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Received
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Commission on
State Mandates

October 21, 2013

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

Dear Ms. Halsey:

RE: CSM 05-4206-I-04
San Mateo County Community College District
Fiscal Years: 1999-00, 2000-01, and 2001-02

Re: CSM 05-4206-I-08
San Bernardino Community College District
Fiscal Years: 2001-02 and 2002-03

Health Fee Elimination
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd. E.S.
Statutes of 1987, Chapter 1118
Consolidated Incorrect Reduction Claim

I have received the Commission Draft Staff Analysis (DSA) dated August 2, 2013, for the above-referenced consolidated incorrect reduction claim, to which I respond on behalf of the two districts listed above. Issues raised by the DSA, but not responded to by this letter, are not waived.

PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OR MANDATE REIMBURSEMENT CLAIMS

1. Initiation and Completion of the Audit

San Mateo asserts that the FY 1999-00 and FY 2000-01 claims were beyond the statute of limitations for an audit when the Controller completed the audit by issuing its

final audit report on January 7, 2005.

Chronology of Claim Action Dates

January 10, 2001	FY 1999-00 claim filed by the District
January 10, 2002	FY 2000-01 claim filed by the District
December 31, 2003	FY 1999-00 statute of limitations for audit expires
December 31, 2004	FY 2000-01 statute of limitations for audit expires
January 7, 2005	Controller's final audit report issued

The District's FY1999-00 claim was mailed to the Controller on January 10, 2001. The District's FY 2000-01 claim was mailed to the Controller on January 10, 2002. According to Government Code Section 17558.5, these claims were subject to audit no later than December 31, 2003, and December 31, 2004, respectively. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 1999-00 and 2000-01 are barred by the statute of limitations set forth in Government Code Section 17558.5, as amended by Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996.

Original Statute

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

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

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

First Amendment

Statutes of 1995, Chapter 945, Section 13, 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."

For San Mateo, the first two fiscal year claims, 1999-00 and 2000-01, were subject to the two-year statute of limitations established by this first amendment. These two claims were beyond audit when the audit report was issued. Since funds were appropriated for the program for all the fiscal years which are the subject of the audit, the alternative measurement date is not applicable, and the potential factual issue of when the audit is initiated is not relevant. The Commission concurs (DSA 24) that this is the version of the Section 17558.5 relevant to the first two fiscal years.

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 three years after the ~~end of the calendar year in which the~~ date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."

The San Mateo claim for FY 2001-02 is subject to this amended version of Section 17558.5, and was still subject to audit at the time the audit report was released. 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 but not paid is introduced. It also means that at the time the claim is filed it is impossible for the claimant to know when the statute of limitations will expire, which is contrary to the purpose of any statute of limitations.

Third Amendment

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

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

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

None of the fiscal period claims which are the subject of the San Mateo audit are subject to this amended version of 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.

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 consolidated incorrect reduction claim. (That statement of decision will be referenced here as HFE-7.) Relying on the findings HFE-7, the Commission concludes here (DSA 24), citing Silva (04/24/08, 3), that the audit for these two fiscal years were properly "initiated 'no later than January 2, 2003, when the entrance conference was held.'" However, the Affidavit of Jim L. Spano, dated November 17, 2006, an attachment to the Silva letter, asserts at item 7 on page 2, that the audit "commenced on June 2, 2003, and ended on January 7, 2005."

While the Commission (DSA, 24) agrees with the claimant that first amendment (Statutes of 1995, Chapter 945) is the relevant version, not the second amendment (Statutes of 2002, Chapter 1128) version, the Commission imports the language of the second amendment to assert that the date "initiation" of the audit controls the running of the two-year limitation. The Commission asserts (DSA, 24) that the second amended version of Section 17558.5 only "clarifies" the first amendment of Section 17558.5, because there is no language in the first amended version that requires the audit to be completed in two years. However, the two-year completion language to complete a properly initiated audit first occurs in the third amended version. Therefore, by transmuting the "plain meaning" of the language in three different statutory amendments with three separate effective dates, the Commission has created a strict interpretation never asserted by the Controller, and has done so for the stated purpose of "consideration and respect" to the Controller. (DSA, 24) There is no finding that the Controller ever requested the original statute of limitations or its amendments, so any quasi-judicial consideration and respect to the Controller are unnecessary.

