

**ITEM 9**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Former Education Code Section 72246 (Renumbered as §76355)<sup>1</sup>  
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

*Health Fee Elimination*

Fiscal Years 2000-2001, 2001-2002, and 2002-2003

05-4206-I-11

El Camino Community College District, Claimant

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**TABLE OF CONTENTS**

**Exhibit A**

Incorrect Reduction Claim (IRC) filed March 27, 2006.....2

**Exhibit B**

State Controller’s Office, Comments on the IRC filed November 24, 2008.....122

**Exhibit C**

Claimant, Rebuttal Comments filed August 11, 2009.....332

**Exhibit D**

Draft Proposed Decision issued August 1, 2014.....457

**Exhibit E**

State Controller’s Office, Comments on the Draft Proposed Decision filed August 5, 2014....487

**Exhibit F**

Claimant, Comments on the Draft Proposed Decision filed September 26, 2014.....492

**Exhibit G**

Supporting Documents

School Mandated Cost Manual Excerpt, revised 09/01, page 7.....509

School Mandated Cost Manual Excerpt, revised 09/02, page 7.....511

School Mandated Cost Manual Excerpt, revised 09/03, page 10.....519

Office of Management and Budget, Cost Principals for Educational Institutions, (OMB Circular A-21, revised 05/10/04).....530

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<sup>1</sup> Statutes 1993, chapter 8.

# SixTen and Associates Mandate Reimbursement Services

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

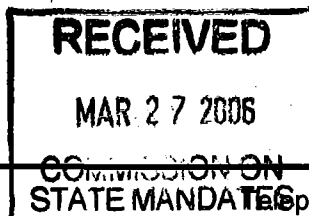


Exhibit A

Phone: (858) 514-8605  
Fax: (858) 514-8645  
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March 24, 2006

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

RE: Incorrect Reduction Claim of El Camino Community College District  
Health Fee Elimination  
Fiscal Years: 2000-01, 2001-02, and 2002-03

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced incorrect reduction claim for El Camino 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:

Pamela Fees, Business Manager  
El Camino Community College District  
16007 Crenshaw Blvd.  
Torrance, CA 90506

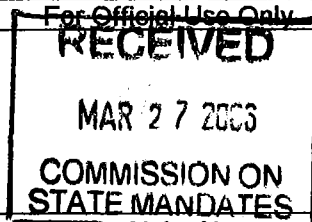
Thank-you.

Sincerely,

A handwritten signature in cursive script that reads "Keith B. Petersen".

for 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)



Claim No. 05-4206-I-11

**INCORRECT REDUCTION CLAIM FORM**

Local Agency or School District Submitting Claim

**EL CAMINO 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  
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Address

Pamela Fees, Business Manager  
El Camino Community College District  
16007 Crenshaw Blvd.  
Torrance, CA 90506

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. Chapter 1118, Statutes of 1987

<u>Fiscal Year</u>	<u>Amount of the Incorrect Reduction</u>
2000-2001	\$ 97,894
2001-2002	\$167,511
2002-2003	\$134,486
Total Amount	\$399,891

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.

Pamela Fees, Business Manager

Voice: 310-660-3110  
Fax: 310-660-3798  
E-Mail: PFees@elcamino.edu

Signature of Authorized Representative

Date

X *Pamela Fees*

March 21, 2006

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  
12 INCORRECT REDUCTION CLAIM OF: )  
13 ) No. CSM \_\_\_\_\_  
14 )  
15 ) Chapter 1, Statutes of 1984, 2nd E.S.  
16 ) Chapter 1118, Statutes of 1987  
17 EL CAMINO )  
18 Community College District, ) Education Code Section 76355  
19 )  
20 ) Health Fee Elimination  
21 Claimant. )  
22 ) Annual Reimbursement Claims:  
23 )  
24 ) Fiscal Year 2000-01  
25 ) Fiscal Year 2001-02  
26 ) Fiscal Year 2002-03  
27 \_\_\_\_\_ )  
28 INCORRECT REDUCTION CLAIM FILING

29 PART I. AUTHORITY FOR THE CLAIM

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

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

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1 "District") is a school district as defined in Government Code Section 17519. Title 2,  
2 CCR, Section 1185 (a), requires the claimant to file an incorrect reduction claim with  
3 the Commission.

4 This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185 (b),  
5 requires incorrect reduction claims to be filed no later than three years following the  
6 date of the Controller's remittance advice notifying the claimant of a reduction. A  
7 Controller's audit report dated October 5, 2005, has been issued. The audit report  
8 constitutes a demand for repayment and adjudication of the claims. On October 27,  
9 2005, the Controller issued "results of review letters" reporting the audit results for the  
10 FY 2000-01 and FY 2001-02 claims, and demanding payment of amounts due to the  
11 state.

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

19 **PART II. SUMMARY OF THE CLAIM**

20 The Controller conducted a field audit of the District's annual reimbursement  
21 claims for the costs of complying with the legislatively mandated Health Fee Elimination

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

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1 program for the period of July 1, 2000 through June 30, 2003. As a result of the audit,  
2 the Controller determined that \$399,891 of the claimed costs are unallowable:

3	Fiscal	Amount	Audit	SCO	Amount Due
4	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u>&lt;State&gt; District</u>
5	2000-01	\$137,923	\$ 97,894	\$54,835	<\$14,806>
6	2001-02	\$167,511	\$167,511	\$34,266	<\$34,266>
7	2002-03	<u>\$174,277</u>	<u>\$134,486</u>	<u>\$ 0</u>	<u>\$39,791</u>
8	Totals	\$479,711	\$399,891	\$89,101	<\$ 9,281>

9 Since the District has been paid \$89,101 for these claims, the audit report concludes  
10 that a remaining amount of \$9,281 is payable to the state.

11 **PART III. PREVIOUS INCORRECT REDUCTION CLAIMS**

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

16 **PART IV. BASIS FOR REIMBURSEMENT**

17 1. Mandate Legislation

18 Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, repealed Education  
19 Code Section 72246 which had authorized community college districts to charge a  
20 student health services fee for the purpose of providing student health supervision and  
21 services, direct and indirect medical and hospitalization services, and operation of

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

1 student health centers. This statute also required the scope of student health services  
2 for which a community college district charged a fee during the 1983-84 fiscal year be  
3 maintained at that level thereafter. The provisions of this statute were to automatically  
4 repeal on December 31, 1987.

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

8 Chapter 8, Statutes of 1993, Section 29, repealed Education Code Section  
9 72246, effective April 15, 1993. Chapter 8, Statutes of 1993, Section 34, added  
10 Education Code Section 76355<sup>1</sup>, containing substantially the same provisions as former

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<sup>1</sup> 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 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

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

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1 Section 72246, effective April 15, 1993.

2 2. **Test Claim**

3 In December 1985, Rio Hondo Community College District filed a test claim

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to subdivision (a):

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

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

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

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

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

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

(f) A district that begins charging a health fee may use funds for startup costs 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 El Camino Community College District  
1/84; 1118/87 Health Fee Elimination

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1 alleging that Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, by eliminating the  
2 authority to levy a fee and by requiring a maintenance of effort, mandated increased  
3 costs by mandating a new program or the higher level of service of an existing program  
4 within the meaning of California Constitution Article XIII B, Section 6.

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

11 At a hearing on April 27, 1989, the Commission of State Mandates determined  
12 that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to  
13 apply to all community college districts which provided student health services in fiscal  
14 year 1986-1987 and required them to maintain that level of student health services in  
15 fiscal year 1987-1988 and each fiscal year thereafter.

16 3. Parameters and Guidelines

17 On August 27, 1987, the original parameters and guidelines were adopted. On  
18 May 25, 1989, those parameters and guidelines were amended. A copy of the  
19 parameters and guidelines, as amended on May 25, 1989, is attached as Exhibit "B."  
20 So far as is relevant to the issues presented below, the parameters and guidelines  
21 state:

1           “V.    REIMBURSABLE COSTS

2                   A.    Scope of Mandate

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

6           “VI.   CLAIM PREPARATION

7                   B...   3.    Allowable Overhead Cost

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

11           “VII.   SUPPORTING DATA

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

15           “VIII   OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

27           4.    Claiming Instructions

28                              The Controller has frequently revised claiming instructions for the Health Fee  
29                              Elimination mandate. A copy of the September 1997 revision of the claiming

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

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1 instructions is attached as Exhibit "C." The September 1997 claiming instructions are  
2 believed to be, for the purposes and scope of this incorrect reduction claim,  
3 substantially similar to the version extant at the time the claims which are the subject of  
4 this Incorrect reduction claim were filed. However, since the Controller's claim forms  
5 and instructions have not been adopted as regulations, they have no force of law, and,  
6 therefore, have no effect on the outcome of this incorrect reduction claim.

7 **PART V. STATE CONTROLLER CLAIM ADJUDICATION**

8 The Controller conducted an audit of the District's annual reimbursement claims  
9 for fiscal years 2000-01, 2001-02, and 2002-03. The audit concluded that only 17% of  
10 the District's costs, as claimed, are allowable. A copy of the October 5, 2005-audit  
11 report and is attached as Exhibit "D."

12 **VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER**

13 By letter dated July 13, 2005, the Controller transmitted a copy of its draft audit  
14 report. By letter dated July 26, 2005, the District objected to the proposed adjustments  
15 set forth in the draft audit report. A copy of the District's letter of July 26, 2005 is  
16 attached as Exhibit "E." The Controller then issued its final audit report without change  
17 to the adjustments as stated in the draft audit report.

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

19 **Finding 1 - Overstated salary, benefits, and indirect costs**

20 The District is not disputing this adjustment.

1 **Finding 2 - Overstated indirect cost rates**

2 The Controller asserts that the District overstated its indirect cost rates and  
3 costs in the amount of \$188,652 for the three fiscal years. This finding is based upon  
4 the Controller's statement that "the district did not obtain federal approval for its IRCPs.  
5 We calculated indirect cost rates using the methodology allowed by the SCO claiming  
6 instructions." Contrary to the Controller's ministerial preferences, there is no  
7 requirement in law that the claimant's indirect cost rate must be "federally" approved,  
8 and the Commission has never specified the federal agencies which have the authority  
9 to approve indirect cost rates. Further, it should be noted that the Controller did not  
10 determine that the District's rate was excessive or unreasonable.

11 CCFS-311

12 In fact, both the District's method and the Controller's method utilized the same  
13 source document, the CCFS-311 annual financial and budget report required by the  
14 state. The difference in the claimed and audited methods is in the determination of  
15 which of those cost elements are direct costs and which are indirect costs. Indeed, the  
16 federally "approved" rates which the Controller will accept without further action, are  
17 "negotiated" rates calculated by a district and then submitted for approval to federal  
18 agencies which are the source of federal programs to which the indirect cost rate is to  
19 be applied, indicating that the process is not an exact science, but a determination of  
20 the relevance and reasonableness of the cost allocation assumptions made for the

1 method used.

2 Regulatory Requirements

3 No particular indirect cost rate calculation is required by statute. The  
4 parameters and guidelines state that “Indirect costs *may be claimed* in the manner  
5 described by the Controller in his claiming instructions.” The District claimed these  
6 indirect costs “in the manner” described by the Controller. The correct forms were used  
7 and the claimed amounts were entered at the correct locations.

8 In the audit report, the Controller asserts that “the specific directions for the  
9 indirect cost rate calculation in the claiming instructions are an extension of *Parameters*  
10 *and Guidelines*.” It is not clear what the legal significance of the concept of “extension”  
11 might be, regardless, the reference to the claiming instructions in the parameters and  
12 guidelines does not change “may” into a “shall.” Since the Controller’s claiming  
13 instructions were never adopted as law, or regulations pursuant to the Administrative  
14 Procedure Act, the claiming instructions are merely a statement of the ministerial  
15 interests of the Controller and not law.

16 Unreasonable or Excessive

17 Government Code Section 17561(d)(2) requires the Controller to pay claims,  
18 provided that the Controller may audit the records of any school district to verify the  
19 actual amount of the mandated costs, and may reduce any claim that the Controller  
20 determines is excessive or unreasonable. The Controller is authorized to reduce a  
21 claim only if it determines the claim to be excessive or unreasonable. Here, the District

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

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1 has computed its indirect cost rate utilizing cost accounting principles from the Office of  
2 Management and Budget Circular A-21, and the Controller has disallowed it without a  
3 determination of whether the product of the District's calculation would, or would not, be  
4 excessive, unreasonable, or inconsistent with cost accounting principles.

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

14 **Finding 3: Understated authorized health revenues claimed**

15 The adjustments for the student health services revenue are based on two  
16 reasons. The Controller adjusted the reported enrollment and reported number of  
17 students subject to payment of the health services fee. The Controller then calculated  
18 the student fees collectible based on the highest student health service fee chargeable,  
19 rather than the fee actually charged the student, resulting in a total adjustment of  
20 \$195,333 for the three fiscal years.

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

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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* states that health  
12 fees authorized by the Education Code must be deducted from costs claimed." The  
13 parameters and guidelines actually 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)<sup>2</sup>."

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

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<sup>2</sup> 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 El Camino Community College District  
1/84; 1118/87 Health Fee Elimination

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

3 Government Code Section 17514

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

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

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

17 The audit report states that the Controller agrees that community college  
18 districts “may choose not to levy a health service fee” and that Education Code Section  
19 76355 “provides the districts with the authority to levy of such fees.” However, it does  
20 not logically follow from that statement to the Controller’s conclusion, based on  
21 Government Code Section 17514, that “health service costs recoverable through  
22 authorized fees are not costs that the district is required to incur.”

23 /



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

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1 Government Code Section 17556

2 The Controller relies upon Government Code Section 17556 for the conclusion  
3 that the "COSM shall not find costs mandated by the State if the district has the  
4 authority to levy fees to pay for the mandated program or increased level of services."

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

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

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

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

19 Student Health Services Fee Amount

20 The Controller asserts that the district should have collected a student health  
21 service fee each semester from non-exempt students in the amount of \$11 for FY 2000-  
22 01 and \$12 for FY 2001-02 and FY 2002-03. Districts receive notice of these fee  
23 amounts from the Chancellor of the California Community Colleges. An example of one

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

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1 such notice is the letter dated March 5, 2001, attached as Exhibit "F." While Education  
2 Code Section 76355 provides for an increase in the student health service fee, it did  
3 not grant the Chancellor the authority to establish mandatory fee amounts or mandatory  
4 fee increases. No state agency was granted that authority by the Education Code, and  
5 no state agency has exercised its rulemaking authority to establish mandatory fees  
6 amounts. It should be noted that the Chancellor's letter properly states that increasing  
7 the amount of the fee is at the option of the district, and that the Chancellor is not  
8 asserting that authority. Therefore, the state cannot rely upon the Chancellor's notice  
9 as a basis to adjust the claim for "collectible" student health services fees.

10 Fees Collected vs. Fees Collectible

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

18 Because districts are not required to collect a fee from students for student  
19 health services, and if such a fee is collected, the amount is to be determined by the  
20 district and not the Controller, the Controller's adjustment is without legal basis. What  
21 claimants are required by the parameters and guidelines to do is to reduce the amount

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

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1 of their claimed costs by the amount of student health services fee revenue actually  
2 received. Therefore, student health fees are merely collectible, they are not  
3 mandatory, and it is inappropriate to reduce claim amounts by revenues not received.

4 Enrollment and Exempted Student Statistics

5 It is our understanding that the Controller adjusted the reported total student  
6 enrollment and reported number of exempt students based on data requested during  
7 the audit from the office of the Chancellor of the Community Colleges, although the  
8 audit report states otherwise. The information obtained from the Chancellor's office is  
9 based on information originally provided to the Chancellor by the District in the normal  
10 course of business. The Controller has not provided any factual basis why the  
11 Chancellor's data, subject to review and revision after the fact for several years, is  
12 preferable to the data reported by the District which was available at the time the claims  
13 were prepared.

14 Other than stating that the District "did not use the actual number of student  
15 counts and BOGG waiver counts," the audit report does not state the source of the data  
16 used by the auditor. That is to say, the Controller does not indicate how and why its  
17 determination of "actual" student counts is any more "actual" than the amount reported  
18 on the claims.

19 **Finding 4- Understated offsetting revenue**

20 The District is not disputing this adjustment.

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

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1 **Amounts Paid By The State**

2 This issue was not an audit finding. The payment received from the state is an  
3 integral part of the reimbursement calculation. The Controller changed the FY 2001-02  
4 claim payment amount received from the state without a finding in the audit report, then  
5 changed it again in the October 27, 2005 demand for payment.

6	7 <u>Amount Paid by the State</u>	Fiscal Year of Claim		
		<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
8	As Claimed	\$54,835	\$35,266	\$ 0
9	As Audited	\$54,835	\$34,266	\$ 0
10	October 27, 2005 demand for payment	\$54,835	\$35,266	n/a

11 The propriety of these adjustments cannot be determined until the Controller states the  
12 reason for the change.

13 **Statute of Limitations for Audit**

14 This issue is not a finding of the Controller. The District asserts that the FY  
15 2000-01 and FY 2001-02 claims are beyond the statute of limitations for audit when  
16 the Controller issued its audit report on October 5, 2005. The District raised this issue  
17 at the beginning of the audit and in its letter dated July 26, 2005 in response to the  
18 draft audit report.

19 Chronology of Claim Action Dates

20	January 14, 2002	FY 2000-01 claim filed by the District (certified mail)
21	December 30, 2002	FY 2001-02 claim filed by the District (certified mail)

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

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- 1 December 31, 2004 FY 2000-01 statute of limitations for audit expires
- 2 December 31, 2004 FY 2001-02 statute of limitations for audit expires
- 3 October 5, 2005 Controller's final audit report issued

4 The District's FY 2000-01 claim was mailed to the Controller on January 14,  
5 2002. The District's FY 2001-02 claim was mailed to the Controller on December 30,  
6 2002. The audit report is dated October 5, 2005. Pursuant to Government Code  
7 Section 17558.5, these claims were subject to audit no later than December 31, 2004.  
8 The audit was not completed by this date. Therefore, the audit adjustments for FY  
9 2000-01 and FY 2001-02 are barred by the statute of limitations.

10 In the audit report, the Controller responded as follows:

11 "On December 2, 2004, we made phone contact with the district' business  
12 manager and sent a follow-up letter dated December 9, 2004, wherein we  
13 agreed to delay the start of the audit until January 5, 2005. In both the phone  
14 call and the letter, we clearly stated that the audit would include the claims filed  
15 in the 2002 calendar year. This audit was initiated prior to the statutory deadline  
16 of December 2004 in which to commence an audit."

17 Thus, the Controller is asserting that date when the audit was "initiated" is relevant to  
18 the period of limitations, and not the date of the audit report. The comment regarding  
19 which claims would be included in the audit is not responsive to the issue of the statute  
20 of limitations. In any case, a review of the legislative history of Government Code  
21 Section 17558.5 indicates that the matter of the audit "initiation" date is not relevant to  
22 the FY 2000-01 and FY 2001-02 fiscal year claims.

23 /

1 Statutory History

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

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

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

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

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

24 The FY 2000-01 and FY 2001-02 annual claims are subject to the two-year statute of  
25 limitations established by Chapter 945, Statutes of 1995. Since funds were  
26 appropriated for the program for all the fiscal years which are the subject of the audit,

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

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1 the alternative measurement date is not applicable, and the potential factual issue of  
2 when the audit is initiated is not relevant. The FY 2000-01 and FY 2001-02 claims  
3 were no longer subject to audit when the audit report was issued.

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

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

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

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

23 “(a) A reimbursement claim for actual costs filed by a local agency or school  
24 district pursuant to this chapter is subject to the initiation of an audit by the  
25 Controller no later than three years after the date that the actual reimbursement  
26 claim is filed or last amended, whichever is later. However, if no funds are

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

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1           appropriated or no payment is made to a claimant for the program for the fiscal  
2           year for which the claim is filed, the time for the Controller to initiate an audit  
3           shall commence to run from the date of initial payment of the claim. In any case,  
4           an audit shall be completed not later than two years after the date that the audit  
5           is commenced."

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

10          Initiation of An Audit

11           The audit report states that the Controller's staff telephone contact with the  
12           District on December 2, 2004 "initiated" the audit. First, the initiation date of the audit  
13           is not relevant to the FY 2000-01 and FY 2001-02 claims. The words "initiate an audit"  
14           are used only in the second sentence of Section 17558.5, that is, in a situation when no  
15           funds are appropriated for the program for the fiscal year for which the claim is made.  
16           Then, and only then, is the Controller authorized to "initiate an audit" within two years  
17           from the date of initial payment. The two claim years at issue here are not subject to  
18           the "no funds appropriated" provision, they are subject only to the first sentence of the  
19           statute, i.e., they were only "subject to audit" through December 2004.

20           The unmistakable language of Section 17558.5 is confirmed by the later actions  
21           of the Legislature. Chapter 1128, Statutes of 2002, amended subdivision (a) of  
22           Government Code Section 17558.5 to change the "subject to audit" language of the first  
23           sentence to "subject to the initiation of an audit." Had the Legislature intended the



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

1 former Section to mean "subject to the initiation of an audit," there would have been no  
2 need to amend the statute to now say "subject to the initiation of an audit." Even if the  
3 Controller had "initiated" the audit on the date of the first phone call, it could not have  
4 completed its months of field work, exit conference, office review, draft audit report, and  
5 issued a final audit report on or before December 31, 2004.

6 The Controller's apparent measurement date for "initiation" of an audit is actually  
7 the date of the entrance conference, not the date of the phone contact. However, for  
8 this audit, and two audits issued in 2004 for Los Rios Community College District<sup>3</sup>, the  
9 Controller asserts the telephone contact as the initiation date for the audit. In other  
10 mandate audit reports issued both after the Los Rios audits and after this audit report,  
11 the Controller states that the entrance conference date initiates the audit.<sup>4</sup> Further, in

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<sup>3</sup> The two Controller's audits which were released before the El Camino audit which assert that the telephone contact is the action which "initiates" the audit are:

- Los Rios Community College District, Health Fee Elimination, issued June 24, 2004.
- Los Rios Community College District, Mandate Reimbursement Process, issued June 24, 2004.

<sup>4</sup> The following Controller's audit reports were issued after the Los Rios audit reports and before the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Newport-Mesa Unified School District, School District of Choice, issued August 31, 2004.
- State Center Community College District, Health Fee Elimination, issued September 17, 2004.
- Clovis Unified School District, Graduation Requirements, issued October 22, 2004.

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

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1 the matter of the Health Fee Elimination audit of North Orange Community College  
2 District, the draft audit report dated May 6, 2005, included the three fiscal years audited  
3 by the Controller: FY 2000-01, FY 2001-02, and FY 2002-03. In its response letter  
4 dated June 15, 2005, North Orange County asserted that the statute of limitations for  
5 the audit of the FY 2000-01 claim expired December 31, 2003, pursuant to Government  
6 Code Section 17558.5, because the audit report was issued after that date. In the final  
7 audit report dated July 22, 2005, the Controller agreed that FY 2000-01 was barred  
8 from audit, but for another reason, the stated reason being that the "FY 2000-01 claim  
9 was not subject to audit due to the expiration of the statute of limitations within which to  
10 initiate an audit." The North Orange County audit entrance conference date was

- 
- San Bernardino Community College District, Health Fee Elimination, issued November 10, 2004.
  - West Valley-Mission Community College District, Health Fee Elimination, issued April 8, 2005.
  - Long Beach Community College District, Health Fee Elimination, issued April 27, 2005.
  - North Orange County Community College District, Health Fee Elimination, issued July 22, 2005.
  - Poway Unified School District, Emergency Procedures, Earthquakes and Disasters, issued August 31, 2005.

The following Controller's audit reports were issued after the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Norwalk-La Mirada Unified School District, School District of Choice, issued October 7, 2005.
- Norwalk-La Mirada Unified School District, Intradistrict Attendance, issued December 23, 2005.
- Norwalk-La Mirada Unified School District, Collective Bargaining, issued December 23, 2005.

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

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1 January 26, 2004, which is the date, according to the Controller, that the audit was  
2 “initiated.”

3           Given this contradiction in measurement dates, it does not appear that the  
4 Controller has a single position on this issue. It appears the Controller discarded the  
5 “telephone call date” rule after the Los Rios audits and then reinstated it for this audit,  
6 perhaps in order to avoid losing jurisdiction of the first two fiscal years. It can therefore  
7 be concluded that the Controller has no legal basis for their policy on the initiation date  
8 of audits.

9 Delay of the Audit

10           The Controller asserts that the Controller “agreed to delay the start of the audit  
11 until January 5, 2005,” which would seem to infer that the District either requested the  
12 delay or somehow committed a willful act intended to delay the completion of the audit.  
13 However, the Controller provides no evidence that there was any willful act by the  
14 District intended to delay the start or completion of the audit. The facts regarding the  
15 events of December 2 through 9, 2004, are stated in my declaration, which is attached  
16 as Exhibit “G.”

17           If there was any delay to the start of the audit, it was by unilateral action of the  
18 Controller. Regardless, the delay in the start of an audit which could not have been  
19 timely completed is not relevant. There was no credible attempt by the Controller’s  
20 office “to initiate the audit” in December 2004. The Controller did not complete the  
21 audit within the statutory period allowed for the first two fiscal year claims included in

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

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1 this audit. The date the audit was "initiated" for the two years is irrelevant, only the  
2 date the audit was completed is relevant as evidenced by the Controller's audit report.  
3 The audit findings are therefore void for those two claims.

4 Completion of the Audit

5 As stated above, the Controller's argument that an attempt was made to "initiate  
6 an audit" in December 2004 is not legally relevant since the claims were only "subject  
7 to audit" through December 2004. The relevant statute of limitations date is the date  
8 when the audit is completed, which is the date the audit report is issued. The annual  
9 claims are "subject to audit" until the audit is completed. The audit report is the  
10 document which completes the audit. If the audit report is not the action which  
11 completes the audit, then the audit report is not a legally enforceable notice of findings  
12 or demand for payment, and there is no other document prior to the audit report which  
13 adjudicates the results of the audit.

14 The Controller did not complete the audit within the statutory period allowed for  
15 the first two fiscal year claims included in this audit. The audit findings are therefore  
16 void for the FY 2000-01 and FY 2001-02 claims.

17 PART VIII. RELIEF REQUESTED

18 The District filed its annual reimbursement claims within the time limits  
19 prescribed by the Government Code. The amounts claimed by the District for  
20 reimbursement of the costs of implementing the program imposed by Chapter 1,  
21 Statutes of 1984, 2nd E.S., Chapter 1118, Statutes of 1987, and Education Code

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

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1 Section 76355 represent the actual costs incurred by the District to carry out this  
2 program. These costs were properly claimed pursuant to the Commission's parameters  
3 and guidelines. Reimbursement of these costs is required under Article XIII B, Section  
4 6 of the California Constitution. The Controller denied reimbursement without any  
5 basis in law or fact. The District has met its burden of going forward on this claim by  
6 complying with the requirements of Section 1185, Title 2, California Code of  
7 Regulations. Because the Controller has enforced and is seeking to enforce these  
8 adjustments without benefit of statute or regulation, the burden of proof is now upon the  
9 Controller to establish a legal basis for its actions.

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

14 /

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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 March 21<sup>st</sup>, 2006, at Torrance, California, by

*Pamela Fees*  
Pamela Fees, Business Manager  
El Camino Community College District  
16007 Crenshaw Blvd.  
Torrance, CA 90506  
Voice: 310-660-3110  
Fax: 310-660-3798  
E-Mail: PFees@elcamino.edu

APPOINTMENT OF REPRESENTATIVE

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

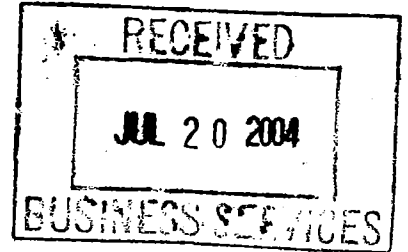
*Pamela Fees*  
Pamela Fees, Business Manager  
El Camino Community College District

3-21-06  
Date

Attachments:

Exhibit "A"	Controller's Legal Counsel's Letter of July 15, 2004
Exhibit "B"	Commission Parameters and Guidelines amended May 25, 1989
Exhibit "C"	Controller's Claiming Instructions September 1997
Exhibit "D"	Controller's Audit Report dated October 5, 2005
Exhibit "E"	District's Letter dated July 26, 2005
Exhibit "F"	Chancellor's Letter dated March 5, 2001
Exhibit "G"	Declaration of Pamela Fees dated February 27, 2006

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.

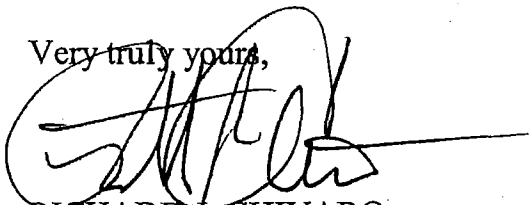
The Controller's informal audit review process was established to resolve factual disputes where no other forum for resolution, other than a judicial proceeding, is available.

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 service 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.

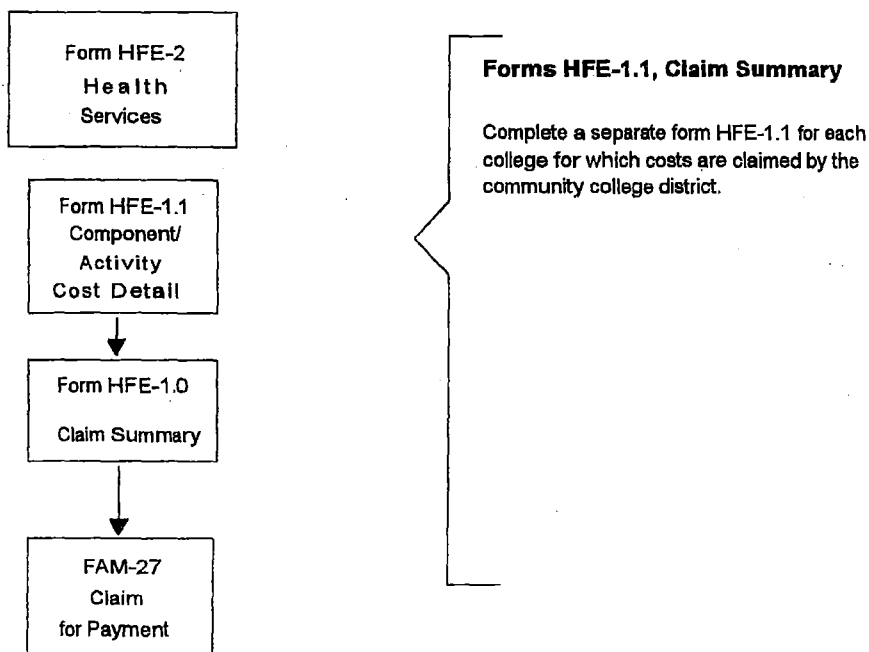
**C. Form HFE-1.0, Claim Summary**

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**



<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561  <b>HEALTH FEE ELIMINATION</b>	For State Controller Use Only (19) Program Number 00029 (20) Date Filed ____/____/____ (21) LRS Input ____/____/____	Program <div style="font-size: 2em; font-weight: bold; border: 1px solid black; padding: 5px; display: inline-block;">029</div>
--	---	--

L A B E L  H E R E	(01) Claimant Identification Number	<b>Reimbursement Claim Data</b>	
	(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

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)
<b>Fiscal Year of Cost</b>	(06) 20__/20__	(12) 20__/20__	(29)
<b>Total Claimed Amount</b>	(07)	(13)	(30)
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(31)
Less: Prior Claim Payment Received		(15)	(32)
<b>Net Claimed Amount</b>		(16)	(33)
<b>Due to Claimant</b>	(08)	(17)	(34)
<b>Due to State</b>		(18)	(35)

**(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 \_\_\_\_\_

<b>Program</b> <b>029</b>	<b>HEALTH FEE ELIMINATION</b> <b>Certification Claim Form</b> <b>Instructions</b>	<b>FORM</b> <b>FAM-27</b>
------------------------------	---	------------------------------

- (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

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

(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.	

<b>(04) Total Amount Claimed</b>	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]
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<b>HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions</b>	<b>FORM HFE-1.0</b>
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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).



<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
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(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 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))]

<p><b>HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions</b></p>	<p><b>FORM HFE-1.1</b></p>
---	--------------------------------

- (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.

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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			

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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			

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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
<b>Referrals to Outside Agencies</b> Private Medical Doctor Health Department Clinic Dental Counseling Centers Crisis Centers Transitional Living Facilities, battered/homeless women Family Planning Facilities Other Health Agencies			
<b>Tests</b> Blood Pressure Hearing Tuberculosis Reading Information Vision Glucometer Urinalysis Hemoglobin EKG Strep A testing PG Testing Monospot Hemacult Others, list			
<b>Miscellaneous</b> Absence Excuses/PE Waiver Allergy Injections Band-aids Booklets/Pamphlets Dressing Change Rest Suture Removal Temperature Weigh Information Report/Form Wart Removal Others, list			
<b>Committees</b> Safety Environmental Disaster Planning			

Exhibit D

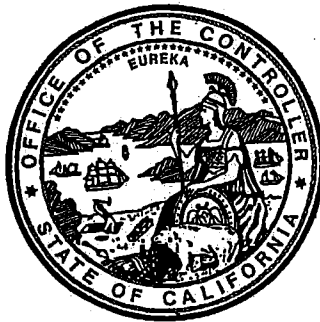
# **EL CAMINO COMMUNITY COLLEGE DISTRICT**

Audit Report

## **HEALTH FEE ELIMINATION PROGRAM**

Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session,  
and Chapter 1118, Statutes of 1987

*July 1, 2000, through June 30, 2003*



**STEVE WESTLY**  
California State Controller

October 2005



**STEVE WESTLY**  
**California State Controller**

October 5, 2005

Thomas M. Fallo, Ed.D.  
President, Superintendent  
El Camino Community College District  
16007 Crenshaw Boulevard  
Torrance, CA 90506

Dear Dr. Fallo:

The State Controller's Office audited the costs claimed by El Camino Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2000, through June 30, 2003.

The district claimed \$479,711 for the mandated program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred because the district claimed unallowable costs and understated claimed revenue. The State paid the district \$89,101. The amount paid exceeds allowable costs claimed by \$9,281.

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](http://www.csm.ca.gov) (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at [csminfo@csm.ca.gov](mailto: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 black ink that reads "Jeffrey V. Brownfield".

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

JVB/ams



cc: Pamela Fees, Business Manager  
El Camino Community College District  
Marty Rubio, Specialist  
Fiscal Accountability Section  
California Community Colleges Chancellor's Office  
Jeannie Oropeza, Program Budget Manager  
Education Systems Unit  
Department of Finance

# Contents

## Audit Report

Summary .....	1
Background .....	1
Objective, Scope, and Methodology .....	2
Conclusion .....	2
Views of Responsible Official .....	3
Restricted Use .....	3
Schedule 1—Summary of Program Costs .....	4
Findings and Recommendations .....	6
Attachment—District’s Response to Draft Audit Report	

# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the El Camino Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2000, through June 30, 2003. The last day of fieldwork was April 7, 2005.

The district claimed \$479,711 for the mandated program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred because the district claimed unallowable costs and understated revenue. The State paid the district \$89,101. The amount paid exceeds allowable costs claimed by \$9,281.

## Background

*Education Code* Section 72246 (repealed by Chapter 1, Statutes of 1984, 2<sup>nd</sup> E.S. and renumbered as Section 76355 by Chapter 8, Statutes of 1993) 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 service fee as specified.

*Education Code* Section 72246 (amended by Chapter 1118, Statutes of 1987 and renumbered as Section 76355 by Chapter 8, Statutes of 1993) 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, 2<sup>nd</sup> 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 service fee in FY 1983-84, regardless of the extent to which the health service 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 the 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, 2000, 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, the El Camino Community College District claimed \$479,711 for costs of the Health Fee Elimination Program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable.

For fiscal year (FY) 2000-01, the State paid the district \$54,835. Our audit disclosed that \$40,029 is allowable. The district should return \$14,806 to the State.

For FY 2001-02, the State paid the district \$34,266. Our audit disclosed that all of the costs claimed are unallowable. The district should return the total amount to the State.

For FY 2002-03, the district was not reimbursed by the State. Our audit disclosed that \$39,791 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$39,791, contingent upon available appropriations.

**Views of  
Responsible  
Official**

We issued a draft audit report on July 13, 2005. Pamela Fees, Business Manager, responded by letter dated July 26, 2005 (Attachment), disagreeing with the audit results for Findings 2 and 3. The district stated that it is not disputing the adjustment at this time for Findings 1 and 4. This final audit report includes the district's response.

**Restricted Use**

This report is solely for the information and use of the El Camino 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, 2000, through June 30, 2003

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<b>July 1, 2000, through June 30, 2001</b>				
Health services costs:				
Salaries and benefits	\$ 331,487	\$ 319,367	\$ (12,120)	Finding 1
Services and supplies	40,562	40,562	—	
Indirect costs	122,627	48,015	(74,612)	Findings 1, 2
Total health services costs	494,676	407,944	(86,732)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	494,676	407,944	(86,732)	
Less authorized health fees	(343,160)	(351,967)	(8,807)	Finding 3
Subtotal	151,516	55,977	(95,539)	
Less offsetting savings/reimbursements	(13,593)	(15,948)	(2,355)	Finding 4
Subtotal	137,923	40,029	(97,894)	
Adjustment to eliminate negative balance	—	—	—	
Total	<u>\$ 137,923</u>	40,029	<u>\$ (97,894)</u>	
Less amount paid by the State		(54,835)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (14,806)</u>		
<b>July 1, 2001, through June 30, 2002</b>				
Health services costs:				
Salaries and benefits	\$ 367,872	\$ 367,872	\$ —	
Services and supplies	35,754	35,754	—	
Indirect costs	115,558	57,194	(58,364)	Finding 2
Total health services costs	519,184	460,820	(58,364)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	519,184	460,820	(58,364)	
Less authorized health fees	(349,090)	(460,800)	(111,710)	Finding 3
Subtotal	170,094	20	(170,074)	
Less offsetting savings/reimbursements	(2,583)	(2,583)	—	
Subtotal	167,511	(2,563)	(170,074)	
Adjustment to eliminate negative balance	—	2,563	2,563	
Total	<u>\$ 167,511</u>	—	<u>\$ (167,511)</u>	
Less amount paid by the State		(34,266)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (34,266)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2002, through June 30, 2003</u>				
Health services costs:				
Salaries and benefits	\$ 400,431	\$ 400,431	\$ —	
Services and supplies	54,721	54,721	—	
Indirect costs	129,536	69,866	(59,670)	Finding 2
Total health services costs	584,688	525,018	(59,670)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	584,688	525,018	(59,670)	
Less authorized health fees	(395,380)	(470,196)	(74,816)	Finding 3
Subtotal	189,308	54,822	(134,486)	
Less offsetting savings/reimbursements	(15,031)	(15,031)	—	
Subtotal	174,277	39,791	(134,486)	
Adjustment to eliminate negative balance	—	—	—	
Total	\$ 174,277	39,791	\$ (134,486)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 39,791		
<u>Summary: July 1, 2000, through June 30, 2003</u>				
Health services costs:				
Salaries and benefits	\$ 1,099,790	\$ 1,087,670	\$ (12,120)	Finding 1
Services and supplies	131,037	131,037	—	
Indirect costs	367,721	175,075	(192,646)	Findings 1, 2
Total health services costs	1,598,548	1,393,782	(204,766)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	1,598,548	1,393,782	(204,766)	
Less authorized health fees	(1,087,630)	(1,282,963)	(195,333)	Finding 3
Subtotal	510,918	110,819	(400,099)	
Less offsetting savings/reimbursements	(31,207)	(33,562)	(2,355)	Finding 4
Subtotal	479,711	77,257	(402,454)	
Adjustment to eliminate negative balance	—	2,563	2,563	
Total	\$ 479,711	79,820	\$ (399,891)	
Less amount paid by the State		(89,101)		
Allowable costs claimed in excess of (less than) amount paid		\$ (9,281)		

<sup>1</sup> See the Findings and Recommendations section.

# Findings and Recommendations

**FINDING 1—  
Overstated salary,  
benefit, and indirect  
costs**

The district overstated salaries and benefits by \$12,120 for the fiscal year (FY) 2000-01. The related indirect cost was \$3,995.

The district claimed 12% of the Dean of Student Services' salary and benefit but did not provide documents such as time logs to validate the time worked at the health center. Therefore, the portion of the dean's salary claimed is unallowable.

*Parameters and Guidelines* specifies that community college districts shall be reimbursed only for costs of health services programs that are traceable to supporting documentation showing evidence of the validity of such costs.

Recommendation

We recommend the district utilize supporting documentation such as time logs to validate labor charges.

District's Response

The District is not disputing this adjustment at this time.

SCO's Comment

The finding and recommendation remain unchanged.

**FINDING 2—  
Overstated indirect  
cost rates**

The district overstated its indirect cost rates, and thus overstated its indirect costs by \$188,652 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		
	2000-01	2001-02	2002-03
Allowable indirect cost rate	13.34%	14.17%	15.35%
Less claimed indirect cost rate	(32.96)%	(28.63)%	(28.46)%
Unsupported indirect cost rate	(19.62)%	(14.46)%	(13.11)%

Based on these unsupported indirect cost rates, the audit adjustments are summarized below.

	Fiscal Year			Total
	2000-01	2001-02	2002-03	
Allowable direct costs claimed	\$ 359,929	\$ 403,626	\$ 455,152	
Unsupported indirect cost rate	×(19.62)%	×(14.46)%	×(13.11)%	
Audit adjustment	\$ (70,618)	\$ (58,364)	\$ (59,670)	\$(188,652)



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

#### Recommendation

We recommend 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. Alternately, the district should use form FAM-29C to prepare ICRPs based on the methodology allowed in the SCO claiming instructions.

#### District's Response

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

The Controller's claiming instructions state that for claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. The Controller claiming instructions were never adopted as rules or regulations, and therefore 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 audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller 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.

#### SCO's Comment

The finding and recommendation remain unchanged.

We disagree with the district's assertions that the SCO has no legal basis to disallow the indirect cost rate calculations used by the district and has not shown a factual basis to reject the rates as unreasonable or excessive.

*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 the 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 the federal agency, which is not an option provided by the SCO's claiming instructions.

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

The district understated authorized health fee revenue by \$195,333 for the audit period.

The district did not use the actual number of student counts and Board of Governors Grants (BOGG) waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect, using various student enrollment and BOGG detail reports dated January 2005 through March 2005. In addition, the district underreported authorized student health fees by one dollar for FY 2000-01, and two dollars for FY 2001-02 and FY 2002-03.

The understated authorized health fee revenues are calculated as follows.

