

COMMISSION ON STATE MANDATES

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July 30, 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-09
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2001-2002 and 2002-2003
North Orange County 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 20, 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 Eric Feller at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

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

Health Fee Elimination

Fiscal Years 2001-2002 and 2002-2003

05-4206-I-09

North Orange County Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) challenges the State Controller's Office (Controller's) audit finding that claimant, North Orange County Community College District (claimant), underreported offsetting revenues of \$252,286 in its reimbursement claims filed for the *Health Fee Elimination* in fiscal years 2001-2002 and 2002-2003 by not charging the fully authorized health fee.

The following issues are in dispute in this IRC:

- The statute of limitations applicable to audits of reimbursement claims for fiscal years 2000-2001, 2001-2002, and 2002-2003.
- Offsetting revenue to be applied from health service fee authority, under 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.² In 1984, the Legislature repealed the

¹ Statutes 1993, chapter 8.

² Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.]

community colleges' fee authority for health services.³ However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester).⁴

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁵ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987,⁶ the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁷ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.⁸ As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁹

Procedural History

Claimant signed and dated the reimbursement claim for fiscal year 2000-2001 on December 3, 2001. Claimant signed and dated the reimbursement claim for fiscal year 2001-2002 on January 8, 2003. Claimant signed and dated the reimbursement claim for fiscal year 2002-2003 on January 12, 2004.¹⁰ Controller conducted an entrance conference for the audit of

³ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

⁴ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

⁵ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

⁶ Statutes 1987, chapter 1118.

⁷ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

⁸ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

⁹ Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

¹⁰ The signing and dating of the reimbursement claims is the only evidence in the record of the reimbursement claim filing dates. For purposes of this analysis, Commission staff presumes that the dates that the reimbursement claims were signed and dated by claimant are also the filing dates.

the 2000-2001, 2001-2002, 2002-2003 reimbursement claims on January 26, 2004. Controller issued the draft audit report on May 6, 2005. Claimant submitted comments on the draft audit report on June 15, 2005. Controller issued the final audit report on July 22, 2005.

Claimant filed this IRC on September 15, 2005. The Controller filed comments in response to the IRC on April 24, 2008. Claimant filed rebuttal comments on May 12, 2009.

Commission staff issued a draft proposed decision on the IRC on July 30, 2014.

Commission Responsibilities

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹¹ 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."¹²

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹³ The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹⁴ 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.¹⁵

¹¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹² *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.

¹³ *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.

¹⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁵ 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

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Statute of limitations for fiscal years 2000-2001, 2001-2002, and 2002-2003.	The Controller withdrew its findings for fiscal year 2000-2001 because it did not initiate the audit within the statute of limitations. Thus, there was no reduction of costs for fiscal year 2000-2001. With regard to the other fiscal years, Claimant disagrees with the Controller's interpretation of Government Code section 17558.5, section requires the Controller to <i>complete</i> the audit for all fiscal years in question within the applicable statutory period.	<i>Deny.</i> The Commission does not have jurisdiction to make findings with respect to the Controller's actions on the 2000-2001 fiscal year reimbursement claim because the Controller withdrew its audit findings for that year, resulting in no reduction of costs. In addition, the Controller's audit of the reimbursement claims for fiscal years 2001-2002 and 2002-2003 was timely initiated and completed pursuant to Government Code section 17558.5.
Reductions based on understated offsetting revenues from student health fees from the 2001-2002 and 2002-2003 reimbursement claims.	Claimant argues that it is inappropriate to reduce the claim amounts by revenues not collected. According to claimant, neither the law nor the parameters and guidelines require a community college district to charge students a health fee.	<i>Deny</i> – Staff finds that the reduction is correct as a matter of law. This issue has been conclusively decided in the <i>Clovis Unified School District</i> decision, in which the court held that local government could choose not to exercise statutory fee authority to its maximum extent, but not at the state's expense.

Staff Analysis

Staff finds that the Commission does not have jurisdiction to make findings with respect to the Controller's actions on the 2000-2001 fiscal year reimbursement claim because the Controller withdrew its audit findings for that year, resulting in no reduction of costs. In addition, staff finds that the Controller's audit of the reimbursement claims for fiscal years 2001-2002 and 2002-2003 was timely and in accordance with Government Code section 17558.5. The audit was

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.

initiated within three years after the date that the reimbursement claims were filed as required by section 17558.5, as amended in 2002, and timely completed.