Notwithstanding, to apply the Commission's or the Controller's interpretation as a rule, one would need to know as a finding of fact the date the audit was initiated and dates of first payment. Here the Controller has asserted two different initiation dates. Then, one would need to know, as a matter of law, what constitutes "initiation" of the audit, whether it is the first phone contact, date of the entrance conference letter, or the date of the entrance conference. The Commission record here is without a finding of law on

the issue of the "initiation date" and is without uncontroverted factual evidence as to the date of "audit initiation" for the San Mateo audit.

2. Document Retention Period

The May 25, 1989, parameters and guidelines in effect for the fiscal years that are the subject of the audit state (P&G, 6) that specific types of documentation "must be kept on file by the agency submitting the claim for a period no less than three years from the date of the final payment of the claim." In 1989 there was no statute of limitations for mandate audits and no Government Code section 17558.5. Upon first adoption (Statutes of 1993, Chapter 906, Section 2, operative January 1, 1994), Section 17558.5 circumscribed the scope of the1989 parameters and guidelines language to the extent that the parameters and guidelines language does not comport with the 1994 or subsequent versions of Section 17558.5. Section 17558.5 specifies a two-year or three-year audit period for these fiscal years, depending on the date when the claim is filed, without reference to a requirement for full claim payment.

Regardless, the Commission (DSA, 25) concludes that documentation is to be maintained "during the period subject to audit," but also "for a minimum of three years after final payment of the claim," essentially what is stated in the 1989 parameters and guidelines. The Commission cites Title 2, CCR, Section 1183.1, (Register 2005, No. 36) for the "period subject to audit" language. However, Section 1183.1 does not make any mention of a three-year minimum nor make any reference to payment dates. So, citation to Section 1183.1 is not useful for the Commission conclusion to maintain documentation for at least three years after the date of final payment.

To buttress its conclusion regarding the three years, the Commission (DSA, 25) then refers to the second amendment of Section 17558.5. However, the Commission concluded that the first amendment applies to the statute of limitation for audit issue asserted by the District, not the second amendment. Even so, the condition of payment language is not even a factual match. While the Commission asserts that the three years after final payment stated in the parameters and guidelines somehow "coincides" with the second amendment, that language actually states that the audit must commence within three years of first payment. Therefore, the Commission record has not established a documentation retention period for the purpose of audit different from, or in excess of, Section 17558.5.

PART B. UNDERSTATED OFFSETTING REVENUES

San Mateo asserted that the Controller incorrectly increased the reported student health services service fee revenues by $70,603, due to a state-authorized $1 increase in health fees that was not passed along by the District to the students for the FY 1999-00 summer semester and for all three semesters of FY 2001-02. The District reported the actual rate charged the student that was lower than the authorized rate for those

semesters. San Bernardino asserted that the Controller incorrectly increased the reported student health services service fee revenues by $150,031, for the two fiscal years subject to the audit. The Controller computed the total student health fees collectible based on state rates while the District reported actual fees collected.

The issue of "collectible fees" versus actual fees collected was the subject of the *Clovis* decision that created what is referred to as the "Health Fee Rule." For this incorrect reduction claim, the Commission concludes (DSA, 27):

> "Thus, pursuant to the court's decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by the Districts for the *Health Fee Elimination* program is valid. The Commission is bound by the court's decision in *Clovis Unified*, and bound to apply the Health Fee Rule set forth by the court."

The Districts agree 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. However, the Commission (DSA, 27) incorrectly concludes the following:

> "Based on the foregoing the Commission finds that the Controller's reduction of reimbursement to the extent of the fee authority found in Education Code section 76355 was not arbitrary, capricious, or entirely lacking in evidentiary support."

The application of the Health Fee Rule, as determined by the Commission's October 27, 2011, statement of decision for HFE-7, involves two factual elements: the number of exempt students and the specific enrollment statistics for each semester. The HFE-7 decision approved the Controller's use of specific Community College Chancellor's MIS data to obtain these enrollment amounts. The method approved by HFE-7 is stated in the more recent HFE audits conducted by the Controller:

> **"FINDING— Understated authorized health service fees**
>
> We obtained student enrollment data from the CCCCO. The CCCCO identified enrollment data from its management information system (MIS) based on student data that the district reported. CCCCO identified the district's enrollment based on its MIS data element STD7, codes A through G. CCCCO 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.*

There is no evidence on the record for this incorrect reduction claim that the Controller has properly applied the Health Fee Rule to either District's annual claims, therefore the

Commission's ultimate conclusion that the adjustments here are not arbitrary or lacking in evidentiary support is unfounded.