	Fall	Spring	Total
<u>FY 2000-01</u>			
Student enrollment	22,111	21,592	
Less allowable health fee exceptions	(5,724)	(5,982)	
Subtotals	16,387	15,610	
Authorized student health fee	× \$(11)	× \$(11)	
Audited authorized health fee revenues	<u>\$ (180,257)</u>	<u>\$ (171,710)</u>	\$ (351,967)
Claimed authorized health fee revenues			<u>343,160</u>
Audit adjustment, FY 2000-01			<u>(8,807)</u>
<u>FY 2001-02</u>			
Student enrollment	25,054	24,970	
Less allowable health fee exceptions	(5,736)	(5,888)	
Subtotals	19,318	19,082	
Authorized student health fee	× \$(12)	× \$(12)	
Audited authorized health fee revenues	<u>\$ (231,816)</u>	<u>\$ (228,984)</u>	(460,800)
Claimed authorized health fee revenues			<u>349,090</u>
Audit adjustment, FY 2001-02			<u>(111,710)</u>
<u>FY 2002-03</u>			
Student enrollment	25,626	27,353	
Less allowable health fee exceptions	(7,047)	(6,749)	
Subtotal	18,579	20,604	
Authorized student health fee	× \$(12)	× \$(12)	
Audited authorized health fee revenues	<u>\$ (222,948)</u>	<u>\$ (247,248)</u>	(470,196)
Claimed authorized health fee revenues			<u>395,380</u>
Audit adjustment, FY 2002-03			<u>(74,816)</u>
Total audit adjustments			<u>\$ (195,333)</u>

*Parameters and Guidelines* states that health fees authorized by *Education Code* must be deducted 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; or (3) demonstrate financial need.

Also, *Government Code* Section 17514 states that costs mandated by the State means any increased costs which a 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 district has the authority to levy fees to pay for the mandated program or increased level of services.

### Recommendation

We recommend the district ensure that allowable health services program costs are offset by the amount of health service fee revenue authorized by the *Education Code*.

### District's Response

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged the student.

### STUDENT HEALTH SERVICES FEE AMOUNT

#### "Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

#### Education Code Section 76355

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.)

Parameters and Guidelines

The 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)." 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.

Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "to the extent community college districts can charge a fee, they are not required to incur a cost." Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language 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." Government Code Section 17556 as last amended by Chapter 589/89 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 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 the 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.

**ENROLLMENT AND EXEMPTED STUDENTS**

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

SCO's Comment

The finding and recommendation remain unchanged.

The district is incorrect when it states that we used student enrollment and Board of Governors Grants (BOGG) waiver counts based on data from the office of Chancellor of the Community Colleges. As mentioned above, the district did not use the actual number of student counts and BOGG waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect using the district's Student Enrollment Reports and the BOGG Detail Reports dated January 2005 through March 2005.

We agree that community college districts may choose not to levy a health service 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 service fee is that the related health service costs do not meet the requirement for mandated costs as defined by *Government Code* Section 17514. Health service costs recoverable through authorized fees 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 mandated program or increased level of service.

**FINDING 4—  
Understated offsetting  
revenue**

For FY 2000-01, the district understated offsetting revenue by \$2,355 because it did not reduce claimed health services costs and related health services revenues recorded in revenue account 8890.

*Parameters and Guidelines* specifies that any offsetting savings or reimbursements received by the district from any source as a result of the mandate must be identified and deducted so that only net district health services costs are claimed.

Recommendation

We recommend the district ensure all applicable revenues are offset on its claims against its mandated program costs.

District's Response

The District is not disputing this adjustment at this time.

SCO's Comment

The finding and recommendation remain unchanged.

**IER ISSUE—  
ute of limitations**

The district's response included comments regarding our authority to audit costs claimed for FY 2000-01 and FY 2001-02.

**District's Response**

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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

**SCO's Comment**

We disagree with the district's assertion that the audit and the related adjustment of the claims are barred by the statute of limitations. *Government Code* Section 17558.5(a), in effect during the audit period, states that 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 claims were filed in January 2002 and December 2002, respectively. On December 2, 2004, we made phone contact with the district's business manager and sent a follow-up letter dated December 9, 2004, wherein we agreed to delay the start of the audit until January 5, 2005. In both the phone call and the letter, we clearly stated that the audit would include the claims filed in the 2002 calendar year. This audit was initiated prior to the statutory deadline of December 2004 in which to commence an audit.

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

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## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310) 532-3670 or 1-866-ELCAMINO

July 26, 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: 2000-01, 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the El Camino Community College District to the letter to President Thomas M. Fallo, EdD, from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated July 13, 2005, and received by the District on July 26, 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, 2000 through June 30, 2003.

### **Finding 1 - Overstated salary, benefits, and indirect costs**

The District is not disputing this adjustment at this time.

### **Finding 2 - Overstated indirect cost rates**

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.



The Controller's findings instructions state that on a direct basis, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, or a rate calculated using Form F-111, 29C, or a 7% indirect cost rate. The Controller's findings instructions were never adopted as rules or regulations, and therefore 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 17631(b)(2)). If the Controller wishes to enforce audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller has stated its 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 - Understated authorized health fees revenues claimed

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health services fee chargeable, rather than the fee actually charged the student.

#### STUDENT HEALTH SERVICES FEE AMOUNT

##### "Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

##### Education Code Section 7635

Education Code Section 7635, 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.)

### Parameters and Guidelines

The 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)." 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.

### Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "to the extent community college districts can charge a fee, they are not required to incur a cost." Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language 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." Government Code Section 17556 as last amended by Chapter 589/89 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 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 the 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.

#### ENROLLMENT AND EXEMPTED STUDENTS

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

#### Finding 4- Understated offsetting revenue

The District is not disputing this adjustment at this time.

#### Statute of Limitations

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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,

EL CAMINO COMMUNITY COLLEGE



Pamela Fees  
Business Manager

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

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





STEVE WESTLY  
California State Controller  
Division of Accounting and Reporting  
OCTOBER 27, 2005

CC19140  
00234  
2005/10/27

BOARD OF TRUSTEES  
EL CAMINO COMM COLL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2001/2002 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 167,511.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 167,511.00

PRIOR PYMT TO/FR ANOTHER PGM - 35,266.00

TOTAL ADJUSTMENTS - 202,777.00

AMOUNT DUE STATE \$ 35,266.00

PLEASE REMIT A WARRANT IN THE AMOUNT OF \$ 35,266.00 WITHIN 30 DAYS FROM THE DATE OF THIS LETTER, PAYABLE TO THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875 WITH A COPY OF THIS LETTER. FAILURE TO REMIT THE AMOUNT DUE WILL RESULT IN OUR OFFICE PROCEEDING TO OFFSET THE AMOUNT FROM THE NEXT PAYMENTS DUE TO YOUR AGENCY FOR STATE MANDATED COST PROGRAMS.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ALEXIS LIAKOS AT (916) 323-0698 OR IN WRITING AT THE ABOVE ADDRESS.

SINCERELY,

*Ginny Drummels*  
GINNY DRUMMELS, MANAGER

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



STEVE WESTLY  
California State Controller  
Division of Accounting and Reporting  
OCTOBER 27, 2005

CC19140  
00234  
2005/10/27

BOARD OF TRUSTEES  
EL CAMINO COMM COLL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2000/2001 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 137,923.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 97,894.00

PRIOR PYMT TO/FR ANOTHER POM - 54,835.00

TOTAL ADJUSTMENTS - 152,729.00

AMOUNT DUE STATE \$ 14,806.00

PLEASE REMIT A WARRANT IN THE AMOUNT OF \$ 14,806.00 WITHIN 30 DAYS FROM THE DATE OF THIS LETTER, PAYABLE TO THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875 WITH A COPY OF THIS LETTER. FAILURE TO REMIT THE AMOUNT DUE WILL RESULT IN OUR OFFICE PROCEEDING TO OFFSET THE AMOUNT FROM THE NEXT PAYMENTS DUE TO YOUR AGENCY FOR STATE MANDATED COST PROGRAMS.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ALEXIS LIAKOS AT (916) 323-0698 OR IN WRITING AT THE ABOVE ADDRESS.

SINCERELY,

*GINNY BRUMMELS*  
GINNY BRUMMELS, MANAGER

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

Exhibit E



## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310) 532-3670 or 1-866-ELCAMINO

July 26, 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: 2000-01, 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the El Camino Community College District to the letter to President Thomas M. Fallo, EdD, from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated July 13, 2005, and received by the District on July 26, 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, 2000 through June 30, 2003.

### **Finding 1 - Overstated salary, benefits, and indirect costs**

The District is not disputing this adjustment at this time.

### **Finding 2 - Overstated indirect cost rates**

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.



The Controller's reliance on instructions state that on calculating indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, or a rate calculated using form 1-545, 20C, or a 7% indirect cost rate. The Controller claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The instructions of the Controller in view 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 17600(2)). If the Controller wishes to enforce audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller 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 treat the rates as unreasonable or excessive, the adjustments should be withdrawn.

### **Finding 3 - Understated authorized health fees revenues claimed**

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health services fee chargeable, rather than the fee actually charged the student.

#### **STUDENT HEALTH SERVICES FEE AMOUNT**

##### **"Authorized" Fee Amount**

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

##### **Education Code Section 76355**

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.)

### Parameters and Guidelines

The 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)." 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.

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"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 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 the 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.

#### ENROLLMENT AND EXEMPTED STUDENTS

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

#### Finding 4- Understated offsetting revenue

The District is not disputing this adjustment at this time.

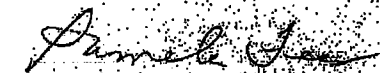
#### Statute of Limitations

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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,

EL CAMINO COMMUNITY COLLEGE



Pamela Fees  
Business Manager

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\01 StudentHealthFees\011StuHealthFees.doc

Exhibit G

1 **DECLARATION OF PAMELA FEES**

2 **EL CAMINO COMMUNITY COLLEGE DISTRICT**

3 **BEFORE THE COMMISSION ON STATE MANDATES**

4 **INCORRECT REDUCTION CLAIM OF El Camino Community College District**

5 **RE: Health Fee Elimination Annual Reimbursement Claims:**

6 **Fiscal Years 2000-01, 2001-02, 2002-03**

7 **I, Pamela Fees, the undersigned, declare:**

8 1. I am over the age of 18 and otherwise competent to testify in any court or  
9 administrative proceeding.

10 2. I am the Business Manager for El Camino Community College District.

11 3. I have been employed by the District since August 1998.

12 4. On Thursday, December 2, 2004, I received a telephone call from Janny Chan,  
13 an auditor employed by the State Controller's Office. Ms. Chan requested to  
14 schedule an entrance conference during the week beginning December 6, 2004,  
15 to commence the audit of the above referenced annual reimbursement claims for  
16 the Health Fee Elimination mandate program. I stated to Ms. Chan that I would  
17 need to first contact the appropriate District staff to determine their availability.

18 5. On Thursday, December 2, 2004, I made a phone call to Ms. Chan, in which I  
19 stated I was attempting to schedule a meeting time on December 8, or 9, 2004.

20 6. On Monday, December 6, 2004, I left a voice mail message with Ms. Chan  
21 stating that the District staff was available for an entrance conference at 2:30  
22 p.m. on December 9, 2004.



DECLARATION OF PAMELA FEES  
INCORRECT REDUCTION CLAIM OF  
EL CAMINO COMMUNITY COLLEGE DISTRICT

---

- 1 7. On Tuesday, December 7, 2004, I received a telephone call from Ms. Chan in  
2 which she stated that her supervisor was not available to attend the entrance  
3 conference on December 9, 2004. During this phone contact, Ms. Chan then  
4 requested the entrance conference to be conducted on January 5, 2005. During  
5 this phone contact, I agreed to the change of date.
- 6 8. On Tuesday, December 7, 2004, I received an e-mail from Ms. Chan confirming  
7 the results of the phone call. The e-mail asked me to provide a letter to her  
8 supervisor stating that the entrance conference was "postponed" to January 5,  
9 2005. This e-mail is dated December 7, 2004, and is attached as Exhibit 1.
- 10 9. On Tuesday, December 7, 2004, I prepared the memo requested by Ms. Chan  
11 and faxed it to her at the telephone number Ms. Chan provided in the e-mail.  
12 This memo is dated December 7, 2004, and attached as Exhibit 2.
- 13 10. On Wednesday, December 8, 2004, I received an e-mail from Ms. Chan in  
14 which she requested that I provide a "formal letter (instead of a memo) to Art  
15 Luna, SCO audit manager" regarding the "postponement" of the entrance  
16 conference. This e-mail is dated December 8, 2004, and attached as Exhibit 3.
- 17 11. On Wednesday, December 8, 2004, I prepared the letter requested by Ms. Chan  
18 and faxed it to her at the telephone number Ms. Chan provided. This letter is  
19 dated December 8, 2004, and attached as Exhibit 4.
- 20 12. On Thursday, December 9, 2004, I received by fax a letter dated December 9,  
21 2004, from Art Luna, Audit Manager, which confirmed the entrance conference

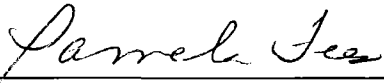
DECLARATION OF PAMELA FEES  
INCORRECT REDUCTION CLAIM OF  
EL CAMINO COMMUNITY COLLEGE DISTRICT

---

1 date of January 5, 2005. In the letter, Mr. Luna stated that the delay of the  
2 entrance conference date was due to the unavailability of District staff. His  
3 statement is in direct contradiction of all previous district communication and  
4 correspondence. The letter is attached as Exhibit 5.

5 The foregoing facts are known to me personally and, if so required, I could testify  
6 to the statements made herein. I hereby declare under penalty of perjury under the  
7 laws of the State of California that the foregoing is true and correct except where stated  
8 upon information or belief and that the attached exhibits are true and correct copies of  
9 the correspondence of the parties.

10 EXECUTED this 27<sup>th</sup> day of February 2006, at Torrance, California.

11   
12 \_\_\_\_\_

13 Pamela Fees

## Fees, Pamela

---

**From:** jchan@sco.ca.gov  
**Sent:** Tuesday, December 07, 2004 2:37 PM  
**To:** Fees, Pamela  
**Cc:** aluna@sco.ca.gov  
**Subject:** Entrance Conference

Hi Pamela

Per our phone conversation today at 2:25 p.m., the entrance conference for Thursday, December 9 is re-scheduled for January 5, 2005.

In addition, you will provide me a letter stating the entrance conference is postponed from December 9, 2004 to January 5, 2005.

Please fax a copy to: (310) 342-5670

and send the original letter to

Suite 1000	State Controller's Office
90230	Division of Audits
	600 Corporate Pointe,
	Culver City, California

Attention: Janny Chan

Thank you.

Janny Chan  
(310) 665-1650


**EL CAMINO COMMUNITY COLLEGE DISTRICT**  
16007 Crenshaw Blvd., Torrance, CA 90506



December 7, 2004

To: Janny Chan  
State Controller's Office  
Division of Audits

FAX No. (310) 342-5670  
Tele No. (310) 665-1650

From: Pamela Fees   
Business Manager

Telephone No. (310) 660-3110  
FAX No. (310) 660-3798

Pages transmitted (including cover page): 1

Re: Health Elimination Fee Audit

In your call to me the morning of December 2, 2004, you asked that I meet with you for an entrance conference the week of December 6. You indicated Tuesday-Friday after 1:30 would be good times to consider for the 1 hour meeting.

I called you back later that day to let you know I would not be working December 3 but was checking with staff to determine if December 8 or 9 would be available.

I confirmed with them Monday that December 9 at 2:30 would be fine and I left you a voice message the morning of December 6.

You called today to let me know your boss wasn't available the afternoon of December 9, even if I moved up our meeting time to 12:30, therefore you couldn't accept that date.

At your suggestion we selected a date in January to conduct the entrance conference. At this time it is scheduled for Wednesday, January 5, 2005, at 10:30 a.m.

We will prepare a parking permit and map indicating the location of the meeting at El Camino College and mail it to you.

## **Fees, Pamela**

---

**From:** jchan@sco.ca.gov  
**Sent:** Wednesday, December 08, 2004 12:08 PM  
**To:** Fees, Pamela  
**Subject:** entrance conference

Hi Pamela

Please fax a formal letter (instead of a memo) to Art Luna, SCO audit manager, stating that an entrance conference for December 9 is postponed to January 5, 2005.

Call me if you have questions.

Janny Chan  
State Auditor  
(310) 665-1650

FAX (310) 342-5670


**EL CAMINO COMMUNITY COLLEGE DISTRICT**  
16007 Crenshaw Blvd., Torrance, CA 90506



December 8, 2004

To: Janny Chan  
State Controller's Office  
Division of Audits

FAX No. (310) 342-5670  
Tele No. (310) 665-1650

From: Pamela Fees   
Business Manager

Telephone No. (310) 660-3110  
FAX No. (310) 660-3798

Pages transmitted (including cover page): 2

Re: Health Fee Elimination Audit

I have attached a formal letter to Art Luna, per your request, indicating our agreed upon meeting date of January 5, 2005.



## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310)532-3670 or 1-877-ECAMINO

December 8, 2004

Art Luna  
State Controller's Office  
Division of Audits  
600 Corporate Pointe, Suite 1000  
Culver City, CA 90230

Dear Mr. Luna:

Per my conversation with Janny Chan yesterday, I understand the original entrance conference date and time (December 9, 2004 at 2:30) I had suggested to discuss the Health Fee Elimination was a time at which you are unavailable.

I confirmed this in a fax to Janny yesterday in a memo form and am now formalizing it in a letter to you.

Therefore we have scheduled the meeting for January 5, 2005, at 10:30 a.m. I will prepare a parking permit and map indicating the location of the meeting at El Camino College and mail it to Janny.

Sincerely,

Pamela Fees  
Business Manager



**STEVE WESTLY**  
**California State Controller**

December 9, 2004

Dr. Thomas M. Fallo  
President / Superintendent  
El Camino Community College District  
16007 Crenshaw Blvd  
Torrance, CA 90506

Dear Dr. Fallo:

This letter confirms that State Controller's Office has scheduled an audit of El Camino Community College District's legislatively mandated Health Fee Elimination Program cost claims filed for fiscal year (FY) 2000-01, FY 2001-02, and FY 2002-03. *Government Code* Section 17558.5 provides the authority for this audit.

In a telephone conversation on Thursday, December 2, 2004, Janny Chan, SCO Auditor-in-Charge, asked to begin the audit this month. However, due to the unavailability of appropriate district personnel, Pamela Fees, Business Manager, requested that the audit commence on January 5, 2005, at 10:30 a.m. The entrance conference will be held at El Camino Community College District, 16007 Crenshaw, Torrance, California 90506.

Please furnish working accommodations for and provide the necessary records (see the Attachment) to the audit staff.

If you have any questions, please call me at (310) 342-5639.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Luna".

ART LUNA  
Audit Manager  
Compliance Audits Bureau  
Division of Audits

AL:th

Attachment



cc: Pamela Fees, Business Manager  
El Camino Community District  
Jim L. Spano, Chief  
Compliance Audits Bureau  
Division of Audits  
State Controller's Office  
Ginny Brummels, Manager  
Division of Accounting and Reporting  
State Controller's Office  
Janny Chan  
Auditor-in-Charge  
Division of Audits  
State Controller's Office

Annual Reimbursement Claims

<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>HEALTH FEE ELIMINATION</b>	For State Controller Use Only (19) Program Number 00029 (20) Date File ____/____/____ (21) LRS Input ____/____/____
--	--

L A B E L H E R E	<b>(01) Claimant Identification Number:</b> S19140	<b>Reimbursement Claim Data</b>																					
	<b>(02) Mailing Address:</b>	(22) HFE - 1.0, (04)(b)	\$ 137,923																				
	<b>Claimant Name</b> El Camino Community College District	(23)																					
	<b>County of Location</b> Los Angeles	(24)																					
	<b>Street Address</b> 16007 Crenshaw Blvd	(25)																					
	<b>City</b> <b>State</b> <b>Zip Code</b> Torrance                      CA                      90506-3110	(26)																					
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:25%;">Type of Claim</th> <th style="width:25%;">Estimated Claim</th> <th style="width:25%;">Reimbursement Claim</th> <th style="width:25%;"></th> </tr> <tr> <td></td> <td>(03) Estimated    <input checked="" type="checkbox"/></td> <td>(09) Reimbursement    <input checked="" type="checkbox"/></td> <td>(27)</td> </tr> <tr> <td></td> <td>(04) Combined    <input type="checkbox"/></td> <td>(10) Combined    <input type="checkbox"/></td> <td>(28)</td> </tr> <tr> <td></td> <td>(05) Amended    <input type="checkbox"/></td> <td>(11) Amended    <input type="checkbox"/></td> <td>(29)</td> </tr> <tr> <td></td> <td></td> <td></td> <td>(30)</td> </tr> </table>	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)		
	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)																				
<b>Fiscal Year of Cost</b>	(06) 2001-2002	(12) 2000-2001	(31)																				
<b>Total Claimed Amount</b>	(07) \$ 151,000	(13) \$ 137,923	(32)																				
<b>Less: 10% Late Penalty, but not to exceed \$1000</b>		(14) \$ -	(33)																				
<b>Less: Estimate Claim Payment Received</b>		(15) \$ 54,835	(34)																				
<b>Net Claimed Amount</b>		(16) \$ 83,088	(35)																				
<b>Due from State</b>	(08) \$ 151,000	(17) \$ 83,088	(36)																				
<b>Due to State</b>		(18) \$ -	(37)																				

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code Section 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 309, Statutes of 1995, 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 309, Statutes of 1995.

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 309, Statutes of 1995, set forth on the attached statements.

Signature of Authorized Representative

Date

*Pamela Fees*

12-20-01

Pamela Fees  
Type or Print Name

Business Manager  
Title

**(39) Name of Contact Person or Claim**  
SixTen & Associates

**Telephone Number**  
(858) 514-8605

CONTROLLER OF CALIFORNIA  
P.O. BOX 942950, SACRAMENTO, CALIFORNIA 94250

THIS REMITTANCE ADVICE IS FOR INFORMATION PURPOSE ONLY.  
THE WARRANT COVERING THE AMOUNT SHOWN WILL BE MAILED  
DIRECTLY TO THE PAYEE.

BOARD OF TRUSTEES  
EL CAMINO COMM COL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

WARRANT AMT: \*\*\*\*54,835.00

PAYEE: TREASURER, EL CAMINO COMM COL DIST  
FUND NAME: GENERAL FUND

ISSUE DATE: 03/08/2001

CLAIM SCHEDULE NBR: MA00514

REIMBURSEMENT OF STATE MANDATED COSTS  
IF YOU HAVE ANY QUESTIONS CALL NIEMAND QUOK AT (916) 323-0734  
ACL : 6370-295-0001      PRG : HEALTH FEE ELIMINATION CH 1/  
2000/2001 ESTIMATED PAYMENT      CLAIMED AMT:      190,000.00  
TOTAL ADJUSTMENTS:      .00  
TOTAL APPROVED CLAIMED AMT:      190,000.00  
LESS PRIOR PAYMENTS:      .00  
PRORATA PERCENT:      28.860275  
PRORATA BALANCE DUE:      135,165.00  
APPROVED PAYMENT AMOUNT:      54,835.00  
PAYMENT OFFSETS -NONE  
NET PAYMENT AMOUNT:      54,835.00

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

<b>(01) Claimant:</b> Claimant Name El Camino Community College District	<b>(02) Type of Claim:</b> Reimbursement <input checked="" type="checkbox"/> X Estimated <input type="checkbox"/>	Fiscal Year 2000-2001
--	---	--------------------------

**(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. El Camino Community College	\$ 137,923.35
2.	\$ -
3.	\$ -
4.	\$ -
5.	\$ -
6.	\$ -
7.	\$ -
8.	\$ -
9.	\$ -
10.	\$ -
11.	\$ -
12.	\$ -
13.	\$ -
14.	\$ -
15.	\$ -
16.	\$ -
17.	\$ -
18.	\$ -
19.	\$ -
20.	\$ -
21.	\$ -
<b>(04) Total Amount Claimed</b>	\$ 137,923

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

<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
--	-------------------------------

<b>(01) Claimant:</b>  El Camino Community College District	<b>(02) Type of Claim:</b> Reimbursement <input checked="" type="checkbox"/>  Estimated <input type="checkbox"/>	Fiscal Year  2000-2001
---	---	------------------------------

**(03) Name of College** El Camino Community College

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

LESS       SAME       MORE

	Direct Cost	Indirect Cost of: 32.96%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 372,049	\$ 122,627	\$ 494,676
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level</b> [Line (05) - line (06)]	\$ 372,049	\$ 122,627	\$ 494,676

**(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	4,330	14,025	\$ 10.00	\$ 43,300	\$ 10.00	\$ 140,250	\$ 183,550
2. Per spring semester	3,103	12,858	\$ 10.00	\$ 31,030	\$ 10.00	\$ 128,580	\$ 159,610
3. Per summer session	503	12,691	-	\$ -	-	\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -
<b>(09) Total health fee that could have been collected</b>	[Line (8.1g) + (8.2g) + .....(8.6g)]						\$ 343,160
<b>(10) Sub-total</b>	[Line (07) - line (09)]						\$ 151,516

<b>Cost Reduction</b>	
<b>(11) Less: Offsetting Savings, if applicable</b>	\$ -
<b>(12) Less: Other Reimbursements, if applicable</b>	\$ 13,593.00
<b>(13) Total Amount Claimed</b>	[Line (10) - (line (11) + line (12))] \$ 137,923

**EL CAMINO COMMUNITY COLLEGE DISTRICT  
INDIRECT COST RATE CALCULATION**

1999-2000

FOR 00-01 CLAIMS

REFERENCE (CCFS 311)	DESCRIPTION	1999-2000
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	31,898,009
	Instructional Operating Expenses	971,604
	Instructional Support	160,692
	Auxiliary Classes - Instructional	72,640
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>33,102,945</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	1,919,129
	Instructional Admin. Salaries and Benefits	4,288,094
	Instructional Admin. Operating Expenses	750,096
	Auxiliary Classes - Noninstructional Salaries & Benefits	382,969
	Auxiliary Classes - Operating Expenses	196,258
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>7,836,120</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>40,939,065</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services	2,117,885
	Admissions and Records	2,204,852
	Counseling and Guidance	2,634,277
	Other Student Services	4,679,375
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>11,636,372</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>	<b>52,575,437</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	6,851,184
	Planning and Policy Making	2,474,029
	General Instructional Support Services	7,907,021
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>17,232,234</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS 7 (5 + 6) = TOTAL COSTS</b>	<b>69,807,671</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
<b>Indirect Support Costs Allocation Rate =</b>	<b>Total Indirect Support Costs (6)</b>	<b>32.96%</b>
	<b>Total Instructional Activity Costs and Direct Support Costs (5)</b>	
<b>Direct Support Costs Allocation Rate =</b>	<b>Total Direct Support Costs (4)</b>	<b>25.63%</b>
	<b>Total Instructional Activity Costs (3)</b>	
<b>Total Support Cost Allocation</b>		<b>61.60%</b>

<p style="text-align: center;"><b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b></p>	<p style="text-align: center;"><b>FORM HFE-2.1</b></p>	
<p>(01) Claimant  El Camino Community College District</p>	<p>Fiscal Year  2000-2001</p>	
<p>(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.</p>	<p>(a) FY 1986/87</p>	<p>(b) FY of Claim</p>
Accident Reports	X	X
Appointments		
College Physician, surgeon	X	X
Dermatology, Family practice	X	X
Internal Medicine	X	X
Outside Physician	X	X
Dental Services		
Outside Labs, (X-ray, etc..)	X	X
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		
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
Sunstance 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	X	X
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



<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>		<b>FORM HFE-2.1</b>	
(01) Claimant		Fiscal Year	
El Camino Community College District		2000-2001	
(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		X	X
Influenza		X	X
Information		X	X
Insurance			
On Campus Accident			
Voluntary			
Insurance Inquiry/Claim Administration			
Laboratory Tests Done		X	X
Inquiry/Interpretation		X	X
Pap Smears		X	X
Physical Examinations			
Employees			
Students		X	X
Athletes		X	X
Medications			
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.,		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops		X	X
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list--> Ibuprofen			
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry			
Elevator Passes			
Temporary Handicapped Parking Permits			

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
(01) Claimant  El Camino Community College District		Fiscal Year  2000-2001	
(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
<b>Referrals to Outside Agencies</b>			
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
<b>Tests</b>			
Blood Pressure		X	X
Hearing		X	X
Tuberculosis			
Reading		X	X
Information		X	X
Vision		X	X
Glucometer		X	X
Urinalysis		X	X
Hemoglobin		X	X
EKG			
Strep A Testing		X	X
PG Testing		X	X
Monospot		X	X
Hemacult		X	X
Others, list			
<b>Miscellaneous</b>			
Absence Excuses/PE Waiver		X	X
Allergy Injections		X	X
Bandaids		X	X
Booklets/Pamphlets		X	X
Dressing Change		X	X
Rest		X	X
Suture Removal		X	X
Temperature		X	X
Weigh		X	X
Information		X	X
Report/Form		X	X
Wart Removal		X	X
Others, list			
<b>Committees</b>			
Safety		X	X
Environmental		X	X
Disaster Planning		X	X
Skin Rash Preparations			
Eye Drops			

**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 \_\_\_/\_\_\_/\_\_\_


<b>(01) Claimant Identification Number:</b> S19140			<b>Reimbursement Claim Data</b>	
<b>(02) Mailing Address:</b>			(22) HFE - 1.0, (04)(b)	\$ 167,511
<b>Claimant Name</b> El Camino Community College District			(23)	
<b>County of Location</b> Los Angeles			(24)	
<b>Street Address</b> 16007 Crenshaw Boulevard			(25)	
<b>City</b> Torrance	<b>State</b> CA	<b>Zip Code</b> 90506-0002	(26)	
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(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)	
<b>Fiscal Year of Cost</b>	(06) 2002-03	(12) 2001-2002	(31)	
<b>Total Claimed Amount</b>	(07) \$ 180,000	(13) \$ 167,511	(32)	
<b>Less: 10% Late Penalty, but not to exceed \$1000</b>		(14) \$ -	(33)	
<b>Less: Estimate Claim Payment Received</b>		(15) \$ 35,266	(34)	
<b>Net Claimed Amount</b>		(16) \$ 132,245	(35)	
<b>Due from State</b>	(08) \$ 180,000	(17) \$ 132,245	(36)	
<b>Due to State</b>		(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**  
  
 Pamela Fees  
 Type or Print Name

**Date**  
 12-23-02  
 Business Manager  
 Title

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



# STATE OF CALIFORNIA

WARRANT NUMBER

62-528582

THE TREASURER OF THE STATE WILL PAY OUT OF THE

FUND NO. 0001 GENERAL FUND

IDENTIFICATION NO. S19140

6870

MO. DAY YR. 03 06 2002

90-1342/1211

62528582

DOLLARS	CENTS
13528	00

TO 6882  
 --- TREASURER  
 EL CAMINO COMM COL DIST  
 LOS ANGELES COUNTY  
 16007 CRENSHAW BLVD  
 TORRANCE CA 90506

*Kathleen Connell*  
 KATHLEEN CONNELL  
 STATE CONTROLLER

⑆21113423⑆ 62528582⑈

DETACH ON DOTTED LINE  
KEEP THIS PORTION FOR YOUR RECORDS

62-528582


ISSUE DATE: 03/06/2002

ISSUE DATE: 03/06/2002

CLAIM SCHEDULE NBR: MA11392E

REIMBURSEMENT OF STATE MANDATED COSTS

ANY QUESTIONS REGARDING THIS CLAIM CALL FRAN 916 323-0766  
 ACL : 6870-295-0001      PRG : HEALTH FEE ELIMINATION CH 1/84  
 2001/2002 ESTIMATED PAYMENT      CLAIMED AMT:      151,000.00  
 TOTAL ADJUSTMENTS:      .00  
 TOTAL APPROVED CLAIMED AMT:      151,000.00  
 LESS PRIOR PAYMENTS:      .00  
 PRORATA PERCENT:      23.354721  
 PRORATA BALANCE DUE:      115,734.00-  
 APPROVED PAYMENT AMOUNT:      35,266.00  
 PAYMENT OFFSETS (ACL NBR, NAME, FY, AMT.):  
 6110-295-0001      COLLECTIVE BARGAIN CH 96 99/00      21,738-  
 NET PAYMENT AMOUNT:      13,528.00

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

<b>(01) Claimant:</b>	<b>(02) Type of Claim:</b>	<b>Fiscal Year</b>
<b>Claimant Name</b>	Reimbursement <input checked="" type="checkbox"/>	
El Camino 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.	El Camino College	\$ 167,511.12
2.		\$ -
3.		\$ -
4.		\$ -
5.		\$ -
6.		\$ -
7.		\$ -
8.		\$ -
9.		\$ -
10.		\$ -
11.		\$ -
12.		\$ -
13.		\$ -
14.		\$ -
15.		\$ -
16.		\$ -
17.		\$ -
18.		\$ -
19.		\$ -
20.		\$ -
21.		\$ -
<b>(04) Total Amount Claimed</b>		<b>\$ 167,511</b>
	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	

0-29	<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
------	--	-------------------------------

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

**(03) Name of College** El Camino 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: 28.63%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 403,626	\$ 115,558	\$ 519,184
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]</b>	\$ 403,626	\$ 115,558	\$ 519,184

**(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	2,298	15,445	\$ 10.00	\$ 22,980	\$ 10.00	\$ 154,450	\$ 177,430
2. Per spring semester	1,894	15,272	\$ 10.00	\$ 18,940	\$ 10.00	\$ 152,720	\$ 171,660
3. Per summer session	30	13,942	\$ -	\$ -	\$ -	\$ -	\$ -
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)] \$ 349,090

**(10) Sub-total** [Line (07) - line (09)] \$ 170,094

**Cost Reduction**

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

**(12) Less: Other Reimbursements, if applicable** \$ 2,583

**(13) Total Amount Claimed** [Line (10) - (line (11) + line (12))] \$ 167,511

**EL CAMINO COMMUNITY COLLEGE DISTRICT  
CALCULATION OF INDIRECT COST RATES,  
FISCAL YEAR  
2000-2001**


*FOR 01-02  
CLAIMS*

REFERENCE (CCFS 311)	DESCRIPTION	2000-2001
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	34,637,085
	Instructional Operating Expenses	1,405,525
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	112,575
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>36,155,185</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	2,350,610
	Instructional Admin. Salaries and Benefits	4,749,688
	Instructional Admin. Operating Expenses	1,141,056
	Auxiliary Classes Non-Inst. Salaries and Benefits	1,605,173
	Auxiliary Classes Operating Expenses	1,543,211
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>11,389,738</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>47,544,923</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services Non Inst. Salaries and Benefits	2,068,940
	Instructional Support Services Operating Expenses	279,642
	Admissions and Records	2,372,772
	Counseling and Guidance	3,469,142
	Other Student Services	5,897,480
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>14,087,976</b>
<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>		<b>61,632,899</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	7,135,934
	Planning and Policy Making	2,634,424
	General Instructional Support Services	7,872,419
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>17,642,777</b>
<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS, AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS</b>		<b>79,275,676</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
<b>Indirect Support Costs Allocation Rate =</b>	Total Indirect Supports Costs (6)	28.63%
	Total Instructional Activity Costs and Direct Support Costs (5)	
<b>Direct Support Costs Allocation Rate =</b>	Total Direct Support Costs (4)	29.63%
	Total Instructional Activity Costs (3)	
<b>Total Support Cost Allocation</b>		<b>58.26%</b>

<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;">029</div>	<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM HFE-2.1</b>
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(01) Claimant  El Camino 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	X	X
Dermatology, Family practice	X	X
Internal Medicine	X	X
Outside Physician	X	X
Dental Services		
Outside Labs, (X-ray, etc.)	X	X
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		
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	X	X
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



	<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM HFE-2.1</b>
---	---	-------------------------

(01) Claimant El Camino Community College District	Fiscal Year 2001-2002
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(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	X	X
Influenza	X	X
Information	X	X
Insurance		
On Campus Accident		
Voluntary		
Insurance Inquiry/Claim Administration		
Laboratory Tests Done	X	X
Inquiry/Interpretation	X	X
Pap Smears	X	X
Physical Examinations		
Employees		
Students	X	X
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list--> Ibuprofen	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
(01) Claimant El Camino 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
Referrals to Outside Agencies			
Private Medical Doctor		X	X
Health Department Clinic		X	X
Dental		X	X
Counseling Centers		X	X
Crisis Centers		X	X
Transitional Living Facilities, battered/homeless women		X	X
Family Planning Facilities		X	X
Other Health Agencies		X	X
Tests			
Blood Pressure		X	X
Hearing		X	X
Tuberculosis			
Reading		X	X
Information		X	X
Vision		X	X
Glucometer		X	X
Urinalysis		X	X
Hemoglobin		X	X
EKG			
Strep A Testing		X	X
PG Testing		X	X
Monospot		X	X
Hemacult		X	X
Others, list			
Miscellaneous			
Absence Excuses/PE Waiver		X	X
Allergy Injections		X	X
Band-aids		X	X
Booklets/Pamphlets		X	X
Dressing Change		X	X
Rest		X	X
Suture Removal		X	X
Temperature		X	X
Weigh		X	X
Information		X	X
Report/Form		X	X
Wart Removal		X	X
Others, list			
Committees			
Safety		X	X
Environmental		X	X
Disaster Planning		X	X
Skin Rash Preparations			
Eye Drops			

**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:**  
 L S19140  
**(02) Mailing Address:**  
 A  
 B  
 E  
 L  
**Claimant Name**  
 El Camino Community College District  
**County of Location**  
 H Los Angeles  
**Street Address**  
 R 16007 Crenshaw Boulevard  
**City State Zip Code**  
 E Torrance CA 90506-0002

**Reimbursement Claim Data**

(22) HFE - 1.0, (04)(b)	\$	174,277
(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"/>	
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	
(06) 2003-2004	(12) 2002-2003	
(07) \$ 175,000	(13) \$ 174,277	
Less: 10% Late Penalty, but not to exceed \$1000	(14) \$ -	
Less: Estimate Claim Payment Received	(15) \$ -	
Net Claimed Amount	(16) \$ 174,277	
(08) \$ 175,000	(17) \$ 174,277	
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**  
  
 Pamela Fees  
 Type or Print Name

**Date**  
 1-6-04  
 Business Manager  
 Title

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

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

<b>(01) Claimant:</b>	<b>(02) Type of Claim:</b>	Fiscal Year
Claimant Name	Reimbursement <input checked="" type="checkbox"/>	
El Camino 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.	El Camino College	\$ 174,277.26
2.		\$ -
3.		\$ -
4.		\$ -
5.		\$ -
6.		\$ -
7.		\$ -
8.		\$ -
9.		\$ -
10.		\$ -
11.		\$ -
12.		\$ -
13.		\$ -
14.		\$ -
15.		\$ -
16.		\$ -
17.		\$ -
18.		\$ -
19.		\$ -
20.		\$ -
21.		\$ -
<b>(04) Total Amount Claimed</b>	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 174,277

	<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
--	--	-------------------------------

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

**(03) Name of College** El Camino 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: 28.46%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 455,152	\$ 129,536	\$ 584,688
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level</b> [Line (05) - line (06)]	\$ 455,152	\$ 129,536	\$ 584,688

**(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	4,776	15,928	\$ 10.00	\$ 47,760	\$ 10.00	\$ 159,280	\$ 207,040
2. Per spring semester	4,448	14,386	\$ 10.00	\$ 44,480	\$ 10.00	\$ 143,860	\$ 188,340
3. Per summer session				\$ -		\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -

<b>(09) Total health fee that could have been collected</b>	[Line (8.1g) + (8.2g) + .....(8.6g)]	\$ 395,380
<b>(10) Sub-total</b>	[Line (07) - line (09)]	\$ 189,308

<b>Cost Reduction</b>		
<b>(11) Less: Offsetting Savings, if applicable</b>		\$ -
<b>(12) Less: Other Reimbursements, if applicable</b>		\$ 15,031
<b>(13) Total Amount Claimed</b>	[Line (10) - (line (11) + line (12))]	\$ 174,277

**EL CAMINO COMMUNITY COLLEGE DISTRICT  
CALCULATION OF INDIRECT COST RATE,  
FISCAL YEAR  
2001-2002**

*For 02-03  
claims*

REFERENCE (CCFS 311)	DESCRIPTION	2001-2002
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	38,465,491
	Instructional Operating Expenses	1,307,934
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	123,607
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>39,897,032</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	2,570,144
	Instructional Admin. Salaries and Benefits	5,056,212
	Instructional Admin. Operating Expenses	971,106
	Auxiliary Classes Non-Inst. Salaries and Benefits	2,052,409
	Auxiliary Classes Operating Expenses	1,373,030
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>12,022,901</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>51,919,933</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services Non Inst. Salaries and Benefits	2,302,041
	Instructional Support Services Operating Expenses	259,142
	Admissions and Records	2,418,915
	Counselling and Guidance	3,696,847
	Other Student Services	6,515,747
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>15,192,692</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>	<b>67,112,625</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	7,117,031
	Planning and Policy Making	2,723,404
	General Instructional Support Services	9,259,918
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>19,100,353</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS</b>	<b>86,212,978</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
Indirect Support Costs Allocation Rate =	Total Indirect Supports Costs (6) Total Instructional Activity Costs and Direct Support Costs (5)	28.46%
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4) Total Instructional Activity Costs (3)	29.26%
Total Support Cost Allocation		57.72%

<b>029</b>	<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM HFE-2.1</b>
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(01) Claimant  El Camino 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	X	X
Dermatology, Family practice	X	X
Internal Medicine	X	X
Outside Physician	X	X
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
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	X	X
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

1769 029	<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM HFE-2.1</b>
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(01) Claimant  El Camino Community College District	Fiscal Year  2002-2003
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(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
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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	X
Influenza	X	X
Information	X	X
Insurance		
On Campus Accident		
Voluntary		
Insurance Inquiry/Claim Administration		
Laboratory Tests Done	X	X
Inquiry/Interpretation	X	X
Pap Smears	X	X
Physical Examinations		
Employees		
Students	X	X
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		



<b>020</b>	<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM HFE-2.1</b>
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(01) Claimant  El Camino 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
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Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis		
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG		
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list		
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X
Skin Rash Preparations		
Eye Drops		



JOHN CHIANG  
California State Controller

RECEIVED

NOV 24 2008

COMMISSION ON  
STATE MANDATES

November 21, 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-11

El Camino Community College District, Claimant

Education Code Section 76355

Statutes 1984, Chapter 1, 2<sup>nd</sup> E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2000-01, 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 utilized an invalid ICRP. In addition, the claim was reduced because the Claimant understated authorized Health 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."<sup>1</sup> This power has been affirmed in recent cases, such as the Incorrect Reductions Claims (IRCs) for the *Graduation Requirements* mandate.<sup>2</sup> 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.<sup>3</sup> See also Evidence Code section 500.<sup>4</sup> Therefore, these claimed costs are unsupported and appropriately disallowed.

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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> "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."

November 21, 2008

Page 2

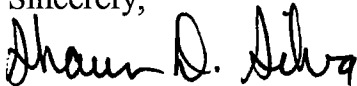
The Claimant utilizes an unapproved indirect cost rate. The Parameters and Guidelines provide for the use of an ICRP determined using the OMB Circular A-21 method or the SCO's FAM-29C. Since the Claimant did not have a current approved ICRP, the auditors utilized the FAM-29C and determined that the allowable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

The Claimant also 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<sup>5</sup>.

