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**Commission on
State Mandates**

Corrected February 24, 2015

BETTY T. YEE
California State Controller

February 20, 2015

(Via efile and email)

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

Sigrid Asmundson
Best Best & Krieger, LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: Controller's Comments on Draft Proposed Decision

Health Fee Elimination, 05-4206-I-06

Education Code Section 76355

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

Fiscal Years 1997-98 through 2001-02

Los Rios Community College District, Claimant

Dear Ms. Halsey and Ms. Asmundson:

This letter constitutes this office's response to the Draft Proposed Decision (DPD) in this matter. Although we agree with the portion that addresses the effect of the offsetting student health fee authority, we disagree with the conclusion that the audit is initiated when the entrance conference occurs. Given the conceded ambiguity as to what constitutes the initiation of an audit, we believe that a more in depth analysis with reference to the purposes of statutes of limitation and a comparison to their application in other legal fields is necessary.

The Controller's Office agrees with the preliminary determination (found in Sec. IV(A)(1), on page 16 of the DPD) that Government Code¹ section 17558.5, as added in 1995, only requires the Controller initiate the audit within two years after the end of the calendar year in which the claim is filed, not complete it, with respect to the fiscal years in question (1997-98 to 1999-2000). However, as noted above we disagree with the conclusion that the entrance conference constitutes the initiation of the audit. Given that

¹ All further references shall be to the Government Code, unless otherwise indicated.

the Controller's phone call and audit letter occurred before the expiration of the time to file, and the entrance conference occurred after time had passed, the pivotal issue is what it meant by the "initiation of an audit" in Section 17558.5

As noted in the DPD (Page 21, 3rd ¶) "a phone call, a confirming letter, or an entrance conference, are all events that could reasonably be viewed as the initiation date under the statute". Given this ambiguity, and the importance of the conclusion, a detailed in depth statutory interpretation of Section 17558.5 was appropriate, but the DPD only devotes three sentences to the analysis of the critical phrase, "initiation of an audit", stating that:

Black's Law Dictionary defines an audit as "a formal examination of an individual's or organization's accounting records ...". And, "initiate" means to "begin." Thus, pursuant to the plain language of section 17558.5, the audit is initiated when the Controller begins its formal examination of the records. (Page 22, 2nd ¶.)

The DPD does not explain what a formal examination entails, but appears to conclude that it requires an onsite visit. Not only does this analysis ignore numerous rules of statutory construction, but it is inconsistent with prior rationale of the Commission with respect to what constitutes an audit. In the Grossmont Increased Graduation Requirements IRC, the Commission addressed the assertion that a desk review (sometimes called an informal audit) did not satisfy the audit requirement of Section 17561. In that case the Commission noted that "[t]here is nothing in this section [17561] that defines the scope of the SCO's audit, or the manner in which the audit may be conducted." Relying on the constitutional and statutory audit authority granted to the Controller, the Commission concluded that the "SCO exercised its audit authority in accordance with state law", when a claim was reduced based on a desk review of the claim and its supporting documentation. We do not believe it is appropriate to limit the concept of an audit in this case to an onsite formal examination of the records of the claimant.

In addition, the analysis of this question is not consistent with how the Division of Audits actually conducts audits. The Division begins reviewing claims and their supporting documentation before they even call the auditee to arrange the entrance conference. They do this to determine the time left to audit the different claimants, and how to allocate available manpower. The document request in the formal audit letter is made because the auditors want to look at all relevant documents not just those submitted with the claim, and to ensure that the most recent versions are available. For a full description of the process involved in determining whom and when to audit, see the attached declaration of Jim Spano.

The primary purpose of statutory construction is “to determine the Legislature’s intent so as to effectuate the law’s purpose.” *In re C.H.* (2011) 53 Cal.4th 94, 100. “We give the words of the statute their ordinary and usual meaning and view them in their statutory context. *Ibid.* We should “examine[] the disputed phrases in the context of the statute as a whole.” *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 959. In this case the DPD focuses on only four words from the statute, not the statute as a whole. In addition, the analysis does not look at how Section 17558.5 fits within the statutory scheme governing mandates. The courts have held that statutes must be harmonized “both internally and with each other, to the extent possible.” *Scottsdale Ins. Co. v. State Farm Mut. Auto Ins. Co.* (2005) 130 Cal.App.4th 890, 898. We believe that the analysis in the DPD is too narrow to satisfy the rules and purposes of statutory interpretation.

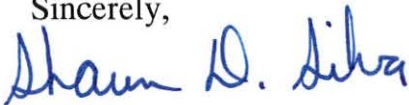
When looking at Section 17558.5, subdivision (a) we can clearly see that it is a statute of limitations provision. To aid us in interpretation we should also look at the purpose of a statute of limitation, as well as compare it to other statutes of limitations. Statutes of limitations are “designed to 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.” *Romano v. Rockwell International, Inc.* (1996) 14 Cal.4th 479, 488. The courts have also stated that the “legislative goal underlying limitations statutes is to require diligent prosecution of known claims so that legal affairs can have their necessary finality and predictability and so that claims can be resolved while evidence remains reasonably available and fresh.” *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 756. In this case, as in other audits conducted by the Controller, the claimant’s sense of finality is not disturbed as they have received notice before the expiration of the statute of limitations. If we are looking for finality and predictability, relying on the entrance conference is misplaced. It can be delayed or continued by scheduling issues as well as staff availability or natural disasters, and is only certain once it occurs. For finality and predictability we should identify a more certain and definite event.

