

COMMISSION ON STATE MANDATES

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July 3, 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**
Mandate Reimbursement Process, 05-4485-I-03
Los Rios Community College District, Claimant
Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459
Fiscal Years 1999-2000 and 2000-2001

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 **July 24, 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 final proposed decision will be issued on or about September 12, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Please contact Tyler Asmundson at (916) 323-3562 if you have any questions.

Sincerely,

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

ITEM __

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459

Mandate Reimbursement Process

Fiscal Years 1999-2000 and 2000-2001

05-4485-I-03

Los Rios Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) is filed by Los Rios Community College District (claimant) challenging reductions made by the State Controller's Office (SCO) to claimed salary, benefit, and related indirect costs for fiscal years 1999-2000 and 2000-2001 to comply with the *Mandate Reimbursement Process* mandate, CSM-4204 and 4485. The *Mandate Reimbursement Process* program authorizes reimbursement to local agencies and school districts for the costs of filing successful test claims and reimbursement claims. Pursuant to the SCO's final audit issued June 24, 2004, reductions totaling \$8,829 were made for claimed salaries, benefits, and related indirect costs for fiscal year 1999-2000 and \$1,175 for fiscal year 2000-2001 on the grounds that: (1) claimant did not provide supporting documentation for mandate-related hours that various employees claimed; and (2) claimant's records do not support the productive hourly rates claimed for various employees. The claimant seeks a determination from the Commission on State Mandates (Commission), pursuant to Government Code section 17551(d), that the SCO incorrectly reduced the claims, and requests that the SCO reinstate the \$10,004 reduced.

Procedural History

On January 16, 2001, claimant filed its 1999-2000 reimbursement claim with the SCO. On April 29, 2002, claimant signed and dated its 2000-2001 reimbursement claim. On December 12, 2002, the SCO called claimant to arrange a time for an entrance conference. On January 16, 2003, an entrance conference was held. On June 24, 2004, the SCO issued the final audit report on the reimbursement claims at issue in this IRC. On September 9, 2005, claimant filed an IRC for fiscal years 1999-2000 and 2000-2001 (05-4485-I-03). On September 19, 2005, Commission staff deemed the IRC filing complete and issued a notice of complete incorrect reduction claim filing and schedule for comments. On February 11, 2008, the SCO filed comments on the IRC. On July XX, 2014, a draft proposed decision on the IRC was issued for comment.

Commission Responsibilities

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO has incorrectly reduced payments to the local agency or school district.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the SCO and request that the costs in the claim be reinstated.

Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the SCO in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹ 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."²

With regard to the SCO's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.³ The Commission must also review the SCO's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁴

Claims

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

Subject	Description	Staff Recommendation
Claimant asserts that the audit of the 1998-1999 and 1999-2000 reimbursement claims was conducted beyond the statute of limitations.	At the time this reimbursement claim was filed, Government Code section 17558.5, as added in 1995, stated the following: A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the SCO no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no	<p><i>Deny:</i> The audit of the 1998-1999 reimbursement claim did not result in a reduction of costs and, therefore, the Commission does not have jurisdiction to make findings with respect to the 1998-1999 reimbursement claim.</p> <p>The audit of the 1999-2000 did result in a reduction of costs and, thus, the Commission must determine if the audit of the 1999-2000 reimbursement claim was</p>

¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

² *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.

³ *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.

	<p>funds are appropriated for the program for the fiscal year for which the claim is made, the time for the SCO to initiate an audit shall commence to run from the date of initial payment of the claim.</p>	<p>timely. Staff finds that the audit was timely.</p> <p>The plain language of Government Code section 17558.5 does not require the SCO to “complete” the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are “subject to audit” within two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur.</p> <p>In this case, since the 1999-2000 reimbursement claim was filed on January 16, 2001, the claim was subject to audit by the plain language of section 17558.5 until December 31, 2003. On January 16, 2003 the audit was initiated by an entrance conference, and this fact is not disputed. Therefore, since the initiation of the audit was within the two-year time period required by section 17558.5, the audit was timely.</p>
Claimant asserts that the SCO improperly reduced salaries and benefits that were supported by source documentation, as required by the applicable parameters and guidelines.	<p>The SCO reduced salaries and benefits of some employees for fiscal years 1999-2000 and 2000-2001 on the ground that claimant did not provide documentation to support the <i>total number of hours</i> claimed for these employees.</p>	<p><i>Deny:</i> The SCO’s reduction of salaries and benefits based on the hours claimed by some of claimant’s employees for fiscal years 1999-2000 and 2000-2001 is in accordance with the documentation requirements of the parameters and guidelines and is supported by substantial evidence in the record. Therefore, these reductions are correct.</p>

<p>Claimant asserts that the SCO made improper adjustments to the productive hourly rates of several employees without providing any reasons for these adjustments.</p>	<p>The SCO reduced salaries and benefits of some employees for fiscal years 1999-2000 and 2000-2001 on the ground that claimant's records did not support the <i>productive hourly rates</i> claimed for various employees.</p>	<p><i>Partially approve:</i> The SCO's adjustment to the productive hourly rate for employee Sorrell is supported by the evidence in the record and is, therefore, correct. However, the following adjustments were based on the SCO's review of the claimant's payroll records, which have not been filed as evidence in the record for this IRC. Section 1185.2(c) of the Commission's regulations requires that all representations of fact shall be supported by documentary evidence. In this respect, the SCO's adjustment to the productive hourly rates for employees Bray and Sayles, based on allegedly incorrect retroactive payments included in the salary of these employees, is not supported by evidence in the record and is, therefore, incorrect. In addition, the SCO's adjustment to the productive hourly rates of employees Millhone and Sayles based on the alleged inclusion of overtime pay in the salaries of these employees is not supported by evidence in the record and is, therefore, incorrect.</p>
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Staff Analysis

A. Statute of Limitations.

Claimant argues that the audit of the reimbursement claims for fiscal years 1998-1999 and 1999-2000 was completed beyond the statute of limitations provided by Government Code section 17558.5 and is therefore void with respect to those claim years.

The SCO's audit of the reimbursement claim filed for fiscal year 1998-1999 did not result in a reduction of costs. The Commission, therefore, does not have jurisdiction to make findings with respect to the 1998-1999 reimbursement claim.

