331,000
(27)	Chapter 1117/89 Law Enforcement Agency Notification	1,543,000
(28)	Chapter 1176/77 Immunization Records	3,520,000
(29)	Chapter 1184/75 Habitual Truant	1,000
(30)	Chapter 1213/91 Collective Bargaining Agreement Disclosures	277,000 ²

¹ If AB3005 is chaptered, these programs will be changed to optional mandates with no additional funding.

² The programs in Schedules (6) and (13) were consolidated into Pupil Suspensions, Expulsions, and Expulsion Appeals and the programs in schedules (21) and (30) were consolidated into Collective Bargaining.

³ Funds appropriated in Schedules (19) and (35) are for transfer to the Pupil Employees' Retirement System for reimbursement of costs incurred pursuant to Chapter 799/80 and Chapter 1398/74.

⁴ The programs in Schedules (14) and (45) were consolidated into School Bus Safety II. This program has been suspended during the 2002-03 fiscal year, per Budget Act Item 6110-295-0001, Chapter 379/02, Provision 4.5.

APPROPRIATIONS FOR THE 2002-03 FISCAL YEAR (continued)**Source of State Mandated Cost Appropriations**

Schedule	Program	Amount Appropriated
(31) Chapter 1253/75	Expulsion Transcripts	29,000
(32) Chapter 1284/88	Parent Classroom Visits	1,041,000
(33) Chapter 1306/89	Notification to Teachers of Pupil Expulsion	2,916,000
(34) Chapter 1347/80	Scoliosis Screening	2,291,000
(35) Chapter 1398/74	PERS-Unused Sick Leave Credits	3,261,000 ³
(36) Chapter 1463/89	School Accountability Report Cards	2,162,000
(37) Chapter 1607/84	School Crimes Reporting	0
(38) Chapter 1659/84	Emergency Procedures: Earthquake & Disasters	14,542,000
(39) Chapter 1675/84	School Testing Physical Fitness	0 ⁵
(40) Chapter 778/96	American Government Course Document Requirements	206,000
(41) Chapter 309/95	Pupil Residency Verification Appeals	224,000
(42) Chapter 588/97	Criminal Background Checks	5,202,000
(43) Chapter 410/95	School Crimes Reporting II	0 ⁶
(44) Chapter 929/97	Annual Parent Notification-Staff Development	1,318,000
(45) Chapter 831/94	School Bus Safety II	0 ⁶
Total Appropriations, Item 6110-295-001		<u>\$125,459,000</u>
Chapter 379/02, Item 6870-295-0001		
(1) Chapter 1/84	Health Fee Elimination	<u>1,691,000</u>
TOTAL - Funding for the 2002-03 Fiscal Year		<u>\$127,150,000</u>

⁵ No claims shall be filed for Schedule (39) School Testing Physical Fitness as this program is inactive.

⁶ Schedule (43) School Crimes Reporting II and (45) School Bus Safety II have been suspended during the 2002-03 fiscal year, per Budget Act Item 6110-295-0001, Chapter 379/02, Provision 4.5.

REIMBURSABLE STATE MANDATED COST PROGRAMS

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

2001-02	2002-03	School Districts and County Offices of Education	
Reimburse- ment Claims	Estimated Claims		
x	x ¹	Chapter 77/78	Absentee Ballots
x	x	Chapter 818/91	AIDS Prevention Instruction
x	x	Chapter 778/96	American Government Course Document Requirements
x	x	Chapter 448/75	Annual Parent Notification III
x	x	Chapter 98/94	Caregiver Affidavits
x	x	Chapter 781/92	Charter Schools
x	x	Chapter 917/87	COE Fiscal Accountability Reporting
x	x	Chapter 961/75	Collective Bargaining
x	x	Chapter 784/95	County Treasury Oversight Committee
x	x	Chapter 588/97	Criminal Background Checks
x	x	Chapter 1659/84	Emergency Procedures: Earthquakes and Disasters
x	x	Chapter 650/94	Employee Benefits Disclosure
x	x	Chapter 1253/75	Expulsion of Pupils: Transcript Cost for Appeals
x	x	Chapter 36/77	Financial and Compliance Audits
x	x	Chapter 498/83	Graduation Requirements
x	x	Chapter 1184/75	Habitual Truant
x	x	Chapter 1120/96	Health Benefits for Survivors of Peace Officers & Firefighters
x	x	Chapter 1/84	Health Fee Elimination
x	x	Chapter 1176/77	Immunization Records
x	x	Chapter 172/86	Interdistrict Attendance Permits
x	x	Chapter 172/86	Interdistrict Transfer Requests: Parents Employment
x	x	Chapter 161/93	Intradistrict Attendance
x	x	Chapter 783/95	Investment Reports
x	x	Chapter 1423/84	Juvenile Court Notices II
x	x	Chapter 1117/89	Law Enforcement Agency Notification
x	x	Chapter 284/98	Law Enforcement College Jurisdiction Agreements
x	x	Chapter 126/93	Law Enforcement Sexual Harassment Training
x	x	Chapter 486/75	Mandate Reimbursement Process
x	x	Chapter 498/83	Notification of Truancy
x	x	Chapter 1306/89	Notification to Teachers: Pupils Subject to Suspension or Expulsion
x	x	Chapter 641/86	Open Meetings Act/Brown Act Reform
x	x	Chapter 1284/88	Parent Classroom Visits
x	x	Chapter 465/76	Peace Officers Procedural Bill of Rights
x	x	Chapter 875/85	Photographic Record of Evidence
x	x	Chapter 64097	Physical Education Reports
x	x	Chapter 975/95	Physical Performance Tests
x	x	Chapter 965/77	Pupil Classroom Suspension: Counseling
x	x	Chapter 668/78	Pupil Exclusions
x	x	Chapter 1208/76	Pupil Health Screenings
x	x	Chapter 309/95	Pupil Residency Verification and Appeals
x	x	Chapter 1253/75	Pupil Suspensions, Expulsions, and Expulsion Appeals

¹ Refer to footnote 1 listed under "Appropriations for the 2002-03 fiscal year."