Use of the entrance conference is even more questionable when we compare the application of the statutes of limitations in other areas of the law. In civil and criminal law (misdemeanor), the event that ends the running of the statute is the filing of a complaint. For administrative law, the Continuing Education of the Bar, California Administrative Hearing Guide states that “[i]n practice, the accusation or statement of issues is considered filed on the date when it was signed and dated by the executive officer or other employee of an agency.” (§3.26, page 3-19.) Each of these processes relies at its core on a written document, not a face to face meeting between the parties. Another characteristic in common is that the filing is accomplished by a unilateral act of the plaintiff/complainant, no contact or coordination with the opposing party is required. The conclusion of the DPD would create a statute of limitations procedure that is unlike

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any other, essentially requiring the consent of the auditee and a face to face meeting, before an audit could be initiated. There is nothing in Section 17558.5(a) that suggests such a departure from other statute of limitation procedures. In light of the purposes of statutes of limitations, as well as the common characteristics of other statutes of limitation schemes, we believe that the formal audit letter should constitute the initiating act, and the date thereon, the date of initiation of the audit. In this case the audit letter was dated December 23, 2002, which should be when the audit is considered initiated. Since the statute didn't run until December 31, 2002, the audit of fiscal years 1997-98 through 1999-2000 should be considered timely.

Sincerely,



SHAWN D. SILVA
Senior Staff Counsel

Attachment

SDS/ss

1 **OFFICE OF THE STATE CONTROLLER**

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

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

8 **INCORRECT REDUCTION CLAIM ON:**

9 *Health Fee Elimination Program*

10 Education Code section 76355
11 Statutes 1984, Chapter 1
(1983-1984 2nd Ex. Session)
12 Statutes 1987, Chapter 1118

13 Los Rios Community College District,
14 Claimant

No.: CSM 05-4206-I-06

AFFIDAVIT OF BUREAU CHIEF

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

- 15 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18 years.
- 16 2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000. Before
17 that, I was employed as an Audit Manager for two years and three months.
- 18 3) I am a California Certified Public Accountant.
- 19 4) I reviewed the work performed by the SCO auditors.
- 20 5) The SCO Division of Audits develops an annual workplan using a risk-based approach that
21 identifies claims subject to audit. We audited the district's Health Fee Elimination Program
22 claims for fiscal year (FY) 1997-98 through FY 2001-02. The claims were selected from the
23 annual work plan and assigned by the Audit Manager. The Auditor-in-Charge pulled the
24 claims packages from the SCO's Division of Accounting and Reporting claim files and
25 reviewed and analyzed the filed claim forms and attached supporting documentation.
- 26 6) For this audit, the documentation included schedules detailing the district's calculations
27 of its indirect cost rates along with relevant expenditure data taken from the district's
accounting system. The claims also included schedules detailing the specific health services
that the district provided during each fiscal year compared to services provided during the
program's base year of 1986-87. The Auditor-in-Charge noted the official filing dates for
the various claims and determined that they were still subject to audit in accordance with
the language of Government Code section 17558.5 at that time.

1 7) Prior to making telephone contact with the district, the Auditor-in-Charge reviewed all
2 of these claimant-prepared records to ascertain whether to officially initiate an audit of the
3 district's claims. The Auditor-in-Charge then requested payment information from the
4 Division of Accounting and Reporting's database to confirm that the claims were still
subject to audit based on claim payment information. The Audit Manager then discussed the
audit with the Bureau Chief prior to proceeding.

5 8) The Auditor-in-Charge contacted the district on December 10, 2002, and left a message
6 with the district's Director of Accounting Services, stating that the SCO will be initiating an
7 audit of the district's mandated cost claims for the Health Fee Elimination Program and
8 requesting to schedule an entrance conference. The Auditor-in-Charge left messages on
9 December 12 and 16, 2002.

10 9) The Auditor-in-Charge made contact with the district's Director of Accounting Services
11 on December 19, 2002. The Auditor-in-Charge informed the Director that the SCO will be
12 initiating an audit the district's mandated cost claims for the Health Fee Elimination
13 Program and requested to schedule an entrance conference. The Auditor-in-Charge and
14 district's Director of Accounting Services agreed to a January 16, 2003, start date for the
15 fieldwork portion of the audit.

16 10) The Auditor-in-Charge processed a formal start letter, dated December 23, 2002, that was
17 addressed to the district's Director of Accounting Services and signed by the Audit Manager.
18 The start letter identified the Auditor-in-Charge, program being audited, telephone contact
19 date, reference to standards being used to perform the audit, the entrance conference date and
20 time, and a basic records request. Some of the basic records requested in the audit start letter
21 included claimant-prepared records already made available, such as copies of claims, support
22 for the district's indirect cost rates, and relevant accounting data. The document request was
23 made because the auditors want to review all relevant documents, not just those submitted with
24 the claim, and to ensure that the most recent versions are available.

25 11) The protocol described above is consistent with the protocol for all audits of mandated
26 cost claims. In addition, the Auditor-in-Charge sends a follow-up email to the claimant to
27 confirm their telephone conversation.

I 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: February 20, 2015

OFFICE OF THE STATE CONTROLLER

By: 

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

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 February 25, 2015, I served the:

SCO Comments filed February 20, 2015 (corrected February 24, 2015)

Health Fee Elimination, 05-4206-I-06

Education Code Section 76355

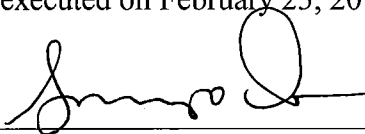
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, and 2001-2002

Los Rios 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 February 25, 2015 at Sacramento, California.



Lorenzo Duran
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/3/15

Claim Number: 05-4206-I-06

Matter: Health Fee Elimination

Claimant: Los Rios 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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