The SCO did make reductions to the costs claimed in fiscal year 1999-2000 and, thus, the Commission must determine if the audit was timely for that claim. The reimbursement claim for fiscal year 1999-2000 was filed on January 16, 2001, and at that time, Government Code section 17558.5, as added in 1995, stated the following:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.⁵

Claimant contends that funds were appropriated for this program for the 1999-2000 claim year and, thus, the first sentence of section 17558.5 applies. Since the 1999-2000 reimbursement claim was filed on January 16, 2001, the claim was subject to audit by the plain language of section 17558.5 until December 31, 2003. The SCO states that it initiated the audit on January 16, 2003, when an entrance conference was held for this audit and this fact is not in dispute. Therefore, the initiation of the audit was timely. However, claimant asserts that “subject to” requires the SCO “to complete” the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. Applying claimant’s argument in this case would require the completion of the audit for the 1999-2000 reimbursement claim by December 31, 2003. The SCO did not complete its final audit of this claim until June 24, 2004.

The Commission finds that the audit of the 1999-2000 reimbursement claim was timely under Government Code section 17558.5, as added by Statutes 1995, chapter 945. The plain language of Government Code section 17558.5, as added in 1995, does not require the SCO to “complete” the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are “subject to audit” within two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which establishes a longer period of time to initiate the audit when no funds are appropriated for the program. The reimbursement claim filed for fiscal year 1999-2000 was subject to audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended;” in this case, before December 31, 2003. Since the audit began in January 2003, it was timely initiated.

This interpretation is consistent with the Legislature’s 2002 amendment to Government Code section 17558.5, clarifying that “subject to audit” means “subject to the initiation of an audit.”⁶ Moreover, section 17558.5 was amended in 2004 to establish, for the first time, the requirement to “complete” the audit two years after the audit is commenced.⁷ The 2004 amendment became effective after the completion of the audit of the reimbursement claim for fiscal year 1999-2000 and, thus, does not apply to the audit in this case.

⁵ Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

⁶ Statutes 2002, chapter 1128.

⁷ Statutes 2004, chapter 313.

Therefore, finds that the audit of claimant's reimbursement claim for fiscal year 1999-2000 is not barred by the statute of limitations.

B. The SCO's Reduction of Salaries and Benefits Based on the Hours Claimed for Some of the Claimant's Employees is in Accordance With the Documentation Requirements of the Parameters and Guidelines and is Supported by Substantial Evidence in the Record.

The parameters and guidelines for the *Mandate Reimbursement Process* program, in effect during the fiscal years which are the subject of this IRC, provide that in order to claim reimbursement for employee salaries and benefits, the costs claimed "shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program."⁸ In addition, the parameters and guidelines provide that "employee costs should be supported by the ... employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate."⁹ Although it is not necessary, under the parameters and guidelines, that claimants produce unimpeachable evidence of costs incurred, claimants are required to provide some type of source documentation upon request of the SCO to show some evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate.

Staff finds that the SCO's reduction in the hours claimed for employees Bray, Davatz, Millhone, and Sayles in fiscal years 1999-2000 and 2000-2001 is supported by the evidence in the record and is, therefore, correct. The source documentation provided by the claimant to support the time spent by these employees on the mandate in fiscal year 1999-2000 supports the hours allowed by the SCO. Reductions to the hours claimed were made when the hours on the claimant's source documents were not consistent with the hours identified on the reimbursement claim.

For fiscal year 2000-2001, the SCO accepted more hours than claimed when the documentation supported the increased hours allowed. The SCO reduced all hours claimed for the remaining employees because the claimant provided *no* supporting documentation for these employees' time.

Based on the foregoing, staff finds that the SCO's reduction of salaries and benefits based on the hours claimed for some of the claimant's employees is in accordance with the documentation requirements of the parameters and guidelines and is supported by the evidence in the record. Therefore, the audit adjustments are correct.

C. Some of the Reductions Made by the SCO for Salaries and Benefits Based on the Claimant's Calculation of the Productive Hourly Rate are Not Supported by Evidence in the Record and are, Therefore, Incorrect.

⁸ Amendments to Parameters and Guidelines adopted September 28, 2000 and October 25, 2001 contain identical language in this regard.

⁹ Amendments to Parameters and Guidelines adopted September 28, 2000 and October 25, 2001 contain identical language in this regard.

In its final audit, the SCO found that the claimant's records did not support the productive hourly rate claimed for various employees. The SCO's findings are as follows:

- For employee Virginia Millhone, for fiscal year 1999-2000, claimant calculated a productive hourly rate of \$33.09 per hour based upon a total salary of \$48,128.¹⁰ The claimant's records indicate that Ms. Millhone's salary included \$464 of overtime pay. The SCO adjusted Ms. Millhone's productive hourly rate to \$32.77, excluding overtime pay.¹¹
- For employee Pete Sorrell, for fiscal year 1999-2000, claimant claimed a productive hourly rate of \$70.21 per hour, but the claimant's calculation of productive hourly rate for the 1999-2000 mandated cost claims, a document produced by claimant, states that Mr. Sorrell's productive hourly rate is actually \$66.52.¹² The SCO adjusted Mr. Sorrell's productive hourly rate to \$66.52 to reflect the productive hourly rate documented in claimants' records.¹³
- For employee Carrie Bray, for fiscal year 2000-2001, claimant calculated a productive hourly rate of \$61.58 per hour based upon a total salary of \$96,144.¹⁴ Ms. Bray's total salary included a retroactive payment of \$426, but claimant's payroll records for Ms. Bray indicate that the retroactive payment was only \$366. The SCO adjusted Ms. Bray's productive hourly rate to \$61.54 to reflect the retroactive payment identified on claimant's payroll records.¹⁵
- For employee Kim Sayles, for fiscal year 2000-2001, claimant calculated a productive hourly rate of \$41.74 based upon a total salary of \$60,154.¹⁶ Ms. Sayles' total salary included a retroactive payment of \$253, but claimant's payroll records for Ms. Sayles indicate that the retroactive payment was only \$225. In addition, claimant's records indicate that Ms. Sayles salary included \$2,490 of overtime pay. The SCO adjusted the productive hourly rate to \$39.99 to exclude overtime pay and to reflect the retroactive payment reflected on claimant's payroll records.¹⁷

¹⁰ Exhibit B, SCO's Comments on the IRC, Tab 6, p. – (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims).