REIMBURSABLE STATE MANDATED COST PROGRAMS (continued)

2001-02 Reimburse- ment Claims	2002-03 Estimated Claims	School Districts and County Offices of Education	
x	x	Chapter 1107/84	Removal of Chemicals
x	x	Chapter 1463/89	School Accountability Report Cards
x	N/A	Chapter 624/92	School Bus Safety II
x	N/A	Chapter 1607/84	School Crimes Reporting II
x	x	Chapter 100/81	School District Fiscal Accountability Reporting
x	x ¹	Chapter 160/93	School District of Choice: Transfers and Appeals
x	x	Chapter 1138/93	School Site Councils and Brown Act Reform
x	x ¹	Chapter 87/86	Schoolsite Discipline Rules
x	x	Chapter 1347/80	Scoliosis Screening
x	x	Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers
x	x	Chapter 828/97	Standardized Testing and Reporting
Community College Districts			
x	x ¹	Chapter 77/78	Absentee Ballots
x	x	Chapter 961/75	Collective Bargaining
x	x	Chapter 1/84	Health Fee Elimination
x	x	Chapter 783/95	Investment Reports
x	x	Chapter 284/98	Law Enforcement College Jurisdiction Agreements
x	x	Chapter 486/75	Mandate Reimbursement Process
x	x	Chapter 641/86	Open Meetings Act/Brown Act Reform
x	x	Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers
x	x	Chapter 1249/92	Threats Against Peace Officers

If AB3005 is chaptered, these programs will be changed to optional mandates with no additional funding.

AUDIT OF COSTS

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

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended. Claim documentation shall be made available to the SCO on request.

RETENTION OF CLAIMING INSTRUCTIONS

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

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

FILING A CLAIM

1. Introduction

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

Estimated claims that show costs to be incurred in the current fiscal year and reimbursement claims that detail the costs actually incurred for the prior fiscal year may be filed with the State Controller's Office (SCO). Claims for on-going programs are filed annually by January 15. Claims for new programs are filed within 120 days from the date claiming instructions are issued for the program. A penalty is assessed for late claims. The SCO may audit the records of any local agency or school district to verify the actual amount of mandated costs and may reduce any claim which is excessive or unreasonable.

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

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

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

2. Types of Claims

A claimant may file a reimbursement claim for mandated costs incurred during the previous fiscal year or may file an estimated claim for mandated costs to be incurred during the current fiscal year. For mandates included in SMAS, a claimant who had established a base year entitlement would automatically be reimbursed by the SCO for the mandate.

All claims received by the SCO will be reviewed to verify costs. Adjustments to the claims will be made if the amounts claimed are determined to be excessive, improper, or unreasonable. Claims must be filed with sufficient documentation (if required in claiming instructions) to support the costs claimed. The types of documentation required to substantiate a claim are identified in the "Cost Elements of a Claim" section of this manual. The certification on Form FAM-27 must be signed and dated by the entity's authorized officer in order for the SCO to make payment on the claim.

A. Reimbursement Claim

A reimbursement claim is defined by Government Code Section (GC §) 17522 as any claim for costs incurred by a local agency or school district and filed with the SCO against an appropriation made for the purpose of paying the claim.

- A claimant may file an annual reimbursement claim by January 15 following the fiscal year in which costs were incurred for an on-going program. A reimbursement claim must detail the costs actually incurred for a fiscal year. The claim must include supporting documentation if required in claiming instruction to substantiate the costs claimed.
- Prior to January 1, 1990, if a claimant submitted an otherwise valid reimbursement claim after the deadline, the Controller would have paid the claim in an amount equal to 80 percent of the amount that would have been paid had the claim been timely filed. Any reimbursement claim submitted more than one year after the deadline would not be paid.
- After January 1, 1990, the late penalty provision was changed by Chapter 589/89. Any reimbursement claim with a filing deadline that is after January 1, 1990, will be reduced by 10 percent of the approved costs, but not to exceed \$1,000 if it is filed after the deadline.
- Any reimbursement claim submitted more than one year after the deadline will not be paid.
- As added by Chapter 643/99, on October 10, 1999, all initial claims for all fiscal years required to be filed on their initial filing date for a state-mandated local program shall be considered as one claim for the purpose of computing any late claim penalty.

B. Estimated Claim

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

- A claimant may file an estimated claim for mandated costs to be incurred during the fiscal year. Estimated claims are due by January 15 of the fiscal year in which the costs are to be incurred or by a date specified in the claiming instructions. After having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. The reimbursement claim must detail the actual costs incurred for the fiscal year in which the estimated claim was filed. If actual costs are greater than or less than the estimated claim, the balance is either the amount due to the claimant or due from the claimant.

C. Entitlement Claim

An entitlement claim is defined by GC § 17522 as any claim filed by a local agency or school district with the SCO for the sole purpose of establishing or adjusting a base year entitlement for a mandate that has been included in SMAS. School mandates included in SMAS are listed in Appendix A.