Lastly, the Claimant asserts that the audit of the 2000-01 and 2001-02 FYs is precluded by the statute of limitations, specifically, Government Code section 17558.5. However, the claimant incorrectly applies the 1996 version of this statute, rather than the 2003 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.<sup>6</sup> 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 are applicable to the claim, requiring that the 2000-01 audit be initiated by January 14, 2005, and the 2001-02 audit be initiated by December 30, 2005. Since the audit of both years was initiated no later than January 5, 2005, when the entrance conference was held, the audit 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: Janice Ely, Business Manager, El Camino 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.)

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

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

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.

4 On November 21, 2008, I served the foregoing document entitled:

5 **SCO'S RESPONSE TO THE INCORRECT REDUCTION CLAIM FOR**  
6 **EL CAMINO COMMUNITY COLLEGE DISTRICT, CSM 05-4206-I-11**

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

8 Paula Higashi (*original*)  
9 Executive Director  
10 Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Janice Ely, Business Manager  
El Camino Community College District  
16007 Crenshaw Boulevard  
Torrance, CA 90506

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

13  **BY MAIL**

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

16  **BY PERSONAL SERVICE**

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

17  **BY OVERNIGHT MAIL/COURIER**

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

19  **BY FACSIMILE TRANSMISSION**

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

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

24 Executed on November 21, 2008, at Sacramento, California.

25   
Amber A. Camarena

**RESPONSE BY THE STATE CONTROLLER'S OFFICE TO THE  
INCORRECT REDUCTION CLAIM BY  
EL CAMINO COMMUNITY COLLEGE DISTRICT  
Health Fee Elimination Program**

**Table of Contents**

<b><u>Description</u></b>	<b><u>Page</u></b>
<b>SCO Response to District's Comments</b>	
Declaration.....	Tab 1
State Controller's Office (SCO) Analysis and Response.....	Tab 2
Excerpt from SCO Claiming Instructions, Section 5B, Indirect Costs (September 2002).....	Tab 3
Health Fee Elimination Claiming Instructions (updated September 1997).....	Tab 4
Excerpt from the Office of Management and Budget Circular A-21—Attachment (Simplified Method for Small Institutions).....	Tab 5
Commission on State Mandates Staff Analysis, Proposed Parameters and Guidelines (May 1989).....	Tab 6
Commission on State Mandates Meeting Minutes (May 1989).....	Tab 7
SCO's Audit Notification Letter (December 9, 2004).....	Tab 8
Excerpt of Documentation Supporting District-Provided Numbers of Student Enrollment and Exemptions.....	Tab 9
California Community College Chancellor's Office Letter on Student Fees (March 5, 2001).....	Tab 10
<b>Attachment – District's Comments</b>	
Incorrect Reduction Claim (March 27, 2006)	
SCO Letter (July 15, 2004).....	Exhibit A
Parameters and Guidelines (amended May 25, 1989).....	Exhibit B
SCO Claiming Instructions (updated September 1997).....	Exhibit C
SCO Final Audit Report (October 05, 2005).....	Exhibit D
Claimant's Letter (July 26, 2005).....	Exhibit E
Chancellor's Letter (March 5, 2001).....	Exhibit F
Claimant's Declaration Statement (February 27, 2006).....	Exhibit G
District's Reimbursement Claims—FY 2000-01, FY 2001-02, and FY 2002-03.....	Exhibit H

# Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

300 Capitol Mall, Suite 1850

2 Sacramento, CA 94250

3 Telephone No.: (916) 445-6854

4 BEFORE THE

5 COMMISSION ON STATE MANDATES

6 STATE OF CALIFORNIA

9 INCORRECT REDUCTION CLAIM ON:

No.: CSM 05-4206-I-11

10 *Health Fee Elimination Program*

AFFIDAVIT OF BUREAU CHIEF

11 Chapter 1, Statutes of 1984, 2<sup>nd</sup>  
12 Extraordinary Session, and Chapter 1118,  
13 Statutes of 1987

14 EL CAMINO COMMUNITY COLLEGE  
DISTRICT, Claimant

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

- 17 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18  
18 years.
- 19 2) I am currently employed as a bureau chief, and have been so since April 21, 2000.  
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 the El Camino  
23 Community College District or retained at our place of business.
- 24 6) The records include claims for reimbursement, along with any attached supporting  
25 documentation, explanatory letters, or other documents relating to the above-entitled  
Incorrect Reduction Claim.


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7) A field audit of the claims for fiscal year (FY) 2000-01, FY 2001-02, and FY 2002-03 commenced on January 5, 2005, and ended on April 07, 2005.

~~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 9, 2007

OFFICE OF THE STATE CONTROLLER

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



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## **Tab 2**

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE  
TO THE INCORRECT REDUCTION CLAIM BY  
EL CAMINO COMMUNITY COLLEGE DISTRICT  
For Fiscal Year (FY) 2000-01, FY 2001-02, and FY 20002-03**

~~Health Fee Elimination Program~~  
**Chapter 1, Statutes of 1984, 2<sup>nd</sup> 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 (IRC) that the El Camino Community College District submitted on March 27, 2006. The SCO audited the district's claims for costs of the legislatively mandated Health Fee Elimination Program for the period of July 1, 2000, through June 30, 2003. The SCO issued its final report on October 5, 2005 (**Exhibit D**).

The district submitted reimbursement claims totaling \$479,711 as follows.

- FY 2000-01—\$137,923 (**Exhibit H**)
- FY 2001-02—\$167,511 (**Exhibit H**)
- FY 2002-03—\$174,277 (**Exhibit H**)

The SCO audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred primarily because the district overstated indirect costs and understated health fees. The State paid the district \$90,101. The amount paid exceeded allowable costs claimed by \$10,281. The following table summarizes the audit results.

<u>Cost Element</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>
<u>July 1, 2000, through June 30, 2001</u>			
Health service costs:			
Salaries and benefits	\$ 331,487	\$ 319,367	\$ (12,120)
Services and supplies	40,562	40,562	-
Indirect costs	<u>122,627</u>	<u>48,015</u>	<u>(74,612)</u>
Total health services costs	494,676	407,944	(86,732)
Less authorized health fees	(343,160)	(351,967)	(8,807)
Less offsetting savings/reimbursements	<u>(13,593)</u>	<u>(15,948)</u>	<u>(2,355)</u>
Total program costs	<u>\$ 137,923</u>	40,029	<u>\$ (97,894)</u>
Less amount paid by the State		<u>(54,835)<sup>2</sup></u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (14,806)</u>	

Cost Element	Actual Costs Claimed	Allowable per Audit	Audit Adjustments
<u>July 1, 2001, through June 30, 2002</u>			
Health service costs:			
Salaries and benefits	\$ 367,872	\$ 367,872	\$ —
Services and supplies	35,754	35,754	—
Indirect costs	115,558	57,194	(58,364)
Total health services costs	519,184	460,820	(58,364)
Less authorized health fees	(349,090)	(460,800)	(111,710)
Less offsetting savings/reimbursements	(2,583)	(2,583)	—
Adjustment to eliminate negative balance	—	2,563	2,563
Total program costs	<u>\$ 167,511</u>	—	<u>\$ (167,511)</u>
Less amount paid by the State		(35,266) <sup>1,2</sup>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (35,266)</u>	
<u>July 1, 2002, through June 30, 2003</u>			
Health service costs:			
Salaries and benefits	\$ 400,431	\$ 400,431	\$ —
Services and supplies	54,721	54,721	—
Indirect costs	129,536	69,866	(59,670)
Total health services costs	584,688	525,018	(59,670)
Less authorized health fees	(395,380)	(470,196)	(74,816)
Less offsetting savings/reimbursements	(15,031)	(15,031)	—
Total program costs	<u>\$ 174,277</u>	39,791	<u>\$ (134,486)</u>
Less amount paid by the State		— <sup>2</sup>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 39,791</u>	
<u>Summary: July 1, 2000, through June 30, 2003</u>			
Health service costs:			
Salaries and benefits	\$ 1,099,790	\$ 1,087,670	\$ (12,120)
Services and supplies	131,037	131,037	—
Indirect costs	367,721	175,075	(192,646)
Total health services costs	1,598,548	1,393,782	(204,766)
Less authorized health fees	(1,087,630)	(1,282,963)	(195,333)
Less offsetting savings/reimbursements	(31,207)	(33,562)	(2,355)
Adjustment to eliminate negative balance	—	2,563	2,563
Total program costs	<u>\$ 479,711</u>	79,820	<u>\$ (399,891)</u>
Less amount paid by the State		(90,101) <sup>1,2</sup>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (10,281)</u>	

<sup>1</sup> As noted in Section VI of our response, the final report incorrectly stated that the district was paid \$34,266 rather than the correct amount of \$35,266 for FY 2001-02. The amount presented has been updated for the accurate amount.

<sup>2</sup> Payment information is based on amount paid when the final report was issued.

The district's IRC contests audit adjustments totaling \$399,891. The district believes that its indirect cost rates claimed are appropriate and that it reported the correct amount of health service fee revenues. Further, the district believes that the SCO was not authorized to make changes to the payment amount from the State for FY 2001-02, and that the SCO was not authorized to audit the district's FY 2000-01 and FY 2001-02 claims.

**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 (CSM) adopted the parameters and guidelines for Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session. The CSM amended the parameters and guidelines on May 25, 1989 (**Exhibit B**), because of Chapter 1118, Statutes of 1987.

The parameters and guidelines (amended May 25, 1989) state:

**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.]

**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.

---

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

**SCO Claiming Instructions**

The SCO annually issues claiming instructions, which contain filing instructions for mandated cost programs. The September 2002 claiming instructions provide instructions for indirect cost. 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, FY 2001-02, and FY 2002-03 mandated cost claims.

**II. THE DISTRICT OVERSTATED SALARIES AND BENEFITS, AND ITS RELATED INDIRECT COSTS**

Issue

For FY 2000-01, the district overstated salaries and benefits by \$12,120 and its related indirect cost by \$3,995. The district does not dispute this adjustment.

SCO Analysis:

The district claimed 12% of the Dean of Student Services' salary and benefits but did not provide documents, such as time logs, to validate the time the dean worked at the health center. Therefore, the portion of the dean's salary and benefits claimed is unallowable.

The parameters and guidelines specify that community college districts shall be reimbursed only for costs of health services programs that are traceable to supporting documentation that shows evidence of the validity of such costs.

District's Response

The district is not disputing this adjustment.

**III. THE DISTRICT OVERSTATED ITS INDIRECT COST RATES**

Issue

The district overstated its indirect cost rates, thus overstating its indirect costs by \$188,652 for the audit period. The district believes that its indirect cost rates claimed are appropriate.

SCO Analysis:

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 simplified indirect cost rate methodology. However, the district did not receive federal approval of its ICRPs.

The parameters and guidelines allow 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.

For FY 2000-01, 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 19.62% for FY 2000-01, 14.46% for FY 2001-02, and 13.11% for FY 2002-03. The district claimed the indirect cost rates of 32.96% for FY 2000-01, 28.63% for FY 2001-02, and 28.46% for FY 2002-03. The differences between the rates claimed and the rates computed by the SCO were applied to the total direct costs for each corresponding year, resulting in overstated claimed costs of \$70,618 for FY 2000-01, \$58,364 for FY 2001-02, and \$59,670 for FY 2002-03; the total amount is \$188,652.

District's Response

The Controller asserts that the District overstated its indirect cost rates and costs in the amount of \$188,652 for the three fiscal years. This finding is based upon the Controller's statement that "the district did not obtain federal approval for its IRCs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions."

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 the Commission has never specified the federal agencies which have the authority to approve indirect cost rates. . . .

#### CCFS-311

~~In fact, both the District's method and the Controller's method utilize 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 statute. 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.

In the audit report, the Controller asserts that the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of the *Parameters and Guidelines*. . . .

#### 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 indirect cost rate 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. . . .

#### SCO's Comment

The parameters and guidelines, section VI state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district 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 (**Tab 3**) 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 the 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.)

The SCO developed Form FAM-29C to (1) equitably allocate administrative support costs to personnel that perform community college district mandated cost activities; and (2) provide a consistent indirect cost rate methodology for all community college districts' mandated cost program.

Form FAM-29C is consistent with OMB Circular A-21 cost accounting principles as they apply to mandated cost programs. The circular states that a cost is allocable to a particular cost objective in accordance with the relative benefits received. It also describes a simplified method for indirect cost rate calculations; many California community college districts currently use the simplified method. However, the circular states that the simplified method should not be used in instances where it produces results that appear inequitable.

The OMB Circular A-21 simplified indirect cost rate methodology (**Tab 5**) does not equitably allocate administrative support costs for personnel who perform mandated cost activities. For example, the circular classifies library costs and a portion of department administration expenses as indirect costs. However, these costs are instructional-related and do not benefit mandated cost activities.

In addition, neither this district nor any other district requested that the CSM review the SCO's claiming instructions pursuant to Title 2, California Code of Regulations (CCR), section 1186. Furthermore, the deadline has elapsed for the district to request a review of the claiming instructions applicable to the audit period. Title 2 CCR Section 1186, subdivision (j)(2), states, "A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

The CSM 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 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 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 report 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. . . ." <sup>3</sup> The district did not obtain federal approvals of its ICRPs for FY 2000-01, 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.

<sup>3</sup> Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

#### **IV. THE DISTRICT UNDERSTATED AUTHORIZED HEALTH FEE REVENUES CLAIMED**

##### Issue

The district understated authorized health fees revenue by \$195,333 for the audit period because it reported actual revenues received rather than the health service fees it was authorized to collect. The district believes that it reported the correct amount of health service fee revenues.

##### SCO Analysis:

The district did not use the actual number of student counts and Board of Governors Grants (BOGG) waiver counts in its reporting of the health fee revenue. The SCO auditor recalculated the authorized health service fees the district was authorized to collect using various student enrollment and BOGG detail reports dated January 2005 through March 2005.

In addition, the district underreported authorized student health fees by one dollar for FY 2000-01, and two dollars for FY 2001-02 and FY 2002-03.

The parameters and guidelines require the district to deduct authorized health services fees from costs claimed. Education Code section 76355, subdivisions (a) and (c), authorize health fees 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; or (3) demonstrate financial need.

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 the 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.

### District's Response

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students subject to payment of the health services fee. The Controller then calculated the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged the student, resulting in a total adjustment of \$195,333 for the three 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 district.]

### Parameters and Guidelines

This Controller states that the "*Parameters and Guidelines* states that health fees authorized by the Education Code must be deducted from costs claimed." 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)." <sup>4</sup>

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 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 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 \$11 for FY 2000-01 and \$12 for FY 2001-02 and FY 2002-03. 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 state cannot rely upon the Chancellor's notice as a basis 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. . . . 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.

#### Enrollment and Exempted Student Statistics

It is our understanding that the Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges, although the audit report states otherwise. The information obtained from the Chancellor's office is based on information originally provided to the Chancellor by the District in the normal course of business. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision after the fact for several years, is preferable to the data reported by the District which was available at the time the claims were prepared. . . .

<sup>4</sup> Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

#### SCO's Comment

We agree that community college districts may choose not to levy a health service fee. However, Education Code section 76355, subdivision (a), provides districts with the authority to levy a health service fee. The parameters and guidelines state that health fees

authorized by the Education Code must be deducted from costs claimed. Education Code section 76355, subdivision (a), states that a governing board of a community college district may require students to pay a health supervision and service fee. Education Code section 76355, subdivision (c), exempts collection of health fees from 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.

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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, subdivision (a).

Effective the summer of 1997, authorized health service fees, pursuant to Education Code section 76355, were \$8 per student for summer and \$11 per student for the fall and spring semesters. Effective the summer of 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 (**Tab 10**).

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, subdivision (d), states that the 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. For the Health Fee Elimination mandated program, the CSM clearly recognized the availability of another funding source by including the fees as offsetting savings in the 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 CSM's determination regarding authorized health service fees. The CSM'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 [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, it is clear that the CSM'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 which the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

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

Two court cases addressed the issue of fee authority.<sup>5</sup> 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.

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 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.

The district is mistaken when it states that the SCO auditor used total reported student enrollment and reported number of exempt students based on data requested during the audit from the Chancellor's Office. The SCO calculated authorized health service fees based on "Student Enrollment List" and "BOGG Detail" reports for the various semesters provided by Marie Stokes, Accounting Technician, Fiscal Services, El Camino Community College District to Janny Chan, SCO Auditor (**Tab 9**).

<sup>5</sup> *County of Fresno v. California* (1991) 53 Cal. 3d 482; *Connell v. Santa Margarita* (1997) 59 Cal. App. 4th 382.

## V. THE DISTRICT UNDERSTATED ITS OFFSETTING REVENUE

### Issue

For FY 2000-01, the district understated offsetting revenue of \$2,355 because it did not reduce claimed health services costs and related health services revenues recorded in Revenue Account 8890. The district does not dispute this adjustment.

### SCO Analysis:

The parameters and guidelines specify that any offsetting savings or reimbursements received by the district from any source as a result of the mandate must be identified and deducted so that only net district health services costs are claimed.

### District's Response

The district is not disputing this adjustment.

## VI. AMOUNTS PAID BY THE STATE

### Issue

For each fiscal year, the audit report identifies the amount previously paid by the State. The district believes that as of the issuance of the final report, the reported amount paid by the State is incorrect for FY 2001-02. We agree with the district and have noted the corrected amount in the Summary Section of this document.

### SCO Analysis:

The State paid the district \$54,835 for FY 2000-01 and \$35,266 for FY 2001-02. These amounts include cash payments and any outstanding accounts receivable offsets applied.

### District's Response

... The payment received from the state is an integral part of the reimbursement calculation. The Controller changed the FY 2001-02 claim payment amounts received without a finding in the audit report, then changed it again in the October 27, 2005 demand for payment.

<u>Amount Paid by the State</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
As Claimed	\$54,835	\$35,266	\$0
Audit Report	\$54,835	\$34,266	\$0

The propriety of these adjustments cannot be determined until the Controller states the reason for each change.

### SCO's Comment

The final audit report incorrectly stated that the district was paid \$34,266 rather than the correct amount of \$35,266 for FY 2001-02. We have updated the payment amount in the Summary Section of this document.

## VII. 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 2000-01 and FY 2001-02.

### SCO Analysis:

Government Code section 17558.5 subdivision (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 2000-01

claim on January 14, 2002, and filed its FY 2001-02 claim on December 30, 2002. Thus, both claims were subject to audit through December 31, 2004. The SCO initiated the audit on December 2, 2004, and conducted an audit entrance conference on January 5, 2005, at the district's request. Therefore, the SCO initiated an audit within the period in which both claims were subject to audit.

### District's Response

This issue is not a finding of the Controller. The District asserts that the FY 2000-01 and FY 2001-02 claims are beyond the statute of limitations for audit when the Controller issued its audit report on October 5, 2005. The District raised this issue at the beginning of the audit and in its letter dated July 26, 2005 in response to the draft audit report.

### Chronology of Claim Action Dates

January 14, 2002	FY 2000-01 claim filed by the District
December 30, 2002	FY 2001-02 claim filed by the District
December 31, 2004	FY 2000-01 statute of limitations for audit expires
December 31, 2004	FY 2001-02 statute of limitations for audit expires
October 5, 2005	Controller's final audit report issued

The District's fiscal year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's fiscal year 2001-02 claim was mailed to the Controller on December 30, 2002. The audit report is dated October 5, 2005. Pursuant to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations. . . .

### 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. . . .

The FY 2000-01 and FY 2001-02 annual claims are subject to the two-year statute of limitations established by Chapter 945, Statutes of 1995 . . . The FY 2000-01 and FY 2001-02 claims were no longer subject to 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 audit report states the Controller's staff telephone contact with the District on December 2, 2004 "initiated" the audit . . . The words "initiate" an audit are used only in the second

sentence of Section 17558.5, that is, in a situation when no funds are appropriated for the program for the fiscal year for which the claim is made. Then, and only then, is the Controller authorized to "initiate an audit" within two years from the date of initial payment. . . .

. . . The Controller's apparent measurement date for "initiation" of an audit is actually the date of the entrance conference, not the date of the phone contact. . . .

. . . It can be therefore be concluded that the Controller has no legal basis for their policy on the initiation date of audits.

#### Delay of the Audit

The Controller asserts that the Controller "agreed to delay the start of the audit until January 5, 2005," which would seem to infer that the District either requested the delay or somehow committed a willful act intended to delay the completion of the audit . . . The facts regarding the events of December 2 through 9, 2004, are stated in my declaration, which is attached as Exhibit "G."

If there was any delay to the start of the audit, it was by unilateral action of the Controller. Regardless, the delay in the start of an audit which could not have been timely completed is not relevant . . . The Controller did not complete the audit within the statutory period allowed for the first two fiscal year claims included in this audit. The date the audit was "initiated" for the two years is irrelevant, only the date the audit was completed is relevant. . . . The audit findings are therefore void for those two claims.

#### Completion of the Audit

As stated above, the Controller's argument that an attempt was made to "initiate an audit" in December 2004 is not legally relevant since the claims were only "subject to audit" through December 2004. The relevant statute of limitations date is the date when the audit is completed. . . .

The Controller did not complete the audit within the statutory period allowed for the first two fiscal year claims included in this audit. The audit findings are therefore void for the FY 2000-01 and FY 2001-02 claims.

#### SCO's Comment

On Thursday, December 2, 2004, the SCO auditor contacted the business manager for El Camino Community College District to request an entrance conference for any date before December 31, 2004 that was convenient for the district staff. The purpose of the conference was to commence the audit of the Health Fee Elimination Program cost claims for the FY 2000-01, FY 2001-02, and FY 2002-03. The business manager informed the auditor that she preferred to hold the entrance conference in January 2005, as she was going on vacation on December 13, 2004, and the college was closed during the last two weeks of the year. The SCO auditor informed the business manager that the entrance conference would not last more than one hour. The business manager agreed to check with her staff members to determine their availability.

On Monday, December 6, 2004, the business manager left a voice mail message with the SCO auditor stating that the district staff was available for an entrance conference at 2:30



p.m. on December 9, 2004. The auditor was out of the office and did not retrieve the message.

On Tuesday, December 7, 2004, the auditor retrieved the message from the business manager. The auditor discussed the date and time for entrance conference with the auditor's manager. ~~Due to conflicts in schedule, the manager and the auditor were not available for that time. The auditor later called the business manager to inform her that the neither the auditor's manager nor the auditor were available on the afternoon of Thursday, December 9, 2004, but were available in the morning or any other date and time before her departure for vacation on December 13, 2004. The business manager indicated that she had no other time available before her departure, and she therefore consented to meet on January 5, 2005. She indicated that she clearly understood that the audit would include FY 2000-01 and FY 2001-02.~~

On Thursday, December 9, 2004, our office faxed a letter to the business manager confirming the January 5, 2005, entrance conference date and informing her that the audit would include FY 2000-01 and FY 2001-02 (Tab 8). The audit notification letter states:

In a telephone conversation on Thursday, December 2, 2004, Janny Chan, SCO Auditor-in-Charge, asked to begin the audit this month. However, due to the unavailability of appropriate district personnel, Pamela Fees, Business Manager, requested that the audit commence on January 5, 2005, at 10:30 a.m.

The district believes that the audit initiation date is not relevant because the term "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. In addition, the district states, "Had the Legislature intended the former Section to mean 'subject to the initiation of an audit,' there would have been no need to amend the statute to now say 'subject to the initiation of an audit.'" Clearly the opposite is true; the Legislature modified the previous language to clarify its intent.

As of July 1, 1996, Government Code section 17558.5, subdivision (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, subdivision (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."<sup>5</sup> 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 issue a final audit report before the two-year period expires.

As of January 1, 2003, Government Code section 17558.5, subdivision (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 issue a final audit report within a certain timeframe would be to read into the statute provisions that do not exist.

The fundamental purpose underlying 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. 4<sup>th</sup> 1093.) Here, the SCO exercised its authority to audit the district's claims before the statute of limitations expired by notifying the district by letter, faxed on December 9, 2004 (**Tab 8**), that the audit would include FY 2000-01 and FY 2001-02.

<sup>5</sup> Source: American Heritage Dictionary of the English Language, Fourth Edition © 2000.

## VIII. CONCLUSION

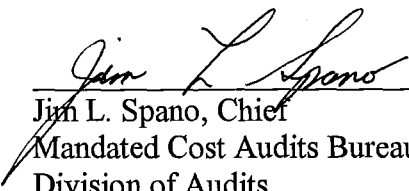
The SCO audited the El Camino Community College District's claims for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2000, through June 30, 2003. The district claimed \$479,711 for the mandated program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred primarily because the district claimed overstated its indirect cost rates and understated health fees.

In conclusion, the CSM should find that: (1) the SCO had authority to audit FY 2000-01 and FY 2001-02; (2) the SCO correctly reduced the district's FY 2000-01 claim by \$97,894; (3) the SCO correctly reduced the district's FY 2001-02 claim by \$167,511; and (4) the SCO correctly reduced the district's FY 2002-03 claim by \$134,486.

## VII. 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 9, 2007, at Sacramento, California, by:

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



**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.						

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**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.

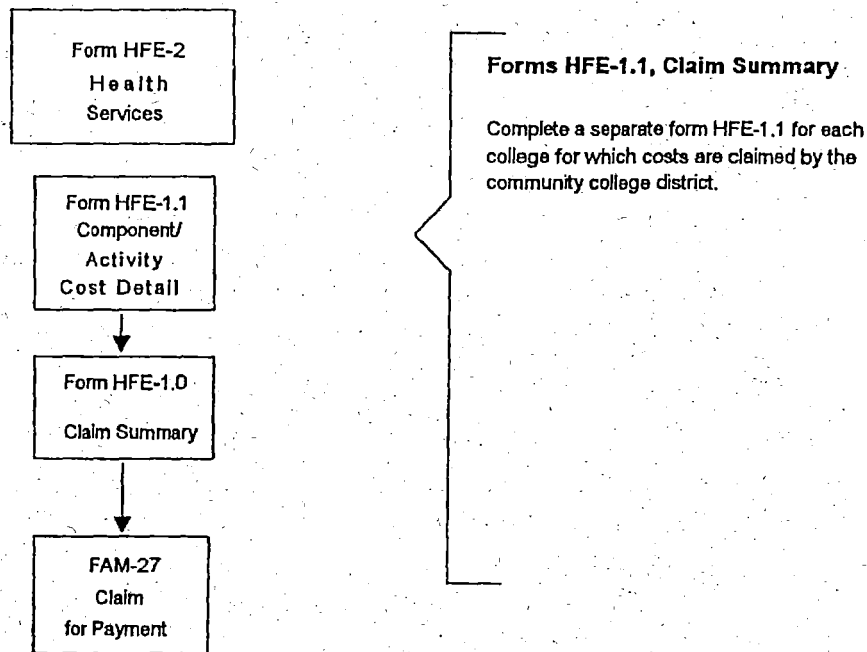
**C. Form HFE-1.0, Claim Summary**

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**



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

L A B E L  H E R E	(01) Claimant Identification Number		<b>Reimbursement Claim Data</b>		
	(02) Claimant Name		(22) HFE-1.0, (04)(b)		
	County of Location		(23)		
	Street Address or P.O. Box		(24)		
	Suite		(25)		
	City State Zip Code		(26)		
<b>Type of Claim</b>		<b>Estimated Claim</b>		<b>Reimbursement Claim</b>	
		(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input 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)
<b>Fiscal Year of Cost</b>		(06) 20 ___/20 ___	(12) 20 ___/20 ___		(30)
<b>Total Claimed Amount</b>		(07)	(13)		(31)
<b>Less: 10% Late Penalty, not to exceed \$1,000</b>			(14)		(32)
<b>Less: Prior Claim Payment Received</b>			(15)		(33)
<b>Net Claimed Amount</b>			(16)		(34)
<b>Due from State</b>		(08)	(17)		(35)
<b>Due to State</b>			(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 <b>029</b>	<b>HEALTH FEE ELIMINATION</b> 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**

<b>MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY</b>		<b>FORM HFE-1.0</b>
(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 19__/19__
<b>(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)</b>		
(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.		
<b>(04) Total Amount Claimed</b>	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	

<p><b>HEALTH FEE ELIMINATION CLAIM SUMMARY</b></p> <p>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"/>			19__/19__		
		Estimated <input type="checkbox"/>					
(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)]			
<b>Cost Reduction</b>							
(11) Less: Offsetting Savings, if applicable							
(12) Less: Other Reimbursements, if applicable							
(13) Total Amount Claimed				[Line (10) - {(line (11) + line (12))}]			



<p><b>HEALTH FEE ELIMINATION CLAIM SUMMARY</b> Instructions</p>	<p><b>FORM HFE-1.1</b></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) 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.

<b>MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES</b>		<b>FORM HFE-2</b>	
(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			

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>	<b>FORM</b> <b>HFE-2</b>
--	-----------------------------

(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		

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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			

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**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**

**TABLE OF CONTENTS**

A. Purpose and scope

1. Objectives
2. Policy guides
3. Application
4. Inquiries

B. Definition of terms

1. Major functions of an institution
2. Sponsored agreement
3. Allocation
4. Facilities and administrative (F&A) costs

C. Basic considerations

1. Composition of total costs
2. Factors affecting allowability of costs
3. Reasonable costs
4. Allocable costs
5. Applicable credits
6. Costs incurred by State and local governments
7. Limitations on allowance of costs
8. Collection of unallowable costs
9. Adjustment of previously negotiated F&A cost rates containing unallowable costs
10. Consistency in estimating, accumulating and reporting costs
11. Consistency in allocating costs incurred for the same purpose
12. Accounting for unallowable costs
13. Cost accounting period
14. Disclosure statement

D. Direct costs

1. General
2. Application to sponsored agreements

E. F&A costs

1. General
2. Criteria for distribution

F. Identification and assignment of F&A costs

1. Definition of Facilities and Administration.
2. Depreciation and use allowances
3. Interest
4. Operation and maintenance expenses
5. General administration and general expenses
6. Departmental administration expenses
7. Sponsored projects administration
8. Library expenses
9. Student administration and services
10. Offset for F&A expenses otherwise provided for by the Federal Government

G. Determination and application of F&A cost rate or rates

1. F&A cost pools
2. The distribution basis
3. Negotiated lump sum for F&A costs
4. Predetermined rates for F&A costs
5. Negotiated fixed rates and carry forward provisions
6. Provisional and final rates for F&A costs
7. Fixed rates for the life of the sponsored agreement
8. Limitation on reimbursement of administrative costs
9. Alternative method for administrative costs
10. Individual rate components
11. Negotiation and approval of F&A rate
12. Standard format for submission

H. Simplified method for small institutions

1. General
2. Simplified procedure

I. ReservedJ. General provisions for selected items of cost

1. Advertising and public relations costs
2. Advisory councils
3. Alcoholic beverages
4. Alumni/ae activities



(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.

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**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.



Adopted: 8/27/87

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~~ in 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

#### IV. PERIOD OF REIMBURSEMENT

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

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

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

#### V. REIMBURSEMENTABLE COSTS

##### A. Scope of Mandate

Eligible community college districts shall be reimbursed for the costs of providing a health services program ~~without the authority of the CDE~~. 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 ~~1987-88~~ 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 / claimants / may / claim / costs / under / one / of / two / alternatives // 1 // Fee / amount / previously / collected / per / student / and / enrollment / count // or // 2 // 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/Activities

Claimed costs should be supported by the following information:

Activity/1//Fees/Previously/Collected/In/1983-84/Fiscal/Year/

1/ Fees/Collected/In/The/1983-84/Fiscal/Year/To/Support/The/Health/Services/Program/

2/ Total/Number/Of/Students/Under/Item/1/Through/4/above//Kosing/His/Activities//The/Total/Amount/Claimed/Will/Be/Item/1/By//Multiplied/By/Item/1/By/2//Which/The/Total/Amount/Reimbursed/Increased/By/The/Applicable/Impact/Rate/Of/Defeat/

Activity/2//Actual Costs of Claim Year for Providing 1983-84 Fiscal Year Program Level of Service.

1. Employee Salaries and Benefits

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

2. Services and Supplies

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

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1983-84 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) ~~not~~ received from individuals other than students who ~~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) 445-8752 445-1163



February 22, 1989



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

Dear Mr. Eich:

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

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

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

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



Mr. Eich

2

February 22, 1989

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

Sincerely,

*David Mertes*

DAVID MERDES  
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

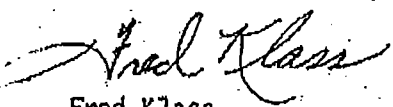
Proposed Amendments to Parameters and Guidelines for Claim No. CSM-4206 -- Chapter 1, Statutes of 1984, 2nd E.S. and Chapter 1118, Statutes of 1987 -- Health Fee Elimination

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

LR:1988-2

CHIEF OF OFFICE

GEORGE DEUKMEJIAN, Governor

## CALIFORNIA COMMUNITY COLLEGES

1500 NINTH STREET  
 SACRAMENTO, CALIFORNIA 95814  
 TEL 445-8752 FAX 445-1163



April 3, 1989

Mr. Robert W. Eich  
 Executive Director  
 Commission on State Mandates  
 100 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*

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.

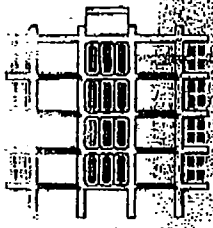
If you have any questions, please call Glen Beatie at 3-8137.

Sincerely,

Glenn Haas, Assistant Chief  
Division of Accounting

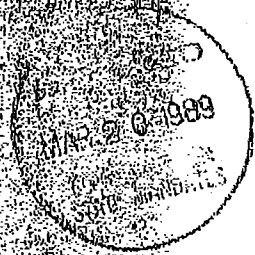
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HRH/60

**RIO HONDO COMMUNITY COLLEGE DISTRICT**  
3600 Workman Mill Road • Whittier, CA 90808 • Phone (213) 692-0921



March 16, 1989

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

Minutes  
Hearing of May 25, 1989  
Page 4

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 for 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.

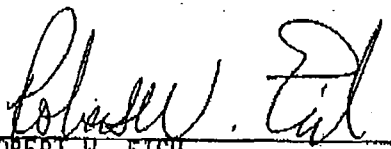
Mr. Parker stated that Commission staff had misstated the events that resulted in the claimant having to pay attorneys' fees to a pupil's guardians, and because of case law, courts do not have any discretion in awarding attorney's fees. Mr. Parker stated that because state legislation has codified the 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

**TAB 8**



CA 9/5/05

STEVE WESTLY  
California State Controller

December 9, 2004

Dr. Thomas M. Fallo  
President / Superintendent  
El Camino Community College District  
16007 Crenshaw Blvd  
Torrance, CA 90506

Dear Dr. Fallo:

This letter confirms that State Controller's Office has scheduled an audit of El Camino Community College District's legislatively mandated Health Fee Elimination Program cost claims filed for fiscal year (FY) 2000-01, FY 2001-02, and FY 2002-03. *Government Code* Section 17558.5 provides the authority for this audit.

In a telephone conversation on Thursday, December 2, 2004, Janny Chan, SCO Auditor-in-Charge, asked to begin the audit this month. However, due to the unavailability of appropriate district personnel, Pamela Fees, Business Manager, requested that the audit commence on January 5, 2005, at 10:30 a.m. The entrance conference will be held at El Camino Community College District, 16007 Crenshaw, Torrance, California 90506.

Please furnish working accommodations for and provide the necessary records (see the Attachment) to the audit staff.

If you have any questions, please call me at (310) 342-5639.

Sincerely,

A handwritten signature in cursive script, appearing to read "Art Luna".

ART LUNA  
Audit Manager  
Compliance Audits Bureau  
Division of Audits

AL:th

Attachment

*CA 4/3/00*

cc: Pamela Fees, Business Manager  
El Camino Community District  
Jim L. Spano, Chief  
Compliance Audits Bureau  
Division of Audits  
State Controller's Office  
Ginny Brummels, Manager  
Division of Accounting and Reporting  
State Controller's Office  
Janny Chan  
Auditor-in-Charge  
Division of Audits  
State Controller's Office



**EL Camino Community College District  
Records Request for Mandated Cost Program  
FY 2000-01, FY 2001-02, and FY 2002-03**

---

1. Copy of claims filed for the mandated cost program
2. Copy of external and internal audit reports performed on the mandated cost program
3. Organization charts for the district effective during the audit period, showing employee names and position titles
4. Organization charts for the division or units handling the mandated cost program effective during the audit period, showing employee names and position titles
5. Chart of accounts
6. Documentation that supports the indirect cost rates
7. Employee time sheets or time logs
8. Access to payroll records showing employee salaries and benefits paid during the audit period
9. Access to general ledger accounts that support disbursements
10. Documentation that supports amounts received from other funding sources
11. Copies of invoices and other documents necessary to support costs claimed

**TAB 9**

EL CAMINO COMMUNITY COLLEGE DISTRICT  
Health Fee Elimination Program  
Review of Student Count/Health Fees  
July 1, 2000 through June 30, 2003  
C05-MCC-0005

*[Handwritten signature]*  
4/6/05

---

**PURPOSE**

1. To determine if the correct number of student count is applied
2. To determine if the health fees are properly computed

**SOURCE**

1. Health Fee Elimination claims for FY 2000/01, FY 2001/02 and FY 2002/03.
2. Student enrollment - Fall 00 (dated 2/25/05), Spring 01 (2/28/05), Fall 01 (2/24/05), Spring 02 (2/24/05), Fall 02 (3/1/05), Spring 03 (1/19/05).
3. Student count - BOGG detail reports
4. Marie Stokes - Accounting technician of Fiscal Services

**SCOPE**

1. Summarized the health fee reported in the claim, by semester
2. Summarized the actual student count, by semester
3. Traced the student count to the detailed run
4. Summarized the actual BOGG waiver, by semester
5. Traced the BOGG waiver to the BOGG detail report
6. Computed the audited student count (actual less fee waiver).
7. Multiplied the standard health fee@student.
8. Compared the audited health fee that should have collected, with the district's reported fee in the claim.

EL CAMINO COMMUNITY COLLEGE DISTRICT  
Health Fee Elimination Program  
Review of Student Count/Health Fees  
July 1, 2000 through June 30, 2003  
C05-MCC-0005

*[Handwritten initials]*

Audit review:

Based on the following documents, we computed the student health fees that could have been collected-

1. Student enrollment report provided by Marie for each semester - FY 2000/01, FY 2001/02 and FY 2002/03. We requested a detailed run for Spring 03 (by student's name and number) and noted no variance. Due to the volume of the pages, we only copied the front and last pages of the other semesters.
2. BOGG detail reports for each semester - FY 2000/01, FY 2001/02, and FY 2002/03. We requested a detailed run for Spring 03 (by student's name and number) and noted no variance. Due to the volume of the pages, we only copied the front and last pages of the other semesters.

*Education Code Section 76355* <sup>(2)</sup> states that health fees are authorized for all students except those students who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need.

brand  
**Transmittal Memo 7672**

Company **Janny Chan**  
**State Controller's Office**

Location  
 Telephone # **(310)342-5670**

Comments  
**Janny, Here are the last BOGG documents you requested. I should have the info from Debbie by tomorrow.**

No. of Pages **10** Today's Date **3/9/05** Time **3:36**

From **Marie Stokes**

Company **El Camino College**  
 Location  
 Dept. Charge

Fax # Telephone #

Original Disposition:  Destroy  Return  Call for pickup

3/8/2005

Page 20 of 21

**El Camino Community College District**  
**SPRING 2001 BOGG Detail Report**  
**BOGG A STUDENTS -- PART-TIME**

SBOGA	[REDACTED]	0402286	2001/SP	2
SBOGA	[REDACTED]	0402365	2001/SP	6
SBOGA	[REDACTED]	0402581	2001/SP	11
SBOGA	[REDACTED]	0402603	2001/SP	6
SBOGA	[REDACTED]	0402725	2001/SP	5
SBOGA	[REDACTED]	0402775	2001/SP	11
SBOGA	[REDACTED]	0402799	2001/SP	3
SBOGA	[REDACTED]	0403034	2001/SP	3
SBOGA	[REDACTED]	0403206	2001/SP	7
SBOGA	[REDACTED]	0403484	2001/SP	9
SBOGA	[REDACTED]	0403552	2001/SP	6
SBOGA	[REDACTED]	0403906	2001/SP	10
SBOGA	[REDACTED]	0403929	2001/SP	3
SBOGA	[REDACTED]	0403969	2001/SP	11
SBOGA	[REDACTED]	0404239	2001/SP	3
SBOGA	[REDACTED]	0404337	2001/SP	4
SBOGA	[REDACTED]	0404380	2001/SP	2
SBOGA	[REDACTED]	0404412	2001/SP	5
SBOGA	[REDACTED]	0404478	2001/SP	1
SBOGA	[REDACTED]	0404624	2001/SP	7
SBOGA	[REDACTED]	0404765	2001/SP	3
SBOGA	[REDACTED]	0404788	2001/SP	10
SBOGA	[REDACTED]	0404841	2001/SP	3

El Camino Community College Distric  
*Student Enrollment Fall 2000 - FULL-TIME*

Last	First	SSN	Status	DOB	Address	City	ZIP
Abarientos	Jemuel		F				
Abbott	Dominic		F				
Abe	Katsutaro		F				
Abeita	Andrew		F				
Abelin	Simone		F				
Abou-Halak	David		F				
Abraha	Yared		F				
Abrahamian	Anthony		F				
Abrahamian	Samuel		F				
Abram	Brandon		F				
Abrego	Amanda		F				
Abuana	Teodorico		F				
Acevedo	Caro		F				
Acosta	Michelle		F				
Acosta	Denise		F				
Acosta	Marcos		F				
Acosta	Christina		F				
Adam	Neri		F				
Adamick	Lynn		F				
Adams	Brian		F				
Adams	John		F				



CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE

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

**DISTRICT'S  
INCORRECT REDUCTION CLAIM  
FILED WITH THE  
COMMISSION ON STATE MANDATES  
ON March 27, 2006**

**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

Rec'd  
4/11/06



April 3, 2006

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-11  
El Camino Community College District, Claimant  
Education Code Section 76355  
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118  
Fiscal Years 2000-2001, 2001-2002, and 2002-2003

Dear Mr. Petersen and Ms. Brummels:

On March 27, 2006, the El Camino 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 2000-2001, 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.

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

RECEIVED

MAR 27 2006

COMMISSION ON  
STATE MANDATES

Claim No.

05-4206-I-11

**INCORRECT REDUCTION CLAIM FORM**

Local Agency or School District Submitting Claim

**EL CAMINO 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

Pamela Fees, Business Manager  
El Camino Community College District  
16007 Crenshaw Blvd.  
Torrance, CA 90506

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. Chapter 1118, Statutes of 1987

<u>Fiscal Year</u>	<u>Amount of the Incorrect Reduction</u>
2000-2001	\$ 97,894
2001-2002	\$167,511
2002-2003	\$134,486
Total Amount	\$399,891

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.