PART C. APPLICATION OF AN INDIRECT COST RATE

The Controller's audit report concludes that San Mateo overstated its indirect cost rates and claimed costs in the amount of $112,243 for all three fiscal years. The audit report states that " . . . the district improperly applied its claimed indirect cost rate to costs beyond those approved by the U.S. Department of Health and Human Services (DHHS) . . . . . the district improperly applied the indirect cost rate to direct services and supplies, other operating expenses, and capital outlay costs . . . " While the Controller accepted the 30% indirect cost rate approved by the federal agency, it did not accept the application of the rate to costs other than salary and benefits because the rate was calculated using only salary and benefit costs. For San Bernardino, the audit report concludes that the District overstated its indirect cost rates and claimed costs in the amount of $281,494. The audit report states "(t)he district claimed indirect costs based on an indirect cost rate proposal (IRCP) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its IRCPs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions."

The Controller's claiming instructions are not enforceable

Both Districts assert 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.[1] The Controller has never asserted that its

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[1] 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

claiming instructions are alone legally enforceable, rather the Controller's "manual is issued to assist claimants. The information contained in the manual is based on state law, regulations, and the parameters and guidelines." Cited (DSA, 29). Therefore, any documentation "standards" or cost accounting formulas published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions.

The Commission (DSA, 29, 30) also does not assert that the claiming instructions alone are enforceable. The Commission (DSA, 30, 31) characterizes the claiming instructions to only "provide guidance for the claimants and the state with respect to indirect cost rates; those instructions reveal that while federal approval of an indirect cost rate is not strictly required, it is one of two options for developing an indirect cost rate." Also, (DSA, 29): "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." *Emphasis added.* The "guidance" is to refer back to the individual parameters and guidelines, which for the Health Fee Elimination mandate, have no specific instructions for the indirect cost rate calcualtion.

The Commission (DSA, 28) instead relies upon the "plain language" of the 1989 parameters and guidelines:

> "The districts' argument is unsound: the parameters and guidelines plainly state that "indirect costs *may be claimed in the manner described by the State Controller.*" The districts argue that the word "may" is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller. The interpretation that is consistent with the plain language of the parameters and guidelines is that "indirect costs may be claimed," or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the Controller's claiming instructions. This interpretation is urged by the Controller."

The Commission analysis strains credulity. Claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather

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> 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.

than the subsequent discretionary choice to use claiming instructions methods is gratuitous.

Even though we have the permissive "may" language in the parameters and guidelines, coupled with claiming instructions that both the Controller and Commission characterize only as guidance, the Commission makes a jump to the conclusion that compliance with the claiming instructions is required (DSA 32, 33):

> "As discussed above, the Commission's duly adopted parameters and guidelines require compliance with the Controller's claiming instructions; the parameters and guidelines incorporate the claiming instructions by reference, and the claiming instructions are therefore presumed to be valid and enforceable."

Somehow the "guidance" provided by the claiming instructions become requirements because (DSA, 29, 30) "the distinction is that here the parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions" even though the parameters and guidelines use the word "may." Due adoption of the parameters and guidelines does not automatically resolve the meaning of adopted language. Thus, 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 Heath 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 issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

"B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate."

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their discretion and has utilized it in college parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

The Districts agree the parameters and guidelines have the force of law, but that it does not extend by reference (tenuous or not) to the claiming instructions for Health Fee Elimination. Neither the Commission or the Controller have ever adopted the Controller's claiming instructions pursuant the process required by the Administrative Procedure Act, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller's claiming instructions.

"Reasonableness" is the only standard available

The Commission (DSA 30, 32) concludes that the Districts "*did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rates.*" Neither the Commission, the Controller, or the Districts assert that the claiming instructions are, by themselves, legally enforceable. Therefore, compliance with the claiming instruction methods is not required. 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 Districts 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.

On the issue of reasonableness, the Commission (DSA 34) concludes:

> "The Commission does not have evidence in the record suggesting a finding that the Controller's reductions to San Bernardino's claim were unreasonable; the determination of which costs are direct and which are indirect is not sufficiently explained in the record, nor are any specific delineations made. Based on the foregoing, the Commission finds that the Controller's reduction was based on an alternative method authorized by the claiming instructions for calculating indirect costs, and is therefore not arbitrary, capricious, or entirely lacking in evidentiary support."