¹¹ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5, p. – (SCO detail of unallowable salaries and benefits for fiscal year 1999-2000).

¹² Exhibit B, SCO's Comments on the IRC, Tab 6, p. – (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims).

¹³ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5 (p. --).

¹⁴ Exhibit B, SCO's Comments on the IRC, Tab 7, p. – (claimant's calculation of productive hourly rate for 2000-2001 mandated cost claims).

¹⁵ Exhibit B, SCO's Comments on the IRC, p.4, and Tab 5 (p. --).

¹⁶ Exhibit B, SCO's Comments on the IRC, Tab 7, p. – (claimant's calculation of productive hourly rate for 2000-2001 mandated cost claims).

¹⁷ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5 (p. --).

Staff finds that the SCO's adjustment to the productive hourly rate for employee Sorrell is supported by the evidence in the record (the source document provided by the claimant calculating productive hourly rates for the 1999-2000 mandated cost claims) and is, therefore, correct.

However, there is no evidence in the record to support the following reductions:

- Reductions to the productive hourly rates of employees Bray and Sayles based on alleged retroactive payments in the salaries of these employees.
- Reductions to the productive hourly rates of employees Millhone and Sayles based on the alleged inclusion of overtime pay in the salaries of these employees.

Section 1185.2(c) of the Commission's regulations requires that all representations of fact shall be supported by documentary evidence. The SCO asserts that the above reductions were based on the claimant's payroll records. These payroll records, however, have not been filed as evidence in the record for this IRC. In addition, no other document in the record supports the factual assertions of the SCO. Rather, the source documentation filed by the claimant supports total salaries used by the claimant to calculate the productive hourly rates claimed for these employees.

Accordingly, staff finds that the adjustment to the productive hourly rates of employees Bray and Sayles based on retroactive payments is not supported by evidence in the record and is, therefore, incorrect. Staff further finds that the adjustment to the productive hourly rates of employees Millhone and Sayles based on the inclusion of overtime pay in the salaries of these employees is not supported by evidence in the record and is, therefore, incorrect. Any costs attributable to this adjustment to the productive hourly rate for these employees should be reinstated by the SCO pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations.

Conclusion

Based on the evidence in the record, staff recommends that the Commission partially approve this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, staff concludes that the following reductions to the salary, benefit, and related indirect costs claimed are not supported by evidence in the record and are, therefore, incorrect and the costs should be reinstated to the claimant:

- Reductions to the productive hourly rates of employees Bray and Sayles based on retroactive payments included in the salaries of these employees.
- Reductions to the productive hourly rates of employees Millhone and Sayles based on the inclusion of overtime pay in the salaries of these employees.

Staff further finds that the following reductions to salary, benefit, and related indirect costs claimed are supported by the parameters and guidelines and the record and are, therefore, correct:

- Reductions based on the hours claimed by employees Bray, Davatz, Millhone, and Sayles in fiscal years 1999-2000 and 2000-2001.
- Reduction to the productive hourly rate of employee Sorrell.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve this IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

Staff further recommends that the Commission remand the subject claims to the SCO, with instructions to reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:
Statutes 1975, Chapter 486; Statutes 1984,
Chapter 1459
Fiscal Years 1999-2000 and 2000-2001
Los Rios Community College District,
Claimant.

Case No.: 05-4485-I-03

Mandate Reimbursement Process

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

(Adopted September 26, 2014)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on September 26, 2014. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis to partially approve the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

I. Summary of the Findings

This IRC is filed by Los Rios Community College District (claimant) challenging reductions made by the State Controller's Office (SCO) to claimed salary, benefit, and related indirect costs for fiscal years 1999-2000 and 2000-2001 to comply with the *Mandate Reimbursement Process* mandate, CSM-4204 and 4485. The SCO reduced the claims by a total of \$8,829 for fiscal year 1999-2000 and \$1,175 for fiscal year 2000-2001 on the grounds that: (1) claimant did not provide supporting documentation for mandate-related hours that various employees claimed; and (2) claimant's records do not support the productive hourly rates claimed for various employees.

The Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission finds that the following reductions made by the SCO to the salary, benefit, and related indirect costs are not supported by evidence in the record as required by section 1185.2(c) of the Commission's regulations and are, therefore, incorrect and the costs should be reinstated to the claimant:

- Reductions to the productive hourly rates of employees Bray and Sayles based on alleged retroactive payments in the salaries of these employees.
- Reductions to the productive hourly rates of employees Millhone and Sayles based on the alleged inclusion of overtime pay in the salaries of these employees.

The SCO asserts that the above reductions were based on the claimant's payroll records. These payroll records have not been filed with the Commission. In addition, no other document in the record supports the factual assertions of the SCO. Thus, these findings are not supported by evidence in the record.

The Commission, however, denies the IRC with respect to the following reductions to salary, benefit, and related indirect costs claimed. These reductions are supported by the parameters and guidelines and the record and are, therefore, correct:

- Reductions based on the hours claimed by employees Bray, Davatz, Millhone, and Sayles in fiscal years 1999-2000 and 2000-2001.
- Reduction to the productive hourly rate of employee Sorrell.

The Commission hereby remands the subject claims to the SCO, with instructions to reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

COMMISSION FINDINGS

II. Chronology

09/28/2000	The Commission adopted amended parameters and guidelines. ¹⁸
01/16/ 2001	Claimant filed its 1999-2000 reimbursement claim with the SCO.
10/25/2001	The Commission adopted amended parameters and guidelines. ¹⁹
04/29/2002	Claimant signed and dated its 2000-2001 reimbursement claim that was filed with the SCO.
12/12/2002	The SCO called claimant to set an appointment for an entrance conference.
01/16/2003	An entrance conference for the audit was held.
05/05/2004	The SCO issued a draft audit report.
05/24/2004	Claimant responded to the SCO's draft audit report.
06/24/2004	The SCO issued the final audit report for fiscal years 1998-1999 through 2001-2002.
09/09/2005	Claimant filed this IRC for fiscal years 1999-2000 and 2000-2001.