Pamela Fees, Business Manager

Voice: 310-660-3110  
Fax: 310-660-3798  
E-Mail: PFees@elcamino.edu

Signature of Authorized Representative

Date

*Pamela Fees*

March 21, 2006

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  
12 INCORRECT REDUCTION CLAIM OF: )

No. CSM \_\_\_\_\_

13 )  
14 )  
15 ) Chapter 1, Statutes of 1984, 2nd E.S.  
16 ) Chapter 1118, Statutes of 1987

17 EL CAMINO )  
18 Community College District, )

Education Code Section 76355

19 )  
20 ) Health Fee Elimination

21 Claimant. )

22 ) Annual Reimbursement Claims:

23 )  
24 ) Fiscal Year 2000-01

25 ) Fiscal Year 2001-02

26 ) Fiscal Year 2002-03

27 )  
28 \_\_\_\_\_ ) INCORRECT REDUCTION CLAIM FILING

29 PART I. AUTHORITY FOR THE CLAIM

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

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

1 "District") is a school district as defined in Government Code Section 17519. Title 2,  
2 CCR, Section 1185 (a), requires the claimant to file an incorrect reduction claim with  
3 the Commission.

4 This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185 (b),  
5 requires incorrect reduction claims to be filed no later than three years following the  
6 date of the Controller's remittance advice notifying the claimant of a reduction. A  
7 Controller's audit report dated October 5, 2005, has been issued. The audit report  
8 constitutes a demand for repayment and adjudication of the claims. On October 27,  
9 2005, the Controller issued "results of review letters" reporting the audit results for the  
10 FY 2000-01 and FY 2001-02 claims, and demanding payment of amounts due to the  
state.

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

19 PART II. SUMMARY OF THE CLAIM

20 The Controller conducted a field audit of the District's annual reimbursement  
21 claims for the costs of complying with the legislatively mandated Health Fee Elimination

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

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1 program for the period of July 1, 2000 through June 30, 2003. As a result of the audit,  
2 the Controller determined that \$399,891 of the claimed costs are unallowable:

3	Fiscal	Amount	Audit	SCO	Amount Due
4	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u>&lt;State&gt; District</u>
5	2000-01	\$137,923	\$ 97,894	\$54,835	<\$14,806>
6	2001-02	\$167,511	\$167,511	\$34,266	<\$34,266>
7	2002-03	<u>\$174,277</u>	<u>\$134,486</u>	<u>\$ 0</u>	<u>\$39,791</u>
8	Totals	\$479,711	\$399,891	\$89,101	<\$ 9,281>

9 Since the District has been paid \$89,101 for these claims, the audit report concludes  
10 that a remaining amount of \$9,281 is payable to the state.

11 PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

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

16 PART IV. BASIS FOR REIMBURSEMENT

17 1. Mandate Legislation

18 Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, repealed Education  
19 Code Section 72246 which had authorized community college districts to charge a  
20 student health services fee for the purpose of providing student health supervision and  
21 services, direct and indirect medical and hospitalization services, and operation of

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

1 student health centers. This statute also required the scope of student health services  
2 for which a community college district charged a fee during the 1983-84 fiscal year be  
3 maintained at that level thereafter. The provisions of this statute were to automatically  
4 repeal on December 31, 1987.

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

8 Chapter 8, Statutes of 1993, Section 29, repealed Education Code Section  
9 72246, effective April 15, 1993. Chapter 8, Statutes of 1993, Section 34, added  
10 Education Code Section 76355<sup>1</sup>, containing substantially the same provisions as former

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<sup>1</sup> 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 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



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

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1 Section 72246, effective April 15, 1993.

2 2. Test Claim

3 In December 1985, Rio Hondo Community College District filed a test claim

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to subdivision (a):

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

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

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

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

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

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

(f) A district that begins charging a health fee may use funds for startup costs 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 alleging that Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, by eliminating the  
2 authority to levy a fee and by requiring a maintenance of effort, mandated increased  
3 costs by mandating a new program or the higher level of service of an existing program  
4 within the meaning of California Constitution Article XIII B, Section 6.

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

11 At a hearing on April 27, 1989, the Commission of State Mandates determined  
12 that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to  
13 apply to all community college districts which provided student health services in fiscal  
14 year 1986-1987 and required them to maintain that level of student health services in  
15 fiscal year 1987-1988 and each fiscal year thereafter.

16 3. Parameters and Guidelines

17 On August 27, 1987, the original parameters and guidelines were adopted. On  
18 May 25, 1989, those parameters and guidelines were amended. A copy of the  
19 parameters and guidelines, as amended on May 25, 1989, is attached as Exhibit "B."  
20 So far as is relevant to the issues presented below, the parameters and guidelines  
21 state:

1 "V. REIMBURSABLE COSTS

2 A. Scope of Mandate

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

6 VI. CLAIM PREPARATION

7 B... 3. Allowable Overhead Cost

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

11 VII. SUPPORTING DATA

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

15 VIII OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

27 4. Claiming Instructions

28 The Controller has frequently revised claiming instructions for the Health Fee  
29 Elimination mandate. A copy of the September 1997 revision of the claiming

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

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1 instructions is attached as Exhibit "C." The September 1997 claiming instructions are  
2 believed to be, for the purposes and scope of this incorrect reduction claim,  
3 substantially similar to the version extant at the time the claims which are the subject of  
4 this Incorrect reduction claim were filed. However, since the Controller's claim forms  
5 and instructions have not been adopted as regulations, they have no force of law, and,  
6 therefore, have no effect on the outcome of this incorrect reduction claim.

7 **PART V. STATE CONTROLLER CLAIM ADJUDICATION**

8 The Controller conducted an audit of the District's annual reimbursement claims  
9 for fiscal years 2000-01, 2001-02, and 2002-03. The audit concluded that only 17% of  
10 the District's costs, as claimed, are allowable. A copy of the October 5, 2005-audit  
report and is attached as Exhibit "D."

12 **VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER**

13 By letter dated July 13, 2005, the Controller transmitted a copy of its draft audit  
14 report. By letter dated July 26, 2005, the District objected to the proposed adjustments  
15 set forth in the draft audit report. A copy of the District's letter of July 26, 2005 is  
16 attached as Exhibit "E." The Controller then issued its final audit report without change  
17 to the adjustments as stated in the draft audit report.

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

19 **Finding 1 - Overstated salary, benefits, and indirect costs**

20 The District is not disputing this adjustment.

1 **Finding 2 - Overstated indirect cost rates**

2 The Controller asserts that the District overstated its indirect cost rates and  
3 costs in the amount of \$188,652 for the three fiscal years. This finding is based upon  
4 the Controller's statement that "the district did not obtain federal approval for its IRCPs.  
5 We calculated indirect cost rates using the methodology allowed by the SCO claiming  
6 instructions." Contrary to the Controller's ministerial preferences, there is no  
7 requirement in law that the claimant's indirect cost rate must be "federally" approved,  
8 and the Commission has never specified the federal agencies which have the authority  
9 to approve indirect cost rates. Further, it should be noted that the Controller did not  
10 determine that the District's rate was excessive or unreasonable.

11 CCFS-311

12 In fact, both the District's method and the Controller's method utilized the same  
13 source document, the CCFS-311 annual financial and budget report required by the  
14 state. The difference in the claimed and audited methods is in the determination of  
15 which of those cost elements are direct costs and which are indirect costs. Indeed, the  
16 federally "approved" rates which the Controller will accept without further action, are  
17 "negotiated" rates calculated by a district and then submitted for approval to federal  
18 agencies which are the source of federal programs to which the indirect cost rate is to  
19 be applied, indicating that the process is not an exact science, but a determination of  
20 the relevance and reasonableness of the cost allocation assumptions made for the

1 method used.

2 Regulatory Requirements

3 No particular indirect cost rate calculation is required by statute. The  
4 parameters and guidelines state that "Indirect costs *may be claimed* in the manner  
5 described by the Controller in his claiming instructions." The District claimed these  
6 indirect costs "in the manner" described by the Controller. The correct forms were used  
7 and the claimed amounts were entered at the correct locations.

8 In the audit report, the Controller asserts that "the specific directions for the  
9 indirect cost rate calculation in the claiming instructions are an extension of *Parameters*  
10 *and Guidelines*." It is not clear what the legal significance of the concept of "extension"  
11 might be, regardless, the reference to the claiming instructions in the parameters and  
12 guidelines does not change "may" into a "shall." Since the Controller's claiming  
13 instructions were never adopted as law, or regulations pursuant to the Administrative  
14 Procedure Act, the claiming instructions are merely a statement of the ministerial  
15 interests of the Controller and not law.

16 Unreasonable or Excessive

17 Government Code Section 17561(d)(2) requires the Controller to pay claims,  
18 provided that the Controller may audit the records of any school district to verify the  
19 actual amount of the mandated costs, and may reduce any claim that the Controller  
20 determines is excessive or unreasonable. The Controller is authorized to reduce a  
21 claim only if it determines the claim to be excessive or unreasonable. Here, the District

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

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1 has computed its indirect cost rate utilizing cost accounting principles from the Office of  
2 Management and Budget Circular A-21, and the Controller has disallowed it without a  
3 determination of whether the product of the District's calculation would, or would not, be  
4 excessive, unreasonable, or inconsistent with cost accounting principles.

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

14 **Finding 3: Understated authorized health revenues claimed**

15 The adjustments for the student health services revenue are based on two  
16 reasons. The Controller adjusted the reported enrollment and reported number of  
17 students subject to payment of the health services fee. The Controller then calculated  
18 the student fees collectible based on the highest student health service fee chargeable,  
19 rather than the fee actually charged the student, resulting in a total adjustment of  
20 \$195,333 for the three fiscal years.

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

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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* states that health  
12 fees authorized by the Education Code must be deducted from costs claimed." The  
13 parameters and guidelines actually 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)<sup>2</sup>."

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

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<sup>2</sup> 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 El Camino Community College District  
1/84; 1118/87 Health Fee Elimination

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1 The use of the term "*any* offsetting savings" further illustrates the permissive nature of  
2 the fees.

3 Government Code Section 17514

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

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

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

17 The audit report states that the Controller agrees that community college  
18 districts "may choose not to levy a health service fee" and that Education Code Section  
19 76355 "provides the districts with the authority to levy of such fees." However, it does  
20 not logically follow from that statement to the Controller's conclusion, based on  
21 Government Code Section 17514, that "health service costs recoverable through  
22 authorized fees are not costs that the district is required to incur."

23 /

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

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1 Government Code Section 17556

2 The Controller relies upon Government Code Section 17556 for the conclusion  
3 that the "COSM shall not find costs mandated by the State if the district has the  
4 authority to levy fees to pay for the mandated program or increased level of services."

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

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

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

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

19 Student Health Services Fee Amount

20 The Controller asserts that the district should have collected a student health  
21 service fee each semester from non-exempt students in the amount of \$11 for FY 2000-  
22 01 and \$12 for FY 2001-02 and FY 2002-03. Districts receive notice of these fee  
23 amounts from the Chancellor of the California Community Colleges. An example of one

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

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1 such notice is the letter dated March 5, 2001, attached as Exhibit "F." While Education  
2 Code Section 76355 provides for an increase in the student health service fee, it did  
3 not grant the Chancellor the authority to establish mandatory fee amounts or mandatory  
4 fee increases. No state agency was granted that authority by the Education Code, and  
5 no state agency has exercised its rulemaking authority to establish mandatory fees  
6 amounts. It should be noted that the Chancellor's letter properly states that increasing  
7 the amount of the fee is at the option of the district, and that the Chancellor is not  
8 asserting that authority. Therefore, the state cannot rely upon the Chancellor's notice  
9 as a basis to adjust the claim for "collectible" student health services fees.

10 Fees Collected vs. Fees Collectible

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

18 Because districts are not required to collect a fee from students for student  
19 health services, and if such a fee is collected, the amount is to be determined by the  
20 district and not the Controller, the Controller's adjustment is without legal basis. What  
21 claimants are required by the parameters and guidelines to do is to reduce the amount

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

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1 of their claimed costs by the amount of student health services fee revenue actually  
2 received. Therefore, student health fees are merely collectible, they are not  
3 mandatory, and it is inappropriate to reduce claim amounts by revenues not received.

4 Enrollment and Exempted Student Statistics

5 It is our understanding that the Controller adjusted the reported total student  
6 enrollment and reported number of exempt students based on data requested during  
7 the audit from the office of the Chancellor of the Community Colleges, although the  
8 audit report states otherwise. The information obtained from the Chancellor's office is  
9 based on information originally provided to the Chancellor by the District in the normal  
10 course of business. The Controller has not provided any factual basis why the  
11 Chancellor's data, subject to review and revision after the fact for several years, is  
12 preferable to the data reported by the District which was available at the time the claims  
13 were prepared.

14 Other than stating that the District "did not use the actual number of student  
15 counts and BOGG waiver counts," the audit report does not state the source of the data  
16 used by the auditor. That is to say, the Controller does not indicate how and why its  
17 determination of "actual" student counts is any more "actual" than the amount reported  
18 on the claims.

19 **Finding 4- Understated offsetting revenue**

20 The District is not disputing this adjustment.

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

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**Amounts Paid By The State**

This issue was not an audit finding. The payment received from the state is an integral part of the reimbursement calculation. The Controller changed the FY 2001-02 claim payment amount received from the state without a finding in the audit report, then changed it again in the October 27, 2005 demand for payment.

<u>Amount Paid by the State</u>	<u>Fiscal Year of Claim</u>		
	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
As Claimed	\$54,835	\$35,266	\$ 0
As Audited	\$54,835	\$34,266	\$ 0
October 27, 2005 demand for payment	\$54,835	\$35,266	n/a

The propriety of these adjustments cannot be determined until the Controller states the reason for the change.

**Statute of Limitations for Audit**

This issue is not a finding of the Controller. The District asserts that the FY 2000-01 and FY 2001-02 claims are beyond the statute of limitations for audit when the Controller issued its audit report on October 5, 2005. The District raised this issue at the beginning of the audit and in its letter dated July 26, 2005 in response to the draft audit report.

Chronology of Claim Action Dates

January 14, 2002	FY 2000-01 claim filed by the District (certified mail)
December 30, 2002	FY 2001-02 claim filed by the District (certified mail)

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

- 1 December 31, 2004 FY 2000-01 statute of limitations for audit expires
- 2 December 31, 2004 FY 2001-02 statute of limitations for audit expires
- 3 October 5, 2005 Controller's final audit report issued

4 The District's FY 2000-01 claim was mailed to the Controller on January 14,  
5 2002. The District's FY 2001-02 claim was mailed to the Controller on December 30,  
6 2002. The audit report is dated October 5, 2005. Pursuant to Government Code  
7 Section 17558.5, these claims were subject to audit no later than December 31, 2004.  
8 The audit was not completed by this date. Therefore, the audit adjustments for FY  
9 2000-01 and FY 2001-02 are barred by the statute of limitations.

10 In the audit report, the Controller responded as follows:

12 "On December 2, 2004, we made phone contact with the district' business  
13 manager and sent a follow-up letter dated December 9, 2004, wherein we  
14 agreed to delay the start of the audit until January 5, 2005. In both the phone  
15 call and the letter, we clearly stated that the audit would include the claims filed  
16 in the 2002 calendar year. This audit was initiated prior to the statutory deadline  
of December 2004 in which to commence an audit."

17 Thus, the Controller is asserting that date when the audit was "initiated" is relevant to  
18 the period of limitations, and not the date of the audit report. The comment regarding  
19 which claims would be included in the audit is not responsive to the issue of the statute  
20 of limitations. In any case, a review of the legislative history of Government Code  
21 Section 17558.5 indicates that the matter of the audit "initiation" date is not relevant to  
22 the FY 2000-01 and FY 2001-02 fiscal year claims.

23 /

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

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1 Statutory History

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

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

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

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

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

24 The FY 2000-01 and FY 2001-02 annual claims are subject to the two-year statute of  
25 limitations established by Chapter 945, Statutes of 1995. Since funds were  
26 appropriated for the program for all the fiscal years which are the subject of the audit,

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

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1 the alternative measurement date is not applicable, and the potential factual issue of  
2 when the audit is initiated is not relevant. The FY 2000-01 and FY 2001-02 claims  
3 were no longer subject to audit when the audit report was issued.

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

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

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

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

23 "(a) A reimbursement claim for actual costs filed by a local agency or school  
24 district pursuant to this chapter is subject to the initiation of an audit by the  
25 Controller no later than three years after the date that the actual reimbursement  
26 claim is filed or last amended, whichever is later. However, if no funds are



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

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1 appropriated or no payment is made to a claimant for the program for the fiscal  
2 year for which the claim is filed, the time for the Controller to initiate an audit  
3 shall commence to run from the date of initial payment of the claim. In any case,  
4 an audit shall be completed not later than two years after the date that the audit  
5 is commenced."

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

10 Initiation of An Audit

11 The audit report states that the Controller's staff telephone contact with the  
12 District on December 2, 2004 "initiated" the audit. First, the initiation date of the audit  
13 is not relevant to the FY 2000-01 and FY 2001-02 claims. The words "initiate an audit"  
14 are used only in the second sentence of Section 17558.5, that is, in a situation when no  
15 funds are appropriated for the program for the fiscal year for which the claim is made.  
16 Then, and only then, is the Controller authorized to "initiate an audit" within two years  
17 from the date of initial payment. The two claim years at issue here are not subject to  
18 the "no funds appropriated" provision, they are subject only to the first sentence of the  
19 statute, i.e., they were only "subject to audit" through December 2004.

20 The unmistakable language of Section 17558.5 is confirmed by the later actions  
21 of the Legislature. Chapter 1128, Statutes of 2002, amended subdivision (a) of  
22 Government Code Section 17558.5 to change the "subject to audit" language of the first  
23 sentence to "subject to the initiation of an audit." Had the Legislature intended the

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

1 former Section to mean "subject to the initiation of an audit," there would have been no  
2 need to amend the statute to now say "subject to the initiation of an audit." Even if the  
3 Controller had "initiated" the audit on the date of the first phone call, it could not have  
4 completed its months of field work, exit conference, office review, draft audit report, and  
5 issued a final audit report on or before December 31, 2004.

6 The Controller's apparent measurement date for "initiation" of an audit is actually  
7 the date of the entrance conference, not the date of the phone contact. However, for  
8 this audit, and two audits issued in 2004 for Los Rios Community College District<sup>3</sup>, the  
9 Controller asserts the telephone contact as the initiation date for the audit. In other  
10 mandate audit reports issued both after the Los Rios audits and after this audit report,  
the Controller states that the entrance conference date initiates the audit.<sup>4</sup> Further, in

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<sup>3</sup> The two Controller's audits which were released before the El Camino audit which assert that the telephone contact is the action which "initiates" the audit are:

- Los Rios Community College District, Health Fee Elimination, issued June 24, 2004.
- Los Rios Community College District, Mandate Reimbursement Process, issued June 24, 2004.

<sup>4</sup> The following Controller's audit reports were issued after the Los Rios audit reports and before the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Newport-Mesa Unified School District, School District of Choice, issued August 31, 2004.
- State Center Community College District, Health Fee Elimination, issued September 17, 2004.
- Clovis Unified School District, Graduation Requirements, issued October 22, 2004.

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

1 the matter of the Health Fee Elimination audit of North Orange Community College  
2 District, the draft audit report dated May 6, 2005, included the three fiscal years audited  
3 by the Controller: FY 2000-01, FY 2001-02, and FY 2002-03. In its response letter  
4 dated June 15, 2005, North Orange County asserted that the statute of limitations for  
5 the audit of the FY 2000-01 claim expired December 31, 2003, pursuant to Government  
6 Code Section 17558.5, because the audit report was issued after that date. In the final  
7 audit report dated July 22, 2005, the Controller agreed that FY 2000-01 was barred  
8 from audit, but for another reason, the stated reason being that the "FY 2000-01 claim  
9 was not subject to audit due to the expiration of the statute of limitations within which to  
10 initiate an audit." The North Orange County audit entrance conference date was

- 
- San Bernardino Community College District, Health Fee Elimination, issued November 10, 2004.
  - West Valley-Mission Community College District, Health Fee Elimination, issued April 8, 2005.
  - Long Beach Community College District, Health Fee Elimination, issued April 27, 2005.
  - North Orange County Community College District, Health Fee Elimination, issued July 22, 2005.
  - Poway Unified School District, Emergency Procedures, Earthquakes and Disasters, issued August 31, 2005.

The following Controller's audit reports were issued after the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Norwalk-La Mirada Unified School District, School District of Choice, issued October 7, 2005.
- Norwalk-La Mirada Unified School District, Intradistrict Attendance, issued December 23, 2005.
- Norwalk-La Mirada Unified School District, Collective Bargaining, issued December 23, 2005.

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

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1 January 26, 2004, which is the date, according to the Controller, that the audit was  
2 "initiated."

3 Given this contradiction in measurement dates, it does not appear that the  
4 Controller has a single position on this issue. It appears the Controller discarded the  
5 "telephone call date" rule after the Los Rios audits and then reinstated it for this audit,  
6 perhaps in order to avoid losing jurisdiction of the first two fiscal years. It can therefore  
7 be concluded that the Controller has no legal basis for their policy on the initiation date  
8 of audits.

9 Delay of the Audit

10 The Controller asserts that the Controller "agreed to delay the start of the audit  
11 until January 5, 2005," which would seem to infer that the District either requested the  
12 delay or somehow committed a willful act intended to delay the completion of the audit.  
13 However, the Controller provides no evidence that there was any willful act by the  
14 District intended to delay the start or completion of the audit. The facts regarding the  
15 events of December 2 through 9, 2004, are stated in my declaration, which is attached  
16 as Exhibit "G."

17 If there was any delay to the start of the audit, it was by unilateral action of the  
18 Controller. Regardless, the delay in the start of an audit which could not have been  
19 timely completed is not relevant. There was no credible attempt by the Controller's  
20 office "to initiate the audit" in December 2004. The Controller did not complete the  
21 audit within the statutory period allowed for the first two fiscal year claims included in

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

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1 this audit. The date the audit was "initiated" for the two years is irrelevant, only the  
2 date the audit was completed is relevant as evidenced by the Controller's audit report.  
3 The audit findings are therefore void for those two claims.

4 Completion of the Audit

5 As stated above, the Controller's argument that an attempt was made to "initiate  
6 an audit" in December 2004 is not legally relevant since the claims were only "subject  
7 to audit" through December 2004. The relevant statute of limitations date is the date  
8 when the audit is completed, which is the date the audit report is issued. The annual  
9 claims are "subject to audit" until the audit is completed. The audit report is the  
10 document which completes the audit. If the audit report is not the action which  
11 completes the audit, then the audit report is not a legally enforceable notice of findings  
12 or demand for payment, and there is no other document prior to the audit report which  
13 adjudicates the results of the audit.

14 The Controller did not complete the audit within the statutory period allowed for  
15 the first two fiscal year claims included in this audit. The audit findings are therefore  
16 void for the FY 2000-01 and FY 2001-02 claims.

17 PART VIII. RELIEF REQUESTED

18 The District filed its annual reimbursement claims within the time limits  
19 prescribed by the Government Code. The amounts claimed by the District for  
20 reimbursement of the costs of implementing the program imposed by Chapter 1,  
21 Statutes of 1984, 2nd E.S., Chapter 1118, Statutes of 1987, and Education Code

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

1 Section 76355 represent the actual costs incurred by the District to carry out this  
2 program. These costs were properly claimed pursuant to the Commission's parameters  
3 and guidelines. Reimbursement of these costs is required under Article XIII B, Section  
4 6 of the California Constitution. The Controller denied reimbursement without any  
5 basis in law or fact. The District has met its burden of going forward on this claim by  
6 complying with the requirements of Section 1185, Title 2, California Code of  
7 Regulations. Because the Controller has enforced and is seeking to enforce these  
8 adjustments without benefit of statute or regulation, the burden of proof is now upon the  
9 Controller to establish a legal basis for its actions.

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

14 /

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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 March 21<sup>st</sup>, 2006, at Torrance, California, by

*Pamela Fees*  
Pamela Fees, Business Manager  
El Camino Community College District  
16007 Crenshaw Blvd.  
Torrance, CA 90506  
Voice: 310-660-3110  
Fax: 310-660-3798  
E-Mail: PFees@elcamino.edu

APPOINTMENT OF REPRESENTATIVE

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

*Pamela Fees*  
Pamela Fees, Business Manager  
El Camino Community College District

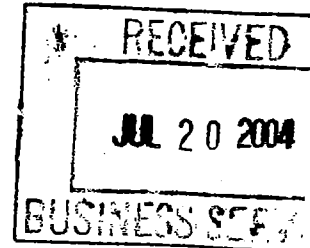
3-21-06  
Date

Attachments:

- Exhibit "A" Controller's Legal Counsel's Letter of July 15, 2004
- Exhibit "B" Commission Parameters and Guidelines amended May 25, 1989
- Exhibit "C" Controller's Claiming Instructions September 1997
- Exhibit "D" Controller's Audit Report dated October 5, 2005
- Exhibit "E" District's Letter dated July 26, 2005
- Exhibit "F" Chancellor's Letter dated March 5, 2001
- Exhibit "G" Declaration of Pamela Fees dated February 27, 2006

**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.

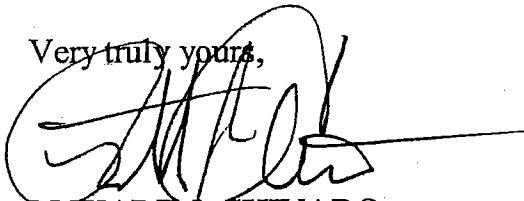
The Controller's informal audit review process was established to resolve factual disputes where no other forum for resolution, other than a judicial proceeding, is available.

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



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 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 college districts' authority to charge a health fee as specified.

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

II. COMMISSION ON STATE MANDATES' DECISION

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

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

III. ELIGIBLE CLAIMANTS

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

#### IV. PERIOD OF REIMBURSEMENT

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

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

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

#### V. REIMBURSABLE COSTS

##### A. Scope of Mandate

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

##### B. Reimbursable Activities

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

##### ACCIDENT REPORTS

##### APPOINTMENTS

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

ASSESSMENT, INTERVENTION & COUNSELING

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

EXAMINATIONS (Minor Illnesses)

- Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

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

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

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

INSURANCE

On Campus Accident  
Voluntary  
Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE

Inquiry/Interpretation  
Pap Smears

PHYSICALS

Employees  
Students  
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)

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

PARKING CARDS/ELEVATOR KEYS

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

REFERRALS TO OUTSIDE AGENCIES

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

TESTS

Blood Pressure  
Hearing  
Tuberculosis  
Reading  
Information  
Vision  
Glucometer  
Urinalysis

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

MISCELLANEOUS

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

COMMITTEES

Safety  
Environmental  
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety  
Stress Management  
Communication Skills  
Weight Loss  
Assertiveness Skills

## VI. CLAIM PREPARATION

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

### A. Description of Activity

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

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

Claimed costs should be supported by the following information:

#### 1. Employee Salaries and Benefits

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

#### 2. Services and Supplies

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

#### 3. Allowable Overhead Cost

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

## VII. SUPPORTING DATA

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



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

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

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

and

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone No.

0350d



## HEALTH FEE ELIMINATION

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

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

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

### 2. Eligible Claimants

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

### 3. Appropriations

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

### 4. Types of Claims

#### A. Reimbursement and Estimated Claims

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

#### B. Minimum Claim

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

### 5. Filing Deadline

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

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

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

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

**6. Reimbursable Components**

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

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

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

The district may increase fees by the same percentage increase as the Implicit Price Deflator (IPD) for the state and local government purchase of goods and services.

Whenever the IPD calculates an increase of one dollar (\$1) above the existing amount, the fees may be increased by one dollar (\$1).

**7. Reimbursement Limitations**

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

**8. Claiming Forms and Instructions**

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

**A. Form HFE- 2, Health Services**

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

**B. Form HFE-1.1, Claim Summary**

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

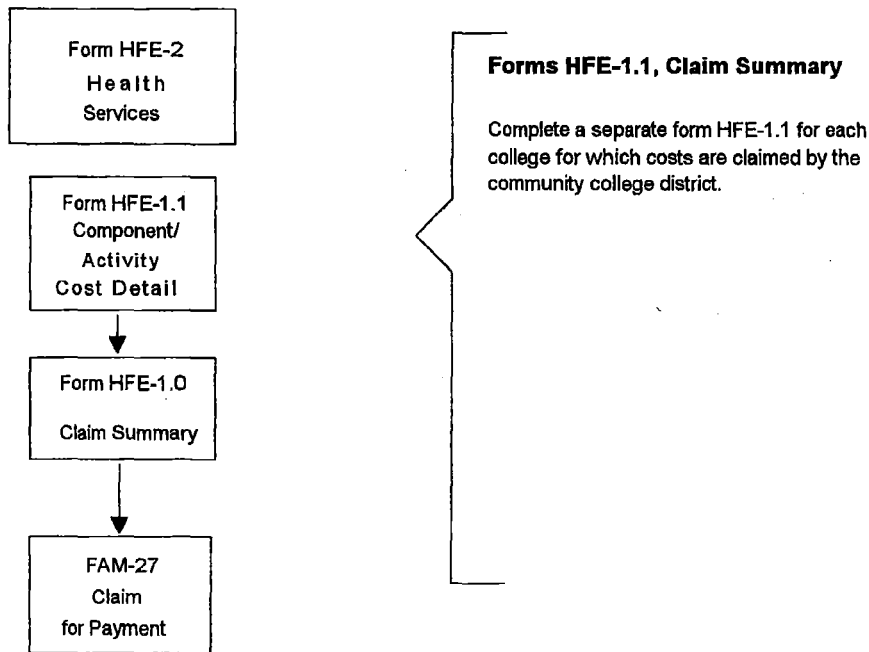
**C. Form HFE-1.0, Claim Summary**

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

**D. Form FAM-27, Claim for Payment**

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

**Illustration of Claim Forms**



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

L A B E L  H E R E	(01) Claimant Identification Number	<b>Reimbursement Claim Data</b>	
	(02) Claimant Name	(22) HFE-1.0,(04)(b)	
	County of Location	(23)	
	Street Address or P.O. Box	(24)	
	City	(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)
<b>Fiscal Year of Cost</b>	(06) <b>20</b> / <b>20</b>	(12) <b>20</b> / <b>20</b>	(30)
<b>Total Claimed Amount</b>	(07)	(13)	(31)
<b>Less: 10% Late Penalty, not to exceed \$1,000</b>		(14)	(32)
<b>Less: Prior Claim Payment Received</b>		(15)	(33)
<b>Net Claimed Amount</b>		(16)	(34)
<b>Due to Claimant</b>	(08)	(17)	(35)
<b>Due to State</b>		(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**

- (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

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



<b>HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions</b>	<b>FORM HFE-1.0</b>
--	-------------------------

(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)]		
<b>Cost Reduction</b>							
(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.

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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
<b>Accident Reports</b>			
<b>Appointments</b> 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			
<b>Assessment, Intervention and Counseling</b> 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			
<b>Examinations, minor illnesses</b> Recheck Minor Injury			
<b>Health Talks or Fairs, Information</b> Sexually Transmitted Disease Drugs Acquired Immune Deficiency Syndrome			

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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			

<b>MANDATED COSTS</b> <b>HEALTH ELIMINATION FEE</b> <b>HEALTH SERVICES</b>		<b>FORM</b> <b>HFE-2</b>	
(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
<b>Referrals to Outside Agencies</b> Private Medical Doctor Health Department Clinic Dental Counseling Centers Crisis Centers Transitional Living Facilities, battered/homeless women Family Planning Facilities Other Health Agencies			
<b>Tests</b> Blood Pressure Hearing Tuberculosis Reading Information Vision Glucometer Urinalysis Hemoglobin EKG Strep A testing PG Testing Monospot Hemacult Others, list			
<b>Miscellaneous</b> Absence Excuses/PE Waiver Allergy Injections Band-aids Booklets/Pamphlets Dressing Change Rest Suture Removal Temperature Weigh Information Report/Form Wart Removal Others, list			
<b>Committees</b> Safety Environmental Disaster Planning			



# **EL CAMINO COMMUNITY COLLEGE DISTRICT**

Audit Report

## **HEALTH FEE ELIMINATION PROGRAM**

Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session,  
and Chapter 1118, Statutes of 1987

*July 1, 2000, through June 30, 2003*



**STEVE WESTLY**  
California State Controller

October 2005





**STEVE WESTLY**  
**California State Controller**

October 5, 2005

Thomas M. Fallo, Ed.D.  
President, Superintendent  
El Camino Community College District  
16007 Crenshaw Boulevard  
Torrance, CA 90506

Dear Dr. Fallo:

The State Controller's Office audited the costs claimed by El Camino Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2000, through June 30, 2003.

The district claimed \$479,711 for the mandated program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred because the district claimed unallowable costs and understated claimed revenue. The State paid the district \$89,101. The amount paid exceeds allowable costs claimed by \$9,281.

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](http://www.csm.ca.gov) (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at [csminfo@csm.ca.gov](mailto: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 black ink that reads "Jeffrey V. Brownfield".

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

JVB/ams

cc: Pamela Fees, Business Manager  
El Camino Community College District  
Marty Rubio, Specialist  
Fiscal Accountability Section  
California Community Colleges Chancellor's Office  
Jeannie Oropeza, Program Budget Manager  
Education Systems Unit  
Department of Finance

# Contents

## Audit Report

Summary .....	1
Background .....	1
Objective, Scope, and Methodology .....	2
Conclusion .....	2
Views of Responsible Official .....	3
Restricted Use .....	3
Schedule 1—Summary of Program Costs .....	4
Findings and Recommendations .....	6
Attachment—District’s Response to Draft Audit Report	

# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the El Camino Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2000, through June 30, 2003. The last day of fieldwork was April 7, 2005.

The district claimed \$479,711 for the mandated program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable. The unallowable costs occurred because the district claimed unallowable costs and understated revenue. The State paid the district \$89,101. The amount paid exceeds allowable costs claimed by \$9,281.

## Background

*Education Code* Section 72246 (repealed by Chapter 1, Statutes of 1984, 2<sup>nd</sup> E.S. and renumbered as Section 76355 by Chapter 8, Statutes of 1993) 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 service fee as specified.

*Education Code* Section 72246 (amended by Chapter 1118, Statutes of 1987 and renumbered as Section 76355 by Chapter 8, Statutes of 1993) 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, 2<sup>nd</sup> 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 service fee in FY 1983-84, regardless of the extent to which the health service 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 the 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, 2000, 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, the El Camino Community College District claimed \$479,711 for costs of the Health Fee Elimination Program. Our audit disclosed that \$79,820 is allowable and \$399,891 is unallowable.

For fiscal year (FY) 2000-01, the State paid the district \$54,835. Our audit disclosed that \$40,029 is allowable. The district should return \$14,806 to the State.

For FY 2001-02, the State paid the district \$34,266. Our audit disclosed that all of the costs claimed are unallowable. The district should return the total amount to the State.

For FY 2002-03, the district was not reimbursed by the State. Our audit disclosed that \$39,791 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$39,791, contingent upon available appropriations.

**Views of  
Responsible  
Official**

We issued a draft audit report on July 13, 2005. Pamela Fees, Business Manager, responded by letter dated July 26, 2005 (Attachment), disagreeing with the audit results for Findings 2 and 3. The district stated that it is not disputing the adjustment at this time for Findings 1 and 4. This final audit report includes the district's response.

**Restricted Use**

This report is solely for the information and use of the El Camino 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, 2000, through June 30, 2003

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2000, through June 30, 2001</u>				
Health services costs:				
Salaries and benefits	\$ 331,487	\$ 319,367	\$ (12,120)	Finding 1
Services and supplies	40,562	40,562	—	
Indirect costs	122,627	48,015	(74,612)	Findings 1, 2
Total health services costs	494,676	407,944	(86,732)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	494,676	407,944	(86,732)	
Less authorized health fees	(343,160)	(351,967)	(8,807)	Finding 3
Subtotal	151,516	55,977	(95,539)	
Less offsetting savings/reimbursements	(13,593)	(15,948)	(2,355)	Finding 4
Subtotal	137,923	40,029	(97,894)	
Adjustment to eliminate negative balance	—	—	—	
Total	<u>\$ 137,923</u>	40,029	<u>\$ (97,894)</u>	
Less amount paid by the State		(54,835)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (14,806)</u>		
<u>July 1, 2001, through June 30, 2002</u>				
Health services costs:				
Salaries and benefits	\$ 367,872	\$ 367,872	\$ —	
Services and supplies	35,754	35,754	—	
Indirect costs	115,558	57,194	(58,364)	Finding 2
Total health services costs	519,184	460,820	(58,364)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	519,184	460,820	(58,364)	
Less authorized health fees	(349,090)	(460,800)	(111,710)	Finding 3
Subtotal	170,094	20	(170,074)	
Less offsetting savings/reimbursements	(2,583)	(2,583)	—	
Subtotal	167,511	(2,563)	(170,074)	
Adjustment to eliminate negative balance	—	2,563	2,563	
Total	<u>\$ 167,511</u>	—	<u>\$ (167,511)</u>	
Less amount paid by the State		(34,266)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (34,266)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2002, through June 30, 2003</u>				
Health services costs:				
Salaries and benefits	\$ 400,431	\$ 400,431	\$ —	
Services and supplies	54,721	54,721	—	
Indirect costs	129,536	69,866	(59,670)	Finding 2
Total health services costs	584,688	525,018	(59,670)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	584,688	525,018	(59,670)	
Less authorized health fees	(395,380)	(470,196)	(74,816)	Finding 3
Subtotal	189,308	54,822	(134,486)	
Less offsetting savings/reimbursements	(15,031)	(15,031)	—	
Subtotal	174,277	39,791	(134,486)	
Adjustment to eliminate negative balance	—	—	—	
Total	\$ 174,277	39,791	\$ (134,486)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 39,791		
<u>Summary: July 1, 2000, through June 30, 2003</u>				
Health services costs:				
Salaries and benefits	\$ 1,099,790	\$ 1,087,670	\$ (12,120)	Finding 1
Services and supplies	131,037	131,037	—	
Indirect costs	367,721	175,075	(192,646)	Findings 1, 2
Total health services costs	1,598,548	1,393,782	(204,766)	
Less cost of services in excess of FY 1986-87 services	—	—	—	
Subtotal	1,598,548	1,393,782	(204,766)	
Less authorized health fees	(1,087,630)	(1,282,963)	(195,333)	Finding 3
Subtotal	510,918	110,819	(400,099)	
Less offsetting savings/reimbursements	(31,207)	(33,562)	(2,355)	Finding 4
Subtotal	479,711	77,257	(402,454)	
Adjustment to eliminate negative balance	—	2,563	2,563	
Total	\$ 479,711	79,820	\$ (399,891)	
Less amount paid by the State		(89,101)		
Allowable costs claimed in excess of (less than) amount paid		\$ (9,281)		

<sup>1</sup> See the Findings and Recommendations section.



# Findings and Recommendations

**FINDING 1—  
Overstated salary,  
benefit, and indirect  
costs**

The district overstated salaries and benefits by \$12,120 for the fiscal year (FY) 2000-01. The related indirect cost was \$3,995.

The district claimed 12% of the Dean of Student Services' salary and benefit but did not provide documents such as time logs to validate the time worked at the health center. Therefore, the portion of the dean's salary claimed is unallowable.

*Parameters and Guidelines* specifies that community college districts shall be reimbursed only for costs of health services programs that are traceable to supporting documentation showing evidence of the validity of such costs.

Recommendation

We recommend the district utilize supporting documentation such as time logs to validate labor charges.

District's Response

The District is not disputing this adjustment at this time.

SCO's Comment

The finding and recommendation remain unchanged.

**FINDING 2—  
Overstated indirect  
cost rates**

The district overstated its indirect cost rates, and thus overstated its indirect costs by \$188,652 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		
	2000-01	2001-02	2002-03
Allowable indirect cost rate	13.34%	14.17%	15.35%
Less claimed indirect cost rate	(32.96)%	(28.63)%	(28.46)%
Unsupported indirect cost rate	(19.62)%	(14.46)%	(13.11)%

Based on these unsupported indirect cost rates, the audit adjustments are summarized below.

	Fiscal Year			Total
	2000-01	2001-02	2002-03	
Allowable direct costs claimed	\$ 359,929	\$ 403,626	\$ 455,152	
Unsupported indirect cost rate	×(19.62)%	×(14.46)%	×(13.11)%	
Audit adjustment	\$ (70,618)	\$ (58,364)	\$ (59,670)	\$ (188,652)

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

#### Recommendation

We recommend 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. Alternately, the district should use form FAM-29C to prepare ICRPs based on the methodology allowed in the SCO claiming instructions.

#### District's Response

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

The Controller's claiming instructions state that for claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. The Controller claiming instructions were never adopted as rules or regulations, and therefore 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 audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller 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.

#### SCO's Comment

The finding and recommendation remain unchanged.

We disagree with the district's assertions that the SCO has no legal basis to disallow the indirect cost rate calculations used by the district and has not shown a factual basis to reject the rates as unreasonable or excessive.

*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 the 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 the federal agency, which is not an option provided by the SCO's claiming instructions.

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

The district understated authorized health fee revenue by \$195,333 for the audit period.

The district did not use the actual number of student counts and Board of Governors Grants (BOGG) waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect, using various student enrollment and BOGG detail reports dated January 2005 through March 2005. In addition, the district underreported authorized student health fees by one dollar for FY 2000-01, and two dollars for FY 2001-02 and FY 2002-03.

The understated authorized health fee revenues are calculated as follows.

	<u>Fall</u>	<u>Spring</u>	<u>Total</u>
<b><u>FY 2000-01</u></b>			
Student enrollment	22,111	21,592	
Less allowable health fee exceptions	<u>(5,724)</u>	<u>(5,982)</u>	
Subtotals	16,387	15,610	
Authorized student health fee	× \$(11)	× \$(11)	
Audited authorized health fee revenues	<u>\$ (180,257)</u>	<u>\$ (171,710)</u>	\$ (351,967)
Claimed authorized health fee revenues			<u>343,160</u>
Audit adjustment, FY 2000-01			<u>(8,807)</u>
<b><u>FY 2001-02</u></b>			
Student enrollment	25,054	24,970	
Less allowable health fee exceptions	<u>(5,736)</u>	<u>(5,888)</u>	
Subtotals	19,318	19,082	
Authorized student health fee	× \$(12)	× \$(12)	
Audited authorized health fee revenues	<u>\$ (231,816)</u>	<u>\$ (228,984)</u>	(460,800)
Claimed authorized health fee revenues			<u>349,090</u>
Audit adjustment, FY 2001-02			<u>(111,710)</u>
<b><u>FY 2002-03</u></b>			
Student enrollment	25,626	27,353	
Less allowable health fee exceptions	<u>(7,047)</u>	<u>(6,749)</u>	
Subtotal	18,579	20,604	
Authorized student health fee	× \$(12)	× \$(12)	
Audited authorized health fee revenues	<u>\$ (222,948)</u>	<u>\$ (247,248)</u>	(470,196)
Claimed authorized health fee revenues			<u>395,380</u>
Audit adjustment, FY 2002-03			<u>(74,816)</u>
Total audit adjustments			<u>\$ (195,333)</u>

*Parameters and Guidelines* states that health fees authorized by *Education Code* must be deducted 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; or (3) demonstrate financial need.