The Commission has it backwards. There is no rebuttable presumption for this mandate that the Controller's methods are per se the only reasonable method. The Controller made no determination as to whether the method used by the District was reasonable or not, but merely substituted the Controller's method for the method used by the Districts. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. In order to move forward with the adjustment, the burden of proof is on the Controller to prove that the District's calculation is unreasonable. There are several reasonable methods which is why, for example, the federal rates are *proposed* by districts and then *negotiated*. Neither the Commission or 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.

Notwithstanding any legal conclusion about the claiming instructions, for any audit for any district, the Controller staff have readily available from the Community College Chancellor's Office sufficient information (the CCFS-311) to calculate any district's indirect cost rates using the Controller's FAM 29-C method, so an audit adjustment reduction to zero or 7% is never necessary.

PART D. DISALLOWANCE OF SALARIES AND APPLICATION OF AUDITED BENEFIT RATES

San Mateo asserts that the Controller incorrectly disallowed "overstated" employee

salaries and benefits in the amount of $610,127 and related indirect costs of $183,038, for the three fiscal years audited. The disallowance consists of specific employees, certain job titles, and some mathematical corrections to reported salaries of other employees. After the salaries were eliminated or adjusted, the Controller applied an audited benefit rate each year to determine benefit costs.

The District concurs with the Commission finding (DSA, 38), based on the application of the contemporary source document rule established by the *Clovis* case, "that the Controller's disallowance of salaries and benefits for Dee Howard and Ernest Rodriguez was arbitrary, capricious, or entirely lacking in evidentiary support, and the costs claimed for these two employees should be reinstated."

The Controller calculated a benefit rate to be applied to the salaries to determine the total allowable salary and employee benefits for each employee. The rates calculated are 16.69264%, 16.62719%, 17.66762% for fiscal years 1999-00, 2000-01, and 2001-02, respectively. The District did not calculate an employee benefit rate to apply to salaries since these benefits are reported as actual costs in the general ledger. Unlike most other mandate programs, the Health Fee Elimination mandate does not generally utilize productive hourly rates, instead the claiming instructions directed claimants to report general ledger amounts which are the appropriate source documentation. Since there is no documentation on the record to otherwise establish a different rate, the District will concede this issue.

PART E. DISALLOWANCE OF OTHER OUTGOING EXPENSES

For the San Mateo audit, the Controller concluded that the District overstated other outgoing expenses in the amounts of $41,375 for FY 2001-02. Since there is no documentation on the record to otherwise explain these journal voucher transactions, the District will concede this issue.

PART F. DISALLOWANCE OF HEALTH SERVICES NOT SUBSTANTIATED IN THE BASE YEAR

In the San Bernardino audit, the Controller reduced health services costs claimed by the District in the amounts of $41,389 for FY 2001-2002, and $61,739 for FY 2002-2003, as unallowable costs for current period services not provided in the FY 1986-87 base year.

The District concurs with the Commission that the adjustments were arbitrary because:

- "... the Controller may not establish an alternate base year; the services provided in 1986-87 are mandated under the plain language of the test claim decision and the parameters and guidelines, and to the extent those services are not offset by student health fees, costs to provide those services are reimbursable." (DSA, 41, 42)

- "The maintenance of effort requirement of the test claim statute turns on the services "provided" in the base year, and the district's interpretation of services provided being equivalent to services *available* is consistent with the purpose and intent of a maintenance of effort requirement." (DSA,42)

- "The maintenance of effort requirement of the test claim statute should not be read so narrowly as to limit the provision of reimbursable health services to the state of medical technology and knowledge available in 1986-1987. ... Such a general approach to the concept of services provided is also consistent with the parameters and guidelines, which provide a list of services 'reimbursable to the extent they were provided by the community college district in fiscal year 1986-87.' ... (I)it would be reasonable to conclude that the immunizations named in the parameters and guidelines are illustrative, rather than exhaustive, in nature." (DSA, 43)

- "The parameters and guidelines are addressed to eligible claimants, meaning community college *districts*, not individual schools. ... (A)lthough the costs of salaries and benefits are broken down by college, the health services inventory certified by the claimant is asserted to apply to the entire district." (DSA 43, 44)

PART G. DISALLOWANCE OF INSURANCE PREMIUMS

For the San Bernardino audit, the Controller disallowed from the claimed services and supplies the amounts of $37,348 for fiscal year 2001-2002, and $38,322 for fiscal year 2002-2003, as athletic insurance premium expense outside the scope of the mandate. Since there is no documentation on the record to otherwise explain these insurance allocations, the District will concede this issue.

CERTIFICATION

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

Executed on October 21, 2013, at Sacramento, California, by

Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box