Claimant also argues that it is not legally correct to reduce the 2001-2002 and 2002-2003 claim amounts by health fee revenues that were authorized by statute, but not collected by the district. In the *Clovis Unified School District* 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.¹⁶ In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is: "To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost." The Commission is bound by the court's decision in *Clovis Unified*, and bound to apply the Health Fee Rule upheld by the court. Therefore, the Commission finds that the Controller's audit adjustment in reducing the claims by \$252,286 for fiscal years 2001-2002 and 2002-2003 for not charging the fully authorized health fee is correct as a matter of law.

Conclusion

Staff finds that the Commission does not have jurisdiction to make findings with respect to the Controller's actions on the 2000-2001 fiscal year reimbursement claim because the Controller withdrew its audit findings for that year, resulting in no reduction of costs. In addition, staff finds that the Controller's audit of the reimbursement claims for fiscal years 2001-2002 and 2002-2003 was timely and in accordance with Government Code section 17558.5.

Staff further finds that the Controller's reduction of costs representing the authorized but uncollected health service fees that should have been deducted as offsetting revenue is correct as a matter of law.

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.

¹⁶ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Former Education Code Section 72246
(Renumbered as § 76355)¹⁷ Statutes 1984,
Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X
1) and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2001-2002 and 2002-2003

North Orange County Community College
District, Claimant

Case No.: 05-4206-I-09

Health Fee Elimination Program

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

(Adopted September 26, 2014)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claims (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] this IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This incorrect reduction claim (IRC) challenges the State Controller's Office (Controller's) audit finding that claimant, North Orange County Community College District (claimant), underreported offsetting revenues of \$252,286 in its reimbursement claims filed for the *Health Fee Elimination* in fiscal years 2001-2002 and 2002-2003 by not charging the fully authorized health fee.

The Commission finds that it does not have jurisdiction to make findings with respect to the Controller's actions on the 2000-2001 fiscal year reimbursement claim because the Controller withdrew its audit findings for that year, resulting in no reduction of costs. In addition, the Commission finds that the Controller's audit of the reimbursement claims for fiscal years 2001-2002 and 2002-2003 was timely and in accordance with Government Code section 17558.5.

¹⁷ Statutes 1993, chapter 8.

In accordance with Government Code section 17551(d), the Commission finds that the Controller's reduction of \$252,286, representing authorized but uncollected health service fees, is correct as a matter of law as interpreted by the court in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

- 12/03/01 Claimant signed and dated the reimbursement claim for fiscal year 2001-2002.¹⁸
- 01/08/03 Claimant signed and dated the reimbursement claim for fiscal year 2001-2002.¹⁹
- 01/12/04 Claimant signed and dated the reimbursement claim for fiscal year 2002-2003.²⁰
- 01/26/04 Controller conducted an entrance conference for the audits of the 2000-2001, 2001-2002, 2002-2003 reimbursement claims.²¹
- 05/06/05 Controller issued the draft audit report.
- 06/15/05 Claimant submitted comments on the draft audit report.²²
- 07/22/05 Controller issued the final audit report.²³
- 09/15/05 Claimant filed IRC.
- 09/20/05 Commission staff issued Notice of Complete Filing
- 04/24/08 The Controller filed comments on IRC.²⁴
- 05/12/09 Claimant filed rebuttal comments.²⁵
- 07/30/14 Commission staff issued draft proposed decision.

¹⁸ Exhibit A, IRC, page 57.

¹⁹ Exhibit A, IRC, page 78.

²⁰ Exhibit A, IRC, page 101. The signing and dating of the reimbursement claims is the only evidence in the record of the reimbursement claim filing dates. For purposes of this analysis, the Commission presumes that the dates that the reimbursement claims were signed and dated by claimant are also the filing dates.

²¹ Exhibit A, IRC, narrative p. 14.

²² Exhibit A, IRC, page 52.

²³ Exhibit A, IRC, pages 36-50.

²⁴ Exhibit B, Controller's Response to the IRC.

²⁵ Exhibit C, Claimant's Rebuttal Comments.

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.²⁶ In 1984, the Legislature repealed the community colleges' fee authority for health services.²⁷ However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester).²⁸

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.²⁹ 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 1987,³⁰ 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, 1988.³¹ 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.³² 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

²⁶ Former Education Code section 72246 (Stats. 1981, ch. 763). Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

²⁷ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

²⁸ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

²⁹ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

³⁰ Statutes 1987, chapter 1118.

³¹ 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).

³² Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

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.³³

On November 20, 1986, the Commission determined that Statutes 1984, chapter 1 imposed a reimbursable state-mandated new program upon community college districts. On August 27, 1987, the Commission adopted parameters and guidelines for the Health Fee Elimination program. On May 25, 1989, the Commission adopted amendments to the parameters and guidelines for the Health Fee Elimination program to reflect amendments made by Statutes 1987, chapter 1118.

The parameters and guidelines generally provide that eligible community college districts shall be reimbursed for the costs of providing a health services program and that only services specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

Controller’s Audit and Summary of the Issues

According to the Controller’s audit, claimant underreported offsetting revenues “authorized” to be charged under Education Code section 76355(a). Instead, the claimant identified as offsetting revenues only the fee revenue “collected.” Specifically, claimant understated the per-student health fee for fiscal year 2001-2002, claiming \$8 per student for the summer 2001 semester (although \$9 was authorized) and \$11 per student for the fall 2001 and Spring 2002 semesters (although \$12 was authorized). The fiscal year 2002-2003 claim did not include any enrollment data to substantiate the health fee revenue claimed.³⁴

The Controller made the following audit reductions to the reimbursement claims for fiscal years 2001-2002 and 2002-2003 in the amount of \$252,286.

Offsetting Savings/reimbursements	Actual Revenue Claimed	Allowable Per Audit	Audit Adjustment
Fiscal Year 2001-2002	\$ 672,891	\$806,292	\$(133,401)
Fiscal Year 2002-2003	\$ 687,944	\$806,829	\$(118,885)
Total	\$1,360,835	\$1,613,121	\$(252,286)

This IRC addresses the following issues:

- The statute of limitations applicable to audits of reimbursement claims by the Controller for fiscal years 2000-2001, 2001-2002, and 2002-2003.
- Offsetting revenue to be applied from health service fee authority, in accordance with the *Clovis Unified* decision for the 2001-2002 and 2002-2003 reimbursement claims.

III. Positions of the Parties

³³ 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)

³⁴ Exhibit A, IRC, pages 45-46.

North Orange County Community College District

Claimant disagrees with the Controller's reason for withdrawing its findings on the fiscal year 2000-2001 audit. The Controller states that this audit was not *initiated* within the statutory deadline of Government Code section 17558.5, but the claimant argues that the audit was not *completed* within the statutory deadline of December 31, 2003. In response to the Controller's request to strike the claimant's arguments on the 2000-2001 reimbursement claim, claimant states that a motion to strike is without foundation and that the applicable statute of limitations is relevant for the 2001-2002 and 2002-2003 claims at issue, since the Controller has a different interpretation of Government Code section 17558.5 than the claimant.

Claimant also argues that it is inappropriate to reduce the claim amounts by revenues not received. According to claimant, neither Education Code section 76355 nor the *Health Fee Elimination* parameters and guidelines require a community college district to charge the student a health fee. Claimant also asserts that neither Government Code sections 17514 or 17556 require collection of a fee.

State Controller's Office

The Controller withdrew the findings of the fiscal year 2000-2001 audit because it had not initiated the audit within the statute of limitations in Government Code section 17558. The Controller argues that the claimant's argument on this issue should be stricken from the record.

According to the Controller's audit, claimant underreported offsetting revenues "authorized" to be charged under Education Code section 76355(a). Instead, the claimant identified as offsetting revenues only the fee revenue "collected." The claimant understated the per-student health fee for fiscal year 2001-2002, claiming \$8 per student for the summer 2001 semester (although \$9 was authorized) and \$11 per student for the fall 2001 and Spring 2002 semesters (although \$12 was authorized). The Controller reduced the reimbursement claims for fiscal years 2001-2002 and 2002-2003 in total by \$252,286.

It is the Controller's position that the audit adjustments are correct and that this IRC should be denied.

IV. Discussion

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes

A. The Commission Does Not Have Jurisdiction to Make Findings on the 2000-2001 Reimbursement Claim, but the 2001-2002 and 2002-2003 Claims Are Not Barred by the Statute of Limitations in Government Code Section 17558.5.

The Controller withdrew its findings for the fiscal year 2000-2001 audit because it had not initiated the audit within the statutory period required under Government Code section 17558.5. In the IRC, claimant disagrees with the Controller's reason for withdrawing its findings. Claimant argues that the audit of the 2000-2001 reimbursement claim was not timely since it was not "completed" within the statutory deadline of December 31, 2003, as required under Government Code section 17558.5.⁴¹ The Controller responds by stating that the Commission does not have jurisdiction to make any determination regarding the 2000-2001 reimbursement claim since the Controller agreed that the audit of that claim was not initiated within the statutory time period and, therefore, made no reductions for that fiscal year.⁴² The Controller asks that the Commission strike the claimant's arguments with respect to the 2000-2001 reimbursement claim. On reply, the claimant asserts that a purported motion to strike is without foundation and that the applicable statute of limitations issue is relevant for the other two reimbursement claims at issue in this case (claims for fiscal years 2001-2002 and 2002-2003) since the Controller has a different interpretation of Government Code section 17558.5 than the claimant. The claimant contends that Government Code section 17558.5 requires the Controller to *complete* the audit within the applicable statutory period and the Controller argues that it is required to *initiate* the audit within the applicable statutory period.⁴³ The claimant states the following:

The purported motion to strike portions of the District's Incorrect Reduction Claim in Mr. Silva's letter is without foundation and unprecedented in Commission proceedings. There is absolutely no foundation for such an action. Further, the discussion of the construction of the applicable statute of limitations is relevant to the other two fiscal years that were the subject of the audit because, although the Controller conceded that FY 2000-2001 claim was outside the statute of limitations for audit, its action was based on a different construction of the statutes than that proposed by the District.⁴⁴

According to Government Code section 17551, the Commission has jurisdiction to find "that the Controller has incorrectly reduced payments to the local agency or school district." The Controller's audit of the reimbursement claim filed for fiscal year 2000-2001 did not result in a reduction of costs and the claimant has not argued that the Controller has incorrectly reduced any payments with respect to the 2000-2001 claim. The Commission, therefore, does not have jurisdiction to make findings with respect to the 2000-2001 reimbursement claim.⁴⁵

⁴¹ Exhibit A, IRC, at pages 14-16.

⁴² Exhibit B, Controller's Response to the IRC, page 2.

⁴³ Exhibit C, Claimant's Rebuttal Comments, page 3.

⁴⁴ Exhibit C, Claimant's Rebuttal Comments, page 3.

⁴⁵ Government Code section 17551(d).

The Commission further finds that the audit of the 2001-2002 and 2002-2003 reimbursement claims was timely. The reimbursement claims for these fiscal years were filed on January 8, 2003, and January 12, 2004, respectively. At that time, Government Code section 17558.5, as amended in 2002 and effective on January 1, 2003, stated the following:

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.⁴⁶

In this case, the claimant contends that funds were appropriated for this program and, thus, the first sentence of section 17558.5 applies.⁴⁷ Based on the plain language of section 17558.5, the reimbursement claim for 2001-2002 was subject to the initiation of an audit by the Controller no later than three years after the date the reimbursement claim was filed, or by January 8, 2006. And the reimbursement claim for 2002-2003 was subject to the initiation of an audit by the Controller no later than January 12, 2007. The Controller states that the audit for both reimbursement claims was initiated on January 26, 2004, when the entrance conference was conducted. The initiation date is not disputed by the claimant and is well before the 2006 and 2007 deadlines.

Moreover, the requirement to “complete” the audit within two years after the audit is commenced was first established when section 17558.5 was amended in 2004 and was met in this case. As amended and effective beginning January 1, 2005, it reads as follows in underline:

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.⁴⁸

As indicated above, the audit was commenced on January 26, 2004, and was completed well within the two-year time period, on July 22, 2005, when the final audit report was issued.⁴⁹

⁴⁶ Statutes 2002, chapter 1128.

⁴⁷ Exhibit A, IRC, page 14.

⁴⁸ Statutes 2004, chapter 313.

⁴⁹ See, *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, where the court found that when state gives up a right previously possessed by it or one of

Accordingly, the audit of the 2001-2002 and 2002-2003 reimbursement claims is timely and not barred by the statute of limitations in Government Code section 17558.5.

B. The Controller's Reduction of Costs for Understated Offsetting Revenues Under the Clovis Unified Decision and the Health Fee Rule is Correct as a Matter of Law.

The Controller reduced the reimbursement claims filed for 2001-2002 and 2002-2003 by \$252,286 because authorized health service fees should have been deducted as offsetting revenue. Instead of reporting the fee revenue authorized by the statute, the claimant reported and deducted only the amounts collected. The Controller states:

The district understated student enrollment and overstated authorized student health fee exemptions. The district also understated the per-student health fee amount for FY 2001-02. The district claimed \$8 per student for the summer semester and \$11 per student for the fall 2001 and spring 2002 semesters. However, the authorized fees for the FY 2001-02 school year were \$9 per student for the summer semester and \$12 per student for the fall and spring semesters. The district's claim for FY 2002-03 did not include any enrollment data to substantiate the amount of student health fee revenue claimed.

The district provided student enrollment data for each semester for both Fullerton and Cypress College during the audit period. For FY 2001-02, enrollment data the district provided disclosed differences between claimed and actual net student enrollment of 5,722 students. The auditor used the district's enrollment data to compute the number of students exempt from health fees for all three semesters of the FY 2002-03 school year. The auditor then used computed net enrollment amounts to compute the amount of health fee revenue authorized for that year.⁵⁰

Claimant is not disputing the audited student enrollment and audited number of exempt students, but states that the Controller's analysis of the fee authority is wrong. Claimant argues that the relevant offset is the amount of fee revenue collected and not the amount authorized by statute. Claimant states the following:

This issue is one of student health fees revenue actually received, rather than student health fees which might be collected. The Commission determined, as stated in the parameters and guidelines, that the student fees "experienced" [collected] would reduce the amount subject to reimbursement. Student fees not collected are student fees not "experienced" and as such should not reduce reimbursement. Further, the amount "collectible" will never equal actual revenues collected due to changes in student's BOGG [Board of Governor's Grant] 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

its agencies, the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims.

⁵⁰ Exhibit B, Controller's Response to IRC, at Tab 2, page 5.

District and not the Controller, the Controller's adjustment is without legal basis.⁵¹

After claimant filed its IRC, the Third District Court of Appeal issued the *Clovis* decision, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. The Health Fee Rule, as provided in the Controller's *Health Fee Elimination* Program specific claiming instructions, provides that reimbursement will be reduced by the amount of *student fees authorized* by statute. As quoted by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.⁵²

Education Code section 76355(a) provides in relevant part the following:

(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).⁵³

Under 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.⁵⁴ The Chancellor of the California Community Colleges issues a notice to the governing boards of all community colleges when a fee increase is triggered.

⁵¹ Exhibit A, IRC, page 13.

⁵² *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 811. Emphasis in original.

⁵³ Education Code section 76355, as amended by Statutes 1995, chapter 758.

⁵⁴ 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 measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

Claimant argues that neither Education Code section 76355 nor the *Health Fee Elimination* parameters and guidelines require a community college district to charge the student a health fee. Claimant also asserts that neither Government Code sections 17514 or 17556 require collection of a fee.⁵⁵

But the court in the *Clovis* decision upheld, as a matter of law, the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In 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."⁵⁶ The court also noted that, "... this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'⁵⁷

The court also responded to the argument that, "since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission's P&G's."⁵⁸ The court stated:

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.⁵⁹

Although the claimant here was not a party to the *Clovis* case, it is binding on the claimant under principles of collateral estoppel.⁶⁰ Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.⁶¹ The issue decided by the court is identical to the issue in this IRC. In addition, the claimant here has privity with the petitioners in the *Clovis* action. "A party is

⁵⁵ Exhibit A, IRC, pages 10-13.

⁵⁶ *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 812.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* Emphasis in original.

⁵⁹ *Ibid.*

⁶⁰ 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.

⁶¹ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

adequately represented for purposes of the privity rule if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action."⁶²

Accordingly, the Controller's reduction of costs representing the fee revenue authorized to be charged is correct as a matter of law.

V. Conclusion

The Commission finds that it does not have jurisdiction to make findings with respect to the Controller's actions on the 2000-2001 fiscal year reimbursement claim because the Controller withdrew its audit findings for that year, resulting in no reduction of costs. In addition, the Commission finds that the Controller's audit of the reimbursement claims for fiscal years 2001-2002 and 2002-2003 was timely and in accordance with Government Code section 17558.5.

In accordance with Government Code section 17551(d), the Commission concludes that the Controller's reduction of costs representing the authorized but uncollected health service fees that should have been deducted as offsetting revenue is correct as a matter of law.

Accordingly, the Commission denies this IRC.

⁶² *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

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 July 30, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Health Fee Elimination, 05-4206-I-09
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2001-2002 and 2002-2003
North Orange County 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 July 30, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/30/14

Claim Number: 05-4206-I-09

Matter: Health Fee Elimination

Claimant: North Orange County 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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