Also, *Government Code* Section 17514 states that costs mandated by the State means any increased costs which a 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 district has the authority to levy fees to pay for the mandated program or increased level of services.

### Recommendation

We recommend the district ensure that allowable health services program costs are offset by the amount of health service fee revenue authorized by the *Education Code*.

### District's Response

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged the student.

### STUDENT HEALTH SERVICES FEE AMOUNT

#### "Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

#### Education Code Section 76355

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.)

Parameters and Guidelines

The 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)." 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.

Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "to the extent community college districts can charge a fee, they are not required to incur a cost." Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language 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." Government Code Section 17556 as last amended by Chapter 589/89 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 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 the 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.

## ENROLLMENT AND EXEMPTED STUDENTS

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

### SCO's Comment

The finding and recommendation remain unchanged.

The district is incorrect when it states that we used student enrollment and Board of Governors Grants (BOGG) waiver counts based on data from the office of Chancellor of the Community Colleges. As mentioned above, the district did not use the actual number of student counts and BOGG waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect using the district's Student Enrollment Reports and the BOGG Detail Reports dated January 2005 through March 2005.

We agree that community college districts may choose not to levy a health service 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 service fee is that the related health service costs do not meet the requirement for mandated costs as defined by *Government Code* Section 17514. Health service costs recoverable through authorized fees 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 mandated program or increased level of service.

### **FINDING 4— Understated offsetting revenue**

For FY 2000-01, the district understated offsetting revenue by \$2,355 because it did not reduce claimed health services costs and related health services revenues recorded in revenue account 8890.

*Parameters and Guidelines* specifies that any offsetting savings or reimbursements received by the district from any source as a result of the mandate must be identified and deducted so that only net district health services costs are claimed.

### Recommendation

We recommend the district ensure all applicable revenues are offset on its claims against its mandated program costs.

### District's Response

The District is not disputing this adjustment at this time.

### SCO's Comment

The finding and recommendation remain unchanged.

**IER ISSUE—  
ute of limitations**

The district's response included comments regarding our authority to audit costs claimed for FY 2000-01 and FY 2001-02.

**District's Response**

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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

**SCO's Comment**

We disagree with the district's assertion that the audit and the related adjustment of the claims are barred by the statute of limitations. *Government Code* Section 17558.5(a), in effect during the audit period, states that 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 claims were filed in January 2002 and December 2002, respectively. On December 2, 2004, we made phone contact with the district's business manager and sent a follow-up letter dated December 9, 2004, wherein we agreed to delay the start of the audit until January 5, 2005. In both the phone call and the letter, we clearly stated that the audit would include the claims filed in the 2002 calendar year. This audit was initiated prior to the statutory deadline of December 2004 in which to commence an audit.

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

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## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310) 532-3670 or 1-866-ELCAMINO

July 26, 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: 2000-01, 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the El Camino Community College District to the letter to President Thomas M. Fallo, EdD, from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated July 13, 2005, and received by the District on July 26, 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, 2000 through June 30, 2003.

### **Finding 1 - Overstated salary, benefits, and indirect costs**

The District is not disputing this adjustment at this time.

### **Finding 2 - Overstated indirect cost rates**

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

The Controller's claiming instructions state that for claiming indirect costs, college districts have the option of using a federally approved method from the Office of Management and Budget Circular A-21, or a rate calculated using Form FVM-200, or a 7% indirect cost rate. The Controller claiming instructions were never adopted as rules or regulations, and therefore 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 audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller 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 - Understated authorized health fees revenues claimed

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged the student.

#### STUDENT HEALTH SERVICES FEE AMOUNT

##### "Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

##### Education Code Section 76355

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.)

Parameters and Guidelines

The 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)." 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.

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

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(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 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 the 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.

#### ENROLLMENT AND EXEMPTED STUDENTS

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

#### Finding 4- Understated offsetting revenue

The District is not disputing this adjustment at this time.

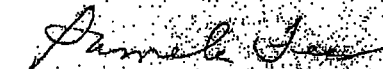
#### Statute of Limitations

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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,

EL CAMINO COMMUNITY COLLEGE



Pamela Fees  
Business Manager

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

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

C05-MCC-005





STEVE WESTLY  
 California State Controller  
 Division of Accounting and Reporting  
 OCTOBER 27, 2005

CC19140  
 00234  
 2005/10/27

BOARD OF TRUSTEES  
 EL CAMINO COMM COLL DIST  
 LOS ANGELES COUNTY  
 16007 CRENSHAW BLVD  
 TORRANCE CA 90506

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2001/2002 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		167,511.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	167,511.00
PRIOR PYMT TO/FR ANOTHER PGM	-	35,266.00
TOTAL ADJUSTMENTS	-	<u>202,777.00</u>
AMOUNT DUE STATE		<u>\$ 35,266.00</u>

PLEASE REMIT A WARRANT IN THE AMOUNT OF \$ 35,266.00 WITHIN 30 DAYS FROM THE DATE OF THIS LETTER, PAYABLE TO THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875 WITH A COPY OF THIS LETTER. FAILURE TO REMIT THE AMOUNT DUE WILL RESULT IN OUR OFFICE PROCEEDING TO OFFSET THE AMOUNT FROM THE NEXT PAYMENTS DUE TO YOUR AGENCY FOR STATE MANDATED COST PROGRAMS.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ALEXIS LIAKOS AT (916) 323-0698 OR IN WRITING AT THE ABOVE ADDRESS.

SINCERELY,

*Ginny Brummels*  
 GINNY BRUMMELS, MANAGER

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



STEVE WESTLY  
California State Controller  
Division of Accounting and Reporting  
OCTOBER 27, 2005

CC19140  
00234  
2005/10/27

BOARD OF TRUSTEES  
EL CAMINO COMM COLL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2000/2001 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 137,923.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 97,894.00

PRIOR PYMT TO/FR ANOTHER PGM - 54,835.00

TOTAL ADJUSTMENTS - 152,729.00

AMOUNT DUE STATE \$ 14,806.00

PLEASE REMIT A WARRANT IN THE AMOUNT OF \$ 14,806.00 WITHIN 30 DAYS FROM THE DATE OF THIS LETTER, PAYABLE TO THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875 WITH A COPY OF THIS LETTER. FAILURE TO REMIT THE AMOUNT DUE WILL RESULT IN OUR OFFICE PROCEEDING TO OFFSET THE AMOUNT FROM THE NEXT PAYMENTS DUE TO YOUR AGENCY FOR STATE MANDATED COST PROGRAMS.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ALEXIS LIAKOS AT (916) 323-0698 OR IN WRITING AT THE ABOVE ADDRESS.

SINCERELY,

*Ginny Brummels*  
GINNY BRUMMELS, MANAGER

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

**EXHIBIT E**





## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310) 532-3670 or 1-866-ELCAMINO

July 26, 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: 2000-01, 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the El Camino Community College District to the letter to President Thomas M. Fallo, EdD, from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated July 13, 2005, and received by the District on July 26, 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, 2000 through June 30, 2003.

### **Finding 1 - Overstated salary, benefits, and indirect costs**

The District is not disputing this adjustment at this time.

### **Finding 2 - Overstated indirect cost rates**

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. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. The parameters and guidelines for Health Fee Elimination (as last amended on May 25, 1989) state that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller.

The Controller's reliance on numerous state and federal auditing bodies, college districts have for action on items 1, federally approved and from the Office of Management and Budget Circular 211, and calculated using from 1.5% to 2% or a 7% indirect cost rate. The Controller claiming institutions were never adopted as rules or regulations, and therefore have no force of law. The mandamus 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 17601.09(2)). If the Controller wishes to enforce audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the Controller 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.

### **Pending 3 - Understated authorized health fees revenues claimed**

The adjustments for the student health services revenue are based on two reasons. The Controller adjusted the reported enrollment and reported number of students exempt from payment of the fee. The Controller then calculated the student fees collectible based on the highest student health services fee chargeable, rather than the fee actually charged the student.

#### **STUDENT HEALTH SERVICES FEE AMOUNT**

##### **"Authorized" Fee Amount**

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The 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 Procedure Act by the "authorizing" state agency.

##### **Education Code Section 76355**

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 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.)

### Parameters and Guidelines

The 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)." 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.

### Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "to the extent community college districts can charge a fee, they are not required to incur a cost." Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language 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." Government Code Section 17556 as last amended by Chapter 589/89 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: . . .

(c) 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 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 the 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.

#### ENROLLMENT AND EXEMPTED STUDENTS

The Controller adjusted the reported total student enrollment and reported number of exempt students based on data requested during the audit from the office of the Chancellor of the Community Colleges. The information obtained from the Chancellor's office is based on information provided by the District. The Controller has not provided any factual basis why the Chancellor's data, subject to review and revision for several years, is preferable to the data reported by the District which was available at the time the claims were prepared.

#### Finding 4- Understated offsetting revenue

The District is not disputing this adjustment at this time.

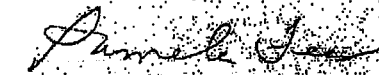
#### Statute of Limitations

The District's Fiscal Year 2000-01 claim was mailed to the Controller on January 14, 2002. The District's Fiscal Year 2001-02 claim was mailed to the Controller on December 30, 2002. The draft audit report is dated July 13, 2005. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for FY 2000-01 and FY 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

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,

EL CAMINO COMMUNITY COLLEGE



Pamela Fees  
Business Manager



**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

102 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\011StuHealthFees.doc

**EXHIBIT G**



1                                   **DECLARATION OF PAMELA FEES**

2                                   **EL CAMINO COMMUNITY COLLEGE DISTRICT**

3   BEFORE THE COMMISSION ON STATE MANDATES

4   INCORRECT REDUCTION CLAIM OF El Camino Community College District

5   RE:   Health Fee Elimination Annual Reimbursement Claims:

6               Fiscal Years 2000-01, 2001-02, 2002-03

7   I, Pamela Fees, the undersigned, declare:

- 8   1.    I am over the age of 18 and otherwise competent to testify in any court or  
9           administrative proceeding.
- 10   2.    I am the Business Manager for El Camino Community College District.
- 11   3.    I have been employed by the District since August 1998.
- 12   4.    On Thursday, December 2, 2004, I received a telephone call from Janny Chan,  
13           an auditor employed by the State Controller's Office. Ms. Chan requested to  
14           schedule an entrance conference during the week beginning December 6, 2004,  
15           to commence the audit of the above referenced annual reimbursement claims for  
16           the Health Fee Elimination mandate program. I stated to Ms. Chan that I would  
17           need to first contact the appropriate District staff to determine their availability.
- 18   5.    On Thursday, December 2, 2004, I made a phone call to Ms. Chan, in which I  
19           stated I was attempting to schedule a meeting time on December 8, or 9, 2004.
- 20   6.    On Monday, December 6, 2004, I left a voice mail message with Ms. Chan  
21           stating that the District staff was available for an entrance conference at 2:30  
22           p.m. on December 9, 2004.

DECLARATION OF PAMELA FEES  
INCORRECT REDUCTION CLAIM OF  
EL CAMINO COMMUNITY COLLEGE DISTRICT

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- 1 7. On Tuesday, December 7, 2004, I received a telephone call from Ms. Chan in  
2 which she stated that her supervisor was not available to attend the entrance  
3 conference on December 9, 2004. During this phone contact, Ms. Chan then  
4 requested the entrance conference to be conducted on January 5, 2005. During  
5 this phone contact, I agreed to the change of date.
- 6 8. On Tuesday, December 7, 2004, I received an e-mail from Ms. Chan confirming  
7 the results of the phone call. The e-mail asked me to provide a letter to her  
8 supervisor stating that the entrance conference was "postponed" to January 5,  
9 2005. This e-mail is dated December 7, 2004, and is attached as Exhibit 1.
- 10 9. On Tuesday, December 7, 2004, I prepared the memo requested by Ms. Chan  
11 and faxed it to her at the telephone number Ms. Chan provided in the e-mail.  
12 This memo is dated December 7, 2004, and attached as Exhibit 2.
- 13 10. On Wednesday, December 8, 2004, I received an e-mail from Ms. Chan in  
14 which she requested that I provide a "formal letter (instead of a memo) to Art  
15 Luna, SCO audit manager" regarding the "postponement" of the entrance  
16 conference. This e-mail is dated December 8, 2004, and attached as Exhibit 3.
- 17 11. On Wednesday, December 8, 2004, I prepared the letter requested by Ms. Chan  
18 and faxed it to her at the telephone number Ms. Chan provided. This letter is  
19 dated December 8, 2004, and attached as Exhibit 4.
- 20 12. On Thursday, December 9, 2004, I received by fax a letter dated December 9,  
21 2004, from Art Luna, Audit Manager, which confirmed the entrance conference

DECLARATION OF PAMELA FEES  
INCORRECT REDUCTION CLAIM OF  
EL CAMINO COMMUNITY COLLEGE DISTRICT

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1 date of January 5, 2005. In the letter, Mr. Luna stated that the delay of the  
2 entrance conference date was due to the unavailability of District staff. His  
3 statement is in direct contradiction of all previous district communication and  
4 correspondence. The letter is attached as Exhibit 5.

5 The foregoing facts are known to me personally and, if so required, I could testify  
6 to the statements made herein. I hereby declare under penalty of perjury under the  
7 laws of the State of California that the foregoing is true and correct except where stated  
8 upon information or belief and that the attached exhibits are true and correct copies of  
9 the correspondence of the parties.

10 EXECUTED this 27<sup>th</sup> day of February 2006, at Torrance, California.

11   
12 \_\_\_\_\_

13 Pamela Fees

## Fees, Pamela

---

**From:** jchan@sco.ca.gov  
**Sent:** Tuesday, December 07, 2004 2:37 PM  
**To:** Fees, Pamela  
**Cc:** aluna@sco.ca.gov  
**Subject:** Entrance Conference

Hi Pamela

Per our phone conversation today at 2:25 p.m., the entrance conference for Thursday, December 9 is re-scheduled for January 5, 2005.

In addition, you will provide me a letter stating the entrance conference is postponed from December 9, 2004 to January 5, 2005.

Please fax a copy to: (310) 342-5670

and send the original letter to

Suite 1000

90230

State Controller's Office

Division of Audits

600 Corporate Pointe,

Culver City, California

Attention: Janny Chan

Thank you.

Janny Chan  
(310) 665-1650


**EL CAMINO COMMUNITY COLLEGE DISTRICT**  
16007 Crenshaw Blvd., Torrance, CA 90506



December 7, 2004

To: Janny Chan  
State Controller's Office  
Division of Audits

FAX No. (310) 342-5670  
Tele No. (310) 665-1650

From: Pamela Fees   
Business Manager

Telephone No. (310) 660-3110  
FAX No. (310) 660-3798

Pages transmitted (including cover page): 1

Re: Health Elimination Fee Audit

In your call to me the morning of December 2, 2004, you asked that I meet with you for an entrance conference the week of December 6. You indicated Tuesday-Friday after 1:30 would be good times to consider for the 1 hour meeting.

I called you back later that day to let you know I would not be working December 3 but was checking with staff to determine if December 8 or 9 would be available.

I confirmed with them Monday that December 9 at 2:30 would be fine and I left you a voice message the morning of December 6.

You called today to let me know your boss wasn't available the afternoon of December 9, even if I moved up our meeting time to 12:30, therefore you couldn't accept that date.

At your suggestion we selected a date in January to conduct the entrance conference. At this time it is scheduled for Wednesday, January 5, 2005, at 10:30 a.m.

We will prepare a parking permit and map indicating the location of the meeting at El Camino College and mail it to you.

## **Fees, Pamela**

---

**Fr** jchan@sco.ca.gov  
**Se** Wednesday, December 08, 2004 12:08 PM  
**To:** Fees, Pamela  
**Subject:** entrance conference

Hi Pamela  
Please fax a formal letter (instead of a memo) to Art Luna, SCO audit manager, stating that an entrance conference for December 9 is postponed to January 5, 2005.

Call me if you have questions.

Janny Chan  
State Auditor  
(310) 665-1650

FAX (310) 342-5670


**EL CAMINO COMMUNITY COLLEGE DISTRICT**  
16007 Crenshaw Blvd., Torrance, CA 90506



December 8, 2004

To: Janny Chan  
State Controller's Office  
Division of Audits

FAX No. (310) 342-5670  
Tele No. (310) 665-1650

From: Pamela Fees   
Business Manager

Telephone No. (310) 660-3110  
FAX No. (310) 660-3798

Pages transmitted (including cover page): 2

Re: Health Fee Elimination Audit

I have attached a formal letter to Art Luna, per your request, indicating our agreed upon meeting date of January 5, 2005.



## EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001  
Telephone (310)532-3670 or 1-877-ECAMINO

December 8, 2004

Art Luna  
State Controller's Office  
Division of Audits  
600 Corporate Pointe, Suite 1000  
Culver City, CA 90230

Dear Mr. Luna:

Per my conversation with Janny Chan yesterday, I understand the original entrance conference date and time (December 9, 2004 at 2:30) I had suggested to discuss the Health Fee Elimination was a time at which you are unavailable.

I confirmed this in a fax to Janny yesterday in a memo form and am now formalizing it in a letter to you.

Therefore we have scheduled the meeting for January 5, 2005, at 10:30 a.m. I will prepare a parking permit and map indicating the location of the meeting at El Camino College and mail it to Janny.

Sincerely,

Pamela Fees  
Business Manager





**STEVE WESTLY**  
**California State Controller**

December 9, 2004

Dr. Thomas M. Fallo  
President / Superintendent  
El Camino Community College District  
16007 Crenshaw Blvd  
Torrance, CA 90506

Dear Dr. Fallo:

This letter confirms that State Controller's Office has scheduled an audit of El Camino Community College District's legislatively mandated Health Fee Elimination Program cost claims filed for fiscal year (FY) 2000-01, FY 2001-02, and FY 2002-03. *Government Code* Section 17558.5 provides the authority for this audit.

In a telephone conversation on Thursday, December 2, 2004, Janny Chan, SCO Auditor-in-Charge, asked to begin the audit this month. However, due to the unavailability of appropriate district personnel, Pamela Fees, Business Manager, requested that the audit commence on January 5, 2005, at 10:30 a.m. The entrance conference will be held at El Camino Community College District, 16007 Crenshaw, Torrance, California 90506.

Please furnish working accommodations for and provide the necessary records (see the Attachment) to the audit staff.

If you have any questions, please call me at (310) 342-5639.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Luna".

ART LUNA  
Audit Manager  
Compliance Audits Bureau  
Division of Audits

AL:th

Attachment

cc: Pamela Fees, Business Manager  
El Camino Community District  
Jim L. Spano, Chief  
Compliance Audits Bureau  
Division of Audits  
State Controller's Office  
Ginny Brummels, Manager  
Division of Accounting and Reporting  
State Controller's Office  
Janny Chan  
Auditor-in-Charge  
Division of Audits  
State Controller's Office



<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>HEALTH FEE ELIMINATION</b>			For State Controller Use Only (19) Program Number 00029 (20) Date File ____/____/____ (21) LRS Input ____/____/____	
<b>(01) Claimant Identification Number:</b> S19140			<b>Reimbursement Claim Data</b>	
L A B E L H E R E	<b>(02) Mailing Address:</b>		(22) HFE - 1.0, (04)(b)	\$ 137,923
	<b>Claimant Name</b> El Camino Community College District		(23)	
	<b>County of Location</b> Los Angeles		(24)	
	<b>Street Address</b> 16007 Crenshaw Blvd		(25)	
	<b>City</b> Torrance	<b>State</b> CA	<b>Zip Code</b> 90506-3110	(26)
	<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(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)	
<b>Fiscal Year of Cost</b>	(06) 2001-2002	(12) 2000-2001	(31)	
<b>Total Claimed Amount</b>	(07) \$ 151,000	(13) \$ 137,923	(32)	
<b>Less: 10% Late Penalty, but not to exceed \$1000</b>		(14) \$ -	(33)	
<b>Less: Estimate Claim Payment Received</b>		(15) \$ 54,835	(34)	
<b>Net Claimed Amount</b>		(16) \$ 83,088	(35)	
<b>Due from State</b>	(08) \$ 151,000	(17) \$ 83,088	(36)	
<b>Due to State</b>		(18) \$ -	(37)	
<b>(38) CERTIFICATION OF CLAIM</b>				
<p>In accordance with the provisions of Government Code Section 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 309, Statutes of 1995, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 309, Statutes of 1995.</p> <p>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 309, Statutes of 1995, set forth on the attached statements.</p>				
<b>Signature of Authorized Representative</b>			<b>Date</b>	
<i>Pamela Fees</i>			12-20-01	
Pamela Fees			Business Manager	
Type or Print Name			Title	
<b>(39) Name of Contact Person or Claim</b> SixTen & Associates			<b>Telephone Number</b> (858) 514-8605	

Claim File Copy

CONTROLLER OF CALIFORNIA  
P.O. BOX 942950, SACRAMENTO, CALIFORNIA 94250

THIS REMITTANCE ADVICE IS FOR INFORMATION PURPOSE ONLY.  
THE WARRANT COVERING THE AMOUNT SHOWN WILL BE MAILED  
DIRECTLY TO THE PAYEE.

BOARD OF TRUSTEES  
EL CAMINO COMM COL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

WARRANT AMT: \*\*\*\*54,835.00

PAYEE: TREASURER, EL CAMINO COMM COL DIST  
FUND NAME: GENERAL FUND

ISSUE DATE: 03/08/2001

CLAIM SCHEDULE NBR: MA00514

REIMBURSEMENT OF STATE MANDATED COSTS  
IF YOU HAVE ANY QUESTIONS CALL NIEMAND QUOK AT (916) 323-0734  
ACL : 6370-295-0001      PRG : HEALTH FEE ELIMINATION CH 1/  
2000/2001 ESTIMATED PAYMENT      CLAIMED AMT:      190,000.00  
TOTAL ADJUSTMENTS:      .00  
TOTAL APPROVED CLAIMED AMT:      190,000.00  
LESS PRIOR PAYMENTS:      .00  
PRORATA PERCENT:      28.860275  
PRORATA BALANCE DUE:      135,165.00  
APPROVED PAYMENT AMOUNT:      54,835.00  
PAYMENT OFFSETS -NONE  
NET PAYMENT AMOUNT:      54,835.00

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

<b>(01) Claimant:</b> Claimant Name El Camino Community College District	<b>(02) Type of Claim:</b> Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2000-2001
--	---	--------------------------

**(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. El Camino Community College	\$ 137,923.35
2.	\$ -
3.	\$ -
4.	\$ -
5.	\$ -
6.	\$ -
7.	\$ -
8.	\$ -
9.	\$ -
10.	\$ -
11.	\$ -
12.	\$ -
13.	\$ -
14.	\$ -
15.	\$ -
16.	\$ -
17.	\$ -
18.	\$ -
19.	\$ -
20.	\$ -
21.	\$ -
<b>(04) Total Amount Claimed</b>	\$ 137,923

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

<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
--	-------------------------------

<b>(01) Claimant:</b>  El Camino Community College District	<b>(02) Type of Claim:</b> Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>  Fiscal Year 2000-2001
---	---

**(03) Name of College** El Camino Community College

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

LESS       SAME       MORE

	Direct Cost	Indirect Cost of: 32.96%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 372,049	\$ 122,627	\$ 494,676
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]</b>	\$ 372,049	\$ 122,627	\$ 494,676

**(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	4,330	14,025	\$ 10.00	\$ 43,300	\$ 10.00	\$ 140,250	\$ 183,550
2. Per spring semester	3,103	12,858	\$ 10.00	\$ 31,030	\$ 10.00	\$ 128,580	\$ 159,610
3. Per summer session	503	12,691	-	\$ -	-	\$ -	\$ -
4. Per first quarter				\$ -		\$ -	\$ -
5. Per second quarter				\$ -		\$ -	\$ -
6. Per third quarter				\$ -		\$ -	\$ -
<b>(09) Total health fee that could have been collected</b>	[Line (8.1g) + (8.2g) + .....(8.6g)]						\$ 343,160
<b>(10) Sub-total</b>	[Line (07) - line (09)]						\$ 151,516

<b>Cost Reduction</b>	
<b>(11) Less: Offsetting Savings, if applicable</b>	\$ -
<b>(12) Less: Other Reimbursements, if applicable</b>	\$ 13,593.00
<b>(13) Total Amount Claimed</b>	\$ 137,923

**EL CAMINO COMMUNITY COLLEGE DISTRICT  
INDIRECT COST RATE CALCULATION**

1999-2000

FOR 00-01 CLAIMS

REFERENCE (CCFS 311)	DESCRIPTION	1999-2000
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	31,698,009
	Instructional Operating Expenses	971,604
	Instructional Support	160,652
	Auxiliary Classes - Instructional	72,640
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>33,102,945</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	7,919,143
	Instructional Admin. Salaries and Benefits	4,288,094
	Instructional Admin. Operating Expenses	730,036
	Auxiliary Classes - Noninstructional Salaries & Benefits	382,369
	Auxiliary Classes - Operating Expenses	196,256
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>7,596,120</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>40,699,065</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services	2,117,865
	Admissions and Records	2,204,832
	Counseling and Guidance	2,634,277
	Other Student Services	4,679,378
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>11,636,352</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>	<b>52,335,417</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	6,851,184
	Planning and Policy Making	2,474,029
	General Instructional Support Services	7,907,021
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>17,232,234</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS</b>	<b>69,567,651</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
Indirect Support Costs Allocation Rate =	Total Indirect Support Costs (6) Total Instructional Activity Costs and Direct Support Costs (5)	32.96%
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4) Total Instructional Activity Costs (3)	28.63%
Total Support Cost Allocation		61.60%



<p align="center"><b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b></p>	<p align="center"><b>FORM HFE-2.1</b></p>	
<p>01) Claimant  El Camino Community College District</p>	<p align="center">Fiscal Year  2000-2001</p>	
<p>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.</p>	<p align="center">(a) FY 1986/87</p>	<p align="center">(b) FY of Claim</p>
<p>Accident Reports</p>	X	X
<p>Appointments</p>		
<p>    College Physician, surgeon</p>	X	X
<p>    Dermatology, Family practice</p>	X	X
<p>    Internal Medicine</p>	X	X
<p>    Outside Physician</p>	X	X
<p>    Dental Services</p>		
<p>    Outside Labs, (X-ray, etc.,)</p>	X	X
<p>    Psychologist, full services</p>	X	X
<p>    Cancel/Change Appointments</p>	X	X
<p>    Registered Nurse</p>	X	X
<p>    Check Appointments</p>	X	X
<p>Assessment, Intervention and Counseling</p>		
<p>    Birth Control</p>	X	X
<p>    Lab Reports</p>	X	X
<p>    Nutrition</p>	X	X
<p>    Test Results, office</p>	X	X
<p>    Venereal Disease</p>	X	X
<p>    Communicable Disease</p>	X	X
<p>    Upper Respiratory Infection</p>	X	X
<p>    Eyes, Nose and Throat</p>	X	X
<p>    Eye/Vision</p>	X	X
<p>    Dermatology/Allergy</p>	X	X
<p>    Gynecology/Pregnancy Service</p>		
<p>    Neuralgic</p>	X	X
<p>    Orthopedic</p>	X	X
<p>    Genito/Urinary</p>	X	X
<p>    Dental</p>	X	X
<p>    Gastro-Intestinal</p>	X	X
<p>    Stress Counseling</p>	X	X
<p>    Crisis Intervention</p>	X	X
<p>    Child Abuse Reporting and Counseling</p>	X	X
<p>    Sunstance Abuse Identification and Counseling</p>	X	X
<p>    Eating Disorders</p>	X	X
<p>    Weight Control</p>	X	X
<p>    Personal Hygiene</p>	X	X
<p>    Burnout</p>	X	X
<p>    Other Medical Problems, list</p>	X	X
<p>Examinations, minor illnesses</p>		
<p>    Recheck Minor Injury</p>	X	X
<p>Health Talks or Fairs, Information</p>		
<p>    Sexually Transmitted Disease</p>	X	X
<p>    Drugs</p>	X	X
<p>    Acquired Immune Deficiency Syndrome</p>	X	X
<p>    Child Abuse</p>	X	X

<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>		<b>FORM HFE-2.1</b>	
(01) Claimant		Fiscal Year	
El Camino Community College District		2000-2001	
(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		X	X
Influenza		X	X
Information		X	X
Insurance			
On Campus Accident			
Voluntary			
Insurance Inquiry/Claim Administration			
Laboratory Tests Done			
Inquiry/Interpretation		X	X
Pap Smears		X	X
Physical Examinations			
Employees			
Students		X	X
Athletes		X	X
Medications			
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.,		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops		X	X
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list--> Ibuprofen			
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry			
Elevator Passes			
Temporary Handicapped Parking Permits			

MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1	
(01) Claimant El Camino Community College District	Fiscal Year 2000-2001	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis		
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG		
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list		
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X
Skin Rash Preparations		
Eye Drops		

**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 S19140

A (02) Mailing Address:  
 B  
 E Claimant Name  
 L El Camino Community College District  
 County of Location  
 H Los Angeles  
 E Street Address  
 R 16007 Crenshaw Boulevard  
 E City State Zip Code  
 Torrance CA 90506-0002

Reimbursement Claim Data	
(22) HFE - 1.0, (04)(b)	\$ 167,511
(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"/>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>
Fiscal Year of Cost	(06) 2002-03	(12) 2001-2002
Total Claimed Amount	(07) \$ 180,000	(13) \$ 167,511
Less: 10% Late Penalty, but not to exceed 00		(14) \$ -
Less: Estimate Claim Payment Received		(15) \$ 35,266
Net Claimed Amount		(16) \$ 132,245
Due from State	(08) \$ 180,000	(17) \$ 132,245
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  
  
 Pamela Fees  
 Type or Print Name

Date  
 12-23-02  
 Business Manager  
 Title

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



# STATE OF CALIFORNIA

62-528582

H THE TREASURER OF THE STATE WILL PAY OUT OF THE  
IDENTIFICATION NO. S19140

FUND NO. 0001 FUND NAME GENERAL FUND

6870

MO. DAY YR. 03 06 2002

90-1342/1211

62528582

TO 8582  
TREASURER  
EL CAMINO COMM COL DIST  
LOS ANGELES COUNTY  
16007 CRENSHAW BLVD  
TORRANCE CA 90506

DOLLARS 13528.00 CENTS

*Kathleen Connell*  
KATHLEEN CONNELL  
STATE CONTROLLER



⑆ 21113423⑆ 62528582⑈

DETACH ON DOTTED LINE  
KEEP THIS PORTION FOR YOUR RECORDS

62-528582

ISSUE DATE: 03/06/2002

ISSUE DATE: 03/06/2002

CLAIM SCHEDULE NBR: MA11392E

### REIMBURSEMENT OF STATE MANDATED COSTS

ANY QUESTIONS REGARDING THIS CLAIM CALL FRAN 916 323-0766

ACL : 6870-295-0001 PROG : HEALTH FEE ELIMINATION CH 1/84

2001/2002 ESTIMATED PAYMENT CLAIMED AMT: 151,000.00

TOTAL ADJUSTMENTS: .00

TOTAL APPROVED CLAIMED AMT: 151,000.00

LESS PRIOR PAYMENTS: .00

PRORATA PERCENT: 23.354721

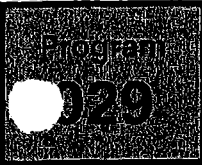
PRORATA BALANCE DUE: 115,734.00-

APPROVED PAYMENT AMOUNT: 35,266.00

PAYMENT OFFSETS (ACL NBR, NAME, FY, AMT.):

6110-295-0001 COLLECTIVE BARGAIN CH 96 99/00 21,738-

NET PAYMENT AMOUNT: 13,528.00


	<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.0</b>
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<b>(01) Claimant:</b> Claimant Name  El Camino Community College District	<b>(02) Type of Claim:</b> Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year  2001-2002
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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.	El Camino College	\$ 167,511.12
2.		\$ -
3.		\$ -
4.		\$ -
5.		\$ -
6.		\$ -
		\$ -
8.		\$ -
9.		\$ -
10.		\$ -
11.		\$ -
12.		\$ -
13.		\$ -
14.		\$ -
15.		\$ -
16.		\$ -
17.		\$ -
18.		\$ -
19.		\$ -
20.		\$ -
< 1.		\$ -

<b>(04) Total Amount Claimed</b>	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 167,511
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	<b>MANDATED COSTS</b> <b>HEALTH FEE ELIMINATION</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>HFE-1.1</b>
--	--	-------------------------------

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

**(03) Name of College** El Camino 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: 28.63%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 403,626	\$ 115,558	\$ 519,184
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level</b> [Line (05) - line (06)]	\$ 403,626	\$ 115,558	\$ 519,184

**(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	2,298	15,445	\$ 10.00	\$ 22,980	\$ 10.00	\$ 154,450	\$ 177,430
2. Per spring semester	1,894	15,272	\$ 10.00	\$ 18,940	\$ 10.00	\$ 152,720	\$ 171,660
3. Per summer session	30	13,942	\$ -	\$ -		\$ -	\$ -
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)] \$ 349,090

**(10) Sub-total** [Line (07) - line (09)] \$ 170,094

<b>Cost Reduction</b>	
<b>(11) Less: Offsetting Savings, if applicable</b>	\$ -
<b>(12) Less: Other Reimbursements, if applicable</b>	\$ 2,583
<b>(13) Total Amount Claimed</b> [Line (10) - {(line (11) + line (12))}]	\$ 167,511

**EL CAJO COMMUNITY COLLEGE DISTRICT  
 CALCULATION OF INDIRECT COST RATE,  
 FISCAL YEAR  
 2000-2001**

*FOR 01-02  
 CLAIMS*

REFERENCE (CCFS 311)	DESCRIPTION	2000-2001
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	34,637,085
	Instructional Operating Expenses	1,405,325
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	112,575
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>36,155,185</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	2,350,610
	Instructional Admin. Salaries and Benefits	4,749,688
	Instructional Admin. Operating Expenses	1,141,056
	Auxiliary Classes Non-Inst. Salaries and Benefits	1,605,173
	Auxiliary Classes Operating Expenses	1,543,211
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>11,389,738</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>47,544,923</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services Non Inst. Salaries and Benefits	2,068,940
	Instructional Support Services Operating Expenses	279,642
	Admissions and Records	2,372,772
	Counseling and Guidance	3,469,142
	Other Student Services	5,897,480
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>14,087,976</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS          AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>	<b>61,632,899</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	7,135,934
	Planning and Policy Making	2,634,424
	General Instructional Support Services	7,872,419
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>17,642,777</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT          SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS          (5 + 6) = TOTAL COSTS</b>	<b>79,275,676</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
Indirect Support Costs Allocation Rate =	Total Indirect Supports Costs (6) Total Instructional Activity Costs and Direct Support Costs (5)	28.63%
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4) Total Instructional Activity Costs (3)	29.63%
Total Support Cost Allocation		58.26%



Program <b>029</b>		MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2.1	
(C., Claimant El Camino 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			X	X	
Dermatology, Family practice			X	X	
Internal Medicine			X	X	
Outside Physician			X	X	
Dental Services					
Outside Labs, (X-ray, etc.,)			X	X	
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					
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			X	X	
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	

<b>MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL</b>		<b>FORM HFE-2.1</b>	
( ) Claimant  El Camino 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		X	X
Influenza		X	X
Information		X	X
Insurance			
On Campus Accident			
Voluntary			
Insurance Inquiry/Claim Administration			
Laboratory Tests Done		X	X
Inquiry/Interpretation		X	X
Pap Smears		X	X
Physical Examinations			
Employees			
Students		X	X
Athletes		X	X
Medications			
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.,		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops		X	X
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list--> Ibuprofen		X	X
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry			
Elevator Passes			
Temporary Handicapped Parking Permits			

Program <b>029</b>	<b>MANDATED COSTS                      HEALTH FEE ELIMINATION                      COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM                      HFE-2.1</b>	
(c) Claimant  El Camino 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	
<b>Referrals to Outside Agencies</b>			
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	
<b>Tests</b>			
Blood Pressure	X	X	
Hearing	X	X	
Tuberculosis			
Reading	X	X	
Information	X	X	
Vision	X	X	
Glucometer	X	X	
Urinalysis	X	X	
Hemoglobin	X	X	
EKG			
Strep A Testing	X	X	
PG Testing	X	X	
Monospot	X	X	
Hemacult	X	X	
Others, list			
<b>Miscellaneous</b>			
Absence Excuses/PE Waiver	X	X	
Allergy Injections	X	X	
Band-aids	X	X	
Booklets/Pamphlets	X	X	
Dressing Change	X	X	
Rest	X	X	
Suture Removal	X	X	
Temperature	X	X	
Weigh	X	X	
Information	X	X	
Report/Form	X	X	
Wart Removal	X	X	
Others, list			
<b>Committees</b>			
Safety	X	X	
Environmental	X	X	
Disaster Planning	X	X	
Skin Rash Preparations			
Eye Drops			

**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**

<b>(01) Claimant Identification Number:</b> L S19140			<b>Reimbursement Claim Data</b>	
<b>(02) Mailing Address:</b>			(22) HFE - 1.0, (04)(b)	\$ 174,277
<b>Claimant Name</b> L El Camino Community College District			(23)	
<b>County of Location</b> H Los Angeles			(24)	
<b>Street Address</b> E 16007 Crenshaw Boulevard			(25)	
<b>City</b> Torrance	<b>State</b> CA	<b>Zip Code</b> 90506-0002	(26)	
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(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)	
<b>Fiscal Year of Cost</b>	(06) 2003-2004	(12) 2002-2003	(31)	
<b>Total Claimed Amount</b>	(07) \$ 175,000	(13) \$ 174,277	(32)	
<b>Less: 10% Late Penalty, but not to exceed \$ 00</b>		(14) \$ -	(33)	
<b>Less: Estimate Claim Payment Received</b>		(15) \$ -	(34)	
<b>Net Claimed Amount</b>		(16) \$ 174,277	(35)	
<b>Due from State</b>	(08) \$ 175,000	(17) \$ 174,277	(36)	
<b>Due to State</b>		(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**

**Date**

*Pamela Fees*

1-6-04

Pamela Fees

Business Manager

Name or Print Name

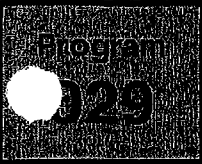
Title

Name of Contact Person or Claim

Telephone Number (858) 514-8605

SixTen and Associates

E-Mail Address kbpsixten@aol.com

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

<b>(01) Claimant:</b>	<b>(02) Type of Claim:</b>	Fiscal Year
Claimant Name	Reimbursement <input checked="" type="checkbox"/>	
El Camino 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.	El Camino College	\$	174,277.26
2.		\$	-
3.		\$	-
4.		\$	-
5.		\$	-
6.		\$	-
		\$	-
8.		\$	-
9.		\$	-
10.		\$	-
11.		\$	-
12.		\$	-
13.		\$	-
14.		\$	-
15.		\$	-
16.		\$	-
17.		\$	-
18.		\$	-
19.		\$	-
20.		\$	-
21.		\$	-
<b>(04) Total Amount Claimed</b>	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$	174,277

<b>MANDATED COSTS</b>	<b>HEALTH FEE ELIMINATION</b>	<b>FORM HFE-1.1</b>
<b>CLAIM SUMMARY</b>		

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

**(03) Name of College** El Camino 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 checked="" type="checkbox"/>	MORE <input type="checkbox"/>
----------------------------------	---	----------------------------------

	Direct Cost	Indirect Cost of: 28.46%	Total
<b>(05) Cost of Health Services for the Fiscal year of Claim</b>	\$ 455,152	\$ 129,536	\$ 584,688
<b>(06) Cost of providing current fiscal year health services which are in excess of the level provided in 1986/87</b>	\$ -	\$ -	\$ -
<b>(07) Cost of providing current fiscal year health services at the 1986/87 level [Line (05) - line (06)]</b>	\$ 455,152	\$ 129,536	\$ 584,688

**(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	4,776	15,928	\$ 10.00	\$ 47,760	\$ 10.00	\$ 159,280	\$ 207,040
2. Per spring semester	4,448	14,386	\$ 10.00	\$ 44,480	\$ 10.00	\$ 143,860	\$ 188,340
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)] \$ 395,380

**(10) Sub-total** [Line (07) - line (09)] \$ 189,308

**Cost Reduction**

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

**(12) Less: Other Reimbursements, if applicable** \$ 15,031

**(13) Total Amount Claimed** [Line (10) - (line (11) + line (12))] \$ 174,277

**EL CAMINO COMMUNITY COLLEGE DISTRICT  
CALCULATION OF INDIRECT COST RATE,  
FISCAL YEAR  
2001-2002**

*For 02-03  
claims*

REFERENCE (CCFS 311)	DESCRIPTION	2001-2002
<b>INSTRUCTIONAL ACTIVITY</b>		
	<b>Instructional Costs</b>	
	Instructional Salaries and Benefits	38,465,491
	Instructional Operating Expenses	1,307,934
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	123,607
	<b>TOTAL INSTRUCTIONAL COSTS 1</b>	<b>39,897,032</b>
	<b>Non-Instructional Costs</b>	
	Non-Instructional Salaries and Benefits	2,570,144
	Instructional Admin. Salaries and Benefits	5,056,212
	Instructional Admin. Operating Expenses	971,106
	Auxiliary Classes Non-Inst. Salaries and Benefits	2,052,409
	Auxiliary Classes Operating Expenses	1,373,030
	<b>TOTAL NON-INSTRUCTIONAL COSTS 2</b>	<b>12,022,901</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)</b>	<b>51,919,933</b>
<b>DIRECT SUPPORT ACTIVITY</b>		
	<b>Direct Support Costs</b>	
	Instructional Support Services Non Inst. Salaries and Benefits	2,302,041
	Instructional Support Services Operating Expenses	259,142
	Admissions and Records	2,418,915
	Counseling and Guidance	3,696,847
	Other Student Services	6,515,747
	<b>TOTAL DIRECT SUPPORT COSTS 4</b>	<b>15,192,692</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)</b>	<b>67,112,625</b>
	<b>Indirect Support Costs</b>	
	Operation and Maintenance of Plant	7,117,031
	Planning and Policy Making	2,723,404
	General Instructional Support Services	9,259,918
	<b>TOTAL INDIRECT SUPPORT COSTS 6</b>	<b>19,100,353</b>
	<b>TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS</b>	<b>86,212,978</b>
<b>SUPPORT COSTS ALLOCATION RATES</b>		
Indirect Support Costs Allocation Rate =	$\frac{\text{Total Indirect Support Costs (6)}}{\text{Total Instructional Activity Costs and Direct Support Costs (5)}}$	28.46%
Direct Support Costs Allocation Rate =	$\frac{\text{Total Direct Support Costs (4)}}{\text{Total Instructional Activity Costs (3)}}$	29.26%
Total Support Cost Allocation		57.72%

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

**FORM  
HFE-2.1**

(01) Claimant  El Camino 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	X	X
Dermatology, Family practice	X	X
Internal Medicine	X	X
Outside Physician	X	X
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
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	X	X
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X



Program 029	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1	
(01) Claimant  El Camino 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		X	X
Influenza		X	X
Information		X	X
Insurance			
On Campus Accident			
Voluntary			
Insurance Inquiry/Claim Administration			
Laboratory Tests Done		X	X
Inquiry/Interpretation		X	X
Pap Smears		X	X
Physical Examinations			
Employees			
Students		X	X
Athletes		X	X
Medications			
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.,		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops		X	X
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list			
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry			
Elevator Passes			
Temporary Handicapped Parking Permits			

Program <b>029</b>	MANDATED COSTS HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2.1	
(.) Claimant  El Camino 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 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 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 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	 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	

# CONFIRMATION OF RECEIPT OF DOCUMENT

Please fax this form to SixTen upon receipt of the enclosed claim.