¹⁸ The parameters and guidelines for this program have been amended numerous times. For the 1999-2000 reimbursement claim, the amended parameters and guidelines adopted September 28, 2000 govern.

¹⁹ For the 2000-2001 reimbursement claim, the amended parameters and guidelines adopted October 25, 2001 govern.

- 09/19/2005 Commission staff deemed the IRC filing complete and issued a notice of complete incorrect reduction claim filing and schedule for comments.
- 02/11/2008 The SCO filed comments on the IRC.
- 07/XX/2014 Commission staff issued draft proposed decision.

III. Background

This IRC challenges reductions made by the SCO to reimbursement claims for salary, benefit, and related indirect costs incurred in fiscal years 1999-2000 and 2000-2001 to comply with the *Mandate Reimbursement Process* mandate, CSM-4204 and 4485. The SCO reduced the claims in the amount of \$8,829 in fiscal year 1999-2000 and \$1,175 in fiscal year 2000-2001 on the grounds that: (1) claimant did not provide supporting documentation for mandate-related hours that various employees claimed; and (2) claimant's records do not support the productive hourly rate claimed for various employees. On this last issue, the SCO determined that the claimant included overtime pay in the calculation of the productive hourly rates for some employees. In addition, the SCO determined that claimant's documentation does not support the hourly rate claimed for some of the employees.

Claimant seeks reimbursement for the full amounts claimed and requests a determination from the Commission pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claims, and requests that the SCO reinstate the \$10,004 reduced.

The *Mandate Reimbursement Process* program

In 1986, the Commission adopted a statement of decision for the *Mandate Reimbursement Process*, CSM-4204 and 4485 test claim, authorizing reimbursement to local agencies and school districts for the costs of filing successful test claims and reimbursement claims. The parameters and guidelines as amended September 28, 2000 and October 25, 2001 and applicable to the reimbursement claims at issue in this IRC, authorize reimbursement for the cost of employee salaries and benefits to prepare successful test claims, parameters and guidelines, reimbursement claims, and IRCs as follows:

B. Reimbursable Activities – Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

C. Reimbursable Activities – Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include,

but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

Section VI. A. and B. of the parameters and guidelines provide instructions on supporting documentation for claiming employee salaries and benefits as follows:

A. Supporting Data

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.²⁰

IV. Positions of the Parties

Claimant, Los Rios Community College District

Claimant argues that the SCO inappropriately reduced \$10,004 in reported costs of salaries, benefits, and related indirect costs claimed in fiscal years 1999-2000 and 2000-2001.²¹ Claimant argues that the SCO made improper adjustments to the productive hourly rates of several employees without providing any reasons for these adjustments. Claimant states that the "propriety of these adjustments cannot be determined until the SCO states the reason for each change to the employee payroll information."²² Claimant also argues that the SCO improperly reduced salaries and benefits that were not supported by source documentation, as required by the applicable parameters and guidelines. Claimant argues that its claims are supported by documentation, including contemporaneous business records, employee time logs, and employee declarations.²³ Claimant also asserts that the SCO failed to cite any statutory basis for its audit

²⁰ Both of the applicable parameters and guidelines amendments contain identical language in regard to reimbursable activities, supporting data and salaries and benefits.

²¹ Exhibit A, Los Rios IRC, at pp. 2-3.

²² *Id.* at p. 7.

²³ *Id.* at pp. 7-9.

adjustments.²⁴ Finally, claimant disputes the application of the statute of limitations to allow audits of the subject fiscal years.²⁵

State Controller's Office

The SCO argues that the IRC should be denied. The final audit report concluded that \$10,004 in salaries, benefits, and related indirect costs were unallowable because: (1) claimant did not provide any supporting documentation for mandate-related hours claimed for multiple employees; and (2) claimant's records did not support the productive hourly rate claimed by various employees. The SCO maintains that the productive hourly rate for several employees was excessive because the productive hourly rate for these employees included overtime pay and inaccuracies.²⁶

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the SCO in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁷ 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."²⁸

With regard to the SCO's audit decisions, the Commission must determine whether they are arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the

²⁴ *Id.* at p. 9.

²⁵ Exhibit A, at pp. 10-11.

²⁶ Exhibit B, SCO's Comments on Los Rios' IRC, at Tab 2, State Controller's Office Analysis and Response, p. 4.

²⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁸ *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.

standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²⁹ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’ … “In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”³⁰

The Commission must review the SCO’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.³¹ 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.³²

A. The audit of claimant’s reimbursement claim for fiscal year 1999-2000 is not barred by the statute of limitations found in Government Code section 17558.5.

Claimant argues that the audit of the reimbursement claims for fiscal years 1998-1999 and 1999-2000 was completed beyond the statute of limitations provided by Government Code section 17558.5 and is therefore void with respect to those claim years. The claimant states the following: “The District asserts that the fiscal year 1998-99 and FY 1999-00 annual claims are beyond the statute of limitations for an audit when the Controller completed its audit on June 24, 2004.”³³

The SCO’s audit of the reimbursement claim filed for fiscal year 1998-1999 did not result in a reduction of costs. The Commission, therefore, does not have jurisdiction to make findings with respect to the 1998-1999 reimbursement claim.

The SCO did make reductions to the costs claimed in fiscal year 1999-2000 and, thus, the Commission must determine if the audit was timely for that claim. The reimbursement claim for fiscal year 1999-2000 was filed on January 16, 2001, and at that time, Government Code section 17558.5, as added in 1995, stated the following:

²⁹ *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.

³⁰ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pp. 547-548.

³¹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³² Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

³³ Exhibit A, p. 10.

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.³⁴

Claimant contends that funds were appropriated for this program for the 1999-2000 claim year and, thus, the first sentence of section 17558.5 applies. Since the 1999-2000 reimbursement claim was filed on January 16, 2001, the claim was subject to audit by the plain language of section 17558.5 until December 31, 2003. The SCO states that it initiated the audit on January 16, 2003, when an entrance conference was held for this audit and this fact is not in dispute. Therefore, the initiation of the audit was timely. However, claimant asserts that “subject to” requires the SCO “to complete” the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. Applying claimant’s argument in this case would require the completion of the audit for the 1999-2000 reimbursement claim by December 31, 2003. The SCO did not complete its final audit of this claim until June 24, 2004.