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

- A base year entitlement is determined by computing an average of the claimant's costs for fiscal years 1982-83, 1983-84, 1984-85 or any three consecutive years thereafter. The amount is first adjusted according to any changes in the deflator. The deflator is applied separately to each year's costs for the three years, which comprise the base year. The SCO will perform this computation for each claimant who has filed claims for three consecutive years. If a claimant has incurred costs for three consecutive years but has not filed a claim in each of those years, the claimant may file an entitlement claim, form FAM-

filed a claim in each of those years, the claimant may file an entitlement claim, form FAM-43, to establish a base year entitlement. An entitlement claim does not result in the claimant being reimbursed for the costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

Claims should be rounded to the nearest dollar. Submit a signed original and one copy of form FAM-27, Claim for Payment, and all other forms and supporting documents (no copies necessary). Use the following mailing addresses:

If delivered by
U.S. Postal Service:

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

If delivered by
Other delivery services:

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

3. Minimum Claim Amount

GC Section 17564 provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds two hundred dollars (\$200)¹, provided that a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds \$200, even if the individual school district's, direct service district's, or special district's claims do not each exceed \$200. The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the SCO, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

4. Eligibility of Costs

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

- The cost is necessary and reasonable for proper and efficient administration of the mandate and not a general expense required carrying out the overall responsibilities of government.
- The cost is allocable to a particular cost objective.
- The cost is net of any applicable credits that offset or reduce expenses of items allocable to the mandate.

The SCO has identified certain costs that, for the purpose of claiming mandated costs, are

¹ If AB3000 is chaptered, the minimum claim amount would be increased from \$200 to \$1,000.

unallowable and should not be claimed on the claim forms unless specified as reimbursable under the program. These expenses include, but are not limited to, subscriptions, depreciation, memberships, conferences, workshops, and general education.

5. Cost Elements of a Claim

Claims for reimbursement of mandated costs are comprised of allowable costs that are either direct or indirect. Because each mandate is unique, the cost element guidelines in this chapter are provided as a general reference. If the requirements of a specific mandate differ from these cost guidelines, the requirements outlined under the specific mandate shall take precedence.

A. Direct Costs

A direct cost is a cost that can be identified specifically with a particular program or activity. Costs that are typically classified as direct costs are:

Table 1 Annual Billable Hours

	Days	Hours Per Day	Total Hours
Gross Hours	365	8	2,920
Weekends	104	8	(832)
Holidays	11	8	(88)
Vacation	14	8	(112)
Sick Leave, Misc.	11	8	(88)
Annual Billable Hours			1,800

- As illustrated in Table 1, a claimant may use 1,800 hours for a full-time employee. If a claimant uses an amount less than 1,800 hours as annual billable hours, a computation of how these hours were computed must be included with the claim.
- Compensation of employees for time devoted specifically to the execution of the mandate.
- Cost of materials acquired, consumed, or expended specifically for the purpose of the mandate.
- Services furnished specifically for the mandate by other entities.

(1) Employee Wages, Salaries, and Fringe Benefits

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

- (a) Compute a billable hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a billable hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual billable hours. Annual billable hours equal the gross annual hours less non-work hours.

Table 2 Annual Billable Rate, Salary + Benefits Method

Formula:	Description:
$[(EAS + Benefits) \div ABH] = ABR$	EAS = Employee's Annual Salary
	ABH = Annual Billable Hours
$[(\$26,000 + \$7,750) \div 1,800 \text{ hrs}] = \18.75	ABR = Annual Billable Rate

- As illustrated in Table 2, if you assume an employee's compensation was \$26,000 and \$7,750 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the annual billable rate would be \$18.75.
- (b) A claimant may also compute the annual billable rate by using the "Percent of Salary Method."

Table 3 Annual Billable Rate, Percent of Salary Method

Example:		
Step 1: Fringe Benefits as a Percent of Salary		Step 2: Annual Billable Rate
Retirement	15.00 %	Formula: $[(EAS \times (1 + FBR)) \div ABH] = ABR$ $[(\$26,000 \times (1.2981)) \div 1,800] = \18.75
Social Security	6.30	
Health & Dental Insurance	5.25	
Workers Compensation	3.25	
Total	29.80 %	
Description:		
EAS = Employee's Annual Salary		ABH = Annual Billable Hours
FBR = Fringe Benefit Rate		ABR = Annual Billable Rate

- As illustrated in Table 3, both methods produce the same annual billable rate.

Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to employees during periods of authorized absences (i.e., annual leave, sick leave, etc.) and employer's contributions for social security, pension plans, insurance, workmen's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:

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

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

(2) Materials and Supplies

Only those materials and supplies not included in the overhead rate and used exclusively for the mandated activity are reimbursable under this cost element. The claimant must list the materials and supplies that were used to perform the mandated activity, the number of units consumed, the cost per unit, and the dollar amount claimed as a cost. Material and supplies purchased to perform a particular mandated activity are expected to be reasonable in quality, quantity and costs. Purchases in excess of reasonable quality, quantity and costs are not reimbursable. Materials and supplies that are withdrawn from inventory must be charged to the mandated activity based upon a recognized method of pricing, consistently applied.

(3) Contract Services

For each of the activities performed, the claimant must list the name of the consulting firm that was contracted with to provide the service and describe the specific mandated activities performed by the consultant. The claimant must also provide the inclusive dates when the service was performed, the number of hours spent to perform the mandate, and the consultant's hourly billing rate. The hourly billing rate shall not exceed the rate specified in the claiming instructions for the mandated program. The consultant's statement, which includes an itemized list of costs for services performed, must accompany the claim.

(4) Equipment

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the claiming instructions for a particular mandate. Equipment rentals used solely for the mandate is reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. For each of the activities performed, the claimant must identify the equipment that was rented the time period for which the equipment was rented and the cost of the rental.

(5) Capital Outlays

Capital outlays for land, building, equipment, furniture and fixtures may be claimed only if the claiming instructions specify them as allowable for the program. If the capital outlays are allowable, the claiming instructions for the mandated program will specify the basis for the reimbursement.

(6) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of local jurisdictions, except for programs that must be reimbursed in accordance with the State Board of Control travel standards (Refer to Appendix B, State of California Travel Expense Guidelines, for current rates). For each activity performed, the claimant must identify the purpose of the trip, the name and address of the person incurring the expense, the date and time of departure and return for each trip, a description of each expense claimed, the cost of commercial transportation or number of private auto miles traveled, and amount of tolls and parking with receipts over \$10.00.

(7) Documentation

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

B. Indirect Cost

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

(1) Indirect Costs for Schools

School districts and county superintendents of schools may claim indirect costs incurred for mandated costs. For fiscal years prior to 1986-87, school districts and county superintendents of schools may use the Department of Education Form Nos. J41A or J-73A, respectively, applicable to the fiscal year of the claim. The rate, however, must not be applied to items of direct costs claimed in complying with the mandate if those same costs are included in cost centers identified as General Support (i.e., EDP Codes 400, 405, 410 in Column 3). For the 1986-87 and subsequent fiscal years, school districts and county superintendents of schools may use the Annual Program Cost Data Report, Department of Education Form Nos. J-380 or J-580, respectively, applicable to the fiscal year of the claim.

The amount of indirect costs the claimant is eligible to claim is computed by multiplying the rate by direct costs. When applying the rate, multiply the rate by direct costs not included in total support services EDP No. 422 of the J-380 or J-580. If there are any exceptions to this general rule for applying the indirect cost rate, they will be found in the individual mandate instructions.

(2) Indirect Cost Rate for Community Colleges

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

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

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

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

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

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

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration	6000					
Academic Administration	301	2,941,386	105,348	2,836,038	0	2,836,038
Course Curriculum & Develop.	302	21,595	0	21,595	0	21,595
Instructional Support Service	6100					
Learning Center	311	22,737	863	21,874	0	21,874
Library	312	518,220	2,591	515,629	0	515,629
Media	313	522,530	115,710	406,820	0	406,820
Museums and Galleries	314	0	0	0	0	0
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300	1,679,596	54,401	1,625,195	0	1,625,195
Other Student Services	6400					
Financial Aid Administration	321	391,459	20,724	370,735	0	370,735
Health Services	322	0	0	0	0	0
Job Placement Services	323	83,663	0	83,663	0	83,663
Student Personnel Admin.	324	289,926	12,953	276,973	0	276,973
Veterans Services	325	25,427	0	25,427	0	25,427
Other Student Services	329	0	0	0	0	0
Operation & Maintenance	6500					
Building Maintenance	331	1,079,260	44,039	1,035,221	0	1,035,221
Custodial Services	332	1,227,668	33,677	1,193,991	0	1,193,991
Grounds Maintenance	333	596,257	70,807	525,450	0	525,450
Utilities	334	1,236,305	0	1,236,305	0	1,236,305
Other	339	3,454	3,454	0	0	0
Planning and Policy Making	6600	587,817	22,451	565,366	565,366	0
General Inst. Support Services	6700					
Community Relations	341	0	0	0	0	0
Fiscal Operations	342	634,605	17,270	617,335	553,184	(a) 64,151
Subtotal		\$32,037,201	\$1,856,299	\$30,180,902	\$1,118,550	\$29,062,352

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
General Inst. Sup. Serv. (cont.)	6700						
Administrative Services	343	\$1,244,248	\$219,331	\$1,024,917	\$933,494	(a) \$91,423	
Logistical Services	344	1,650,889	126,935	1,523,954	1,523,954	0	
Staff Services	345	0	0	0	0	0	
Noninstr. Staff Benefit & Incent.	346	10,937	0	10,937	0	10,937	
Community Services	6800						
Community Recreation	351	703,858	20,509	683,349	0	683,349	
Community Service Classes	352	423,188	24,826	398,362	0	398,362	
Community Use of Facilities	353	89,877	10,096	79,781	0	79,781	
Ancillary Services	6900						
Bookstores	361	0	0	0	0	0	
Child Development Center	362	89,051	1,206	87,845	0	87,845	
Farm Operations	363	0	0	0	0	0	
Food Services	364	0	0	0	0	0	
Parking	365	420,274	6,857	413,417	0	413,417	
Student Activities	3663	0	0	0	0	0	
Student Housing	67	0	0	0	0	0	
Other	379	0	0	0	0	0	
Auxiliary Operations	7000						
Auxiliary Classes	381	1,124,557	12,401	1,112,156	0	1,112,156	
Other Auxiliary Operations	382	0	0	0	0	0	
Physical Property Acquisitions	7100	814,318	814,318	0	0	0	
(05) Total		\$38,608,398	\$3,092,778	\$35,515,620	\$3,575,998	\$31,939,622	
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				11.1961%			
(07) Notes							
(a) Mandated Cost activities designated as direct costs per claim instructions.							

C. Offset Against Mandated Claims

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

Example 1:

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

Table 5 Offset Against State Mandates, Example 1

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

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

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

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

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

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

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

Example 2:

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

Table 6 Offset Against State Mandates, Example 2

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

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

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

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

6. Federal and State Funding Sources

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

7. Governing Authority

The costs of salaries and expenses of the governing authority, such as the school superintendent and governing board, are not reimbursable. These are costs of general government as described by the federal guideline entitled "Cost Principle and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," A-87.

8. Payment of Claim by State Controller's Office

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

9. Audit of Claim by State Controller's Office

The SCO has the authority to audit the records of a claimant and may reduce any claim, which is determined by the SCO to be excessive or unreasonable. The claimant has the responsibility of retaining, for a period of two years after the end of the calendar year in which the reimbursement claim is filed or last amended, all supporting documents (books of original entry, general and subsidiary ledgers, purchase orders, invoices, canceled warrants and payroll records). In those instances where no funds are appropriated for the program for the fiscal year, which the claim is made, the time for the SCO to initiate an audit commence to run from the date of initial payment of the claim. The claimant also has the responsibility of organizing the claim, supporting work papers and source documents in a manner, which provides the auditor with a clear audit trail from the claim to supporting documents.