Fax to: SixTen and Associates  
858-514-8645

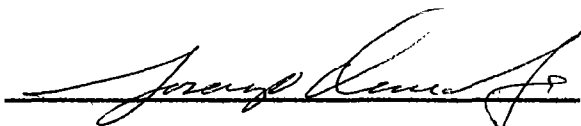
From: Commission on State Mandates

RE: Incorrect Reduction Claim of

El Camino Community College District  
Health Fee Elimination  
2000-01 through 2002-03

This fax is to confirm receipt of the above referenced document.

Date received: 3/27/04

Received by: 

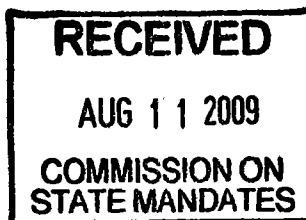
# SixTen and Associates

## Mandate Reimbursement Services

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

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

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-11  
El Camino Community College District  
Fiscal Years: 2000-01, 2001-02, and 2002-03  
Incorrect Reduction Claim

Dear Ms. Higashi:

This letter is in rebuttal to the State Controller's Office response dated November 21, 2008, to the Incorrect Reduction Claim of El Camino Community College District (District) submitted on March 27, 2006.

### **Part I. Mr. Silva's Transmittal Letter**

Mr. Silva's transmittal letter, dated November 21, 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 completely 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, cited in footnote three of Mr. Silva's letter, relied on *Honeywell, Inc. v. State Board of Equalization*<sup>1</sup> 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.

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<sup>1</sup>*Honeywell, Inc. v. State Board of Equalization* (1982)128 Cal.App.3d 739, 744.

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 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 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 no finding regarding offsetting revenue in the Parameters and Guidelines or the reimbursement process.

## E. STATUTE OF LIMITATIONS

Mr. Silva's letter claims that the FY 2000-01 and FY 2001-02 reimbursement claims were subject to the amended version of Government Code Section 17558.5 that went into effect on January 1, 2003, because they were still subject to audit on that date under the previous version of this section. However, the two claims were subject only to the version of Section 17558.5 in effect at the time they were 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 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.

Finally, the Controller has taken an inconsistent position. The Controller's response of November 21, 2008, which consists of a transmittal letter signed by Mr. Silva and a response signed by Mr. Spano, does not advocate applying a single 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. 16) accepts the District's position by applying the 1996 version of Section 17558.5.

**II. State Controller's Office Analysis and Response to the Incorrect Reduction Claim by El Camino Community College District (Spano Response)**

**RE: III. THE DISTRICT OVERSTATED ITS INDIRECT COST RATES**

The Controller determined that the District overstated indirect costs by \$188,652 for the audit period. Mr. Spano's response (Tab 2; p. 5) asserts that the District's indirect cost rate was recalculated using an alternative methodology because the original rate calculated by the District was not federally approved, as required when using OMB Circular A-21. However, the District used the same source document as the Controller and applied the same method, but corrected for instances where the Controller did not follow the CCFS-311 determination of direct and indirect costs. 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.

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.

The Controller's interpretation of Section VI of the Parameters and Guidelines would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The Controller's claiming instructions are unilaterally created and modified without public notice or comment. The Commission would violate the Administrative Procedure Act if it held that the Controller's claiming instructions are enforceable as standards or regulations. In fact, until 2005, the Controller regularly included a "forward" in the Mandated Cost Manual for Community Colleges 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, Mr. Spano's response (Tab 2; p. 7) points out 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: "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."

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" cost rates for this mandate program.

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

Mr. Spano's response (Tab 2; p. 7) states that the Controller's FAM-29C method was created to "equitably allocate" indirect costs for mandate activities and "provide a consistent indirect cost rate methodology for all community college districts' mandated cost program." There is no evidence that the FAM-29C methodology actually achieves these goals. More important, the Controller's aspirations for the FAM-29C do not make the methodology an enforceable preference since the Controller has not adhered to the requirements of the Administrative Procedure Act.

For years prior to, and during the audit period, the Controller accepted federally approved indirect cost rates as a matter of practice. Federally approved indirect cost rates are created using the OMB Circular A-21. In contradiction to this longstanding policy, Mr. Spano's response (Tab 2; p. 7) concludes that the OMB Circular A-21 does not "equitably allocate" indirect costs for mandate activities. Further, these observations are not relevant to the audit because the District did not use the OMB Circular A-21.

Finally, Mr. Spano's response (Tab 2; p. 7) 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. THE DISTRICT UNDERSTATED AUTHORIZED HEALTH FEE REVENUES CLAIMED

The Controller asserts that revenue offsets were understated by \$195,333 for the audit period. 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 District is not required to charge a health fee, and must only claim offsetting revenue it actually experiences.

Mr. Spano's response (Tab 2; p. 11) 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.

Mr. Spano's response (Tab 2; p. 11) correctly states that health service fees were included in the Parameters and Guidelines as a possible source of offsetting savings, but then concludes that fees authorized by Education Code Section 76355 must be deducted because "[t]o the extent districts have 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)<sup>2</sup>.

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. Thus, this finding is based on an illogical interpretation of the Parameters and Guidelines by the Controller. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not.

Mr. Spano’s response (Tab 2; p. 12) 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 (DOF) 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. That the Commission staff and the California Community Colleges Chancellor’s Office agreed with DOF’s interpretation does not negate the fact that the Commission adopted parameters and guidelines that *did not* include the additional language. It would be ridiculous if the Commission held that every proposal that is discussed was somehow implied into the adopted document, because the proposals of the various parties are often contradictory. Therefore, it is evident that the Commission intends the language of the Parameters and Guidelines to be construed as written, and only those savings that are *experienced* are to be deducted.

The two court cases Mr. Spano’s response (Tab 2; p. 12) cited (*County of Fresno v. California* (1991) 53 Cal. 3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal. App. 4<sup>th</sup> 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 stage, only whether there is fee authority *sufficient to fully fund* the mandate that would prevent the Commission from approving the test claim.

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

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).

Finally, Mr. Spano's response (Tab 2; p. 12) states that the auditor used the District's enrollment and BOGG grant records to calculate authorized health service 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: VII. STATUTE OF LIMITATIONS FOR AUDIT

The District asserts that the FY 2000-01 and FY 2001-02 claims were beyond the statute of limitations for audit when the Controller completed its audit on October 5, 2005.

#### Audit Initiation

According to the Declaration of Pamela Fees, which was attached to the District's Incorrect Reduction Claim, an auditor contacted the District to schedule an entrance conference on December 2, 2004. That entrance conference took place on January 5, 2005. A two-year statute of limitations to complete the audit, imposed by the applicable version of Government Code Section 17558.5, expired for both fiscal years on December 31, 2004. The Controller interprets the statute of limitations as being satisfied so long as the audit is initiated, rather than completed, before the statute of

limitation expires. Therefore, in order to conclude that the audit did not violate the statute of limitations, Mr. Spano's response (Tab 2; p. 14) asserts that the audit was initiated with the December 2, 2004 phone call rather than the January 5, 2005 entrance conference. This position is inconsistent with past audits<sup>3</sup>, and is not consistent with Mr. Silva's assertion in his transmittal letter. Mr. Silva makes no attempt to assert the start of the audit is the phone call, and instead states that the audit "was initiated no later than January 5, 2005, when the entrance conference was held . . . ."

Mr. Spano's response (Tab 2; p. 16) asserts that the audit was delayed as a result of District personnel not being available to meet with auditors. A letter dated December 9, 2004, from the Controller to the District is cited (Tab 8) as evidence of the District's delay. However, the Declaration of Pamela Fees directly contradicts this conclusion. The auditor requested an entrance conference on "any date before December 31, 2004 that was convenient for the district staff." The District had an available time on December 9, 2004. The auditor unilaterally postponed the entrance conference to January 5, 2005 because the auditor and the auditor's manger were not available at that time. Therefore, Mr. Spano's response is in error when it asserts that the District was the source of the delay of the entrance conference.

---

<sup>3</sup> The Controller has taken various positions on the date the audit is initiated in different audit reports. For example, the following audit reports state that the initial telephone contact initiates the audit:

- Los Rios Community College District, Health Fee Elimination, issued June 24, 2004.
- Los Rios Community College District, Mandate Reimbursement Process, issued June 24, 2004.

The following audit reports state that the audit entrance conference initiates the audit:

- Newport-Mesa Unified School District, School District of Choice, issued August 31, 2004.
- State Center Community College District, Health Fee Elimination, issued September 17, 2004.
- Clovis Unified School District, Graduation Requirements, issued October 22, 2004.
- San Bernardino Community College District, Health Fee Elimination, issued November 10, 2004.
- West Valley-Mission Community College District, Health Fee Elimination, issued April 8, 2005.
- Long Beach Community College District, Health Fee Elimination, issued April 27, 2005.
- North Orange County Community College District, Health Fee Elimination, issued July 22, 2005.
- Poway Unified School District, Emergency Procedures, Earthquakes and Disasters, issued August 31, 2005.

“Subject to Audit”

As Mr. Spano’s response (Tab 2; p. 16) 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 2000-01 and FY 2001-02 claims were 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 the time limitation may not be extended simply because the audit process is initiated.

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 commences 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.

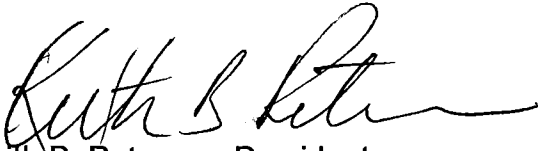
Among the important purposes of statutes of limitations are protecting settled expectations, giving stability to transactions, and encouraging the prompt enforcement of substantive law. (*Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861, 872). The Controller’s interpretation of Section 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 2000-01 and FY 2001-02 claims were beyond the statute of limitations when the Controller completed its audit by issuing the final audit report on October 5, 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: Jo Ann Higdon, Vice President  
Administrative Services  
El Camino 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-11  
4 El Camino 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 Jo Ann Higdon, Vice President  
30 El Camino Community College District  
31 16007 Crenshaw Boulevard  
32 Torrance, CA 90506-0002  
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

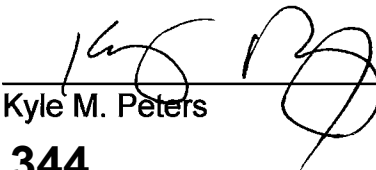
46  **FACSIMILE TRANSMISSION:** On the  
date below from facsimile machine  
number (858) 514-8645, I personally  
transmitted to the above-named person(s)  
to the facsimile number(s) shown above,  
pursuant to California Rules of Court  
2003-2008. A true copy of the above-  
described document(s) was(were)  
transmitted by facsimile transmission and  
the transmission was reported as  
complete and without error.

**OTHER SERVICE:** I caused such  
envelope(s) to be delivered to the office of  
the addressee(s) listed above by:  
  
\_\_\_\_\_  
(Describe)

A copy of the transmission report issued  
by the transmitting machine is attached to  
this proof of service.

**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  
**344**



**Exhibit A**



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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 Appeal reversed.

The events underlying the companion case of Himelspace v. Department of Motor Vehicles (1983) post, at page 542 [189 Cal.Rptr. 518, 658 P.2d 1319], are procedurally similar except that Himelspace 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 herefore 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 **349** 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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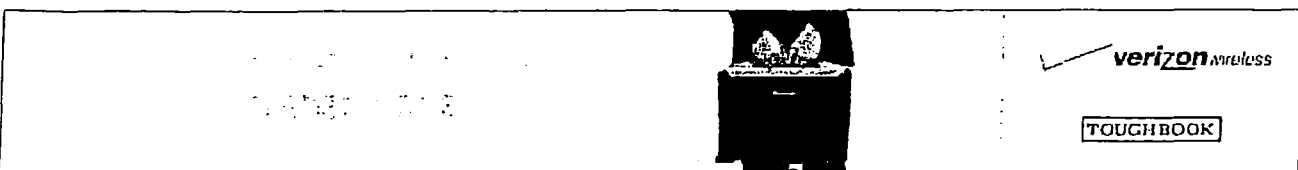
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## **Evelyn, Inc., v. California Emp. Stab. Com. , 48 Cal.2d 588**

[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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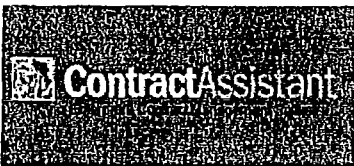
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## **City of Long Beach v. Department of Industrial Relations (2004)34 Cal.4th 942 , -- Cal.Rptr.3d --; -- P.3d --**

[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**

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## 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 by 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 Freeddenfeld & 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**

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# 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](mailto: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

## TABLE OF CONTENTS

<b>SECTION 1</b>	<b>Appropriation Information</b>	<b>Page</b>
1.	Reimbursable State Mandated Cost Programs	1
2.	Appropriations for the 2003-04 Fiscal Year	2

<b>SECTION 2</b>	<b>Filing a Claim</b>	
1.	Introduction	1
2.	Types of Claims	1
3.	Minimum Claim Amount	3
4.	Filing Deadline for Claims	3
5.	Payment of Claims	4
6.	State Mandates Apportionment System (SMAS)	5
7.	Direct Costs	6
8.	Indirect Costs	11
9.	Offsets Against State Mandated Claims	15
10.	Notice of Claim Adjustments	16
11.	Audit of Costs	16
12.	Source Documents	17
13.	Claim Forms and Instructions	17
14.	Retention of Claiming Instructions	18

### **SECTION 3 State Mandated Cost Programs**

Program Name	Chapter/Statute	Program Number
Absentee Ballots	Ch. 77/78	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
Peace Officers Procedural Bill of Rights	Ch. 465/76	239
Photographic Record of Evidence	Ch. 875/85	240
Sex Offenders: Disclosure by Law Enforcement Officers	Ch. 908/96	241
Threats Against Peace Officers	Ch. 1249/92	242

## TABLE OF CONTENTS

SECTION 4 Appendix	Page
A. State of California Travel Expense Guidelines	1-3
B. Government Code Sections 17500 - 17616	1-17



## 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 <sup>1</sup>			
(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
<b>Total Appropriations, Item 6110-295-001</b>			<b>\$ 0</b>
Chapter 379/02, Item 6870-295-0001			
(13)	Chapter 1/84	Health Fee Elimination	1,000
<b>TOTAL - Funding for the 2003-04 Fiscal Year</b>			<b>\$1,000</b>

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<sup>1</sup> 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**

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

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

**Table 2 Productive Hourly Rate, Percent of Salary Method**

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

<b>Table 4 Calculating an Average Productive Hourly Rate</b>			
	<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
<b>Total</b>	<b>5.50 hrs</b>		<b>\$45.88</b>
<b>Average Productive Hourly Rate is \$45.88/5.50 hrs. = \$8.34</b>			

**(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**

<b>Supplies</b>	<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					
<b>Subtotal</b>		<b>\$30,357,605</b>	<b>\$1,801,898</b>	<b>\$28,555,707</b>	<b>\$1,118,550</b>	<b>\$27,437,157</b>

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**

	<b>Program Costs</b>	<b>Actual Local Assistance Revenues</b>	<b>State Mandated Costs</b>	<b>Offset Against State Mandated Claims</b>	<b>Claimable Mandated Costs</b>
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](http://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](mailto: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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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](http://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

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# Contents

## Audit Report

Summary .....	1
Background .....	1
Objective, Scope, and Methodology .....	2
Conclusion .....	2
Views of Responsible Official .....	3
Restricted Use .....	3
Schedule 1—Summary of Program Costs.....	4
Findings and Recommendations .....	7

# 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 <sup>1</sup>
<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 <sup>1</sup>
<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	<u>\$ 280,694</u>	268,128	<u>\$ (12,566)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 268,128</u>		
<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	<u>\$ 413,324</u>	230,962	<u>\$ (182,362)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 230,962</u>		
<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 <sup>2</sup>	(10,000)	(9,515)	485	
Total program costs	<u>\$ 319,864</u>	182,874	<u>\$ (136,990)</u>	
Less amount paid by the State		(234,716)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (51,842)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<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 <sup>2</sup>	(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		(273,783)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 478,339</u>		

<sup>1</sup> See the Findings and Recommendations section.

<sup>2</sup> 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]."<sup>1</sup> 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.

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<sup>1</sup> 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	19,965
Audit adjustment	39,090
Authorized health service fees claimed	(431,580)
Adjusted authorized health service fees claimed	<u>\$ (392,490)</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>	<u>—</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 CCCCO 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.<sup>2</sup> 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.

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<sup>2</sup> *County of Fresno v. California* (1991) 53 Cal. 3d 482; *Connell v. Santa Margarita* (1997) 59 Cal. App. 4<sup>th</sup> 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	\$ (14,958)	\$ (41,359)	\$ (15,001)	\$ (22,803)	\$ (24,686)	\$ (118,807)

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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Office of the Executive Vice Chancellor



**Yosemite Community College District**

P.O. Box 4065 / Modesto, CA 95352 / 2201 Blue Gum Avenue  
Phone (209) 575-6530 / FAX (209) 575 6562

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 (fees) 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  
Post Office Box 942850  
Sacramento, CA 94250-5874**

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

**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. Comms.*, 86 Cal.App.2d 714 [196 P. d 94]; *Larson v. Board of Police etc. Comms.*, 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:  $2\% (X) = 60\%/yr.; X = 30 \text{ yrs.}$

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. Buhrmann. However, while Buhrmann 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, Buhrmann'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 Buhrmann'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. *Schaefer 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. Tomano* (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 plaintiffs' 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]rordinarily 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 Buhrmann 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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## COMMISSION ON STATE MANDATES

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August 1, 2014

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

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

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Health Fee Elimination, 05-4206-I-11*  
 Education Code Section 76355  
 Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118  
 Fiscal Years 2000-2001, 2001-2002, and 2002-2003  
 El Camino 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.)

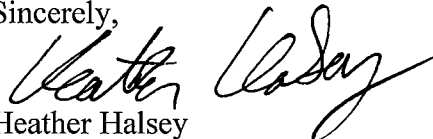
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### 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)<sup>1</sup>  
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

*Health Fee Elimination*

Fiscal Years 2000-2001, 2001-2002, and 2002-2003

05-4206-I-11

El Camino Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses the incorrect reduction claim (IRC) filed by El Camino Community College District (claimant) regarding reductions made by the State Controller's Office (SCO) to reimbursement claims for indirect costs incurred during fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program of \$399,891.

The following issues are in dispute in this IRC:

- The statute of limitations applicable to audits of reimbursement claims by the SCO for fiscal years 2000-2001 and 2001-2002;
- Reduction of costs claimed by the claimant in fiscal years 2000-2001, 2001-2002, and 2002-2003 based on claimant's development and application of indirect cost rates; and
- The appropriate extent of offsetting revenue available from health service fees, pursuant to the *Clovis Unified* decision.

**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.<sup>2</sup> In 1984, the Legislature repealed the community colleges' fee authority for health services.<sup>3</sup> However, the Legislature also reenacted

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<sup>1</sup> Statutes 1993, chapter 8.

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

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

section 72246 in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester), to become operative on January 1, 1988.<sup>4</sup>

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

### **Procedural History**

On January 14, 2002, claimant filed reimbursement claims with the SCO for the 2000-2001 fiscal year. On December 30, 2002, claimant filed reimbursement claims with the SCO for the 2001-2002 fiscal year. On December 15, 2003 the SCO conducted an entrance conference to initiate an audit of the 2000-2001, 2001-2002, and 2002-2003 claims. On October 5, 2005 the SCO issued its final audit report, concluding that claimant had overstated its indirect costs for the program. Claimant filed this IRC on March 27, 2005, as a result of its disagreement over the SCO's audit report.<sup>10</sup>

On November 24, 2008, the SCO submitted written comments on the IRC, reiterating the audit findings and asserting that its adjustments were appropriate. On September 11, 2009, claimant filed rebuttal comments restating its claim that the indirect cost rate proposal had been

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<sup>4</sup> Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

<sup>5</sup> Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

<sup>6</sup> Statutes 1987, chapter 1118.

<sup>7</sup> 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).

<sup>8</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

<sup>9</sup> 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).

<sup>10</sup> Exhibit A, Glendale Community College District IRC.

improperly rejected; and continuing to challenge the statute of limitations asserted by the SCO. Commission staff issued a draft proposed decision on the IRC on August 1, 2014.

### **Commission Responsibilities**

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO 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 SCO 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.<sup>11</sup> 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."<sup>12</sup>

With regard to the SCO'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.<sup>13</sup> The Commission must also review the SCO's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>14</sup> 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.<sup>15</sup>

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<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>12</sup> *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.

<sup>13</sup> *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.

<sup>14</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>15</sup> 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.

<b>Subject</b>	<b>Description</b>	<b>Staff Recommendation</b>
<p>Statute of limitations for fiscal year 2000-2001 and 2001-2002 reimbursement claims.</p>	<p>At the time the underlying reimbursement claims were filed, Government Code section 17558.5 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 SCO 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 SCO to initiate an audit shall commence to run from the date of initial payment of the claim.</p> <p>The statute was amended effective January 1, 2003 to enlarge the period of time to initiate an audit to three years after the date the actual reimbursement claim is filed or last amended.</p> <p>The statute was also amended effective January 1, 2005, to impose a statutory deadline to complete the audit “not later than two years after the date that the audit is commenced.”</p>	<p><i>Deny:</i> Staff finds that audit of the 2000-2001 and 2001-2002 reimbursement claims was timely.</p> <p>The 2002 amendment to Government Code section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the statute of limitations from two years to three years after the date the actual reimbursement claim is filed or last amended, controls in this case and gives the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. Since the audit was initiated “no later than January 5, 2005,” when the entrance conference was held, the audit was timely initiated.</p> <p>Moreover, the audit was timely completed. Effective January 1, 2005, when the audit period was still pending in this case, the rule changed to require that “an audit shall be completed not later than two years after the date that the audit is commenced;” which in this case would be no later than January 5, 2007. The audit was completed when the final audit</p>

		report was issued on October 5, 2005, well before the two year deadline of January 5, 2007, to complete the audit.
Reductions based on asserted flaws in the development of indirect cost rates.	For fiscal years 2000-2001, 2001-2002, and 2002-2003 claimant calculated its indirect cost rate without obtaining federal approval. The Controller reduced the claim by calculating the IRCP using Form FAM-29C.	<i>Deny:</i> – 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, which is authorized, but did not obtain federal approval for its indirect costs, as required by the OMB Circular A-21. Therefore the SCO’s reduction and recalculation of indirect costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
Reductions based on understated offsetting revenues from student health fees.	Claimant argues that the parameters and guidelines only require a claimant to declare offsetting revenues that the claimant “experiences,” and that while the fee amount that claimant was authorized to impose may have increased for the applicable period, nothing in the Education Code made the increase of those fees mandatory.	<i>Deny:</i> The reduction is correct as a matter of law. In the <i>Clovis Unified School District</i> decision, the court upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are authorized to charge. The Commission is bound by the court’s decision in <i>Clovis Unified</i> and must apply the Health Fee Rule upheld by the court.

**Staff Analysis**

**A. The audit of the claimant’s reimbursement claims for fiscal years 2000-2001 and 2001-2002 is not barred by the statute of limitations found in Government Code section 17558.5.**

Government Code section 17558.5, as added by Statutes 1995, chapter 945 (operative July 1, 1996), provides that a reimbursement claim “is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.”<sup>16</sup> Claimant contends that the relevant period for which the claim for fiscal years

<sup>16</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

2000-2001 and 2001-2002 would be *subject to audit* expired as of December 31, 2004 and thus the October 5, 2005 audit report was completed outside the period subject to audit.

The SCO argues that section 17558.5 does not require an audit to be *completed* within two years; “subject to audit,” according to the SCO, means subject to *initiation* of an audit. 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,<sup>17</sup> and there is no reason to interpret the prior version of the code differently.

The 2002 amendment was effective January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. Here, the 2002 amendment of section 17558.5, enlarged the statute of limitations from two years to three years after the date the actual reimbursement claim is filed or last amended, giving the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. As the audit was initiated “no later than January 5, 2005,” when the entrance conference was held, the audit was timely initiated.

The Commission further finds that the audit was timely completed. Before Government Code section 17558.5 was amended effective January 1, 2005, the SCO had to complete an audit within a reasonable period of time,<sup>18</sup> but did not have a statutory deadline for the completion of an audit. Effective January 1, 2005, when the audit period was still pending in this case, the rule changed to require that “an audit shall be completed not later than two years after the date that the audit is commenced;” which in this case would be no later than January 5, 2007. Here, the audit was completed when the final audit report was issued on October 5, 2005, well before the two year deadline of January 5, 2007, to complete the audit.

Based on the plain language of the statute, and the Legislature’s subsequent clarifying amendment to the statute, staff finds that the statute of limitations found in section 17558.5 does not bar the audit of the 2000-2001 and 2001-2002 reimbursement claims.

**B. The SCO’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 SCO reduced indirect costs claimed by the claimant by a total of \$188,652 because claimant did not obtain federal approval of its indirect cost rate for these years in accordance with OMB Circular A-21.<sup>19</sup> The SCO claiming instructions provide two options for claiming indirect costs: the OMB Circular A-21 or the state’s FAM-29C method. However, to use the OMB option, a claimant must obtain federal approval which the claimant did not do. Thus, the SCO applied the Form FAM-29C methodology Applying the rates from the Form FAM-29C methodology to

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<sup>17</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

<sup>18</sup> Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant. (*Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.)

<sup>19</sup> Exhibit B, SCO’s Comments on IRC, Exhibit D SCO Final Audit Report dated October 5, 2005, at p. 6 and Tab 2, SCO’s Analysis and Response to the IRC, at pp. 5-8.

total direct costs for the three fiscal years subject to audit resulted in a reduction in indirect costs of \$188,652.<sup>20</sup> The SCO's use of the FAM-29C method for calculating indirect costs is not arbitrary, capricious or lacking in evidentiary support. The FAM-29C method is expressly identified and allowed by the claiming instructions.

Therefore, staff finds that the SCO's reduction of indirect costs is correct as a matter of law, and the recalculation of indirect costs using another authorized method is not arbitrary, capricious, or entirely lacking in evidentiary support.

### **C. The SCO's Audit Reductions for Understated Offsetting Revenues Pursuant to *Clovis Unified* and the Health Fee Rule were Correct as a Matter of Law.**

The SCO found that the claimant understated offsetting revenue by \$8,807 for fiscal year 2000-2001, \$111,710 for fiscal year 2001-2002, and \$74,816 for fiscal year 2002-2003 because authorized health service fees should have been deducted as offsetting revenue.<sup>21</sup> The claimant reported and deducted only the amounts collected rather than the fee revenue authorized by statute.

Staff finds that this adjustment is correct as a matter of law, and consistent with the *Clovis Unified School District* decision, which upheld the SCO's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are authorized to charge.<sup>22</sup> 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.<sup>23</sup>

### **Conclusion**

Staff concludes that the SCO's audit was conducted within the statute of limitations. Pursuant to Government Code section 17551(d) staff further finds that:

- Claimant did not comply with the parameters and guidelines and the SCO's claiming instructions in preparing its indirect cost rate and, thus, the SCO's recalculation of indirect costs using another authorized method, resulting in a reduction of \$188,652, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The SCO's reduction of the claimant's reimbursement claims, on the basis of understated health fee revenues, in the amount of \$195,333, is correct as a matter of law pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

### **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.

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<sup>20</sup> Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at p. 6.

<sup>21</sup> Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at pp. 8-11.

<sup>22</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

<sup>23</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Former Education Code Section 72246  
(Renumbered as §76355)<sup>24</sup>

Statutes 1984, Chapter 1 (1983-1984 2nd Ex.  
Sess.) (AB2X 1) and Statutes 1987, Chapter  
1118 (AB 2336)

Fiscal Years 2000-2001, 2001-2002 and 2002-  
2003

El Camino Community College District,  
Claimant.

Case No.: 05-4206-I-11

*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 decision addresses the IRC filed by El Camino Community College District (Claimant) regarding reductions totaling \$399,891 made by the State Controller's Office (SCO) to reimbursement claims for fiscal years 2000-2001, 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 SCO for fiscal years 2000-2001 and 2001-2002;
- Reduction of costs claimed in fiscal years 2000-2001, 2001-2002, and 2002-2003 based on claimant's development and application of indirect cost rates; and

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<sup>24</sup> Statutes 1993, chapter 8.

- The appropriate extent of offsetting revenue available from health service fees, pursuant to the *Clovis Unified* decision.

The Commission finds that the audit was conducted within the statute of limitations. The Commission further finds that:

- Claimant did not comply with the parameters and guidelines and the SCO’s claiming instructions in preparing its indirect cost rate without federal approval and, thus, the SCO’s recalculation of indirect costs using another authorized method, resulting in a reduction of \$188,652, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The SCO’s reduction of \$195,333, based on understated health fee revenues, is correct as a matter of law pursuant to the court’s ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Accordingly, the Commission denies this IRC.

## COMMISSION FINDINGS

### I. Chronology

- 01/14/2002 Claimant filed a reimbursement claim for fiscal year 2000-2001.<sup>25</sup>
- 12/30/2002 Claimant filed a reimbursement claim for fiscal year 2001-2002.<sup>26</sup>
- 12/02/2004 Controller contacted claimant to schedule an entrance conference.<sup>27</sup>
- 01/05/2005 The entrance conference was held.<sup>28</sup>
- 10/05/2005 Controller issued the final audit report for fiscal years 2000-2001, 2001-2002, and 2002-2003.
- 03/27/2006 Claimant filed an IRC for fiscal years 2000-2001, 2001-2002, and 2002-2003.
- 04/03/2006 Commission staff deemed the IRC complete and issued a notice of complete filing and schedule for comments.
- 11/24/2008 Controller submitted comments on IRC.
- 09/11/2009 Claimant filed rebuttal comments.
- 08/01/2014 Commission staff issued the draft proposed decision.

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<sup>25</sup> Exhibit A, IRC, at p. 17; Exhibit B, SCO’s Comments on IRC, Tab 2, “State Controller’s Office (SCO) Analysis and Response,” at p. 14.

<sup>26</sup> *Ibid.*

<sup>27</sup> Exhibit A, IRC, Exhibit G, Declaration of Pamela Fees, at p. 1; Exhibit B, SCO’s Comments on IRC, Tab 2, State Controller’s Office (SCO) Analysis and Response, at p. 15.

<sup>28</sup> Exhibit B, SCO’s Comments on IRC, Tab 2, State Controller’s Office (SCO) Analysis and Response, at p. 14.

## 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.<sup>29</sup> In 1984, the Legislature repealed the community colleges' fee authority for health services.<sup>30</sup> However, the Legislature also reenacted section 72246 in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester), which was to become operative on January 1, 1988.<sup>31</sup>

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.<sup>32</sup> 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,<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

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<sup>29</sup> Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

<sup>30</sup> Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4 [repealing Education Code section 72246].

<sup>31</sup> Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

<sup>32</sup> Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

<sup>33</sup> Statutes 1987, chapter 1118.

<sup>34</sup> 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).

<sup>35</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

<sup>36</sup> 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).

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.

### The Controller's Audit and Summary of the Issues

The SCO reduced claimant's reimbursement claims filed for fiscal years 2000-2001, 2001-2002, and 2002-2003 in the amount of \$399,891 on the ground that the claimant did not properly calculate indirect costs and did not deduct the full amount of offsetting fee revenues authorized by statute. The following issues are in dispute:

- The statute of limitations applicable to audits of reimbursement claims by the SCO for fiscal years 2000-2001 and 2001-2002;
- Reduction of indirect costs calculated and claimed in fiscal years 2000-2001, 2001-2002, and 2002-2003 and the SCO's application of an alternative indirect cost rate calculation; and
- The appropriate extent of offsetting revenue available from health service fees, pursuant to the *Clovis Unified* decision.

### **III. Positions of the Parties**

#### El Camino Community College District

Claimant argues that the SCO inappropriately reduced reported indirect costs claimed and adjusted for uncollected offsetting revenues,<sup>37</sup> and that the proper measure of offsetting revenues should be the health fees collected, not the amount of fees authorized.<sup>38</sup> Claimant argues that the SCO inappropriately reduced "indirect cost rates and costs in the amount of \$188,652 for [fiscal years 2000-2001, 2001-2002, and 2002-2003] because "the district did not obtain federal approval for its [indirect cost rate proposals (IRCPs)]."<sup>39</sup> Claimant contends that "there is no requirement in law that the claimant's indirect cost rate must be 'federally' approved, and the Commission has never specified the federal agencies which have the authority to approve

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<sup>37</sup> Exhibit A, IRC, at pp. 9-25.

<sup>38</sup> *Id.* at pp. 11-16.

<sup>39</sup> *Id.* at 9.

indirect cost rates.”<sup>40</sup> Finally, claimant disputes the application of the statute of limitations to allow audits of its reimbursement claims for fiscal years 2000-2001 and 2001-2002.<sup>41</sup>

In its rebuttal comments claimant maintains that the SCO has the burden of proof in showing that the district’s claimed costs were not allowable, and that therefore costs that were disallowed were improperly reduced. Claimant renews its argument that the district did not need to obtain federal approval of its indirect cost rates. Claimant also renews its contention regarding the health fee authority, and restates its challenge to the statute of limitations for audits asserted by the SCO.<sup>42</sup>

#### State Controller’s Office

The SCO concluded that claimant overstated indirect costs by \$188,652 for the audit period, because the “district claimed indirect costs based on an indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant...[but] did not obtain federal approval for its ICRPs.”<sup>43</sup> The SCO also concluded that claimant “understated authorized health fee revenue by \$195,333” by claiming actual, rather than authorized, health fee revenues.<sup>44</sup> Finally, the SCO argues that the statute of limitations for audits under section 17558.5 permitted the SCO to audit fiscal years 2000-2001 and 2001-2002.<sup>45</sup>

#### **IV. Discussion**

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO 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 SCO 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 SCO 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.<sup>46</sup> The

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<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.* at pp. 17-25.

<sup>42</sup> Exhibit C, El Camino Rebuttal Comments, at pp. 1-4.

<sup>43</sup> Exhibit B, SCO’s Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at p. 6.

<sup>44</sup> *Id.*, at p. 8.

<sup>45</sup> Exhibit B, SCO’s Comments on IRC, Tab 2, State Controller’s Office (SCO) Analysis and Response, at pp. 13-17.

<sup>46</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

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.”<sup>47</sup>

With regard to the SCO’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>48</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]’ ”<sup>49</sup>

The Commission must also review the SCO’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>50</sup> In addition, section 1185.2(c) of the Commission’s regulations requires that any assertion 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.<sup>51</sup>

**A. The Audit of the Claimant’s Reimbursement Claims for Fiscal Years 2000-2001 and 2001-2002 is not Barred by the Statute of Limitations Found in Government Code Section 17558.5.**

The claimant asserts that the statute of limitations applicable to audits of mandate reimbursement claims bars the SCO’s audit of the claim filed for fiscal years 2000-2001 and 2001-2002.

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<sup>47</sup> *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.

<sup>48</sup> *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.

<sup>49</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at 547-548.

<sup>50</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>51</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

The time to audit a reimbursement claim is provided in Government Code section 17558.5. At the time the reimbursement claims in this case were filed in 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 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.<sup>52</sup>

Effective January 1, 2003, section 17558.5 was amended as follows:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~ three years after the ~~end of the calendar year in which the date that the actual~~ reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>53</sup>

Government Code section 17558.5 was amended again in 2004 to establish the requirement to “complete” the audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, it reads as follows in underline and strikeout:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.<sup>54</sup>

The parties disagree about which version of section 17558.5 applies in this case. The claimant argues that Government Code section 17558.5, as amended by Statutes 1995, chapter 945 (operative July 1, 1996) applies in this case, requiring 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*

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<sup>52</sup> Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

<sup>53</sup> Statutes 2002, chapter 1128.

<sup>54</sup> Statutes 2004, chapter 313.

*reimbursement claim is filed or last amended...*<sup>55</sup> The claimant asserts that “subject to audit” requires the SCO “to complete” the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. In this case, the claimant contends that the audit of the reimbursement claims for fiscal years 2000-2001 and 2001-2002, which were respectively filed on January 14, 2002, and December 30, 2002, were subject to audit and had to be completed by December 31, 2004. The District reasons that since the final audit report was issued on October 5, 2005, ten months after the deadline, the audit of these reimbursement claims is barred.

The SCO contends that the audit of the reimbursement claims is timely, but makes two different arguments to support its position. First, in the SCO’s “Analysis and Response to the Incorrect Reduction Claim by El Camino Community College District,” the SCO relies on the 1995 version of Government Code section 17558.5, arguing “subject to audit” means subject to the initiation of an audit, and does not require that the audit be completed within “two-years after the end of the calendar year in which the reimbursement claim is filed.” The SCO further asserts that the reimbursement claims in this case, both filed in 2002, were subject to audit through December 31, 2004, and that the audit was timely initiated on December 2, 2004, when the SCO contacted the claimant by phone to request an entrance conference. The entrance conference was conducted on January 5, 2005. These comments state the following:

Government Code section 17558.5 subdivision (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 2000-01 claim on January 14, 2002, and filed its 2001-02 claim on December 30, 2002. Thus, both claims were subject to audit through December 31, 2004. The SCO initiated the audit on December 2, 2004, and conducted an audit entrance conference on January 5, 2005, at the district’s request. Therefore, the SCO initiated an audit within the period in which both claims were subject to audit.<sup>56</sup>

However, in a letter prepared by the SCO’s staff counsel, the SCO argues that Government Code section 17558.5, *as later amended by Statutes 2002, chapter 1128* (AB 2834), provides the proper statute of limitations, because “[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.”<sup>57</sup> Therefore, the SCO reasons, the expanded statute of limitations is applicable, providing that a reimbursement claim “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.” Therefore, the audit of the 2000-2001 claim had to be initiated by January 14, 2005, and the audit of the 2001-2002 claim had to be initiated by December 30, 2005. The letter further states that

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<sup>55</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)); Exhibit A, IRC, at p. 19.

<sup>56</sup> Exhibit B, SCO’s Comments on IRC, Tab 2, “State Controller’s Office (SCO) Analysis and Response,” at pp. 13-14.

<sup>57</sup> Exhibit B, SCO’s Comments on IRC, letter by Shawn D. Silva, Staff Counsel, State Controller’s Office, at p. 2. (Citing, *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465; 43 Cal.Jur.3d, Limitation of Actions § 8.)



the audit in this case was timely initiated “no later than January 5, 2005,” the date of the entrance conference.

Although the claimant asserts that the date the audit was initiated is not relevant to the analysis of Government Code section 17558.5 since the statute requires the audit to be completed by the deadline, the claimant factually disputes the SCO’s assertions about when the audit was “initiated.” The claimant argues that an audit is initiated when the entrance conference is held, and that the SCO’s position, that the audit was initiated *before* the entrance conference, is new and conflicts with prior positions of the SCO.<sup>58</sup> The claimant also disagrees with the SCO’s factual assertion that the claimant requested that the entrance conference be delayed until January 5, 2005, due to the unavailability of district staff. In this respect, the claimant has filed a declaration from Pamela Fees, Business Manager for El Camino Community College District, describing the communication with the SCO that began with a phone call on December 2, 2004.<sup>59</sup> Ms. Fees declares that the district was available to meet on December 9, 2004, but was told that the SCO was not available on that date and that the SCO requested the conference be conducted on January 5, 2005. Ms. Fees also declares that she was asked by the Controller’s Office to prepare a letter stating that the entrance conference was postponed until January 5, 2005. The letter was mailed on December 8, 2004. On December 9, 2004, Ms. Fees received a letter faxed by the Controller’s audit manager stating that the delay of the entrance conference date was due to the unavailability of District staff. Ms. Fees declares that this statement is in “direct contradiction of all previous district communication and correspondence.”

For the reasons below, the Commission finds that the audit of the 2000-2001 and 2001-2002 reimbursement claims was timely.

At the time the reimbursement claims were filed, the reimbursement claims in issue would be “subject to audit,” pursuant to the 1995 version of section 17558.5, within two years after the end of the calendar year that the reimbursement claim was filed. However, pursuant to the *Douglas Aircraft* case, “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.”<sup>60</sup> Therefore, in this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the statute of limitations to three years after the date the actual reimbursement claim is filed or last amended, would control, and gives the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. Since the audit was initiated “no later than January 5, 2005,” when the entrance conference was held, the audit was timely initiated.

The Commission further finds that the audit was timely completed. Before Government Code section 17558.5 was amended effective January 1, 2005, the SCO had to complete an audit

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<sup>58</sup> Exhibit A, IRC, at pp. 22-23; Exhibit C, claimant’s rebuttal comments, at p. 10.

<sup>59</sup> Exhibit A, IRC, at claimant’s exhibit G.

<sup>60</sup> *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

within a reasonable period of time,<sup>61</sup> but did not have a statutory deadline for the completion of an audit. Effective January 1, 2005, when the audit period was still pending in this case, the rule changed to require that “an audit shall be completed not later than two years after the date that the audit is commenced;” which in this case would be no later than January 5, 2007. The courts have held that where the state gives up a right previously possessed by it or one of its agencies (like the SCO’s unspecified time to complete an audit before January 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, 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, 246 P. 1046, 46 A.L.R. 1095.) 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. The case of *Superior Oil Co. v. Superior Court*, 6 Cal.2d 113, 56 P.2d 950, is distinguishable since the court was there concerned with the operation of a statute which applied to private persons as well as the state. This distinction was not noted in *Calif. Emp. Stab. Comm. v. Chichester etc. Co.*, 75 Cal.App.2d 899, 172 P.2d 100, which relied on the *Superior Oil* case and assumed without discussion that the same rule would apply where the state alone would be adversely affected. It was held in the *Chichester* case that the amendment of section 45.2 in 1943 could not operate to deprive the commission of the right to sue on existing causes of action until a reasonable time had passed after the statute became effective. The commission was created by, and derives its powers from, the Legislature, and it does not have rights which are superior to the legislative will. By the enactment in 1939 of section 45.2, the three-year limitation contained in section 338 was rendered inapplicable, and the commission was given the right without limit as to time to enforce contributions where no return had been filed. Thereafter in 1943 the Legislature determined that it was unwise and perhaps unfair to allow the commission an unlimited time within which to enforce contributions where there was no intent to evade the act, and as to those cases, the three-year limitation was restored and the right of action was cut off if the period had run. This the Legislature had the power to do insofar as the constitutional requirement of due process is concerned, and the holding to the contrary in the *Chichester* case, 75 Cal.App.2d 899, 172 P.2d 100, is disapproved.