The SCO argues that claimant’s conclusion “is erroneous and improperly attempts to add a deadline for completion of the audit where none exists.”³⁵ The SCO asserts that the “subject to audit” language in section 17558.5, as added in 1995, refers to the time the audit is initiated. In this case, the SCO states that the audit was initiated at the entrance conference conducted on January 16, 2003 and that this date is within two years after the end of the calendar year in which the claim was filed.³⁶ Alternatively, the SCO argues that a 2002 amendment to section 17558.5 enlarges the statute of limitations to initiate an audit to three years, and that the later enacted statute applies here to give the SCO an additional year to initiate the audit since the audit period for the 1999-2000 was still open. In this regard, the SCO states the following:

More important is the fact that the 1999-00 audit is subject to the provisions of Section 17558.5 that were effective on January 1, 2003, not the 1996 version. Unless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred. [citing, *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465, and 43 Cal.Jur.3d, Limitations of Actions § 8.] Under the 1996 version, the 1999-00 fiscal year was subject to audit until December 31, 2003, well after the January 1, 2003 effective date. Therefore, the 2003 provisions of Section 17558.5 are applicable to the

³⁴ Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

³⁵ Exhibit B, SCO’s Comments on the IRC, at Tab 2, State Controller’s Office Analysis and Response, p. 8.

³⁶ Exhibit B, SCO’s Comments on the IRC, page 2.

claim, requiring that the audit be initiated no later than January 16, 2003, when the entrance conference was held, it is valid and enforceable.³⁷

The Commission finds that the audit of the 1999-2000 reimbursement claim was timely under Government Code section 17558.5, as added by Statutes 1995, chapter 945, and that therefore the application of the 2002 statute is not necessary.

The plain language of Government Code section 17558.5, as added in 1995, does not require the SCO to “complete” the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are “subject to audit” within two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which establishes a longer period of time to initiate the audit when no funds are appropriated for the program. The reimbursement claim filed for fiscal year 1999-2000 was subject to audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended;” in this case, before December 31, 2003. Since the audit began in January 2003, it was timely initiated.

This interpretation is consistent with the Legislature’s 2002 amendment to Government Code section 17558.5, clarifying that “subject to audit” means “subject to the initiation of an audit” as follows:

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.³⁸

Moreover, section 17558.5 was amended in 2004 to establish, for the first time, the requirement to “complete” the audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, it reads:

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

³⁷ Exhibit B, SCO’s Comments on the IRC, page 2.

³⁸ Statutes 2002, chapter 1128.

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.³⁹

The 2004 amendment became effective after the completion of the audit of the reimbursement claim for fiscal year 1999-2000 and, thus, does not apply to the audit in this case.

Based on the foregoing, the Commission finds that the audit of claimant's reimbursement claim for fiscal year 1999-2000 is not barred by the statute of limitations.

B. The SCO's Reduction of Salaries and Benefits Based on the Hours Claimed For Some of the Claimant's Employees is in Accordance With the Documentation Requirements of the Parameters and Guidelines and is Supported by Substantial Evidence in the Record.

The parameters and guidelines for the *Mandate Reimbursement Process* program, in effect during the fiscal years which are the subject of this IRC, provide that in order to claim reimbursement for employee salaries and benefits, the costs claimed "shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program."⁴⁰ In addition, the parameters and guidelines provide that "employee costs should be supported by the ... employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate."⁴¹ Although it is not necessary under the parameters and guidelines that claimants produce unimpeachable evidence of costs incurred, claimants are required to provide some type of source documentation upon request of the SCO to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate. That documentation, whether in the form of a worksheet, timesheet, other business record, or declaration needs to identify the employee, the time spent on the mandate by the employee, and the salary information for each employee identified in the reimbursement claim.

In this case, the SCO reduced the reimbursement claims for salary and benefits on the ground that the hours claimed by various employees of the claimant were not consistent with the documentation provided by the claimant, or were not supported by any source documentation at all. The SCO's findings and reductions are outlined in a chart (Exhibit B, Tab 5) showing the hours claimed by the claimant and the hours supported by documentation and allowed by the SCO in fiscal years 1999-2000 and 2000-2001.

Tab 5 shows that in fiscal year 1999-2000, the SCO found that the claimant's documentation supported the following hours spent on the mandated program:

- Claimant claimed 27.1 hours for employee Carrie Bray, but only produced documentation supporting 9.42 hours for this mandate.

³⁹ Statutes 2004, chapter 313.

⁴⁰ Amendments to Parameters and Guidelines adopted September 28, 2000 and October 25, 2001 contain identical language in this regard.

⁴¹ Amendments to Parameters and Guidelines adopted September 28, 2000 and October 25, 2001 contain identical language in this regard.

- Claimant claimed 9.1 hours for employee Louise Davatz, but only produced documentation supporting 1.5 hours for this mandate.
- Claimant claimed 29.25 hours for employee Virginia Millhone, but only produced documentation supporting 26.25 hours for this mandate.
- Claimant claimed 136 hours for employee Kim Sayles, but only produced documentation supporting 1.5 hours for this mandate.⁴²

The Commission finds that the SCO's reduction in the hours claimed for these employees in fiscal year 1999-2000 is supported by the evidence in the record. As shown below, the claimant did not provide source documentation to show evidence of the validity of all the hours spent and costs claimed, and their relationship to the state mandated program, as required by the parameters and guidelines. Instead, the documents in the record support the times allowed by the SCO.