10. Source Documents

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets to show evidence of the validity of claimed costs from the date of initial payment of the claim. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

11. Claim Forms and Instructions

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

A. Form-2, Component/Activity Cost Detail

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

B. Form-1, Claim Summary

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

Community colleges have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21) or form FAM-29C.

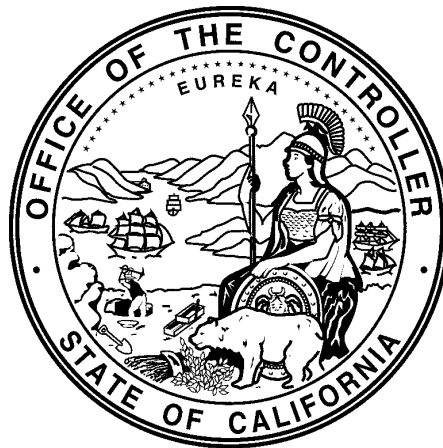
C. Form FAM-27, Claim for Payment

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

Received
August 2, 2013
Commission on
State Mandates

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

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

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

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

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

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		Program Number
	Absentee Ballots	Ch. 77/78
	Collective Bargaining	Ch. 961/75
	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96
	Health Fee Elimination	Ch. 1/84
	Investment Reports	Ch. 783/95
	Law Enforcement College Jurisdiction Agreements	Ch. 284/98
	Law Enforcement Sexual Harassment Training	Ch. 126/93
	Mandate Reimbursement Process	Ch. 486/75
	Open Meetings Act /Brown Act Reform	Ch. 641/86
	Peace Officers Procedural Bill of Rights	Ch. 465/76
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REIMBURSABLE STATE MANDATED COST PROGRAMS

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

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

APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR
Source of State Mandated Cost Appropriations

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

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

FILING A CLAIM

1. Introduction

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

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

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

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

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

2. Types of Claims

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

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

A. Reimbursement Claim

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

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

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

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

B. Estimated Claim

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

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

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

C. Entitlement Claim

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

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

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

3. Minimum Claim Amount

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

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

4. Filing Deadline for Claims

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

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

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

5. Payment of Claims

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

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

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

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

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

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

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

6. State Mandates Apportionment System (SMAS)

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

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

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

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

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

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

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

School Mandates Included In SMAS

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

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

7. Direct Costs

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

(1) Employee Wages, Salaries, and Fringe Benefits

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

(a) Productive Hourly Rate Options

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

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

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

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

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

(b) Compute a Productive Hourly Rate

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

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

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

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

Table 2 Productive Hourly Rate, Percent of Salary Method

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

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

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

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

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

(c) Calculating an Average Productive Hourly Rate

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

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

(d) Employer's Fringe Benefits Contribution

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

For example:

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

(e) Materials and Supplies

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

(f) Calculating a Unit Cost for Materials and Supplies

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

Table 1 Calculating A Unit Cost for Materials and Supplies

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

Table 2 Calculating a Unit Cost for Materials and Supplies

Supplies	Supplies Used	Unit Cost of Supplies Per Activity
Paper (\$10.00 for 500 sheet ream)	250 Sheets	\$5.00
Files (\$2.50 for box of 25)	10 Folders	1.00
Envelopes (\$3.00 for box of 100)	50 Envelopes	1.50
Photocopies (\$0.05 per copy)	40 Copies	<u>2.00</u>
		<u>\$9.50</u>
<p>If the number of reimbursable instances, is 25, then the unit cost of supplies is \$0.38 per reimbursable instance ($\\$9.50 / 25$).</p>		

(g) Contract Services

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

(h) Equipment Rental Costs

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

(i) Capital Outlay

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

(j) Travel Expenses

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

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

(k) Documentation

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

8. Indirect Costs

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

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

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

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

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

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

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

Table 4 Indirect Cost Rate for Community Colleges

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

Table 4 Indirect Cost Rate for Community Colleges (continued)

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

Table 4 Indirect Cost Rate for Community Colleges (continued)

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

9. Offset Against Mandated Claims

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

Example 1:

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

Table 5 Offset Against State Mandates, Example 1

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

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

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

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

In (4), local assistance revenues were fully realized to cover the entire cost of the program, including the state mandate activity; therefore, the offset against state mandated claims is \$2,500, and claimable costs are \$0..

In (5), the district is sharing 50% of the project cost. Since local assistance revenues of \$50,000 were fully realized, the offset against state mandated claims is \$1,250.

In (6), local assistance revenues were less than the amount expended and the offset against state mandated claims is \$250. Therefore, the claimable mandated costs are \$2,250.

Example 2:

As illustrated in Table 6, this example shows how the offset against state mandated claims is determined for school districts receiving special project funds based on approved actual costs. Local assistance revenues for special projects must be applied proportionately to approved costs.

Table 6 Offset Against State Mandates, Example 2

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	\$100,000	\$100,000	\$2,500	\$2,500	\$-0-
2.	100,000 **	75,000	2,500	1,875	625
3.	100,000 **	45,000	1,500	1,125	375

** School district share is \$25,000 of the program cost.

In (2), the entire program cost was approved. Since the local assistance revenue source covers 75% of the program cost, it also proportionately covered 75% of the \$2,500 state mandated costs, or \$1,875.

If in (3) local assistance revenues are less than the amount expected because only \$60,000 of the \$100,000 program costs were determined to be valid by the contracting agency, then a proportionate share of state mandated costs is likewise reduced to \$1,500. The offset against state mandated claims is \$1,125. Therefore, the claimable mandated costs are \$375.

Federal and State Funding Sources

The listing in Appendix C is not inclusive of all funding sources that should be offset against mandated claims but contains some of the more common ones. State school fund apportionments and federal aid for education, which are based on average daily attendance and are part of the general system of financing public schools as well as block grants which do not provide for specific reimbursement of costs (i.e., allocation formulas not tied to expenditures), should not be included as reimbursements from local assistance revenue sources.

Governing Authority

The costs of salaries and expenses of the governing authority, such as the school superintendent and governing board, are not reimbursable. These are costs of general government as described in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".

10. Notice of Claim Adjustment

All claims submitted to the SCO are reviewed to determine if the claim was prepared in accordance with the claiming instructions. If any adjustments are made to a claim, the claimant will receive a "Notice of Claim Adjustments" detailing adjustments made by the SCO.

11. Audit of Costs

All claims submitted to the State Controller's Office (SCO) are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the Parameters and Guidelines (P's & G's) adopted by the Commission on State Mandates (COSM). If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to Government Code (GC) Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, must be

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of three years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for three years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

12. Source Documents

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

13. Claim Forms and Instructions

A claimant may submit a computer generated report in substitution for Form-1 and Form-2, provided the format of the report and data fields contained within the report are identical to the claim forms included with these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file an estimated or reimbursement claim. The SCO will revise the manual and claim forms as necessary.

A. Form-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by the official financial records of the claimant and copies of supporting documentation, as specified in the claiming instructions, must be submitted with the claims. All supporting documents must be retained for a period of not less than three years after the reimbursement claim was filed or last amended.

B. Form-1, Claim Summary

This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from Form-2 and are carried forward to form FAM-27.

Community colleges have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21) or form FAM-29C.

C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized officer of the county. All applicable information from Form-1 must be carried forward onto this form in order for the SCO to process the claim for payment. An original and one copy of the FAM-27 is required.

Claims should be rounded to the nearest dollar. Submit a signed original and one copy of form FAM-27, Claim for Payment, and all other forms and supporting documents (**To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.**) Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
Other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

14. RETENTION OF CLAIMING INSTRUCTIONS

For your convenience, the revised claiming instructions in this package have been arranged in alphabetical order by program name. These revisions should be inserted in the School Mandated Cost Manual and the old forms they replace should be removed. The instructions should then be retained permanently for future reference, and the forms should be duplicated to meet your filing requirements. Annually, updated forms and any other information or instructions claimants may need to file claims, as well as instructions and forms for all new programs released throughout the year will be placed on the SCO's web site at www.sco.ca.gov/ard/local/locreim/index/shtml.

If you have any questions concerning mandated cost reimbursements, please write to us at the address listed for filing claims, send e-mail to lrsdar@sco.ca.gov, or call the Local Reimbursements Section at (916) 324-5729.

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the COSM's P's and G's. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district is subject to audit by the State Controller no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and shall be made available to the SCO on request.

HEALTH FEE ELIMINATION

1. Summary of Chapters 1/84, 2nd E.S., and Chapter 1118/87

Chapter 1, Statutes of 1984, 2nd E.S., repealed Education Code § 72246 which authorized community college districts to charge a fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required community college districts that charged a fee in the 1983/84 fiscal year to maintain that level of health services in the 1984/85 fiscal year and each fiscal year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community college districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987 amended Education Code § 72246 to require any community college district that provided health services in the 1986/87 fiscal year to maintain health services at that level in the 1986/87 fiscal year and each fiscal year thereafter. Chapter 8, Statutes of 1993, has revised the numbering of § 72246 to § 76355.

2. Eligible Claimants

Any community college district incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to community college presidents.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds \$200 per program per fiscal year.

5. Filing Deadline

- (1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement

claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See item 3 above).

- (2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Components

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code § 76355.

After January 1, 1993, pursuant to Chapter 8, Statutes of 1993, the fees students were required to pay for health supervision and services were not more than:

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

The district may increase fees by the same percentage increase as the Implicit Price Deflator (IPD) for the state and local government purchase of goods and services. Whenever the IPD calculates an increase of one dollar (\$1) above the existing amount, the fees may be increased by one dollar (\$1).

7. Reimbursement Limitations

- A. If the level at which health services were provided during the fiscal year of reimbursement is less than the level of health services that were provided in the 1986/87 fiscal year, no reimbursement is forthcoming.
- B. Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms HFE-1.0, HFE-1.1, and form HFE-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form HFE-2, Health Services

This form is used to list the health services the community college provided during the 1986/87 fiscal year and the fiscal year of the reimbursement claim.

B. Form HFE-1.1, Claim Summary

This form is used to compute the allowable increased costs an individual college of the community college district has incurred to comply with the state mandate. The level of health services reported on this form must be supported by official financial records of the community college district. A copy of the document must be submitted with the claim. The amount shown on line (13) of this form is carried to form HFE-1.0.

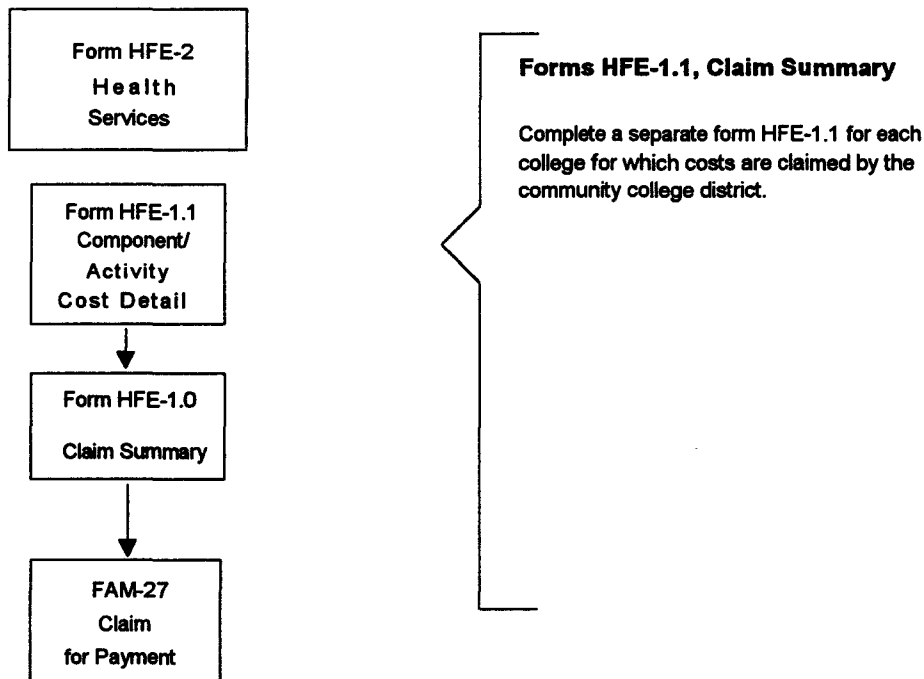
C. Form HFE-1.0, Claim Summary

This form is used to list the individual colleges that had increased costs due to the state mandate and to compute a total claimable cost for the district. The "Total Amount Claimed", line (04) on this form is carried forward to form FAM-27, line 13, for the reimbursement claim, or line (07) for the estimated claim.

D. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form HFE-1.0 and HFE 1.1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT
 Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use Only

(19) Program Number 00029
 (20) Date File _____/_____/_____
 (21) LRS Input _____/_____/_____

LABEL HERE	(01) Claimant Identification Number		Reimbursement Claim Data	
	(02) Mailing Address		(22) HFE-1.0, (04)(b)	
	Claimant Name		(23)	
	County of Location		(24)	
	Street Address or P. O.. Box		(25)	
	City	State	Zip Code	(26)
	Type of Claim	Estimated Claim	Reimbursement Claim	(27)
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(28)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(30)	
Fiscal Year of Cost	(06) 19__/19__	(12) 19__/19__	(31)	
Total Claimed Amount	(07)	(13)	(32)	
Less: 10% Late Penalty, not to exceed \$1000		(14)	(33)	
Less: Estimated Claim Payment Received		(15)	(34)	
Net Claimed Amount		(16)	(35)	
Due from State	(08)	(17)	(36)	
Due to State		(18)	(37)	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1, Statutes of 1984 and Chapter 1118, Statutes of 1987; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, Inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1, Statutes of 1984 and Chapter 1118, Statutes of 1987.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1, Statutes of 1984 and Chapter 1118, Statutes of 1987, set forth on the attached statements.

Signature of Authorized Representative _____ Date _____

Type or Print Name _____ Title _____

(39) Name of Contact Person for Claim _____ Telephone Number _____ Ext. _____

<p>HEALTH FEE ELIMINATION Certification Claim Form Instructions</p>	<p>FORM FAM-27</p>
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- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the place shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If estimate exceeds the previous fiscal year's actual costs by more than 10%, complete form HFE-1.0 and enter the amount from line (04)(b).
- (08) Enter the same amount as shown in line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form HFE-1.0, line (04)(b).
- (14) If the reimbursement claim is filed after November 30 following the fiscal year in which costs were incurred, the claim must be reduced by late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If you are filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (37) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of line (22) for the reimbursement claim [e.g., HFE-1.0, (04)(b), means the information is located on form HFE-1.0, line (04)(b)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect cost percentage should be shown as a whole number and without the percent symbol (i.e., 7.548% should be shown as 8). The claim cannot be processed for payment unless this data block is correct and complete.
- (38) Read the statement "Certification of Claim." If the statement is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (39) Enter the name of the person and telephone number that this office should contact if additional information is required.

SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

*Address, if delivered by:
 U.S. Postal Service*

**OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursement Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250**

*Address, if delivered by:
 Other delivery service*

**OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursement Section
 Division of Accounting and Reporting
 3301 C Street, Suite 501
 Sacramento, CA 95816**

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
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(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 19__/19__
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(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]

HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.0
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(01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.

(02) Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which the expenses were/are to be incurred. A separate claim must be filed for each fiscal year.

Form HFE-1.0 must be filed for a reimbursement claim. Do not complete form HFE-1.0 if you are filing an estimated claim and the estimate is not more than 110% of the previous fiscal year's actual costs. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, forms HFE-1.0 and HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) List all the colleges of the community college district which have increased costs. A separate form HFE-1.1 must be completed for each college showing how costs were derived.

(04) Enter the total claimed amount of all colleges by adding the Claimed Amount, line (3.1b) + line (3.2b) ...+ (3.21b).

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	19__/19__

(03) Name of College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost	Total
(05) Cost of health services for the fiscal year of claim			
(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87			
(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]			

(08) Complete columns (a) through (g) to provide detail data for health fees

Period for which health fees were collected	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code § 76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code § 76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per fall semester							
2. Per spring semester							
3. Per summer session							
4. Per first quarter							
5. Per second quarter							
6. Per third quarter							

(09) Total health fee that could have been collected	[Line (8.1g) + (8.2g) +(8.6g)]
(10) Sub-total	[Line (07) - line (09)]

Cost Reduction

(11) Less: Offsetting Savings, if applicable	
(12) Less: Other Reimbursements, if applicable	
(13) Total Amount Claimed	[Line (10) - {(line (11) + line (12))}]

**HEALTH FEE ELIMINATION
CLAIM SUMMARY
Instructions**

**FORM
HFE-1.1**

- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form HFE-1.1 must be filed for a reimbursement claim. If you are filing an estimated claim and the estimate does not exceed the previous year's actual costs by 10%, do not complete form HFE-1.1. Simply enter the amount of the estimated claim on form FAM-27, line (05), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the name of the college or community college district that provided student health services in the 1986/87 fiscal year and continue to provide the same services during the fiscal year of the claim.
- (04) Compare the level of health services provided during the fiscal year of reimbursement to the 1986/87 fiscal year and indicate the result by marking a check in the appropriate box. If the "Less" box is checked, STOP and do not complete the remaining part of this claim form. No reimbursement is forthcoming.
- (05) Enter the direct cost, indirect cost, and total cost of health services for the fiscal year of claim on line (05). Direct cost of health services is identified on the college expenditures report (individual college's cost of health services as authorized under Education Code § 76355 and included in the district's Community College Annual Financial and Budget Report CCFS-311, EDP Code 6440, column 5). **If the amount of direct costs claimed is different than shown on the expenditures report, provide a schedule listing those community college costs that are in addition to, or a reduction to expenditures shown on the report.** For claiming indirect costs, college districts have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21), or the State Controller's methodology outlined in "Filing a Claim" of the Mandated Cost Manual for Schools.
- (06) Enter the direct cost, indirect cost, and total cost of health services that are in excess of the level provided in the 1986/87 fiscal year.
- (07) Enter the difference of the cost of health services for the fiscal year of claim, line (05), and the cost of providing current fiscal year health services that is in excess of the level provided in the 1986/87 fiscal year, line (06).
- (08) Complete columns (a) through (g) to provide details on the amount of health service fees that could have been collected. **Do not include students who are exempt from paying health fees established by the Board of Governors and contained in Section 58620 of Title 5 of the California Code of Regulations.** After 01/01/93, the student fees for health supervision and services were \$10.00 per semester, \$5.00 for summer school, and \$5.00 for each quarter. Beginning with the summer of 1997, the health service fees are: \$11.00 per semester and \$8.00 for summer school, or \$8.00 for each quarter.
- (09) Enter the sum of Student Health Fees That Could Have Been Collected, (other than from students who were exempt from paying health fees) [Line (8.1g) + line (8.2g) + line (8.3g) + line (8.4g) + line (8.5g) + line (8.6g)].
- (10) Enter the difference of the cost of providing health services at the 1986/87 level, line (07) and the total health fee that could have been collected, line (09). If line (09) is greater than line (07), no claim shall be filed.
- (11) Enter the total savings experienced by the school identified in line (03) as a direct cost of this mandate. Submit a schedule of detailed savings with the claim.
- (12) Enter the total other reimbursements received from any source, (i.e., federal, other state programs, etc.). Submit a schedule of detailed reimbursements with the claim.
- (13) Subtract the sum of Offsetting Savings, line (11), and Other Reimbursements, line (12), from Total 1986/87 Health Service Cost excluding Student Health Fees.

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES		FORM HFE-2	
(01) Claimant:		(02) Fiscal Year costs were incurred:	
(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.		(a) FY 1986/87	(b) FY of Claim
Accident Reports Appointments College Physician, surgeon Dermatology, family practice Internal Medicine Outside Physician Dental Services Outside Labs, (X-ray, etc.) Psychologist, full services Cancel/Change Appointments Registered Nurse Check Appointments Assessment, Intervention and Counseling Birth Control Lab Reports Nutrition Test Results, office Venereal Disease Communicable Disease Upper Respiratory Infection Eyes, Nose and Throat Eye/Vision Dermatology/Allergy Gynecology/Pregnancy Service Neuralgic Orthopedic Genito/Urinary Dental Gastro-Intestinal Stress Counseling Crisis Intervention Child Abuse Reporting and Counseling Substance Abuse Identification and Counseling Acquired Immune Deficiency Syndrome Eating Disorders Weight Control Personal Hygiene Burnout Other Medical Problems, list Examinations, minor illnesses Recheck Minor Injury Health Talks or Fairs, Information Sexually Transmitted Disease Drugs Acquired Immune Deficiency Syndrome			

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES		FORM HFE-2	
(01) Claimant:		(02) Fiscal Year costs were incurred:	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.		(a) FY 1986/87	(b) FY of Claim
<ul style="list-style-type: none"> Child Abuse Birth Control/Family Planning Stop Smoking Library, Videos and Cassettes 			
First Aid, Major Emergencies			
First Aid, Minor Emergencies			
First Aid Kits, Filled			
Immunizations <ul style="list-style-type: none"> Diphtheria/Tetanus Measles/Rubella Influenza Information 			
Insurance <ul style="list-style-type: none"> On Campus Accident Voluntary Insurance Inquiry/Claim Administration 			
Laboratory Tests Done <ul style="list-style-type: none"> Inquiry/Interpretation Pap Smears 			
Physical Examinations <ul style="list-style-type: none"> Employees Students Athletes 			
Medications <ul style="list-style-type: none"> Antacids Antidiarrheal Aspirin, Tylenol, Etc Skin Rash Preparations Eye Drops Ear Drops Toothache, oil cloves Stingkill Midol, Menstrual Cramps Other, list 			
Parking Cards/Elevator Keys <ul style="list-style-type: none"> Tokens Return Card/Key Parking Inquiry Elevator Passes Temporary Handicapped Parking Permits 			

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES		FORM HFE-2	
(01) Claimant:	(02) Fiscal Year costs were incurred:		
(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.		(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies Private Medical Doctor Health Department Clinic Dental Counseling Centers Crisis Centers Transitional Living Facilities, battered/homeless women Family Planning Facilities Other Health Agencies			
Tests Blood Pressure Hearing Tuberculosis Reading Information Vision Glucometer Urinalysis Hemoglobin EKG Strep A testing PG Testing Monospot Hemacult Others, list			
Miscellaneous Absence Excuses/PE Waiver Allergy Injections Band-aids Booklets/Pamphlets Dressing Change Rest Suture Removal Temperature Weigh Information Report/Form Wart Removal Others, list			
Committees Safety Environmental Disaster Planning			