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<sup>61</sup> Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant. (*Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.)

Here, the audit was completed when the final audit report was issued on October 5, 2005, well before the two year deadline of January 5, 2007, to complete the audit.

Based on the foregoing, the Commission finds that the audit of the District's reimbursement claim for fiscal years 2000-2001 and 2001-2002 is not barred by the statute of limitations.

**B. 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 SCO claiming instructions provide two options for claiming indirect costs, the OMB Circular A-21 or the state's methodology in FAM-29C. In its audit of claims for fiscal years 2000-2001, 2001-2002, and 2002-2003 the SCO found that the claimant though assertedly applying the OMB Circular A-21 methodology, did not obtain federal approval of its indirect cost rate for these years, as required by OMB Circular A-21<sup>62</sup> Thus, the SCO applied the alternative Form FAM-29C methodology to calculate indirect costs.<sup>63</sup> Applying these rates to total direct costs for the three fiscal years subject to audit resulted in a reduction in indirect costs of \$188,652.<sup>64</sup>

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

1. *The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the SCO's claiming instructions, which in turn provide for an indirect cost rate to be developed in accordance with federal OMB guidelines or by using the state Form FAM-29C.*

Parameters and guidelines adopted by the Commission are required to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program.<sup>65</sup> The reimbursement claims filed by the claimants are, likewise, required as a matter of law to be filed in accordance with the parameters and guidelines.<sup>66</sup> The parameters and guidelines for the *Health Fee Elimination* program provide that "*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.*"<sup>67</sup>

Claimant argues that it is not required to adhere to the claiming instructions.<sup>68</sup> Claimant also argues that the word "may" is permissive, and that therefore the parameters and guidelines do not

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<sup>62</sup> Exhibit B, SCO's Comments on IRC, Tab 2, SCO's Analysis and Response to the IRC, at pp. 5-8.

<sup>63</sup> Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at p. 6.

<sup>64</sup> *Ibid.*

<sup>65</sup> Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

<sup>66</sup> Government Code sections 17561(d)(1); 17564(b); and 17571.

<sup>67</sup> Exhibit A, IRC, p. 10.

<sup>68</sup> Exhibit A, IRC, p. 10.

require that indirect costs be claimed in the manner described by the SCO.<sup>69</sup> In addition, claimant argues that “[n]either state law nor the parameters and guidelines made compliance with the Controller’s claiming instructions a condition of reimbursement.”<sup>70</sup>

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

The claiming instructions specific to the *Health Fee Elimination* mandate, included in the IRC and SCO’s comments,<sup>71</sup> do not discuss specific rules or guidelines for claiming indirect costs for this mandate. However, the School Mandated Cost Manual provides 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.<sup>72</sup> More recently the manuals for school districts and community college districts have been printed separately, and therefore both the general instructions, and the instructions specific to the *Health Fee Elimination* mandate, are now provided in the Mandated Cost Manual for Community Colleges, available on the SCO’s web site.<sup>73</sup> The Mandated Cost Manual 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:

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.<sup>74</sup>

The SCO submitted pages from the Mandated Cost Manual addressing indirect cost rates, revised September 2002, in response to the IRC.<sup>75</sup> The SCO 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.<sup>76</sup> This last document suggests that all

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Id.* at p. 11.

<sup>71</sup> Exhibit B, SCO’s Comments on IRC, tab 3.

<sup>72</sup> Mandated Cost Manual General Instructions Excerpt 1999-2000.

<sup>73</sup> Exhibit F, Community College Mandated Cost Manual General Instructions Updated September 28, 2001. The same language exists in the Manual updated September 29, 2000 and September 30, 2003.

<sup>74</sup> *Ibid.*

<sup>75</sup> Exhibit B, SCO’s Comments on IRC, tab 3.

<sup>76</sup> Exhibit B, SCO’s Comments on IRC, tab 4.

community college claiming instructions were, at or near the relevant time period, published in the School Mandated Cost Manual.<sup>77</sup> Therefore, the reference in the parameters and guidelines to the SCO's claiming instructions necessarily includes the general provisions of the School Mandated Cost Manual, and the manual provides ample notice to claimants as to how they may properly claim indirect costs. Claimant's assertion that "[n]either State law or the parameters and guidelines made compliance with the SCO's claiming instructions a condition of reimbursement"<sup>78</sup> is therefore not correct.<sup>79</sup>

Claimant also argues that because the claiming instructions "were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are merely a statement of the ministerial interests of the SCO and not law."<sup>80</sup> In the *Clovis* case,<sup>81</sup> the SCO'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.<sup>82</sup> Here, claimant implies the same fault in the claiming instructions with respect to indirect cost rates. But the distinction is that here the parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions. The Commission's parameters and guidelines are a final, binding document,<sup>83</sup> and provide notice of the options for claiming indirect costs, pursuant to duly issued claiming instructions, which are general and apply to all programs.

Therefore, the Commission finds that the parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the SCO's the 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 rate, so the SCO's adjustment is correct as a matter of law.*

Claimant argues that "there is no requirement in law that the claimant's indirect cost rate must be 'federally' approved," and that "[n]o particular indirect cost rate calculation is required by statute."<sup>84</sup> Claimant also argues that "the District has computed its indirect cost rate utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the SCO has disallowed it without a determination of whether the product of the District's

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<sup>77</sup> Available at: <[http://www.sco.ca.gov/Files-ARD-Local/Manuals/ccd\\_1112\\_print.pdf](http://www.sco.ca.gov/Files-ARD-Local/Manuals/ccd_1112_print.pdf)> [accessed on July 1, 2014].

<sup>78</sup> Exhibit A, IRC, at p. 11.

<sup>79</sup> Government Code section 17564(b) was amended by Statutes 2004, chapter 890, to require: "Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions."

<sup>80</sup> Exhibit A, IRC, p. 10.

<sup>81</sup> *Clovis Unified School Dist. v. Chiang (Clovis)*(2010) 188 Cal.App.4th 794

<sup>82</sup> *Id.* at page 807.

<sup>83</sup> *CSBA v. State, supra*, 171 Cal.App.4th 1183, 1201.

<sup>84</sup> Exhibit A, IRC, at p. 9.

calculation would, or would not, be excessive, unreasonable, or inconsistent with cost accounting principles.”<sup>85</sup> In addition, claimant asserts that “the Commission has never specified the federal agencies which have the authority to approve indirect cost rates.”<sup>86</sup>

The Commission disagrees with the claimant’s interpretation. As discussed above, the Commission’s duly adopted parameters and guidelines require compliance with the SCO’s claiming instructions. The claiming instructions provide two options for claiming indirect costs, one of which is using the OMB Circular A-21. 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 September 2002 claiming instructions, under the heading “Indirect Cost Rate for Community Colleges” 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.<sup>87</sup> 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 community colleges in computing an indirect cost rate for state mandate.<sup>88</sup>

The claiming instructions specify that, to use the OMB Circular A-21 option, a claimant must obtain federal approval, which the claimant here did not do. Thus, because claimant did not obtain federal approval, the claimant did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rate. Therefore, the SCO’s adjustment for overstated indirect costs is correct as a matter of law.

3. *The SCO’s decision to apply the alternative indirect cost rate described in the claiming instructions to claimant’s reimbursement claims is not arbitrary, capricious, or entirely lacking in evidentiary support.*

In its audit of claimant’s reimbursement claims, the SCO, concluding that the rate was not approved and therefore not supported by the parameters and guidelines and the claiming

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<sup>85</sup> *Id.* at pp. 10-11.

<sup>86</sup> *Id.* at p. 9.

<sup>87</sup> Note that the methodology later outlined is the state Form FAM-29C.

<sup>88</sup> Exhibit B, Controller’s Comments, tab 3, p. 1.

instructions, recalculated the indirect cost rate using the alternative state procedure, the “FAM-29C method,” outlined in the School Mandated Cost Manual.<sup>89</sup>

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

Indeed, federally ‘approved’ rates which the Controller will accept without further action, are ‘negotiated’ rates calculated by the district and submitted for approval to federal agencies which are the source of federal programs to which the indirect cost rate is to be applied, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used.<sup>90</sup>

Claimant argues that the SCO “made no determination as to whether the method used by the District was reasonable, but merely substituted its FAM-29C method for the method reported by the District.” Claimant also argues that the SCO’s decision to recalculate indirect costs by its own method “is an arbitrary choice of the SCO, not a ‘finding’ enforceable by fact or law.”<sup>91</sup>

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

Given that claimant did not receive approval for its OMB Circular A-21 indirect cost rate, that rate was invalid and applying the Form FAM-29C methodology was effectively the only authorized alternative available. Based on the foregoing, the Commission finds that the SCO’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 was not arbitrary, capricious, or entirely lacking in evidentiary support.

**C. The SCO’s Audit Reduction for Health Fee Revenues Authorized To Be Charged is Correct as a Matter of Law.**

The SCO reduced the reimbursement claims by \$8,807 for fiscal year 2000-2001, \$111,710 for fiscal year 2001-2002, and \$74,816 for fiscal year 2002-2003 on the ground that the authorized, but uncollected, health service fees should have been deducted as offsetting revenue.<sup>92</sup> The claimant reported and deducted only the amounts collected rather than the fee revenue authorized by statute.

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<sup>89</sup> Exhibit B, Controller’s Comments on the IRC, tab 2, pp. 6-7.

<sup>90</sup> Exhibit A, IRC, page 9.

<sup>91</sup> Exhibit A, IRC, page 11.

<sup>92</sup> Exhibit B, SCO’s Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at pp. 8-11.

Claimant argues that the parameters and guidelines only require a claimant to declare offsetting revenues that the claimant “experiences,” and that while the fee amount that claimant was authorized to impose may have increased for the applicable period, nothing in the Education Code made the increase of those fees mandatory.<sup>93</sup> Claimants argue that the issue is the difference between fees collected and fees collectible.<sup>94</sup>

After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the issue of whether the SCO properly reduced reimbursement claims for state-mandated health services required by the *Health Fee Elimination* program 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 (i.e., the “Health Fee Rule”). 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.<sup>95</sup> (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).<sup>96</sup>

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.<sup>97</sup>

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<sup>93</sup> Exhibit A, IRC, at p. 15.

<sup>94</sup> *Id.* at pp. 15-16.

<sup>95</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 811.

<sup>96</sup> 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)].

<sup>97</sup> 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 (and quarterly) by the United States Department of Commerce as part of its statistical series on



Claimant argues that the actual increase of the fee imposed upon students requires action of the community college district,<sup>98</sup> and that “[t]his issue is one of student health fees revenue actually received, rather than student health fees which might be collected.”<sup>99</sup>

But the court in *Clovis Unified* upheld, as a matter of law, the SCO’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 noted that its conclusion is consistent with the state mandates process embodied in Government Code sections 17514 and 17556(d), and that:

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.<sup>100</sup>

The court also noted that, “this basic principle flows from common sense as well. As the SCO succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>101</sup>

Additionally, in responding to the community college districts’ argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s.”<sup>102</sup> 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*.<sup>103</sup> (Italics added.)

The claimant here was a party to the *Clovis* case and is bound by the decision therein under principles of collateral estoppel.<sup>104</sup> 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;

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measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

<sup>98</sup> Exhibit A, IRC, at p. 15.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.* (Original italics.)

<sup>103</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

<sup>104</sup> 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.

and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.<sup>105</sup> The issue decided by the court is identical to the issue in this IRC.

Thus, pursuant to the court's decision in *Clovis*, the Health Fee Rule used by the SCO to adjust reimbursement claims filed by claimants for the *Health Fee Elimination* program is correct. 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.<sup>106</sup>

Accordingly, the Commission finds that the SCO's adjustment based on the fee revenue authorized to be charged 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 SCO's reduction of claimed costs for indirect costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission finds that the audit was conducted within the statute of limitations. The Commission further finds that:

- Claimant did not comply with the parameters and guidelines and the SCO's claiming instructions in preparing its indirect cost rate without federal approval and, thus, the SCO's reduction and recalculation of indirect costs using another authorized method, in the amount of \$188,652, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The SCO's reduction of the claimant's reimbursement claims, on the basis of understated health fee revenues, in the amount of \$195,333, is correct as a matter of law pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Accordingly, the Commission denies this IRC.

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<sup>105</sup> *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

<sup>106</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

**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 August 1, 2014, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*Health Fee Elimination*, 05-4206-I-11

Education Code Section 76355

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

Fiscal Years 2000-2001, 2001-2002, and 2002-2003

El Camino 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 1, 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:** 7/31/14

**Claim Number:** 05-4206-I-11

**Matter:** Health Fee Elimination

**Claimant:** El Camino 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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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-11*  
Education Code Section 76355  
Statutes of 1984, Chapter 1, 2<sup>nd</sup> E.S.; Statutes of 1987, Chapter 1118  
Fiscal Years 2000-2001, 2001-2002, and 2002-2003  
El Camino 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 El Camino 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/mh

14393

**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-11*

Education Code Section 76355

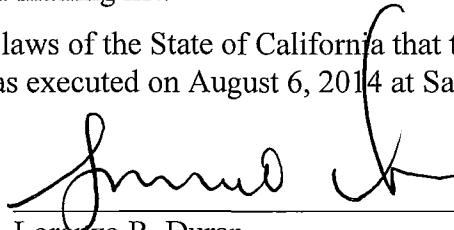
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2000-2001, 2001-2002, and 2002-2003

El Camino 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:** 8/5/14

**Claim Number:** 05-4206-I-11

**Matter:** Health Fee Elimination

**Claimant:** El Camino Community College District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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# SixTen and Associates Mandate Reimbursement Services

**RECEIVED**  
September 26, 2014  
*Commission on  
State Mandates*

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September 26, 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-11  
**El Camino Community College District**  
Fiscal Years: 2000-01, 2001-02, and 2002-03  
Health Fee Elimination  
Education Code Section 76355  
Statutes of 1984, Chapter 1, 2<sup>nd</sup>. 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 asserts that the audit of the FY 2000-01 and FY 2001-02 annual claims were not initiated before the expiration of the statute of limitations to commence an audit. The District's FY 2000-01 claim was submitted to the Controller on January 14, 2002, and the FY 2001-02 annual claim was submitted December 30, 2002. Pursuant to the then relevant version of Government Code Section 17558.5, (Statutes of 1995,

Chapter 945, Section 18, operative July 1, 1996)<sup>1</sup>, these claims were subject to audit no later than December 31, 2004. The Controller asserts that the audit was timely commenced:

SCO's Comment

We disagree with the district's assertion that the audit and the related adjustment of the claims are barred by the statute of limitations. *Government Code* Section 17558.5(a), in effect during the audit period, states that 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 claims were filed in January 2002 and December 2002, respectively. On December 2, 2004, we made phone contact with the district's business manager and sent a follow-up letter dated December 9, 2004, wherein we agreed to delay the start of the audit until January 5, 2005. In both the phone call and the letter, we clearly stated that the audit would include the claims filed in the 2002 calendar year. This audit was initiated prior to the statutory deadline of December 2004 in which to commence an audit. (*Audit Report*, p. 12)

The Controller asserts that the December 2004 communications with the District initiated the audit rather than the entrance conference in January 2005, which was after the 1995 two-year statutory period to start and finish the audit. The Controller's apparent measurement date for "initiation" of an audit is different for different audits. For this audit, and two audits issued in 2004 for Los Rios Community College District<sup>2</sup>,

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<sup>1</sup> 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."

<sup>2</sup> The two Controller's audits which were released before the El Camino audit which assert that the telephone contact is the action which "initiates" the audit are:  
- Los Rios Community College District, Health Fee Elimination, issued June 24, 2004.

the Controller asserts the telephone contact as the initiation date for the audit. In other mandate audit reports issued both after the Los Rios audits and after this audit report, the Controller states that the entrance conference date initiates the audit.<sup>3</sup> Further, in the matter of the Health Fee Elimination audit of North Orange Community College District, the draft audit report dated May 6, 2005, included the three fiscal years audited by the Controller: FY 2000-01, FY 2001-02, and FY 2002-03. In its response letter dated June 15, 2005, North Orange County asserted that the statute of limitations for the audit of the FY 2000-01 claim expired December 31, 2003, pursuant to Government Code Section 17558.5, because the audit report was issued after that date. In the final

- 
- Los Rios Community College District, Mandate Reimbursement Process, issued June 24, 2004.

<sup>3</sup> The following Controller's audit reports were issued after the Los Rios audit reports and before the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Newport-Mesa Unified School District, School District of Choice, issued August 31, 2004.
- State Center Community College District, Health Fee Elimination, issued September 17, 2004.
- Clovis Unified School District, Graduation Requirements, issued October 22, 2004.
- San Bernardino Community College District, Health Fee Elimination, issued November 10, 2004.
- West Valley-Mission Community College District, Health Fee Elimination, issued April 8, 2005.
- Long Beach Community College District, Health Fee Elimination, issued April 27, 2005.
- North Orange County Community College District, Health Fee Elimination, issued July 22, 2005.
- Poway Unified School District, Emergency Procedures, Earthquakes and Disasters, issued August 31, 2005.

The following Controller's audit reports were issued after the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Norwalk-La Mirada Unified School District, School District of Choice, issued October 7, 2005.
- Norwalk-La Mirada Unified School District, Intradistrict Attendance, issued December 23, 2005.
- Norwalk-La Mirada Unified School District, Collective Bargaining, issued December 23, 2005.

audit North Orange report dated July 22, 2005, the Controller agreed that FY 2000-01 was barred from audit, but for another reason, the stated reason being that the "FY 2000-01 claim was not subject to audit due to the expiration of the statute of limitations within which to initiate an audit." The North Orange County audit entrance conference date was January 26, 2004, which is the date, according to the Controller, that the audit was "initiated." All of the referenced audits are available at the Controller's web site. The administrative record for the incorrect reduction claims for the referenced audits is available at the Commission web page.

Given this contradiction in measurement dates, it does not appear that the Controller has a single position on this issue, but rather chooses the rule that would yield compliance with the 1995 two-year rule. It appears the Controller discarded the pre-entrance conference telephone call/e-mail date rule after the Los Rios audits and then reinstated it for this audit, perhaps in order to avoid losing jurisdiction of the first two fiscal years. It can therefore be concluded that the Controller has no legal basis for their policy on the initiation date of audits. The Commission must make this determination.

However, the Commission makes no explicit finding regarding whether the date of first communication or date of the entrance conference commences the audit. Instead, the Commission (DPD, 16) asserts that *at the time the claims were filed* the annual claims were subject to the 1995 calendar two-year initiation rule (without defining the date of initiation), but that *at the time of audit*, the statute of limitations had become "enlarged" to the 2002 three-year from the date of filing rule<sup>4</sup>:

At the time the reimbursement claims were filed, the reimbursement claims in issue would be "subject to audit," pursuant to the 1995 version of section

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<sup>4</sup> 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."

17558.5, within two years after the end of the calendar year that the reimbursement claim was filed. However, pursuant to the *Douglas Aircraft* case, “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.” Therefore, in this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the statute of limitations to three years after the date the actual reimbursement claim is filed or last amended, would control, and gives the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. Since the audit was initiated “no later than January 5, 2005,” when the entrance conference was held, the audit was timely initiated.

The Commission analysis fails on the facts. Government Code section 17558.5 is specific to administrative claims, not civil actions, and needs no further interpretation by analogy. For the enlargement issue to operate, again misapplying a civil action concept, there has to be a “matter pending” and not barred. If the matter is the filed claim, the claimant accomplished all that was necessary by timely filing the claim, thus nothing was pending. If the “matter” is the Controller’s audit, it was barred by the 1995 law and therefore could not be “pending.” Further, the alleged “enlargement” works a benefit for the Controller, but is a post-facto reduction of the previous statutory right of the claimant extant at the time of claim filing to be exposed to audit (and thus record retention requirements) for a shorter period. The Commission incorrectly applies the concept of enlargement to the extension of relief to a state agency rather than its effect as an impairment of previous rights to the claimants. The Commission cites cases that allow the Legislature to retroactively curtail the rights of state agencies, but none that allow post-facto impairment of claimants’ rights.

## 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 2000-01 annual claim (filed January 14, 2002) and FY 2001-02 annual claim (filed December 30, 2002) were beyond the statute of limitations for completion of the audit (December 31, 2004) when the Controller completed its audit on October 5, 2005.

The Commission (DPD, 16-17) asserts that the 1995 version of Section 17558.5 “did not have a statutory deadline for the completion of an audit,” and citing in footnote 61 the *Cedar-Sinai Medical Center* decision, proposes that claimants rely upon the defense of laches. Again, this is a misapplication of a decision in a civil matter. The Commission seems to be asserting that the Controller was required under common law to complete the audit within a reasonable period of time without regard to the positive



law of the legislature's statute of limitations. Reliance on the reasonableness of the actual length of the audit period process would mean in practice that the determination of a reasonable audit completion date would become a question of fact for every audit, which is contrary to the concept of a *statute* of limitations.

The Commission's reliance on the equitable concept of laches is troublesome. Cases in law are governed by statutes of limitations, which are laws that determine how long a person has to file a lawsuit before the right to sue expires. Laches is the equitable equivalent of statutes of limitations. However, unlike statutes of limitations, laches leaves it up to the adjudicator to determine, based on the unique facts of the case, whether a plaintiff has waited too long to seek relief. Here there is no issue as to whether the District has been tardy in seeking relief. The incorrect reduction claim, the statutory form of relief from an audit, was timely-filed according to the statute.

Laches is a defense to a proceeding in which a plaintiff seeks equitable relief. Cases in equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the plaintiff. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the court against a party. An incorrect reduction claim is explicitly a matter of money due the claimant. The District is not seeking an injunction, where the court orders a party to do or not to do something; declaratory relief, where the court declares the rights of the two parties to a controversy; or an accounting, where the court orders a detailed written statement of money owed, paid, and held.

The Commission has not indicated that it has jurisdiction for equitable remedies. Therefore a Commission finding that there is no evidence of an unreasonable delay in the completion of the audit is without jurisdiction or consequence and simply irrelevant. Or, if the Commission is suggesting that claimant resort to the courts for an equitable remedy on the issue of statute of limitations, that is contrary to fact that the Government Code establishes primary jurisdiction to the Commission for audit disputes, that is, the incorrect reduction claim process.

Having concluded that there was no statutory time limit to finish an audit until the 2004 amendment to Section 17558.5<sup>5</sup>, and that (DPD, 17) "the restriction in the new law

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<sup>5</sup> 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

becomes effective immediately upon the operative date of the change in law for all pending claims," the Commission then concludes that the audit was completed within the 2004 two-year period allowed to complete an audit, in this case, January 5, 2007 (DPD, 18), which would seem to endorse, without an explicit finding, that an audit commences on the entrance conference date (which would decide the initiation date issue above). This is a misapplication of the law to the facts. If the matter is the filed claim, the claimant accomplished all that was necessary by timely filing the claim, thus nothing was pending. If the "matter" is the Controller's audit, it was barred by the 1995 law and therefore could not be "pending."

The adjudication of the audit completion date should end with the 1995 version of Section 17558.5. Section 17558.5 was amended two more times after the FY 2000-01 and FY 2001-02 annual claims were filed. As a matter of law, these amendments are not relevant to the determination of statute of limitations for the FY 2000-01 and FY 2001-02 annual claims, so reliance upon the language of the subsequent amendments as a declaration of retroactively consistent legislative policy, or intent, or a source of enlargement, is without foundation. Regardless, the Commission concludes that its interpretation of the significance of the second sentence in the 1995 version is supported by the 2002 amendment to Section 17558.5 which extends the audit initiation period to three years. The 2002 amendment provides no new information about the audit completion date. The 2004 amendment to Section 17558.5 does establish a two-year limit to complete a timely filed audit based on date of audit initiation, not based on the date of claim filing. The 2004 amendment to Section 17558.5 is definitive to the issue of when the audit completion period was first placed in statute, but it is of no assistance to resolve the 1995 issue.

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 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.

If, as the Commission asserts, that the first amended version establishes no statutory

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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."

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 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.

## PART B. APPLICATION OF AN INDIRECT COST RATE

The audit asserts that the District overstated its indirect cost rates and costs in the amount of \$188,652 for the audit period. This finding is based upon the Controller's statement that the district did not obtain federal approval for its indirect cost rate proposals (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 and correct as a matter of law. 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*.<sup>6</sup>

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<sup>6</sup> From the Clovis Appellate Court Decision (4):

"Once the Commission determines that a state mandate exists, it adopts regulatory "[P]arameters and [G]uidelines" (P&G's) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory "[C]laiming [I]nstructions" for each Commission-determined mandate; these instructions must derive from the Commission's test claim decision and its adopted P&G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs." Emphasis added.

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.

The Controller has never asserted that its claiming instructions are alone legally enforceable. The Community College Mandated Cost Manual General Instructions revised or updated September 29, 2000, September 28, 2001, and September 30, 2003 included the following language (DPD, 19):

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.

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.

Regardless of the lack of legal sources for the indirect cost rate calculation, the Commission asserts (DPD, 20): because "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 the manual provides ample notice to claimants as to how they may properly claim indirect costs," and because the parameters and guidelines (DPD, 20) "which were duly adopted at a Commission hearing, require compliance with the claiming instructions," that (DPD, 20) claimants are required "to claim indirect costs in the manner described in the SCO's the claiming instructions." To the contrary, claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission's attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather than the subsequent discretionary choice to use claiming instructions method, is gratuitous.

The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller's claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller's claiming instructions. The Controller's use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code 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 regulatory discretion and has utilized it in new program college mandate parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code Section 17561. No particular indirect cost rate calculation method is required by law. Government Code Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

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 C. UNDERSTATED OFFSETTING REVENUES**

This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of \$195,333 for the audit period. The Controller computed the total student health fees collectible based on state rates while the District reported actual fees collected.

The Commission (DPD, 23) 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 claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the issue of whether the SCO properly reduced reimbursement claims for state-mandated health services required by the *Health Fee Elimination* program 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 (i.e., the "Health Fee Rule"). 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 this audit, completed October 5, 2005, well before the October 27, 2011, Commission decision, the source of the enrollment statistics used by the auditor was different:

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

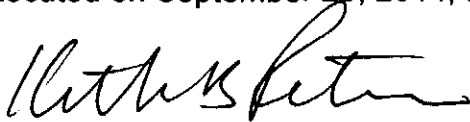
The district is incorrect when it states that we used student enrollment and Board of Governors Grants (BOGG) waiver counts based on data from the office of Chancellor of the Community Colleges. As mentioned above, the district did not use the actual number of student counts and BOGG waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect using the district's Student Enrollment Reports and the BOGG Detail Reports dated January 2005 through March 2005. *Audit report, p. 11.*

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.

**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 26, 2014, at Sacramento, California, by



Keith B. Petersen, President  
SixTen & Associates

Service by Commission Electronic Drop Box



**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 September 29, 2014, I served the:

**Claimant Comments**

*Health Fee Elimination, 05-4206-I-11*

Education Code Section 76355

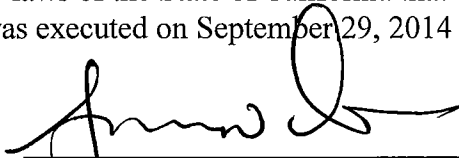
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 2000-2001, 2001-2002, and 2002-2003

El Camino 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 29, 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:** 8/18/14

**Claim Number:** 05-4206-I-11

**Matter:** Health Fee Elimination

**Claimant:** El Camino 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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## 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.

## 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)<sup>1</sup>, 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

<sup>1</sup> 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**

	<b>Days</b>	<b>Hours Per Day</b>	<b>Total Hours</b>
Gross Hours	365	8	2,920
Weekends	104	8	(832)
Holidays	11	8	(88)
Vacation	14	8	(112)
Sick Leave, Misc.	11	8	(88)
<b>Annual Billable Hours</b>			<b>1,800</b>

- 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**

<b>Formula:</b>	<b>Description:</b>
$[(EAS + Benefits) \div ABH] = ABR$	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**

<b>Example:</b>		
<b>Step 1: Fringe Benefits as a Percent of Salary</b>		<b>Step 2: Annual Billable Rate</b>
Retirement	15.00 %	<b>Formula:</b> $[(EAS \times (1 + FBR)) \div ABH] = ABR$  $[(\$26,000 \times (1.2981)) \div 1,800 ] = \$18.75$
Social Security	6.30	
Health & Dental Insurance	5.25	
Workers Compensation	3.25	
<b>Total</b>	<b>29.80 %</b>	
<b>Description:</b>		
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.

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## 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.

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**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.

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## 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**

<b>Formula:</b>	<b>Description:</b>
$[(EAS + Benefits) \div APH] = PHR$	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**

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

<b>Supplies</b>	<u>Cost Per Unit</u>	Amount of Supplies Used Per Activity	Unit Cost of Supplies Per Activity
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**

<b>Supplies</b>	<b>Supplies Used</b>	<b>Unit Cost of Supplies Per Activity</b>
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 (<math>\\$9.50 / 25</math>).</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.

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

##### TABLE OF CONTENTS

##### A. Purpose and scope

1. Objectives
2. Policy guides
3. Application
4. Inquiries

##### B. Definition of terms

1. Major functions of an institution
2. Sponsored agreement
3. Allocation
4. Facilities and administrative (F&A) costs

##### C. Basic considerations

1. Composition of total costs
  2. Factors affecting allowability of costs
  3. Reasonable costs
  4. Allocable costs
  5. Applicable credits
  6. Costs incurred by State and local governments
  7. Limitations on allowance of costs
  8. Collection of unallowable costs
  9. Adjustment of previously negotiated F&A cost rates containing unallowable costs
  10. Consistency in estimating, accumulating and reporting costs
  11. Consistency in allocating costs incurred for the same purpose
  12. Accounting for unallowable costs
  13. Cost accounting period
  14. Disclosure statement
- D. Direct costs
1. General
  2. Application to sponsored agreements
- E. F&A costs
1. General
  2. Criteria for distribution
- F. Identification and assignment of F&A costs
1. Definition of Facilities and Administration.
  2. Depreciation and use allowances
  3. Interest
  4. Operation and maintenance expenses
  5. General administration and general expenses
  6. Departmental administration expenses
  7. Sponsored projects administration
  8. Library expenses
  9. Student administration and services
  10. Offset for F&A expenses otherwise provided for by the Federal Government
- G. Determination and application of F&A cost rate or rates
1. F&A cost pools
  2. The distribution basis
  3. Negotiated lump sum for F&A costs
  4. Predetermined rates for F&A costs
  5. Negotiated fixed rates and carry-forward provisions

6. Provisional and final rates for F&A costs
  7. Fixed rates for the life of the sponsored agreement
  8. Limitation on reimbursement of administrative costs
  9. Alternative method for administrative costs
  10. Individual rate components
  11. Negotiation and approval of F&A rate
  12. Standard format for submission
- H. Simplified method for small institutions
1. General
  2. Simplified procedure
- I. Reserved
- J. General provisions for selected items of cost
1. Advertising and public relations costs
  2. Advisory councils
  3. Alcoholic beverages
  4. Alumni/ae activities
  5. Audit and related services
  6. Bad debts
  7. Bonding costs
  8. Commencement and convocation costs
  9. Communication costs
  10. Compensation for personal services
  11. Contingency provisions
  12. Deans of faculty and graduate schools
  13. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
  14. Depreciation and use allowances
  15. Donations and contributions
  16. Employee morale, health, and welfare costs
  17. Entertainment costs
  18. Equipment and other capital expenditures
  19. Fines and penalties
  20. Fund raising and investment costs
  21. Gains and losses on depreciable assets
  22. Goods or services for personal use
  23. Housing and personal living expenses
  24. Idle facilities and idle capacity
  25. Insurance and indemnification
  26. Interest
  27. Labor relations costs
  28. Lobbying
  29. Losses on other sponsored agreements or contracts

30. Maintenance and repair costs
31. Material and supplies costs
32. Meetings and conferences
33. Memberships, subscriptions and professional activity costs
34. Patent costs
35. Plant and homeland security costs
36. Pre-agreement costs
37. Professional service costs
38. Proposal costs
39. Publication and printing costs
40. Rearrangement and alteration costs
41. Reconversion costs
42. Recruiting costs
43. Rental costs of buildings and equipment
44. Royalties and other costs for use of patents
45. Scholarships and student aid costs
46. Selling and marketing
47. Specialized service facilities
48. Student activity costs
49. Taxes
50. Termination costs applicable to sponsored agreements
51. Training costs
52. Transportation costs
53. Travel costs
54. Trustees

K. Certification of charges

Exhibit A - List of Colleges and Universities Subject to Section J.12.h of Circular A-21

Exhibit B - Listing of Institutions that are eligible for the utility cost adjustment

Exhibit C - Examples of "major project" where direct charging of administrative or clerical staff salaries may be appropriate

Appendix A - CASB's Cost Accounting Standards (CAS)

Appendix B - CASB's Disclosure Statement (DS-2)

Appendix C - Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals

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

A. Purpose and scope.

1. Objectives. This Attachment provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. Policy guides. The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that --

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such governmentwide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating facilities and administrative (F&A) cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. Application. These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Federal Government for actual costs incurred.

d. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles



for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

#### 4. Inquiries.

All inquiries from Federal agencies concerning the cost principles contained in this Circular, including the administration and implementation of the Cost Accounting Standards (CAS) (described in Sections C.10 through C.13) and disclosure statement (DS-2) requirements, shall be addressed by the Office of Management and Budget (OMB), Office of Federal Financial Management, in coordination with the Cost Accounting Standard Board (CASB) with respect to inquiries concerning CAS. Educational institutions' inquiries should be addressed to the cognizant agency.

#### B. Definition of terms.

1. Major functions of an institution refers to instruction, organized research, other sponsored activities and other institutional activities as defined below:

a. Instruction means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension

division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) Sponsored instruction and training means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) Departmental research means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. Organized research means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) Sponsored research means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, shall be combined with sponsored research under the function of organized research.

c. Other sponsored activities means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. Other institutional activities means all activities of an institution except:

(1) instruction, departmental research, organized research, and other sponsored activities, as defined above;

(2) F&A cost activities identified in Section F; and

(3) specialized service facilities described in Section J.47. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. Sponsored agreement, for purposes of this Circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or a F&A cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

4. Facilities and administrative (F&A) costs, for the purpose of this Circular, means costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs, as previously used in this Circular and as currently used in Appendices A and B. The F&A cost categories are described in Section F.1.

#### C. Basic considerations.

1. Composition of total costs. The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable F&A costs of the institution, less applicable credits as described in subsection 5.

2. Factors affecting allowability of costs. The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items.

3. Reasonable costs. A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefore, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Federal Government, and the public at large; and, (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. Allocable costs.

a. A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) it benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Circular, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid

restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

c. Any costs allocable to activities sponsored by industry, foreign governments or other sponsors may not be shifted to federally-sponsored agreements.

d. Allocation and documentation standard.

(1) Cost principles. The recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable under these cost principles.

(2) Internal controls. The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(3) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding subsection b, the costs may be allocated or transferred to benefited projects on any reasonable basis, consistent with subsections d. (1) and (2).

(4) Documentation. Federal requirements for documentation are specified in this Circular, Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and specific agency policies on cost transfers. If the institution authorizes the principal investigator or other individual to have primary responsibility, given the requirements of subsection d. (2), for the management of sponsored agreement funds, then the institution's documentation requirements for the actions of those individuals (e.g., signature or initials of the principal investigator or designee or use of a password) will normally be considered sufficient.

5. Applicable credits.

a. The term "applicable credits" refers to those receipts or negative expenditures that operate to offset or reduce direct or F&A cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to

educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F.10, J.14, and J.47 for areas of potential application in the matter of direct Federal financing.)

6. Costs incurred by State and local governments. Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of subsections 1 through 5.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. Limitations on allowance of costs. Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Circular, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

8. Collection of unallowable costs, excess costs due to noncompliance with cost policies, increased costs due to failure to follow a disclosed accounting practice and increased costs resulting from a change in cost accounting practice. The following costs shall be refunded (including interest) in accordance with applicable Federal agency regulations:

a. Costs specifically identified as unallowable in Section J, either directly or indirectly, and charged to the Federal Government.

b. Excess costs due to failure by the educational institution to comply with the cost policies in this Circular.

c. Increased costs due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs.

d. Increased costs resulting from a change in accounting practice.

9. Adjustment of previously negotiated F&A cost rates containing unallowable costs. Negotiated F&A cost rates based on a proposal later found to have included costs that (a) are unallowable as specified by (i) law or regulation, (ii) Section J of this Circular, (iii) terms and conditions of sponsored agreements, or (b) are unallowable because they are clearly not allocable to sponsored agreements, shall be adjusted, or a refund shall be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

a. For rates covering a future fiscal year of the institution, the unallowable costs will be removed from the F&A cost pools and the rates appropriately adjusted.

b. For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

c. For rates covering the current period, either a rate adjustment or a refund, as described in subsections a and b, shall be required by the cognizant agency. The choice of method shall be at the discretion of the cognizant agency, based on its judgment as to which method would be most practical.

d. The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

10. Consistency in estimating, accumulating and reporting costs.

a. An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

b. An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in pricing the related proposal or application.

c. The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under subsection a when such costs are accumulated and reported in greater detail on an actual cost basis during performance of the sponsored agreement.

d. Appendix A also reflects this requirement, along with the purpose, definitions, and techniques for application, all of which are authoritative.

11. Consistency in allocating costs incurred for the same purpose.

a. All costs incurred for the same purpose, in like circumstances, are either direct costs only or F&A costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any F&A cost pool to be allocated to that or any other final cost objective.

b. Appendix A reflects this requirement along with its purpose, definitions, and techniques for application, illustrations and interpretations, all of which are authoritative.

12. Accounting for unallowable costs.

a. Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a sponsored agreement.



b. Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this subsection or subsection a.

c. Costs which, in a Federal official's written decision furnished pursuant to sponsored agreement disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either subsection a or b shall be accorded the identification required by subsection b.

d. The costs of any work project not contractually authorized by a sponsored agreement, whether or not related to performance of a proposed or existing sponsored agreement, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

e. All unallowable costs covered by subsections a through d shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular F&A cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in a F&A cost pool that shall be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the F&A cost pool and be allocated through the regular allocation process.

f. Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and F&A cost allocation shall be made to the sponsored agreement cost objective, in accordance with established cost accounting practices and standards which regularly govern a given entity's allocations to sponsored agreement cost objectives. In any determination of a cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

g. Appendix A reflects this requirement, along with its purpose, definitions, techniques for application, and illustrations of this standard, all of which are authoritative.

13. Cost accounting period.

a. Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of a F&A function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period on the basis of data for that part of the cost accounting period if the cost is: (i) material in amount, (ii) accumulated in a separate F&A cost pool or expense pool, and (iii) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(2) An annual period other than the fiscal year may, upon mutual agreement with the Federal Government, be used as the cost accounting period if the use of such period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

b. An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

c. The same cost accounting period shall be used for accumulating costs in a F&A cost pool as for establishing its allocation base, except that the Federal Government and educational institution may agree to use a different period for establishing an allocation base, provided:

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the educational institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the F&A costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

d. Appendix A reflects this requirement, along with its purpose, definitions, techniques for application and illustrations, all of which are authoritative.

14. Disclosure Statement.

a. Educational institutions that received aggregate sponsored agreements totaling \$25 million or more subject to this Circular during their most recently completed fiscal year shall disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix B. With the approval of the cognizant agency, an educational institution may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$25 million or more in sponsored agreements.

b. The DS-2 shall be submitted to the cognizant agency with a copy to the educational institution's audit cognizant office.

c. Educational institutions receiving \$25 million or more in sponsored agreements that are not required to file a DS-2 pursuant to 48 CFR 9903.202-1 shall file a DS-2 covering the first fiscal year beginning after the publication date of this revision, within six months after the end of that fiscal year. Extensions beyond the above due date may be granted by the cognizant agency on a case-by-case basis.

d. Educational institutions are responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. Educational institutions must file amendments to the DS-2 when disclosed practices are changed to comply with a new or modified standard, or when practices are changed for other reasons. Amendments of a DS-2 may be submitted at any time. If the change is expected to have a material impact on the educational institution's negotiated F&A cost rates, the revision shall be approved by the cognizant agency before it is implemented. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

e. Cost and funding adjustments. Cost adjustments shall be made by the cognizant agency if an educational institution fails to comply with the cost policies in this Circular or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of sponsored agreements, if aggregate cost impact on sponsored agreements is material. The cost adjustment shall normally be made on an aggregate basis for all affected sponsored agreements through an adjustment of the educational institution's future F&A costs rates or other means considered appropriate by the cognizant agency. Under the terms of CAS-covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

f. Overpayments. Excess amounts paid in the aggregate by the Federal Government under sponsored agreements due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs shall be credited or refunded, as deemed appropriate by the cognizant agency. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance shall also be determined and collected in accordance with applicable Federal agency regulations.

g. Compliant cost accounting practice changes. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency may require cost adjustments if the change has a material effect on sponsored agreements and the changes are deemed appropriate by the cognizant agency.

h. Responsibilities. The cognizant agency shall:

(1) Determine cost adjustments for all sponsored agreements in the aggregate on behalf of the Federal Government. Actions of the cognizant agency official in making cost adjustment determinations shall be coordinated with all affected Federal agencies to the extent necessary.

(2) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the educational institution's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this Circular.

(3) Distribute to all affected agencies any DS-2 determination of adequacy and/or noncompliance.

#### D. Direct costs.

1. General. Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or F&A costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

2. Application to sponsored agreements. Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from F&A costs of sponsored agreements. Typical costs

charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than F&A costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than F&A costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. F&A costs.

1. General. F&A costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See Section F.1 for a discussion of the components of F&A costs.

2. Criteria for distribution.

a. Base period. A base period for distribution of F&A costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. Need for cost groupings. The overall objective of the F&A cost allocation process is to distribute the F&A costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the F&A cost categories referred to in subsection 1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c. Each such pool or cost grouping should then be

distributed individually to the related cost objectives, using the distribution base or method most appropriate in the light of the guides set forth in subsection d.

c. General considerations on cost groupings. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an F&A cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the F&A costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central F&A costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as F&A charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F, unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing F&A cost rates described in Section H.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section F shall

not be used to distribute utility or student services costs. Instead, subsections F.4.c and F.4.d may be used in the recovery of utility costs.

e. Order of distribution.

(1) F&A costs are the broad categories of costs discussed in Section F.1.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining F&A cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an F&A cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more F&A cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the F&A cost categories described in Section F is required.