For example, claimant claimed 27.1 hours for employee Carrie Bray in fiscal year 1999-2000.⁴³ Two time records were submitted for employee Bray, dated May 13, 2000 and September 12, 2000.⁴⁴ Both time records report the same time spent by employee Bray on mandated cost training on March 31, 2000, for six hours, resulting in a duplicate claim of 12 hours spent for training. The SCO allowed six hours for the training on March 31, 2000, and the claimant has not provided evidence to rebut that finding. In addition, the time record dated September 12, 2000, reports 1.5 hours for training on June 28, 2000. The sign-in sheet for the training on June 28, 2000, however, shows that employee Bray was present for 1.25 hours, and not 1.5 hours.⁴⁵ The remaining time reported on these time sheets supports the SCO's finding that employee Bray spent 9.42 hours on the mandate in fiscal year 1999-2000, and not 27.1 as claimed as follows: 6 hours on March 31, 2000; 40 minutes (.67 hours) on May 26, 2000; 1.25 hours on June 28, 2000; and 1.5 hours on May 1, 2000; for a total of 9.42 hours.⁴⁶

The only documentation submitted to support the 9.1 hours claimed for employee Louise Davatz is a "Sign-in Sheet for Activities of Mandated Program: 485/75 Mandate Reimbursement Process," dated March 31, 2000, for training on the *Collective Bargaining* mandate ("CB Training") from "9:30-11:00." The document shows that Louise Davatz was present from 9:30-11:00, for 1.5 hours.⁴⁷ There is no documentation in the record to support the remaining 7.6 hours claimed.

⁴² Exhibit B, SCO's Comments on the IRC, at p. 5 and Tab 5, p. – (SCO detail of unallowable salaries and benefits for fiscal year 1999-2000).

⁴³ Exhibit A, IRC, pp. 72-73 (Reimbursement Claim for fiscal year 1999-2000).

⁴⁴ Exhibit B, SCO's Comments on the IRC, p. 5, and Tab 8, pp. – (employee time sheets for Carrie Bray and training sign-in sheet for June 28, 2000, provided by claimant).

⁴⁵ Exhibit B, SCO's Comments on the IRC, Tab 8, p. --.

⁴⁶ *Ibid.*

⁴⁷ Exhibit B, SCO's Comments on the IRC, Tab 9, p. – (training sign-in sheet for March 31, 2000, provided by claimant).

The claimant claimed 29.25 hours for employee Virginia Millhone in fiscal year 1999-2000 (28 hours for claim preparation and 1.25 hours for training).⁴⁸ The 1.25 hours for training is supported by the sign-in sheet for training on the “OMA” (*Open Meetings Act*) mandate on March 31, 2000, starting at “1:30,” which includes employee Millhone’s name as the sixth signature on the sheet.⁴⁹ However, only 25 hours for preparing claims, and not the 28 hours claimed, is supported by the time record, dated January 8, 2001, for employee Virginia Millhone. That document shows a total of 25 hours to prepare claims from January 1, 2000, through January 13, 2000.⁵⁰ There are no other documents in the record supporting the additional three hours claimed and disallowed by the SCO for employee Millhone.

And finally for fiscal year 1999-2000, the claimant claimed 136 hours for employee Kim Sayles and the SCO allowed 1.5 hours. The only document in the record to support the time spent on the program by employee Sayles is the sign-in sheet for the *Open Meetings Act* training on March 31, 2000, beginning at “1:30.”⁵¹ The SCO allowed 1.5 hours for that training, and the claimant has not filed evidence rebutting that conclusion. In addition, there is no other evidence in the record supporting the additional 134.5 hours claimed for employee Sayles in fiscal year 1999-2000.

For fiscal year 2000-2001, the SCO accepted more hours than claimed when the documentation supported the increased hours allowed.⁵² The SCO reduced all hours claimed for the remaining employees because the claimant provided *no* supporting documentation for these employees’ time.⁵³ As indicated above, the parameters and guidelines require that the costs claimed for salaries and benefits “shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.” There is no source document or other evidence in the record supporting the time claimed and disallowed by the SCO in fiscal year 2000-2001.

Based on the foregoing, the Commission finds that the SCO’s reduction of salaries and benefits based on the hours claimed by some the claimant’s employees is in accordance with the

⁴⁸ Exhibit A, IRC, pp. 72-73 (Reimbursement Claim for fiscal year 1999-2000).

⁴⁹ Exhibit B, SCO’s Comments on the IRC, Tab 9, p. --.

⁵⁰ Exhibit B, SCO’s Comments on the IRC, Tab 10, p. – (employee time sheet for Virginia Millhone, provided by claimant).

⁵¹ Exhibit B, SCO’s Comments on the IRC, Tab 9, p. --.

⁵² Exhibit B, SCO’s Comments on the IRC, Tab 5, p. -- (SCO detail of unallowable salaries and benefits for fiscal year 2000-2001). Additional hours were allowed for the following employees: Forbes-Boyles, Bray, Chock-Hunt, Cobian, Cypret, Dun, Iwata, Jones, LaVine, Moore, Sandusky, Travis, Turner, Wark, and Wiecking.

⁵³ *Ibid.* Hours were disallowed for the following employees: Beachler, Borg, Brown, Campbell, Davatz, Freeman, Gessford, Hannson, Harris, Henderson, Hsieh, Jolly, Jorgensen, Lorimer, McCormac, Olson, Pannier, Perez, Purmont, Roach, Rogers, Serrano, Silvia, Sloane, Sleeves, and Yamamura.

documentation requirements of the parameters and guidelines and is supported by the evidence in the record. Therefore, these audit adjustments are correct.

C. Some of the Reductions Made by the SCO for Salaries and Benefits Based on the Claimant's Calculation of the Productive Hourly Rate are not Supported by Evidence in the Record and are, Therefore, Incorrect.

In its final audit, the SCO found that the claimant's records did not support the productive hourly rate claimed for various employees. The SCO's findings are as follows:

- For employee Virginia Millhone, for fiscal year 1999-2000, claimant calculated a productive hourly rate of \$33.09 per hour based upon a total salary of \$48,128.⁵⁴ The claimant's records indicate that Ms. Millhone's salary included \$464 of overtime pay. The SCO adjusted Ms. Millhone's productive hourly rate to \$32.77, excluding overtime pay.⁵⁵
- For employee Pete Sorrell, for fiscal year 1999-2000, claimant claimed a productive hourly rate of \$70.21 per hour, but the claimant's calculation of productive hourly rate for the 1999-2000 mandated cost claims, a document produced by claimant, states that Mr. Sorrell's productive hourly rate is actually \$66.52.⁵⁶ The SCO adjusted Mr. Sorrell's productive hourly rate to \$66.52 to reflect the productive hourly rate documented in claimants' records.⁵⁷
- For employee Carrie Bray, for fiscal year 2000-2001, claimant calculated a productive hourly rate of \$61.58 per hour based upon a total salary of \$96,144.⁵⁸ Ms. Bray's total salary included a retroactive payment of \$426, but claimant's payroll records for Ms. Bray indicate that the retroactive payment was only \$366. The SCO adjusted Ms. Bray's productive hourly rate to \$61.54 to reflect the retroactive payment identified on claimant's payroll records.⁵⁹
- For employee Kim Sayles, for fiscal year 2000-2001, claimant calculated a productive hourly rate of \$41.74 based upon a total salary of \$60,154.⁶⁰ Ms. Sayles' total salary included a retroactive payment of \$253, but claimant's payroll records for Ms. Sayles indicate that the retroactive payment was only \$225. In addition, claimant's records

⁵⁴ Exhibit B, SCO's Comments on the IRC, Tab 6, p. – (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims).

⁵⁵ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5, p. –(SCO detail of unallowable salaries and benefits for fiscal year 1999-2000).

⁵⁶ Exhibit B, SCO's Comments on the IRC, Tab 6, p. – (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims).

⁵⁷ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5 (p. --).

⁵⁸ Exhibit B, SCO's Comments on the IRC, Tab 7, p. – (claimant's calculation of productive hourly rate for 2000-2001 mandated cost claims).

⁵⁹ Exhibit B, SCO's Comments on the IRC, p.4, and Tab 5 (p. --).

⁶⁰ Exhibit B, SCO's Comments on the IRC, Tab 7, p. – (claimant's calculation of productive hourly rate for 2000-2001 mandated cost claims).

indicate that Ms. Sayles salary included \$2,490 of overtime pay. The SCO adjusted the productive hourly rate to \$39.99 to exclude overtime pay and to reflect the retroactive payment reflected on claimant's payroll records.⁶¹

Thus, the SCO reduced costs related to the employees' productive hourly rate based on two factors: (1) the claimant's documentation did not support the hourly rate claimed for some of the employees, but supported a lower hourly rate; and (2) the claimant included overtime pay in the productive hourly rate. These issues are addressed below.

- 1. The SCO's adjustment to the productive hourly rate for employee Sorrell is supported by the evidence in the record; but the adjustment to the productive hourly rates for employees Bray and Sayles, based on allegedly incorrect retroactive payments included in the salary of these employees, is not supported by evidence in the record and is, therefore, incorrect.**

As indicated above, the parameters and guidelines for the *Mandate Reimbursement Process* program, in effect during the fiscal years which are the subject of this IRC, provide that in order to claim reimbursement for employee salaries and benefits, the costs claimed "shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program."

The SCO reduced the productive hourly rate claimed for employee Pete Sorrell in fiscal year 1999-2000 because the rate was not consistent with the hourly rate identified on the claimant's source document outlining the productive hourly rates for fiscal year 1999-2000. The claimant's source document clearly shows a lower productive hourly rate for employee Pete Sorrell at \$66.52 per hour, rather than the higher rate claimed (\$70.21) in the reimbursement claim for fiscal year 1999-2000, and the claimant has filed no evidence or explanation rebutting this finding.⁶² Thus, the Commission finds that the SCO correctly reduced the productive hourly rate claimed for employee Sorrell based on the claimant's documents provided to support the claim for salaries and benefits.

The SCO's reductions to the productive hourly rates claimed for employees Carrie Bray and Kim Sayles, however, were based on the claimant's payroll records, which purportedly identify lower retroactive payments included in the annual salaries of these employees, resulting in a lower annual salary than what was identified on the claimant's source document calculating productive hourly rates for the 2000-2001 mandated cost claims.⁶³ As identified above, the SCO found that the claimant calculated a productive hourly rate of \$61.58 per hour for employee Carrie Bray for fiscal year 2000-2001 based upon a total annual salary of \$96,144. The SCO asserts that Ms. Bray's total salary included a retroactive payment of \$426, but SCO found that claimant's payroll records for Ms. Bray indicate that the retroactive payment was only \$366. The SCO adjusted Ms. Bray's productive hourly rate to \$61.54 to reflect the retroactive payment identified

⁶¹ Exhibit B, SCO's Comments on the IRC, p. 4, and Tab 5 (p. --).

⁶² Exhibit A, IRC, pp. 72-73 (Reimbursement Claim for fiscal year 1999-2000); Exhibit B, SCO's Comments on the IRC, Tab 6, p. – (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims).

⁶³ Exhibit B, SCO's Comments on the IRC, Tab 6, pp --.

on claimant's payroll records. With respect to employee Kim Sayles, for fiscal year 2000-2001, claimant calculated a productive hourly rate of \$41.74 based upon a total salary of \$60,154. The SCO asserts that it found Ms. Sayles' total salary included a retroactive payment of \$253, but claimant's payroll records for Ms. Sayles indicate that the retroactive payment was only \$225.

Although the SCO asserts the claimant's payroll records support the adjustments of the annual salaries and, thus, the lower productive hourly rates, the payroll records have not been filed as evidence in the record for this IRC. Thus, the SCO's factual assertions regarding the lower retroactive payments included in the annual salaries of employees Bray and Sayles are not supported by evidence in the record. Section 1185.2(c) of the Commission's regulations requires that all representations of fact made in comments to an IRC shall be supported by documentary evidence and submitted with the comments.

Moreover, the annual salaries used by the claimant to calculate the productive hourly rates of employees Bray and Sayles are identified on the claimant's source document calculating the productive hourly rates for fiscal year 2000-2001 for mandated cost claims.⁶⁴ This source document is a chart or worksheet that "shows evidence of the validity of such costs and their relationship to the state mandated program," and supports the claimant's claim for the annual salaries used in the calculation of the productive hourly rates for employees Bray and Sayles.

Accordingly, the Commission finds that the adjustment to the productive hourly rates of employees Bray and Sayles based on retroactive payments included in the annual salaries is not supported by evidence in the record and is, therefore, incorrect. Any costs attributable to this adjustment to the productive hourly rate for these employees should be reinstated by the SCO pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations.

2. The SCO's adjustment to the productive hourly rates of employees Millhone and Sayles based on the alleged inclusion of overtime pay in the salaries of these employees is not supported by evidence in the record and is, therefore, incorrect.

The SCO also reduced the productive hourly rate claimed by employee Virginia Millhone in fiscal year 1999-2000 because the claimant's payroll records showed that the annual salary of \$48,128 included an overtime payment of \$465. The SCO similarly reduced the productive hourly rate claimed for employee Kim Sayles in fiscal year 2000-2001 on the ground that the claimant's payroll records showed that the annual salary of \$60,154 included \$2,490 in overtime pay. The SCO contends that the allowable productive hourly rate does not include overtime pay.⁶⁵

As discussed above, the parameters and guidelines in effect in fiscal years 1999-2000 and 2000-2001 for the *Mandate Reimbursement Process* mandate provide that in order to claim employee salaries and benefits, a claimant is to provide each employee's productive hourly rate to support

⁶⁴ Exhibit B, SCO's Comments on the IRC, Tab 7, pp --.

⁶⁵ Exhibit B, SCO Comments on the IRC, p. 4. The total salary costs for these employees are identified in Tabs 6 (claimant's calculation of productive hourly rate for 1999-2000 mandated cost claims) and Tab 7 (claimant's calculation of productive hourly rate for 2000-2001 mandated cost claims).

the reimbursement claim. While the parameters and guidelines do not state how the productive hourly should be calculated, the SCO's Mandated Cost Manual for fiscal years 1999-2000 and 2000-2001, provides as follows:

(1) Employee Wages, Salaries, and Fringe Benefits

For each of the mandated activities performed, the claimant must list the names of the employees who worked on the mandate, their job classification, hours worked on the mandate, and rate of pay.

The claimant may in-lieu of reporting actual compensation and fringe benefits use an hourly rate:

- (a) Compute a billable hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a billable hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual billable hours. Annual billable hours equal the gross annual hours less non-work hours.

Table 2 Annual Billable Rate, Salary + Benefits Method

Formula:

$$[(EAS + Benefits) \div ABH] = ABR$$

Description:

EAS = Employee's Annual Salary

ABH = Annual Billable Hours

$$[(\$26,000 + \$7,750)] \div 1800 \text{ hrs} = 18.75$$

ABR = Annual Billable Rate

As illustrated in Table 2, if you assume an employee's compensation was \$26,000 and \$7,750 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the annual billable rate would be \$18.75. (Emphasis added.)⁶⁶

The manual further states that reimbursement for personal services includes compensation paid for salaries, wages, and fringe benefits:

Reimbursement for personal services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to employees during periods of authorized absences (i.e., annual leave, sick leave, etc.) and employer's contributions for social security, pension plans, insurance, workmen's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities.

The manual, therefore, directs claimants to calculate an hourly rate by taking the employee's annual salary plus fringe benefits, and divide that number by the annual billable hours (typically 1,800 hours). The definition of "fringe benefits" does not specifically include overtime pay; rather the definition of fringe benefits is the "regular compensation paid to employees during periods of authorized absences (i.e., annual leave, sick leave, etc.) and employer's contributions for social security, pension plans, insurance, worker's compensation insurance and similar

⁶⁶ Except for formatting changes, the SCO Mandated Cost Manual for fiscal years 1999-2000 and 2000-2001 include identical information for claiming employee wages, salaries, and fringe benefits.

payments.” Moreover, there is no discussion in the manual whether “annual salary” or “rate of pay” includes overtime pay.

Nevertheless, and without reaching the issue whether the calculation of productive hourly rates may properly include or exclude overtime pay, there is no evidence in the record to support SCO’s assertion that the salaries reported for employees Millhone and Sayles include overtime pay. The SCO states that it came to the conclusion based on claimant’s payroll records. The payroll records have not been filed as evidence in the record for this IRC. And while the employee time record for Virginia Millhone (Exhibit B, Tab 10) identifies a total of 25 hours to collect and organize data to be used for claim preparation, and shows that nine of those hours were overtime hours (“OT”), there is no evidence that the salary reported for employee Millhone includes overtime pay. The claimant’s source documents do show that the claimant calculated a rate of pay for each employee. The claimant’s calculation of productive hourly rates for 1999-2000 and 2000-2001 (Exhibit B, Tabs 6 and 7) identify each employee’s salary, benefit rate, flat benefit costs, total benefits, salary and benefits, productive hours of 1,800, and then the productive hourly rate (calculated by dividing the total salary and benefits by 1,800 hours). There is no evidence in the record that the claimant paid or included overtime pay in the salaries of these employees.

Section 1185.2(c) of the Commission’s regulations requires that all representations of fact shall be supported by documentary evidence. Thus, the SCO’s factual assertions are not supported by evidence in the record.

Accordingly, the Commission finds that the adjustment to the productive hourly rates of employees Millhone and Sayles based on the inclusion of overtime pay in the salaries of these employees is not supported by evidence in the record and is, therefore, incorrect. Any costs attributable to this adjustment to the productive hourly rate for these employees should be reinstated by the SCO pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations.

V. Conclusion

Based on the evidence in the record, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations, the Commission finds that the following reductions to the salary, benefit, and related indirect costs claimed are not supported by evidence in the record and are, therefore, incorrect and the costs should be reinstated to the claimant:

- Reductions to the productive hourly rates of employees Bray and Sayles based on retroactive payments included in the salaries of these employees.
- Reductions to the productive hourly rates of employees Millhone and Sayles based on the inclusion of overtime pay in the salaries of these employees.

The Commission further finds that the following reductions to salary, benefit, and related indirect costs claimed are supported by the parameters and guidelines and the record and are, therefore, correct:

- Reductions based on the hours claimed by employees Bray, Davatz, Millhone, and Sayles in fiscal years 1999-2000 and 2000-2001.
- Reduction to the productive hourly rate of employee Sorrell.

The Commission hereby remands the subject claims to the SCO, with instructions to reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 3, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Mandate Reimbursement Process, 05-4485-I-03

Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459

Fiscal Years 1999-2000 and 2000-2001

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 July 3, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/2/14

Claim Number: 05-4485-I-03

Matter: Mandate Reimbursement Process

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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