#### F. Identification and assignment of F&A costs.

1. Definition of Facilities and Administration. F&A costs are broad categories of costs. "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operation and maintenance expenses, and library expenses. "Administration" is defined as general administration and general expenses, departmental administration, sponsored projects administration, student administration and services, and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

2. Depreciation and use allowances.

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J.14.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated in the following manner:



(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation or use allowances on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to benefiting functions on the basis of:

(a) the employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefiting from the use of that space; or

(b) institution-wide employee FTEs or salaries and wages applicable to the benefiting major functions (see Section B.1) of the institution.

(4) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

c. Large research facilities. The following provisions apply to large research facilities that are included in F&A rate proposals negotiated after January 1, 2000, and on which the design and construction begin after July 1, 1998. Large facilities, for this provision, are defined as buildings with construction costs of more than \$10 million. The determination of the Federal participation (use) percentage in a building is based on institution's estimates of building use over its life, and is made during the planning phase for the building.

(1) When an institution has large research facilities, of which 40 percent or more of total assignable space is expected for Federal use, the institution must maintain an adequate review and approval process to ensure that construction costs

are reasonable. The review process shall address and document relevant factors affecting construction costs, such as:

- Life cycle costs
- Unique research needs
- Special building needs
- Building site preparation
- Environmental consideration
- Federal construction code requirements
- Competitive procurement practices

The approval process shall include review and approval of the projects by the institution's Board of Trustees (which can also be called Board of Directors, Governors or Regents) or other independent entities.

(2) For research facilities costing more than \$25 million, of which 50 percent or more of total assignable space is expected for Federal use, the institution must document the review steps performed to assure that construction costs are reasonable. The review should include an analysis of construction costs and a comparison of these costs with relevant construction data, including the National Science Foundation data for research facilities based on its biennial survey, "Science and Engineering Facilities at Colleges and Universities." The documentation must be made available for review by Federal negotiators, when requested.

3. Interest. Interest on debt associated with certain buildings, equipment and capital improvements, as defined in Sections J.25, shall be classified as an expenditure under the category Facilities. These costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and maintenance expenses.

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expense category should also include its allocable

share of fringe benefit costs, depreciation and use allowances, and interest costs.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated in the same manner as described in subsection 2.b for depreciation and use allowances.

c. For F&A rates negotiated on or after July 1, 1998, an institution that previously employed a utility special cost study in its most recently negotiated F&A rate proposal in accordance with Section E.2.d, may add a utility cost adjustment (UCA) of 1.3 percentage points to its negotiated overall F&A rate for organized research. Exhibit B displays the list of eligible institutions. The allocation of utility costs to the benefiting functions shall otherwise be made in the same manner as described in subsection F.4.b. Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.

d. Beginning on July 1, 2002, Federal agencies may receive applications for utilization of the UCA from institutions not subject to the provisions of subsection F.4.c.

#### 5. General administration and general expenses.

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expense of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and, the operations of the central administrative management information systems. General administration and general expenses shall not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6, Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section G.2. When an activity included in this F&A cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental administration expenses.

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the F&A cost rate for major functions in Section G; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and

general expenses, operation and maintenance expenses, and depreciation and/or use allowances.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or F&A costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances.

(2) The salaries of administrative and clerical staff should normally be treated as F&A costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples of major projects are described in Exhibit C.

(3) Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs.

c. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) shall be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored projects administration.

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other F&A cost items, such as accounting, procurement, or personnel administration.

8. Library expenses.

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C.5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amount allocated in subsection b shall be assigned further as follows:

(1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

9. Student administration and services.

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Section J.10. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

10. Offset for F&A expenses otherwise provided for by the Federal Government.

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government that are made to the institution to support solely, specifically, and directly, in whole or in part, any of the

administrative or service activities described in subsections 2 through 9.

b. The items in this group shall be treated as a credit to the affected individual F&A cost category before that category is allocated to benefiting functions.

G. Determination and application of F&A cost rate or rates.

1. F&A cost pools.

a. (1) Subject to subsection b, the separate categories of F&A costs allocated to each major function of the institution as prescribed in Section F shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in subsection 2 to arrive at a single F&A cost rate for each function.

(2) The rate for each function is used to distribute F&A costs to individual sponsored agreements of that function. Since a common pool is established for each major function of the institution, a separate F&A cost rate would be established for each of the major functions described in Section B.1 under which sponsored agreements are carried out.

(3) Each institution's F&A cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the F&A costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the F&A cost pools, as described in Sections E.2 and F.2 through F.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section B.1) shall contain all the programs or activities that utilize the F&A costs allocated to that major function. At the time a F&A cost proposal is submitted to a cognizant Federal agency, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the F&A costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist



of research under a group of sponsored agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of F&A costs, provisions should be made for a separate F&A cost pool applicable to such work. The separate F&A cost pool should be developed during the regular course of the rate determination process and the separate F&A cost rate resulting therefrom should be utilized; provided it is determined that (1) such F&A cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. The distribution basis. F&A costs shall be distributed to applicable sponsored agreements and other benefiting activities within each major function (see Section B.1) on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000 shall be excluded from modified total direct costs. Other items may only be excluded where necessary to avoid a serious inequity in the distribution of F&A costs. For this purpose, a F&A cost rate should be determined for each of the separate F&A cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage that the amount of the particular F&A cost pool is of the modified total direct costs identified with such pool.

3. Negotiated lump sum for F&A costs. A negotiated fixed amount in lieu of F&A costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's F&A services cannot be readily determined. Such negotiated F&A costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and

other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined rates for F&A costs. Public Law 87-638 (76 Stat. 437) authorizes the use of predetermined rates in determining the "indirect costs" (F&A costs in this Circular) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for F&A costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of F&A costs during the ensuing accounting periods.

5. Negotiated fixed rates and carry-forward provisions. When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the F&A cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected F&A costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple

rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and final rates for F&A costs. Where the cognizant agency determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate shall be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed rates for the life of the sponsored agreement.

a. Federal agencies shall use the negotiated rates for F&A costs in effect at the time of the initial award throughout the life of the sponsored agreement. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal funding agency at the time of the award. If negotiated rate agreements do not extend through the life of the sponsored agreement at the time of the initial award, then the negotiated rate for the last year of the sponsored agreement shall be extended through the end of the life of the sponsored agreement. Award levels for sponsored agreements may not be adjusted in future years as a result of changes in negotiated rates.

b. When an educational institution does not have a negotiated rate with the Federal Government at the time of the award (because the educational institution is a new grantee or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award shall be adjusted once a rate is negotiated and approved by the cognizant agency.

8. Limitation on reimbursement of administrative costs.

a. Notwithstanding the provisions of subsection 1.a, the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental

Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation and/or use allowances, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Sections F.5, F.6, F.7 and F.9) and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section F.

b. Existing F&A cost rates that affect institutions' fiscal years which begin on or after October 1, 1991, shall be unilaterally amended by the cognizant Federal agency to reflect the cost limitation in subsection a.

c. Permanent rates established prior to this revision that have been amended in accordance with subsection b may be renegotiated. However, no such renegotiated rate may exceed the rate which would have been in effect if the agreement had remained in effect; nor may the administrative portion of any renegotiated rate exceed the limitation in subsection a.

d. Institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to: (i) change the charging of a particular type of cost from F&A to direct, or (ii) reclassify costs, or increase allocations, from the administrative pools identified in subsection to the other F&A cost pools or fringe benefits. Cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative method for administrative costs.

a. Notwithstanding the provisions of subsection 1.a, an institution may elect to claim fixed allowance for the "Administration" portion of F&A costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section F.1, whichever is less, provided that no accounting or cost allocation changes with the effects described in subsection 8.d have occurred. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the F&A cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated F&A cost agreement includes this alternative, an institution shall make no further charges for the expenditure categories described in Sections F.5, F.6, F.7 and F.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may

continue to exercise it at the same rate without further identification or documentation of costs, provided that no accounting or cost allocation changes with the effects described in subsection 8.d have occurred.

c. If an institution elects to accept a threshold rate, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its F&A cost rate, the institution must reconcile its F&A cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section B.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling F&A cost proposals to financial statements and allocating facilities costs.

#### 10. Individual rate components.

In order to satisfy the requirements of Section J.14 and to provide mutually agreed upon information for management purposes, each F&A cost rate negotiation or determination shall include development of a rate for each F&A cost pool as well as the overall F&A cost rate.

#### 11. Negotiation and approval of F&A rate.

a. Cognizant agency assignments. "A cognizant agency" means the Federal agency responsible for negotiating and approving F&A rates for an educational institution on behalf of all Federal agencies.

(1) Cost negotiation cognizance 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. Information on funding shall be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency assignment shall default to HHS. Notwithstanding the method for cognizance determination described above, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and shall be decided based on mutual agreement between HHS and DOD.

(2) Cognizant assignments as of December 31, 1995, shall continue in effect through educational institutions' fiscal

years ending during 1997, or the period covered by negotiated agreements in effect on December 31, 1995, whichever is later, except for those educational institutions with cognizant agencies other than HHS or DOD. Cognizance for these educational institutions shall transfer to HHS or DOD at the end of the period covered by the current negotiated rate agreement. After cognizance is established, it shall continue for a five-year period.

b. Acceptance of rates. The negotiated rates shall be accepted by all Federal agencies. Only under special circumstances, when required by law or regulation, may an agency use a rate different from the negotiated rate for a class of sponsored agreements or a single sponsored agreement.

c. Correcting deficiencies. The cognizant agency shall negotiate changes needed to correct systems deficiencies relating to accountability for sponsored agreements. Cognizant agencies shall address the concerns of other affected agencies, as appropriate.

d. Resolving questioned costs. The cognizant agency shall conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for work performed under Circular A-21 may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates. The cognizant agency shall arrange with the educational institution to provide copies of rate proposals to all interested agencies. Agencies wanting such copies should notify the cognizant agency. Rates shall be established by one of the following methods:

(1) Formal negotiation. The cognizant agency is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Non-cognizant Federal agencies, which award sponsored agreements to an educational institution, shall notify the cognizant agency of specific concerns (i.e., a need to establish special cost rates) that could affect the negotiation process. The cognizant agency shall address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency shall then arrange a negotiation conference with the educational institution.

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

g. Formalizing determinations and agreements. The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest.

h. Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.

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

#### H. Simplified method for small institutions.

##### 1. General.

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

b. The simplified procedure should not be used where it produces results that appear inequitable to the Federal Government or the institution. In any such case, F&A costs should be determined through use of the regular procedure.

##### 2. Simplified procedure - Salaries and wages base.

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

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

(3) Library.

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

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

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a the amount of salaries and wages included under subsection b.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to direct salaries and wages for individual agreements to determine the amount of F&A costs allocable to such agreements.

3. Simplified procedure - Modified total direct cost base.

a. Establish the total costs incurred by the institution for the base period.

b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

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

(3) Library.



(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.

d. The only allowable public relations costs are:

(1) Costs specifically required by the sponsored agreement;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements (these costs are considered necessary as part of the outreach effort for the sponsored agreement); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in sections D. ("Direct Costs") and E. ("F & A Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, 1.d and 1.e.

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the institution, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the institution.

## 2. Advisory councils.

Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to sponsored agreements.

3. Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

4. Alumni/ae activities.

Costs incurred for, or in support of, alumni/ae activities and similar services are unallowable.

5. Audit costs and related services.

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 USC 7505(b) and section \_\_.230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section \_\_.200(d) are allowable, subject to the conditions listed in A-133, section \_\_.230 (b)(2).

6. Bad Debt.

Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

7. Bonding costs.

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the institution. They arise also in instances where the institution requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the institution in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

8. Commencement and convocation costs.

Costs incurred for commencements and convocations are unallowable, except as provided for in Section F.9.

9. Communication costs.

Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

10. Compensation for personal services.

a. General. Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (see subsection f). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as F&A costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b. Payroll distribution.

(1) General Principles.

(a) The distribution of salaries and wages, whether treated as direct or F&A costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying F&A costs and the functions to which they are allocable. The components of

the residual category are not required to be separately documented.

(b) The apportionment of employees' salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will-

(1) be in accordance with Sections A.2 and C;

(2) produce an equitable distribution of charges for employee's activities; and

(3) distinguish the employees' direct activities from their F&A activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in subsection b.(2). Examples of acceptable methods are contained in subsection c. Other methods that meet the criteria specified in subsection b.(2) also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) Criteria for Acceptable Methods.

(a) The payroll distribution system will

(i) be incorporated into the official records of the institution;

(ii) reasonably reflect the activity for which the employee is compensated by the institution; and

(iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in subsection a need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and F&A cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or F&A cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify F&A costs and the functions to which they are allocable. The activities chargeable to F&A cost categories or the major functions of the institution for employees whose salaries must be apportioned (see subsection b.(1)b)), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and F&A charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. Examples of Acceptable Methods for Payroll Distribution:

(1) Plan-Confirmation: Under this method, the distribution of salaries and wages of professorial and professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other

activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in subsection a need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (See Section H for treatment of F&A costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with a significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period. Whenever it is apparent that a significant change in work activity that is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, F&A cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) After-the-fact Activity Records: Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system

(compensation for incidental work as described in subsection a need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose, provided that they meet the requirements in subsections (a) through (e).

(3) Multiple Confirmation Records: Under this system, the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and F&A cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be F&A cost records to reflect the distribution of that activity to F&A costs. These records may be kept jointly or separately (but are to be certified separately, see below).



(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity for which employees are compensated by the institution (compensation for incidental work as described in subsection a need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the record for each employee will include:

(1) the signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate; and,

(2) the record of F&A costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities. These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purposes, provided they meet the requirements in subsections (a) through (f).

d. Salary rates for faculty members.

(1) Salary rates for academic year. Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies

to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) Periods outside the academic year.

(a) Except as otherwise specified for teaching activity in subsection (b), charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) Part-time faculty. Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments. For example, an institution pays \$5000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of \$5000, or \$2500.

e. Noninstitutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional

activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

f. Fringe benefits.

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. See subsection 11.f.(4) for treatment of sabbatical leave.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established educational institutional policies, and are distributed to all institutional activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable for fiscal years beginning after September 30, 1998. See Section J.45.b, Scholarships and student aid costs, for treatment of tuition remission provided to students.

(3) Rules for pension plan costs are as follows:

(a) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided: (i) such policies meet the test of reasonableness, (ii) the methods of cost allocation are equitable for all activities, (iii) the amount of pension cost assigned to each fiscal year is determined in accordance with subsection (b), and (iv) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(b) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (48 Part 9904-412).

(c) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under ERISA are also unallowable.

(4) Rules for sabbatical leave are as follows:

(a) Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution.

(b) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

(5) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of institution-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the institution demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees. Fringe benefits shall be treated in the same manner as the salaries and wages of the employees receiving the benefits. The benefits related to salaries and wages treated as direct costs shall also be treated as direct costs; the benefits related to salaries and wages treated as F&A costs shall be treated as F&A costs.

g. Institution-furnished automobiles.

That portion of the cost of institution-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

h. Severance pay.

(1) Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's

part, or by circumstances of the particular employment.

(2) Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of subsection (1) may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

(4) Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

#### 11. Contingency provisions.

Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable, except as noted in the cost principles in this circular regarding self-insurance, pensions, severance and post-retirement health costs.

#### 12. Deans of faculty and graduate schools.

The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

#### 13. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

##### a. Definitions.

"Conviction," as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

"Costs," include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the institution to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

"Fraud," as used herein, means -

(1) acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents;

(2) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (3) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding

(a) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation, by the institution (including its agents and employees); and

(b) results in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of institutional liability.

(iii) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(iv) A final decision by an appropriate Federal official to debar or suspend the institution, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(v) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subsections (i) through (iv).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subsection b.

c. If a proceeding referred to in subsection b. is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the institution and the Federal Government, then the costs incurred by the institution in connection with such proceedings that are otherwise not allowable under subsection b. may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subsection b. is commenced by a State, local or foreign government, the authorized Federal

official may allow the costs incurred by the institution for such proceedings, if such authorized official determines that the costs were incurred as a result of -

(1) a specific term or condition of a federally-sponsored agreement; or

(2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subsection b, but which are not made unallowable by that subsection, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subsection c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the institution in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the institution was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement

litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs, which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the institution separately. During the pendency of any proceeding covered by subsections b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the institution to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

#### 14. Depreciation and use allowances.

a. Institutions may be compensated for the use of their buildings, capital improvements, and equipment, provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F.2. Depreciation and use allowances are computed applying the following rules:

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the institution by a third party shall be its fair market value at the time of the donation.

c. For this purpose, the acquisition cost will exclude:

- (1) the cost of land;
- (2) any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located; and
- (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibits recovery.

d. In the use of the depreciation method, the following shall be observed:

- (1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular



area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method.

Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This requirement does not apply to those institutions (e.g., public institutions of higher education) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

(3) Where the depreciation method is introduced to replace the use allowance method, depreciation shall be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The aggregate amount of use allowances and depreciation attributable to an asset (including imputed depreciation applicable to periods prior to the conversion to the use allowance method as well as depreciation after the conversion) may be less than, and in no case, greater than the total acquisition cost of the asset.

(4) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components shall be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a Federal cognizant agency may authorize a institution to use more than these three groupings. When a institution elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statement purposes, as described in subsection d.2.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (See also subsection e.(3))

e. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost.

The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition cost of the assets. For donated assets, use allowance recovery is limited to the fair market value of the assets at the time of donation.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building.

The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets that meet these criteria will be subject to the 6 2/3 percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

(4) Notwithstanding subsection e.(3), once a institution converts from one cost recovery methodology to another,

acquisition costs not recovered may not be used in the calculation of the use allowance in subsection e.(3).

f. Except as otherwise provided in subsections b. through e., a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

g. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

h. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Exhibit A, List of Colleges and Universities Subject to Section J.14.h of Circular A-21.

(1) Institutions shall expend currently, or reserve for expenditure within the next five years, the portion of F&A cost payments made for depreciation or use allowances under sponsored research agreements, consistent with Section F.2, to acquire or improve research facilities. This provision applies only to Federal agreements, which reimburse F&A costs at a full negotiated rate. These funds may only be used for (a) liquidation of the principal of debts incurred to acquire assets that are used directly for organized research activities, or (b) payments to acquire, repair, renovate, or improve buildings or equipment directly used for organized research. For buildings or equipment not exclusively used for organized research activity, only appropriately proportionate amounts will be considered to have been expended for research facilities.

(2) An assurance that an amount equal to the Federal reimbursements has been appropriately expended or reserved to acquire or improve research facilities shall be submitted as part of each F&A cost proposal submitted to the cognizant Federal agency which is based on costs incurred on or after October 1, 1991. This assurance will cover the cumulative amounts of funds received and expended during the period beginning after the period covered by the previous assurance and ending with the fiscal year on which the proposal is based. The assurance shall also cover any amounts reserved from a prior period in which the funds received exceeded the amounts expended.

15. Donations and contributions.

a. Contributions or Donations rendered.

Contributions or donations, including cash, property, and services, made by the institution, regardless of the recipient, are unallowable.

b. Donated services received.

Donated or volunteer services may be furnished to a institution by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or F&A cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with Circular A-110.

c. Donated property.

The value of donated property is not reimbursable either as a direct or F&A cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J.14. The value of donated property may be used to meet cost sharing or matching requirements, in accordance with Circular A-110.

16. Employee morale, health, and welfare costs and costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

c. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only (a) where the institution can demonstrate unusual circumstances, and (b) with the approval of the cognizant Federal agency.

17. Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals,

lodging, rentals, transportation, and gratuities) are unallowable.

18. Equipment and other capital expenditures.

a. For purposes of this subsection, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, and land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the institution's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the institution for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or

useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to subsections J.18.b(1) through (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section J.14, Depreciation and use allowances, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section J.43, Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

#### 19. Fines and penalties.

Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsored agreement, or instructions in writing from the authorized official of the sponsoring agency authorizing in advance such payments.

#### 20. Fund raising and investment costs.

a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Costs related to the physical custody and control of monies and securities are allowable.

#### 21. Gain and losses on depreciable assets.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Section J.14.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.25.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing sponsored agreement costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

## 22. Goods or services for personal use.

Costs of goods or services for personal use of the institution's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

## 23. Housing and personal living expenses.

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the institution's officers are unallowable regardless of whether the cost is reported as taxable income to the employees.

b. The term "officers" includes current and past officers.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) "Idle facilities" means completely unused facilities that are excess to the institution's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between:

(a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and

(b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other sponsored agreements, subletting, renting, or sale, in accordance with



sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

(1) types and extent and cost of coverage must be in accordance with sound institutional practice;

(2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to federally-owned property are unallowable, except to the extent that the Federal Government has specifically required or approved such costs; and

(3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in subsection d.

f. Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the institution's materials or workmanship are unallowable.

g. Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research

involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

26. Interest.

a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the institution's own funds, however represented, are unallowable. However, interest on debt incurred after July 1, 1982 to acquire buildings, major reconstruction and remodeling, or the acquisition or fabrication of capital equipment costing \$10,000 or more, is allowable.

b. Interest on debt incurred after **May 8, 1996** to acquire or replace capital assets (including construction, renovations, alterations, equipment, land, and capital assets acquired through capital leases) acquired after that date and used in support of sponsored agreements is allowable, subject to the following conditions:

(1) For facilities costing over \$500,000, the institution shall prepare, prior to acquisition or replacement of the facility, a lease-purchase analysis in accordance with the provisions of Sec\_\_\_\_.30 through\_\_\_\_.37 of OMB Circular A-110, which shows that a financed purchase, including a capital lease is less costly to the institution than other operating lease alternatives, on a net present value basis. Discount rates used shall be equal to the institution's anticipated interest rates and shall be no higher than the fair market rate available to the institution from an unrelated ("arm's length") third-party. The lease-purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the institution. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the defined period. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the defined period. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or

reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the institution directly or as part of the lease arrangement.

(2) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the institution from an unrelated (arm's length) third party.

(3) Investment earnings, including interest income on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(4) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subsection (1). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease-purchase analysis is required to be performed, Federal reimbursement shall be based upon the least expensive alternative.

(5) For debt arrangements over \$1 million, unless the institution makes an initial equity contribution to the asset purchase of 25 percent or more, the institution shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(6) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of

which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(7) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the institution from an unrelated (arm's length) third party.

c. Institutions are also subject to the following conditions:

(1) Interest on debt incurred to finance or refinance assets re-acquired after the applicable effective dates stipulated above is unallowable.

(2) Interest attributable to fully depreciated assets is unallowable.

d. The following definitions are to be used for purposes of this section:

(1) "Re-acquired" assets means assets held by the institution prior to the applicable effective dates stipulated above that have again come to be held by the institution, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) "Initial equity contribution" means the amount or value of contributions made by non-Federal entities for the acquisition of the asset prior to occupancy of facilities.

(3) "Asset costs" means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

#### 27. Labor relations costs.

Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

#### 28. Lobbying.

Reference is made to the common rule published at 55 FR 6736 (2/26/90), and OMB's governmentwide guidance, amendments to OMB's governmentwide guidance, and OMB's clarification notices published at 54 FR 52306 (12/20/89), 61 FR 1412 (1/19/96), 55 FR

24540 (6/15/90) and 57 FR 1772 (1/15/92), respectively. In addition, the following restrictions shall apply:

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence -

(i) the introduction of Federal or State legislation;

(ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature, including efforts to influence State or local officials to engage in similar lobbying activity; or

(iii) any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence -

(i) the introduction of Federal or State legislation; or

(ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subsection a:

(1) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or

subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(2) Any lobbying made unallowable by subsection a.(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the institution's authority to perform the grant, contract, or other agreement; or

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. When an institution seeks reimbursement for F&A costs, total lobbying costs shall be separately identified in the F&A cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of Section B.1.d.

d. Institutions shall submit as part of their annual F&A cost rate proposal a certification that the requirements and standards of this section have been complied with.

e. Institutions shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to this section complies with the requirements of this Circular.

f. Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when:

(1) the employee engages in lobbying (as defined in subsections a and b) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) within the preceding five-year period, the institution has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, institutions are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

g. Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or

disagreements concerning the interpretation or application of this section. Any such advance resolutions shall be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Circular, provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

h. Executive lobbying costs.

Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

29. Losses on other sponsored agreements or contracts.

Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for F&A costs.

30. Maintenance and repair costs.

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see section 18.a(1)).

31. Material and supplies costs.

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a sponsored agreement are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory

withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the sponsored agreement, such materials will be used without charge.

### 32. Meetings and Conferences.

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section J.17, Entertainment costs.

### 33. Memberships, subscriptions and professional activity costs.

a. Costs of the institution's membership in business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are unallowable.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

### 34. Patent costs.

a. The following costs relating to patent and copyright matters are allowable:

(1) cost of preparing disclosures, reports, and other documents required by the sponsored agreement and of searching the art to the extent necessary to make such disclosures;

(2) cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections J.37, Professional service costs, and J.44, Royalties and other costs for use of patents).



b. The following costs related to patent and copyright matter are unallowable:

(i) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the sponsored agreement award does not require conveying title or a royalty-free license to the Federal Government, (but see section J.44, Royalties and other costs for use of patents).

35. Plant and homeland security costs.

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section J.18, Equipment and other capital expenditures, of this Circular.

36. Preagreement costs. Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

37. Professional service costs.

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the institution, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section J.13.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the institution's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to sponsored agreements.

(4) The impact on the institution's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-sponsored agreements.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

### 38. Proposal costs.

Proposal costs are the costs of preparing bids or proposals on potential federally and non-federally-funded sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as F&A costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

### 39. Publication and printing costs.

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the institution.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government: and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

#### 40. Rearrangement and alteration costs.

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the sponsoring agency.

#### 41. Reconversion costs.

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

#### 42. Recruiting costs.

a. Subject to subsections b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet

the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or F&A cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Federal Government.

43. Rental costs of buildings and equipment.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the institution continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subsection b) that would be allowed had title to the property vested in the institution. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between --

(1) divisions of a institution;

(2) non-Federal entities under common control through common officers, directors, or members; and

(3) a institution and a director, trustee, officer, or key employee of the institution or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a institution may establish a separate corporation for the sole purpose of owning property and leasing it back to the institution.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection b) that would be allowed had the institution purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting

Standards Board Statement 13, *Accounting for Leases*, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section J.26. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the institution purchased the facility.

44. Royalties and other costs for use of patents.

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a sponsored agreement award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a institution.

c. In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

45. Scholarships and student aid costs.

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that --

(1) The individual is conducting activities necessary to the sponsored agreement;

(2) Tuition remission and other support are provided in accordance with established educational institutional policy and consistently provided in a like manner to students in return for similar activities conducted in nonsponsored as well as sponsored activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at the institution or affiliated institution and the activities of the student in relation to the Federally-sponsored research project are related to the degree program;

(4) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J.10, and shall be treated as direct or F&A cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

#### 46. Selling and marketing.

Costs of selling and marketing any products or services of the institution are unallowable (unless allowed under subsection J.1 as allowable public relations costs or under subsection J.38 as allowable proposal costs).

#### 47. Specialized service facilities.

a. The costs of services provided by highly complex or specialized facilities operated by the institution, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either subsection 47.b. or 47.c. and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subsection C.5. of this Circular.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that

(1) does not discriminate against federally-supported activities of the institution, including usage by the institution for internal purposes, and

(2) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all F&A costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as F&A costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

#### 48. Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

#### 49. Taxes.

a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for--

(1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Federal Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Federal Government in the manner directed by the Federal Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the institution has been reimbursed by the Federal Government for the taxes, interest, and penalties.

50. Termination costs applicable to sponsored agreements.

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the sponsored agreement not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the sponsored agreement shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the institution,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated sponsored agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the sponsored agreement bears to the entire terminated sponsored agreement award and other sponsored agreements for which the special tooling, machinery, or equipment was acquired.



d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated sponsored agreement less the residual value of such leases, if:

(1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the sponsored agreement and such further period as may be reasonable, and

(2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the sponsored agreement, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the sponsored agreement, unless the termination is for default (see Subpart. \_\_.61 of Circular A-110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the sponsored agreement, except when institutions are reimbursed for disposals at a predetermined amount in accordance with Subparts \_\_.32 through \_\_.37 of Circular A-110.

(3) F&A costs related to salaries and wages incurred as settlement expenses in subsections b.(1) and (2). Normally, such F&A costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under subawards, including the allocable portion of claims which are common to the sponsored agreement and to other work of the institution, are generally allowable.

An appropriate share of the institution's F&A costs may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in section E, F&A costs. The F&A costs so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

51. Training costs.

The cost of training provided for employee development is allowable.

52. Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate F&A cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

53. Travel costs.

a. General.

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the institution's non-federally-sponsored activities.

b. Lodging and subsistence.

Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as the result of the institution's written travel policy. In the absence of an acceptable, written institution policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under sponsored agreements (48 CFR 31.205-46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

- (a) require circuitous routing;
- (b) require travel during unreasonable hours; (c) excessively prolong travel;
- (d) result in additional costs that would offset the transportation savings; or
- (e) offer accommodations not reasonably adequate for the traveler's medical needs. The institution must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a institution's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the institution can demonstrate either of the following:

- (a) that such airfare was not available in the specific case; or
- (b) that it is the institution's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier.

Costs of travel by institution-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection 53.c., is unallowable.

#### 54. Trustees.

Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in Section 53.

#### K. Certification of charges.

1. To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that

all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

2. Certification of F&A costs.

a. Policy.

(1) No proposal to establish F&A cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of F&A Costs set forth in subsection b. The certificate must be signed on behalf of the institution by an individual at a level no lower than vice president or chief financial officer of the institution that submits the proposal.

(2) No F&A cost rate shall be binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish F&A cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When F&A cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

b. Certificate. The certificate required by this section shall be in the following form:

Certificate of F&A Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the F&A cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final F&A costs rate for [identify period

covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

For educational institutions that are required to file a DS-2 in accordance with Section C.14, the following statement shall be added to the "Certificate of F&A Costs":

(5) The rate proposal is prepared using the same cost accounting practices that are disclosed in the DS-2, including its amendments and revisions, filed with and approved by the cognizant agency.

I declare under penalty of perjury that the foregoing is true and correct.

Institution: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Exhibit A -- List of Colleges and Universities Subject to  
Section J.12.h of Circular A-21.

1. Johns Hopkins University
2. Stanford University
3. Massachusetts Institute of Technology
4. University of Washington
5. University of California-Los Angeles
6. University of Michigan
7. University of California-San Diego
8. University of California-San Francisco
9. University of Wisconsin-Madison
10. Columbia University
11. Yale University
12. Harvard University
13. Cornell University
14. University of Pennsylvania
15. University of California-Berkeley
16. University of Minnesota
17. Pennsylvania State University
18. University of Southern California
19. Duke University
20. Washington University
21. University of Colorado
22. University of Illinois-Urbana
23. University of Rochester
24. University of North Carolina-Chapel Hill
25. University of Pittsburgh
26. University of Chicago
27. University of Texas-Austin
28. University of Arizona
29. New York University
30. University of Iowa
31. Ohio State University
32. University of Alabama-Birmingham
33. Case Western Reserve
34. Baylor College of Medicine
35. California Institute of Technology
36. Yeshiva University
37. University of Massachusetts
38. Vanderbilt University
39. Purdue University
40. University of Utah
41. Georgia Institute of Technology
42. University of Maryland-College Park

43. University of Miami
44. University of California-Davis
45. Boston University
46. University of Florida
47. Carnegie-Mellon University
48. Northwestern University
49. Indiana University
50. Michigan State University
51. University of Virginia
52. University of Texas-SW Medical Center
53. University of California-Irvine
54. Princeton University
55. Tulane University of Louisiana
56. Emory University
57. University of Georgia
58. Texas A&M University-all campuses
59. New Mexico State University
60. North Carolina State University-Raleigh
61. University of Illinois-Chicago
62. Utah State University
63. Virginia Commonwealth University
64. Oregon State University
65. SUNY-Stony Brook
66. University of Cincinnati
67. CUNY-Mount Sinai School of Medicine
68. University of Connecticut
69. Louisiana State University
70. Tufts University
71. University of California-Santa Barbara
72. University of Hawaii-Manoa
73. Rutgers State University of New Jersey
74. Colorado State University
75. Rockefeller University
76. University of Maryland-Baltimore
77. Virginia Polytechnic Institute & State University
78. SUNY-Buffalo
79. Brown University
80. University of Medicine & Dentistry of New Jersey
81. University of Texas-Health Science Center San Antonio
82. University of Vermont
83. University of Texas-Health Science Center Houston
84. Florida State University
85. University of Texas-MD Anderson Cancer Center
86. University of Kentucky
87. Wake Forest University

88. Wayne State University
89. Iowa State University of Science & Technology
90. University of New Mexico
91. Georgetown University
92. Dartmouth College
93. University of Kansas
94. Oregon Health Sciences University
95. University of Texas-Medical Branch-Galveston
96. University of Missouri-Columbia
97. Temple University
98. George Washington University
99. University of Dayton



Exhibit B -- Listing of institutions that are eligible for the utility cost adjustment.

1. Baylor University
2. Boston College
3. Boston University
4. California Institute of Technology
5. Carnegie-Mellon University
6. Case Western University
7. Columbia University
8. Cornell University (Endowed)
9. Cornell University (Statutory)
10. Cornell University (Medical)
11. Dayton University
12. Emory University
13. George Washington University (Medical)
14. Georgetown University
15. Harvard Medical School
16. Harvard University (Main Campus)
17. Harvard University (School of Public Health)
18. Johns Hopkins University
19. Massachusetts Institute of Technology
20. Medical University of South Carolina
21. Mount Sinai School of Medicine
22. New York University (except New York University Medical Center)
23. New York University Medical Center
24. North Carolina State University
25. Northeastern University
26. Northwestern University
27. Oregon Health Sciences University
28. Oregon State University
29. Rice University
30. Rockefeller University
31. Stanford University
32. Tufts University
33. Tulane University
34. Vanderbilt University
35. Virginia Commonwealth University
36. Virginia Polytechnic Institute and State University
37. University of Arizona
38. University of CA, Berkeley
39. University of CA, Irvine
40. University of CA, Los Angeles
41. University of CA, San Diego

42. University of CA, San Francisco
43. University of Chicago
44. University of Cincinnati
45. University of Colorado, Health Sciences Center
46. University of Connecticut, Health Sciences Center
47. University of Health Science and The Chicago Medical School
48. University of Illinois, Urbana
49. University of Massachusetts, Medical Center
50. University of Medicine & Dentistry of New Jersey
51. University of Michigan
52. University of Pennsylvania
53. University of Pittsburgh
54. University of Rochester
55. University of Southern California
56. University of Tennessee, Knoxville
57. University of Texas, Galveston
58. University of Texas, Austin
60. University of Texas Southwestern Medical Center
61. University of Virginia
62. University of Vermont & State Agriculture College
63. University of Washington
64. Washington University
65. Yale University
66. Yeshiva University

Exhibit C -- Examples of "major project" where direct charging of administrative or clerical staff salaries may be appropriate.

- \* Large, complex programs such as General Clinical Research Centers, Primate Centers, Program Projects, environmental research centers, engineering research centers, and other grants and contracts that entail assembling and managing teams of investigators from a number of institutions.

- \* Projects which involve extensive data accumulation, analysis and entry, surveying, tabulation, cataloging, searching literature, and reporting (such as epidemiological studies, clinical trials, and retrospective clinical records studies).

- \* Projects that require making travel and meeting arrangements for large numbers of participants, such as conferences and seminars.

- \* Projects whose principal focus is the preparation and production of manuals and large reports, books and monographs (excluding routine progress and technical reports).

- \* Projects that are geographically inaccessible to normal departmental administrative services, such as research vessels, radio astronomy projects, and other research fields sites that are remote from campus.

- \* Individual projects requiring project-specific database management; individualized graphics or manuscript preparation; human or animal protocols; and multiple project-related investigator coordination and communications.

These examples are not exhaustive nor are they intended to imply that direct charging of administrative or clerical salaries would always be appropriate for the situations illustrated in the examples. For instance, the examples would be appropriate when the costs of such activities are incurred in unlike circumstances, i.e., the actual activities charged direct are not the same as the actual activities normally included in the institution's facilities and administrative (F&A) cost pools or, if the same, the indirect activity costs are immaterial in amount. It would be inappropriate to charge the cost of such activities directly to specific sponsored agreements if, in similar circumstances, the costs of performing the same type of

activity for other sponsored agreements were included as allocable costs in the institution's F&A cost pools. Application of negotiated predetermined F&A cost rates may also be inappropriate if such activity costs charged directly were not provided for in the allocation base that was used to determine the predetermined F&A cost rates.

Appendix A Part 99005 -- Cost Accounting Standards for Educational Institutions.

CAS 9905.501 -- Consistency in estimating, accumulating and reporting costs by educational institutions.

Purpose

The purpose of this standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the educational institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual sponsored agreements, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting sponsored agreement. Such comparisons provide one important basis for financial control over costs during sponsored agreement performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of agreement. The comparisons also provide an improved basis for evaluating estimating capabilities.

Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Accumulating costs means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) Actual cost means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) Estimating costs means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) Pricing means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) Proposal means any offer or other submission used as a basis for pricing a sponsored agreement, sponsored agreement modification or termination settlement or for securing payments thereunder.

(7) Reporting costs means the providing of cost information to others.

#### Fundamental Requirement

An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in the related proposal or application.

The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices of this paragraph when such costs are accumulated in reported in greater detail on an actual costs basis during performance of the sponsored agreement.

#### Techniques for application

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate sponsored agreement costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting sponsored agreement shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect; (2) the indirect cost pools to which each element of cost is charged or proposed to be charged; and (3) the methods of allocating indirect costs to the sponsored agreement.

(b) Adherence to the requirement of this standard shall be determined as of the date of award of the sponsored agreement, unless the sponsored agreement has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87-653), in which case adherence to the requirement of this standard shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501-40(b), changes in established cost accounting practices during sponsored agreement performance may be made in accordance with Part 9903 (48 CFR 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the sponsored agreement must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

CAS 9905.502 -- Consistency in allocating costs incurred for the same purpose by educational institutions.

#### Purpose

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any sponsored agreement or other cost objective. The criteria for determining the allocation of costs to a sponsored agreement or

other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

#### Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) Direct cost means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a sponsored agreement are direct costs of that sponsored agreement. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) Final cost objective means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.



(6) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

#### Fundamental Requirement

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

#### Techniques for application

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in sponsored agreement proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the educational institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement

required to be submitted by educational institutions in Section C.14.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to sponsored agreements shall be based upon the educational institution's cost accounting practices used at the time of sponsored agreement proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either (1) use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or (2) directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

#### Illustrations

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the sponsored agreement. Since travel costs of personnel whose time is accounted for as direct labor working on other sponsored agreements are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government sponsored agreement. The educational institution's

Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new sponsored agreement requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the educational institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to sponsored agreements. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to sponsored agreements. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the sponsored agreement, in addition to the directly allocated special test equipment costs, is not considered a violation of the standard.

(2) An educational institution proposes to perform a sponsored agreement which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the sponsored agreement. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all sponsored agreements; however, it wants to allocate the three fixed-post

firemen directly to the particular sponsored agreement requiring them and also allocate a portion of the cost of the general firefighting force to the same sponsored agreement. The educational institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the educational institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

#### Interpretation

(a) Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in this standard, that " \* \* \* no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way this standard applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under this standard, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing sponsored agreement are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing sponsored agreement relate only to that sponsored agreement while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

CAS 9905.505 -- Accounting for unallowable costs --  
Educational institutions.

#### Purpose

(a) The purpose of this standard is to facilitate the negotiation, audit, administration and settlement of sponsored agreements by establishing guidelines covering (1) identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and (2) the cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs. The standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution -- regardless of the allowability of such costs under Government sponsored agreements -- are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

#### Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Directly associated cost means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) Expressly unallowable cost means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or sponsored agreement, is specifically named and stated to be unallowable.

(3) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) Unallowable cost means any cost which, under the provisions of any pertinent law, regulation, or sponsored agreement, cannot be included in prices, cost reimbursements, or settlements under a Government sponsored agreement to which it is allocable.

#### Fundamental requirement

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a Government sponsored agreement.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a Federal official's written decision furnished pursuant to disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph b. of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included

in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and indirect cost allocation shall be made to the cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government sponsored agreement cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

#### Techniques for application

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to sponsored agreement cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of sponsored agreement cost determination and verification. The standard does not require such cost identification for purposes which are not relevant to the determination of Government sponsored agreement cost. Thus, to provide visibility for incurred costs, acceptable alternative

practices would include (1) the segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account, (2) the development and maintenance of separate accounting records or workpapers, or (3) the use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs. Educational institutions may satisfy the visibility requirements for estimated costs either (1) by designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or (2) by description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the standard.

#### Illustrations

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a sponsored agreement, on the basis that these particular costs were not required for performance and were not authorized by the sponsored agreement. The Federal officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the Federal officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the educational institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject sponsored agreement consists of direct labor, direct material, total prime cost, total cost input, etc., the educational institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the Federal officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.



(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of general administration and general expenses (GA&GE) or other indirect expenses, the educational institution must allocate the GA&GE or other indirect expenses to sponsored agreements and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A-21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the Federal officer for resolution pursuant to the sponsored agreement disputes clause. The Federal officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the Federal officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government sponsored agreements, in which such costs are included. If the Federal officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable sponsored agreement costs, the educational institution identified and excluded the expressly unallowable costs. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the Federal officer's authorized representatives, indirect cost rates were

established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered sponsored agreements constitutes compliance with the standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE) pool, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A-21, and is separately identified by the educational institution. The educational institution does not regularly include its GA&GE in any indirect-expense allocation base. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

CAS 9905.506 -- Cost accounting period -- Educational institutions.

#### Purpose

The purpose of this standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for sponsored agreement cost estimating, accumulating, and reporting. This standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in sponsored agreement cost measurements.

#### Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term

includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost Objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) Fiscal year means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

#### Fundamental requirement

Educational institutions shall use their fiscal year as their cost accounting period, except that:

Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period.

An annual period other than the fiscal year may be used as the cost accounting period if its use is an established practice of the educational institution.

A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base.

#### Techniques for application

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is (1) material in amount, (2) accumulated in a separate indirect cost pool or expense pool, and (3) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by this standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the educational institution's cost accounting period, the standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the educational institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of sponsored agreements which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An educational institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience, (2) the practice is consistently followed by the educational institution, (3) the annual period

used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and (4) the practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required, educational institution may select any one of the following: (1) the period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period, (2) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the previous cost accounting period, or (3) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period. A change in the educational institution's cost accounting period is a change in accounting practices for which an adjustment in the sponsored agreement price may be required.

#### Illustrations

(a) An educational institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a sponsored agreement, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the educational institution's cost accounting period.

(b) An educational institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefitting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting

period may be allocated to the benefitting cost objectives of that same 8-month period.

(c) An educational institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined, because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the sponsored agreement prices may thereafter be required.

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June&nbsp;30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the standard.

(e) Most financial accounts and sponsored agreement cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted.