

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



April 3, 2015

Mr. Keith 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, 07-4206-I-16*  
Former Education Code Section 72246 (Renumbered as 76355)  
Statutes 1984, Chapter 1, (1983-1984 2nd Ex Sess.); Statutes 1987, Chapter 1118  
Fiscal Years 2001-2002, 2002-2003, and 2003-2004  
Sierra Joint 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 **April 24, 2015**. You are advised that comments filed with the Commission on State Mandates (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, May 29 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 15, 2015. 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.

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)<sup>1</sup>  
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

*Health Fee Elimination*

Fiscal Years, 2001-2002, 2002-2003, and 2003-2004

07-4206-I-16

Sierra Joint Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses reductions made by the State Controller's Office (Controller) to reimbursement claims filed by Sierra Joint Community College District (claimant) totaling \$560,846 for fiscal years 2001-2002 through 2003-2004 under the *Health Fee Elimination* program. The Controller's audit reduced the claims by the following amounts:

- \$158,718 in salaries and benefits and related indirect costs for fiscal years 2002-2003 and 2003-2004 due to inadequate documentation or a documented time study supporting the costs claimed for academic counselors providing personal counseling services. The claimant calculated an average salary cost for 19 counselors and claimed five percent of the average cost for each counselor and related benefit costs.
- \$166,810 for fiscal years 2001-2002, 2002-2003, and 2003-2004 based on asserted faults in the development and application of indirect cost rates. The claimant developed indirect cost rate proposals based on the OMB Circular A-21 methodology, but did not obtain federal approval. The Controller recalculated indirect costs using the FAM-29C methodology allowed in the claiming instructions.
- \$256,592 for fiscal years 2001-2002, 2002-2003, and 2003-2004 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant. The Controller recalculated authorized health fee revenue by using student enrollment data that the claimant reported to the Chancellor's Office and health service fee waivers that the claimant's records supported.

**Health Fee Elimination Program**

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a

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

health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.<sup>2</sup> In 1984, the Legislature repealed the community colleges' fee authority for health services.<sup>3</sup> 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 per quarter or summer semester).<sup>4</sup>

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.<sup>5</sup> As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.<sup>6</sup> In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.<sup>7</sup> As a result, beginning January 1, 1988, all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.<sup>8</sup>

### **Procedural History**

On January 10, 2003, claimant signed its fiscal year 2001-2002 reimbursement claim. Claimant's fiscal year 2002-2003 reimbursement claim is signed but not dated.<sup>9</sup> On January 11, 2005, claimant signed its fiscal year 2003-2004 reimbursement claim. On November 15, 2006,

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<sup>2</sup> 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.]

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

<sup>4</sup> Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

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

<sup>6</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

<sup>7</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

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

<sup>9</sup> Since there is no dispute over the statute of limitations, the lack of a date is not at issue.

the Controller's audit report was issued. On September 6, 2005, the District filed this IRC.<sup>10</sup> On March 15, 2010, the Controller submitted comments on the IRC.<sup>11</sup> On April 3, 2015, Commission staff issued the draft proposed decision on the IRC.

### **Commission Responsibilities**

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 on State Mandates (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.<sup>12</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions

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<sup>10</sup> Exhibit A, Incorrect Reduction Claim, at p. 1.

<sup>11</sup> Exhibit B, Controller's Comments IRC.

<sup>12</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>13</sup> *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>14</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>15</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>16</sup>

**Claims**

Issue	Description	Staff Recommendation
Reduction in employee salary and benefit costs.	Claimant asserts that the Controller should not have reduced claimed costs for salaries, benefits and related indirect costs even though, for fiscal years 2002-2003 and 2003-2004, claimant estimated a percentage of time spent on counseling activities and did not provide actual documentation of hours worked, time logs, or a time study as required by the parameters and guidelines.	<i>Correct</i> – Staff finds that the claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the “estimated” costs claimed for counseling. Therefore this reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
Reduction of costs based on asserted flaws in the development of indirect cost rates	Claimant asserts that the Controller incorrectly reduced indirect costs claimed, because the District did not obtain federal approval for its indirect cost rate proposals. Claimant argues that there is no requirement that an indirect cost rate proposal be federally approved.	<i>Correct</i> – Claimant did not comply with the parameters and guidelines, claiming instructions, and the OMB Circular A-21 when calculating indirect costs because it did not obtain federal approval of its rates. The Controller recalculated the indirect cost rate using the Form FAM 29-C which is expressly authorized in the claiming instructions. Therefore, this reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
Reduction of costs based on understated offsetting revenues from student health fees authorized to be charged.	Claimant asserts that the Controller incorrectly reduced costs claimed because only the fee revenue collected is required to be deducted from the costs claimed.	<i>Correct</i> – This issue has been conclusively decided by <i>Clovis Unified School District v. Chiang</i> (2010) 188 Cal.App.4 <sup>th</sup> 794, 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. Thus, the reduction is correct as a matter of

<sup>16</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

		<p>law.  In addition, the Controller’s calculation of authorized health service fees, based on enrollment data provided by the claimant and health service fee waivers that the claimant’s records supported, is not arbitrary, capricious, or entirely lacking in evidentiary support.</p>
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**Staff Analysis**

**A. Claimant did not Comply with the Parameters and Guidelines in Claiming Salary and Benefit Costs and, Thus, the Controller’s Reduction of These Costs is Correct as a Matter of Law and is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller found that claimant overstated salary and benefit costs, and related indirect costs, by a total of \$158,718 as described below.

For fiscal years 2002-2003 and 2003-2004, reimbursement was claimed for salaries and benefits for academic counselors providing personal counseling services. Costs were claimed based on an estimate of five percent of the average salary and benefit costs for 19 counselors. The claimant did not provide documents supporting actual costs incurred on the mandate or a documented time study to support the five percent allocation to the mandated program or for the average salary claimed. The only documentation provided during the audit was a duty statement describing the overall duties of the counselors, including personal counseling services, and two worksheets showing an “average salary” and that “approximately 5% of 19 counselor’s time” was spent on the mandate. The Controller reduced the claimed costs for salaries and benefits for each fiscal year to zero.

Staff finds that the reduction of costs for counseling is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Claimant failed to comply with the parameters and guidelines, which require a claimant to identify each employee and the employee’s classification, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. In addition, the parameters and guidelines require that the costs claimed “shall be traceable to source documents and/or worksheets that show evidence of the validity of such costs.” When claiming costs based on the average number of hours, the parameters and guidelines require that the number of hours reported must be supported by a “documented time study.” Claimant did not comply with these requirements. Thus, there is no evidence in the record supporting the costs claimed for counseling in fiscal years 2002-2003 and 2003-2004.

**B. The Controller’s Recalculation and Reduction of Indirect Costs Claimed is Correct as a Matter of Law and Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.**

The Controller reduced indirect costs claimed for fiscal years 2001-2002, 2002-2003, and 2003-2004 by a total of \$166,810 because claimant did not obtain federal approval of its indirect cost

rate as required by the OMB Circular A-21. The Controller recalculated the indirect cost rate using the state Form FAM-29C in accordance with the claiming instructions, reducing the indirect cost rates to 18.45 percent for fiscal year 2001-2002, 21.06 percent for fiscal year 2002-2003, and 22.16 percent for fiscal year 2003-2004.

Staff finds claimant did not comply with the requirements in the parameters and guidelines, claiming instructions, or the OMB Circular A-21 when developing and applying its indirect cost rate for fiscal years 2001-2002, 2002-2003, and 2003-2004, since it did not obtain federal approval of the rates. Therefore, the reduction is correct as a matter of law. Staff further finds that the Controller's recalculation of indirect costs using the Form FAM 29C is not arbitrary, capricious, or entirely lacking in evidentiary support since that method is expressly authorized in the claiming instructions and results in rates higher than the seven percent default rate.

**C. The Controller's Reduction for Understated Offsetting Revenues is Correct as a Matter of Law and not Arbitrary, Capricious, or Lacking in Evidentiary Support.**

The Controller reduced costs for the three fiscal years by \$256,592 because claimant understated its offsetting fees by reporting only the fee revenue collected, and not the fee revenue authorized to be charged.

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. v. Chiang*, 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. As cited by the court, the "Health Fee Rule" states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.<sup>17</sup>

The court in *Clovis Unified* upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fee districts are *authorized* to charge. 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.<sup>18</sup>

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.'"<sup>19</sup> Since the *Clovis* case is a final decision of the court addressing the merits of

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<sup>17</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811.

<sup>18</sup> *Id.* at p. 812.

<sup>19</sup> *Ibid.*

the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.<sup>20</sup>

Therefore, staff finds the Controller's adjustment is correct as a matter of law. Staff further finds that the Controller's calculation of the claimant's total authorized offsetting fee revenue is not arbitrary, capricious, or entirely lacking in evidentiary support since the Controller used the enrollment data available and reported by the claimant.

### **Conclusion**

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, staff finds that the Controller's reduction of costs claimed for salary and benefits and related indirect costs due to inadequate supporting documentation, the Controller's reduction of indirect costs based on claimant's failure to obtain federal approval for its indirect cost rate, and the Controller's reduction of costs based on understated health service fee authority was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

### **Staff Recommendation**

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

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<sup>20</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Education Code Section 76355

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years 2001-2002, 2002-2003, and 2003-2004

Sierra Joint Community College District,  
Claimant.

Case Nos.: 07-4206-I-16

*Health Fee Elimination*

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

*(Adopted May 29, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 29, 2015. [Witness list will be included in the adopted decision.]

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

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

**Summary of the Findings**

This analysis addresses reductions made by the State Controller's Office (Controller) to Sierra Joint Community College District's (claimant's) reimbursement claims for fiscal years 2001-2002, 2002-2003, and 2003-2004 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced costs totaling \$560,846. The Controller found that claimant overstated employee salaries and benefits, incorrectly calculated indirect cost rates for the three fiscal years, and under reported offsetting health service fee revenue authority.

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission concludes that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$158,718 in costs claimed for salaries and benefits due to inadequate documentation is correct. The claimant estimated time spent by counselors providing "personal counseling" services, but did not comply with the parameters and guidelines by either providing documentation supporting the actual time spent on the mandate or supporting the salaries claimed, or by providing a documented time study to support the costs claimed.

- \$166,810 in indirect costs claimed for all three fiscal years is correct because claimant used the OMB Circular A-21 methodology but did not obtain federal approval for its indirect cost rate proposals.
- \$256,592 in offsetting fees due to claimant's reporting of offsetting revenue collected, rather than the amount authorized to be charged, is correct and in accordance with *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

Accordingly, the Commission denies this IRC.

## I. Chronology

- 01/10/2003 Claimant signed its fiscal year 2001-2002 reimbursement claim.<sup>21</sup>
- No date Claimant signed its fiscal year 2002-2003 reimbursement claim.<sup>22</sup>
- 01/11/2005 Claimant signed its fiscal year 2003-2004 reimbursement claim.<sup>23</sup>
- 11/15/2006 The Controller, Division of Audits issued its final audit.<sup>24</sup>
- 10/11/2007 Claimant filed this incorrect reduction claim.<sup>25</sup>
- 03/15/2010 The Controller filed comments on the incorrect reduction claim.<sup>26</sup>
- 04/03/2015 Commission staff issued the draft proposed decision.

## II. Background

### Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.<sup>27</sup> In 1984, the Legislature repealed the community colleges' fee authority for health services.<sup>28</sup> However, Legislature also reenacted section 72246, to become

<sup>21</sup> Exhibit A, Incorrect Reduction Claim, p. 84.

<sup>22</sup> Exhibit A, Incorrect Reduction Claim, p. 92. The reimbursement claim for 2002-2003 was undated but the statute of limitations is not at issue in this analysis and the Controller has not challenged the claim as untimely.

<sup>23</sup> Exhibit A, Incorrect Reduction Claim, p. 99.

<sup>24</sup> Exhibit A, Incorrect Reduction Claim, p– 56.

<sup>25</sup> Exhibit A, Incorrect Reduction Claim.

<sup>26</sup> Exhibit B, Controller's Comments on IRC.

<sup>27</sup> 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.].

<sup>28</sup> Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4 [repealing Education Code section 72246].

operative on January 1, 1988, to reauthorize the fee at \$7.50 for each semester (or \$5 per quarter or summer semester).<sup>29</sup>

In addition to temporarily repealing community college districts' fee authority, Statutes 1984, chapter 1 required any district which provided health services during the 1983-1984 fiscal year, for which it districts were previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.<sup>30</sup> As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987,<sup>31</sup> the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.<sup>32</sup> In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.<sup>33</sup> As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services.<sup>34</sup> In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.<sup>35</sup>

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

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<sup>29</sup> Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

<sup>30</sup> Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

<sup>31</sup> Statutes 1987, chapter 1118.

<sup>32</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

<sup>33</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

<sup>34</sup> 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. (Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

<sup>35</sup> Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

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

The claimant submitted reimbursement claims totaling \$578,368 for costs incurred in fiscal years 2001-2002, 2002-2003, and 2003-2004. The Controller's audit reduced the claims by \$560,846 and determined that \$17,522 was allowable as follows:

- Reduction of \$158,718 in salaries and benefits and related indirect costs in fiscal years 2002-2003 and 2003-2004 due to inadequate documentation. During these fiscal years, the claimant claimed estimated time spent by academic counselors on personal counseling issues. The claimant calculated an average salary cost for 19 counselors and claimed five percent of the average cost for each counselor and related benefit costs. The claimant did not provide time logs, supporting documentation, or a documented time study to support the five percent allocation to the mandated program. In addition, the claimant did not provide documentation supporting the average salary cost. The claimant provided duty statements for the counselors, but the Controller maintains that "pre-determined time allocations do not represent actual costs."<sup>36</sup>
- Reduction of \$166,810 for fiscal years 2001-2002, 2002-2003, and 2003-2004 based on asserted faults in the development and application of indirect cost rates. The claimant developed indirect cost rate proposals based on the OMB Circular A-21 methodology, but did not obtain federal approval for its proposals. The Controller recalculated indirect costs using the FAM-29C methodology allowed in the claiming instructions.<sup>37</sup>
- Reduction of \$256,592 for fiscal years 2001-2002, 2002-2003, and 2003-2004 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant. The Controller recalculated authorized health fee revenue by using student enrollment data that the claimant reported to the Chancellor's Office and health service fee waivers that the claimant's records supported.<sup>38</sup>

The Controller also found that the claimant understated offsetting revenues by \$5,637 for the audit period, but the claimant is not challenging this reduction.<sup>39</sup>

### **III. Positions of the Parties**

#### **Sierra Joint Community College District's Position**

Claimant asserts that the Controller incorrectly reduced salaries and benefits and related indirect costs claimed for fiscal years 2002-2003 through 2003-2004, totaling \$158,718, asserting that its estimate of five percent of nineteen counselor's salaries was supported by sufficient documentation. Claimant asserts that the Controller's reduction of \$166,810 in overstated indirect costs on the basis that "the district did not obtain federal approval for its [indirect cost

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<sup>36</sup> Exhibit A, Incorrect Reduction Claim, p. 65 (Finding 1, Final Audit Report).

<sup>37</sup> Exhibit A, Incorrect Reduction Claim, p. 66 (Finding 2, Final Audit Report).

<sup>38</sup> Exhibit A, Incorrect Reduction Claim, p. 69 (Finding 3, Final Audit Report); Exhibit B, Controller's Comments on IRC, pp. 19-20.

<sup>39</sup> Exhibit A, Incorrect Reduction Claim, p. 73 (Finding 4, Final Audit Report).

rates,]” was incorrect. Claimant argues that the claiming instructions are “merely a statement of the ministerial preferences of the Controller and have no force of law...”<sup>40</sup> Claimant also asserts that there is no requirement in law that claimant’s indirect cost rate must be ‘federally’ approved,”<sup>41</sup> and the Controller did not make findings that claimant’s rate was excessive or unreasonable.<sup>42</sup> Claimant also asserts that a reduction of \$256,592, based on understated authorized health service fees was incorrect, because the parameters and guidelines require claimants to state offsetting savings “experienced,” and claimant did not experience offsetting savings for fees that it did not charge to students.<sup>43</sup>

### **Controller’s Position**

The Controller argues that the IRC should be denied. The Controller asserts that claimant failed to provide adequate documentation to support its reimbursement claim for salary and benefit costs and related indirect costs for fiscal years 2002-2003 and 2003-2004 as claimant only provided an estimate of five percent of the total salaries of nineteen counselors without either documentation of actual time worked or a documented time study. The Controller asserts that claimant overstated its indirect costs for all three fiscal years because claimant used the federal OMB Circular A-21 but did not obtain federal approval for its indirect cost rate proposals, as required by the Controller’s claiming instructions and by OMB Circular A-21. The Controller asserts that its recalculation of claimant’s indirect cost rate using the state Form FAM-29C was reasonable.

The Controller further found that claimant understated its authorized health service fees for the audit period by \$256,592. Using enrollment and exemption data, the Controller recalculated the health fees that claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues.<sup>44</sup> The Controller argues that, “to the extent community college districts can charge a fee, they are not required to incur a cost.”<sup>45</sup>

### **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 statement of decision to the Controller and request that the costs in the claim be reinstated.

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<sup>40</sup> Exhibit A, Incorrect Reduction Claim, p. 15.

<sup>41</sup> Exhibit A, Incorrect Reduction Claim, p. 15.

<sup>42</sup> Exhibit A, Incorrect Reduction Claim, pp. 17-18.

<sup>43</sup> Exhibit A, Incorrect Reduction Claim, p. 23.

<sup>44</sup> Exhibit A, Incorrect Reduction Claim, p.69.

<sup>45</sup> Exhibit B, Controller’s Comments on IRC, p. 20.

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 over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>46</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>47</sup>

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.<sup>48</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”<sup>49</sup>

The Commission must review also 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.<sup>50</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>51</sup>

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<sup>46</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>47</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>48</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>49</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>50</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>51</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

**A. Claimant did not Comply With the Parameters and Guidelines in Claiming Salary and Benefit Costs and, Thus the Controller’s Reduction of These Costs is Correct as a Matter of Law and is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller found that claimant overstated salary, benefit, and related indirect costs by \$158,712 for fiscal years 2002-2003 and 2003-2004 because claimant claimed five percent of the total costs for nineteen counselors but was unable to support the five percent allocation with time logs, time studies documenting the actual time spent on counseling activities, or other actual documentation showing that the counselors performed counseling activities related to the mandated program. The Controller reduced the claimed costs for salaries and benefits for each fiscal year to zero.

1. The parameters and guidelines specify the requirements for claiming employee salary and benefit costs.

Parameters and guidelines adopted by the Commission are required to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program, and also identify the supporting documentation required to be retained during the period subject to audit.<sup>52</sup> The reimbursement claims filed by the claimants are required as a matter of law to be filed in accordance with the parameters and guidelines.<sup>53</sup>

The parameters and guidelines for the *Health Fee Elimination* program provide a long list of services, which are “reimbursable to the extent they were provided by the community college district in fiscal year 1986-87.” The claiming instructions contain the same list of services, and provide a form (HFE-2) with columns for the reimbursement year and the 1986-87 fiscal year (the base year). Claimants are required to mark in those columns the services provided in the claim year, and the services provided in the base year; only those services marked in both columns are reimbursable. Those forms, as a part of the reimbursement claim, are submitted under penalty of perjury.

In addition, the parameters and guidelines provide that in order to claim reimbursement for employee salaries and benefits, the claimant is required to identify the employee and the employee(s) classification, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.<sup>54</sup>

The parameters and guidelines also require that the costs claimed “shall be traceable to source documents and/or worksheets that show evidence of the validity of such costs.”<sup>55</sup> Although contemporaneous source documentation is not required under these parameters and guidelines,

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<sup>52</sup> Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

<sup>53</sup> Government Code sections 17561(d)(1); 17564(b); and 17571; *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th794, 801, where the court ruled that parameters and guidelines adopted by the Commission are regulatory in nature and are “APA valid.”

<sup>54</sup> Exhibit A, Incorrect Reduction Claim, p. 40.

<sup>55</sup> *Id.*

claimants are required to provide some type of source documentation upon request of the Controller to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate.

2. The reduction of costs claimed for “counseling” is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

For the 2002-2003 and 2003-2004 fiscal years, five percent of salary and benefit and related indirect costs for nineteen counselors were claimed as costs for “personal needs” counseling services. To support the costs claimed for counseling, the claimant provided a copy of the duty statement for district counselors, dated February 1997, which, in part, identifies the job description for personal counseling services as follows:

Personal Counseling: ESSENTIAL: Provide personal counseling to students, as appropriate, regarding assistance with interpersonal relationship issues and problems, development of interpersonal communication skills, clarification of values and goals, psychological and/or behavioral difficulties, development of decision making skills, chemical dependency problems, gender/sexuality issue and concerns, health problems and concerns, and/or other problems and concerns; provide referrals to students to external community mental health and/or professional counseling and/or other assistance agencies, as appropriate to meet the student needs; provide crisis intervention and/or emergency counseling for students experiencing serious problems, as necessary to meet student needs.<sup>56</sup>

The claimant argues that the regulations that implement the *Health Fee Elimination* program indicate that these services are appropriate for the program and are funded with the student health fees. In addition, claimant argues that the regulations allow a claimant to prorate the cost to only the portion attributable to the mandated program.<sup>57</sup>

The claimant also provided two worksheets to support the personal counseling costs claimed. The first worksheet states the following:

01/07/04

Counselor time spend in personal counseling for 2002-2003

Approximately 5% of 19 counselor’s time

Average salary \$55,000

$19 * 55000 * 5\% = \$73,150$

The second worksheet states the following:

01/06/05

Counselor time spent in personal counseling for 2003-2004

Approximately 5% of 19 counselor’s time

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<sup>56</sup> Exhibit A, Incorrect Reduction Claim, p. 11; Exhibit B, Controller’s Comments on IRC, p. 38 (Tab 4).

<sup>57</sup> Exhibit A, IRC, pp. 12-13.

Average salary \$55,500

$19 * 55500 * 5\% = \$52,725$ <sup>58</sup>

The Controller found the duty statement provided by the claimant contained descriptions of both duties that could be attributed to mandated activities and duties unrelated to mandated activities, with no apportionment of time actually spent on the mandated program.<sup>59</sup> The Controller states the following:

The duty statement shows that a counselor's responsibilities include many duties unrelated to the mandated program, such as academic advising/educational planning, career/vocational counseling and development, instruction, outreach/liaison, and student advocacy/development. In addition, the district's response fails to disclose that the duty statement referenced is dated February 1997, over four years before the audit period. The district did not provide any documentation showing that this duty statement is representative of a counselor's duties during the audit period.

The duty statement's "personal counseling" section also includes both mandate-related and non-mandate-related activities. Neither Title 5, California Code of Regulations (CCR), section 54702, nor the program's parameters and guidelines identify duties such as development of interpersonal skills, clarification of values and goals, and development of decision-making skills as mandated activities.

Furthermore, the district did not provide any documentation showing the actual time that employees spent performing mandated activities or showing that employees actually performed mandated activities. A duty statement is merely a list of responsibilities; it does not document activities actually performed.<sup>60</sup>

The Controller further contends that the worksheets provided do not document actual costs incurred for the program, since they estimate that "approximately" five percent of the counselor's time was spent on the program.<sup>61</sup>

The Commission finds that the reduction of costs for personal counseling is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. As stated above, the parameters and guidelines require claimant to provide documentation to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate. There are no supporting documents in the record to show that the "counseling" costs claimed were incurred as a result of the health services mandate, or whether the costs result from other types of counseling services provided by claimant, like academic or career counseling, which are not eligible for reimbursement.

Moreover, claimant did not comply with the supporting documentation requirements of the parameters and guidelines when claiming employee costs. The parameters and guidelines

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<sup>58</sup> Exhibit B, Controller's Comments on IRC, pp. 41-42.

<sup>59</sup> Exhibit B, Controller's Comments on IRC, p. 15; duty statement, Tab 4, pp. 37-39.

<sup>60</sup> Exhibit B, Controller's Comments on IRC, page 15.

<sup>61</sup> *Ibid.*

provide that in order to claim reimbursement for employee salaries and benefits, claimant is required to identify the employees, show the classification of the employees involved, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. Claimant did not comply with those instructions, and instead estimated five percent of its counselors time was devoted to state-mandated counseling services. However, the parameters and guidelines require that when claiming costs based on the average number of hours, the number of hours reported must be supported by a “documented time study.” The claimant admits it did not conduct a time study for the fiscal years at issue.<sup>62</sup> The parameters and guidelines require that each claim for reimbursement must be supported by source documentation or a time study for that claim year.<sup>63</sup> Thus, there is no evidence in the record supporting the costs claimed for personal counseling in fiscal years 2002-2003 and 2003-2004.

Based on these facts, the Commission finds that claimant did not comply with the parameters and guidelines in claiming salary and benefit costs for counseling and, thus, the Controller’s reduction of these costs is correct as a matter of law and is not arbitrary, capricious or entirely lacking in evidentiary support.

**B. Claimant Did Not Comply With the Parameters and Guidelines, Controller’s Claiming Instructions, and the OMB Circular in Preparing its Indirect Cost Rate and, Thus, the Controller’s Reduction of These Costs is Correct as a Matter of Law and the Recalculation of Indirect Costs is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller reduced indirect costs claimed by a total of \$166,810 for all three fiscal years. Claimant used the OMB Circular A-21 to calculate its indirect cost rate, but claimant failed to obtain federal approval for use of the OMB Circular A-21 methodology. The Controller recalculated indirect costs for all three fiscal years using the state Form FAM-29C allowed in the claiming instructions.<sup>64</sup>

Claimant disputes the Controller’s findings that the indirect cost rate proposal was incorrectly applied, charging that the Controller’s conclusions were without basis in the law.

1. The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide for an indirect cost rate developed in accordance with federal OMB Circular A-21 guidelines or the state Form FAM-29C.

If the Commission approves a test claim and determines there are costs mandated by the state, parameters and guidelines are required to be adopted to determine the amount to be subvended.<sup>65</sup> Parameters and guidelines, in addition to identifying the reimbursable activities, provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect

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<sup>62</sup> Exhibit A, Incorrect Reduction Claim, p. 40.

<sup>63</sup> Exhibit A, Incorrect Reduction Claim, p. 40.

<sup>64</sup> Exhibit A, Incorrect Reduction Claim, p.66.

<sup>65</sup> Government Code section 17557.

costs of a state-mandated program.<sup>66</sup> The Commission’s adoption of parameters and guidelines is quasi-judicial and, therefore, the parameters and guidelines are final and binding on the parties unless set aside by a court pursuant to Government Code section 17559.<sup>67</sup> Claimants are required as a matter of law to file reimbursement claims in accordance with the parameters and guidelines.<sup>68</sup> Moreover, the parameters and guidelines cannot be amended by the Commission absent the filing of a request to amend the parameters and guidelines by a local government or state agency pursuant to Government Code section 17557. In this case, the parameters and guidelines for the *Health Fee Elimination* program have not been challenged, and no party has requested they be amended. The parameters and guidelines are therefore binding and must be applied to the reimbursement claims here.

Section VI of the parameters and guidelines provide that “*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.*”<sup>69</sup> Claimant argues that the word “may” in the indirect cost language of the parameters and guidelines is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.<sup>70</sup>

Claimant’s argument is unsound: the parameters and guidelines plainly state that “indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The interpretation that is consistent with the plain language of the parameters and guidelines is that “indirect costs may be claimed,” or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the parameters and guidelines and claim indirect costs in the manner described in the Controller’s claiming instructions.

Claimant also argues that because the claiming instructions “were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are merely a statement of the ministerial interests of the SCO and not law.”<sup>71</sup> The parameters and guidelines, which were duly adopted at a Commission hearing and are regulatory in nature, require compliance with the claiming instructions. As indicated above, the parameters and guidelines, never having been challenged or amended at the request of the parties, are binding.

The claiming instructions specific to the *Health Fee Elimination* mandate, are found in the School Mandated Cost Manual which is revised each year and contains claiming instructions applicable to all school and community college mandated programs. The cost manuals issued by

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<sup>66</sup> Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

<sup>67</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: “[U]nless a party to a quasi-judicial proceeding challenges the agency’s adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.” [Citation omitted.]

<sup>68</sup> Government Code sections 17561(d)(1); 17564(b); and 17571. See also, *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, finding that the parameters and guidelines are regulatory.

<sup>69</sup> Exhibit A, Incorrect Reduction Claim, p. 40.

<sup>70</sup> Exhibit A, Incorrect Reduction Claim, p. 16.

<sup>71</sup> Exhibit A, Incorrect Reduction Claim, p. 16.

the Controller's Office in September 2001 and September 2003, govern the reimbursement claims filed for all three fiscal year reimbursement claims in this case.<sup>72</sup> These cost manuals allow claimants to use the OMB Circular A-21 methodology with federal approval or the FAM-29C., a default rate of 7 percent, or "a higher expense percentage . . . if the college can support its allocation basis" as follows<sup>73</sup>

A college has the option of using a federally approved rate, utilizing the cost accounting principles from *Office of Management and Budget Circular A-21* "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. *Form FAM-29C* has been developed to assist the community college in computing an indirect cost rate for state mandates. . . .

[¶]

The [FAM-29C] computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

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If the claimant uses the OMB Circular A-21 methodology, federal approval of the indirect cost rate is required. The OMB Circular A-21 establishes principles for determining costs applicable to grants, contracts, and other agreements between the federal government and educational institutions. Section G(11) of the OMB Circular A-21 governs the determination of indirect cost rates and requires the federal approval of a proposed rate by the "cognizant federal agency," which is normally either the Federal Department of Health and Human Services or the Department of Defense's Office of Naval Research.<sup>75</sup>

Therefore, the Commission finds that the parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller's claiming instructions, which in

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<sup>72</sup> Exhibit X, School Mandated Cost Manual excerpts.

<sup>73</sup> Exhibit X, School Mandated Cost Manuals excerpts.

<sup>74</sup> Exhibit X, School Mandated Cost Manual, excerpts from fiscal years 2000-2001 and 2002-2003, pp. 12, and 17.

<sup>75</sup> Exhibit X, OMB Circular A-21.

turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or the state Form FAM-29C.

2. Claimant did not comply with the requirements of the parameters and guidelines, claiming instructions, and the OMB Circular in developing and applying its indirect cost rates for 2001--2002, 2002-2003 and 2003-2004. Therefore, the Controller's reduction is correct as a matter of law and the recalculation of the indirect cost rate using the Form Fam-29C was not arbitrary, capricious, or entirely lacking in evidentiary support.

Here, claimant used a valid methodology, the OMB Circular A-21, but failed to obtain federal approval for that rate as required in the OMB Circular A-21, and the parameters and guidelines and claiming instructions. Therefore, the reduction of costs is correct as a matter of law.

The Commission further finds that the Controller's recalculation of indirect costs using the Form Fam-29C is not arbitrary, capricious, or entirely lacking in evidentiary support. The methodology is expressly allowed by the claiming instructions. The Controller's allowable rate was 18.45 percent for fiscal year 2001-2002, 21.06 percent for fiscal year 2002-2003, and 22.16 percent for fiscal year 2003-2004.<sup>76</sup>

Accordingly, the Commission finds that the Controller's reduction is correct as a matter of law and the recalculation of the indirect cost rate using the state Form FAM-29C rate was not arbitrary, capricious, or entirely lacking in evidentiary support.

**C. The Controller's Reduction for Understated Offsetting Revenues is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller reduced costs for the three fiscal years by \$256,592 because claimant understated its offsetting health service fee revenue. For fiscal year 2001-2002, the Controller found that claimant's documentation in its own Health Fee Report did not reconcile student count and fees collected with the total health fee revenue shown in claimant's own Financial Summary Report, and also did not calculate the total health service fee revenue authorized to be charged.<sup>77</sup> For fiscal years 2002-2003 and 2003-2004, claimant reported only those health service fee revenues actually collected, and not the fee revenue authorized to be charged.

The Commission finds that the correct calculation and application of offsetting revenue from student health fees has been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law.

After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the 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. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced

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<sup>76</sup> Exhibit A, Incorrect Reduction Claim, p.66.

<sup>77</sup> Exhibit A, Incorrect Reduction Claim, p. 69.

by the amount of student health fees authorized per the Education Code [section] 76355.<sup>78</sup>

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

(a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.<sup>79</sup> The Chancellor of the California Community Colleges issues a notice to the governing boards of all community colleges when a fee increase is triggered.<sup>80</sup> Here, the Controller asserts that claimant had the authority to increase its fee in accordance with the notices periodically issued by the Chancellor of the California Community Colleges, stating that the Implicit Price Deflator Index had increased enough to support a one dollar increase in student health fees.<sup>81</sup> The Controller argues that the claimant was required to claim offsetting fees in the amount authorized. Claimant argues that the actual increase of the fee imposed upon students requires action of the community college district governing board, and that “the Controller cannot rely on the Chancellor’s notice as a basis to adjust the claim for ‘collectible’ student health services fees,”<sup>82</sup> because the fees levied on students are raised by action of the governing board of the community college district. But the *authority* to impose the health service fees increases with the Implicit Price Deflator, as noticed by the Chancellor, and without any legislative action by a community college district, or any other entity (state or local). Moreover,

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<sup>78</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 811.

<sup>79</sup> See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

<sup>80</sup> See, e.g., Exhibit A, Incorrect Reduction Claim [Letter from Chancellor, page 81].

<sup>81</sup> See Exhibit B, Controller’s Comments, p. 17; Exhibit A, Incorrect Reduction Claim, pp. 66-67.

<sup>82</sup> Exhibit A, Incorrect Reduction Claim, p. 24.

the court in *Clovis Unified* upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes 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.<sup>83</sup>

The court also notes 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.’”<sup>84</sup> Additionally, in responding to the community college districts’ argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s,”<sup>85</sup> the court held:

To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.<sup>86</sup> (Italics added.)

Thus, pursuant to the court’s decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimants for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.<sup>87</sup> In addition, the *Clovis* decision is binding on the claimant under principles of collateral estoppel.<sup>88</sup> Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.<sup>89</sup> Here, the claimant was in privity with parties to the *Clovis* action, and under

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<sup>83</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.* (Original italics.)

<sup>86</sup> *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812.

<sup>87</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

<sup>88</sup> The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

<sup>89</sup> *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

principles of collateral estoppel, the court's decision is binding on the claimant with respect to these reimbursement claims.<sup>90</sup>

The Commission further finds that the Controller's recalculation of offsetting revenues authorized to be charged, using student enrollment data that claimant reported to the California Community College Chancellor's Office and student waiver data supported by claimant's records, was not arbitrary, capricious, or entirely lacking in evidentiary support. The documents are public records maintained by claimant in the normal course of business, and claimant has provided no other documents to support the offsetting health service fee revenue authorized for this program.

Accordingly, the Commission finds that the Controller's reduction for understated offsetting revenues is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

## **V. Conclusion**

Based on the foregoing, the Commission denies this IRC. Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission finds that the Controller's reduction of costs claimed for salary and benefits and related indirect costs due to inadequate supporting documentation, the Controller's reduction of indirect costs based on claimant's failure to obtain federal approval for its indirect cost rate, and the Controller's reduction of costs based on understated health service fees was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>90</sup>*Ibid.* 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.

**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 April 3, 2015, I served the:

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

*Health Fee Elimination, 07-4206-I-16*

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1, (1983-1984 2nd Ex Sess.); Statutes 1987, Chapter 1118

Fiscal Years 2001-2002, 2002-2003, and 2003-2004

Sierra Joint 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 April 3, 2015 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/2/15

**Claim Number:** 07-4206-I-16

**Matter:** Health Fee Elimination

**Claimant:** Sierra Joint 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.)

**Socorro Aquino**, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Giny Chandler**, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA

Phone: (916) 323-3562

giny.chandler@csm.ca.gov

**Marieta Delfin**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

**Ed Hanson**, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

**Cheryl Ide**, Associate Finance Budget Analyst, *Department of Finance*  
Education Systems Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
Cheryl.ide@dof.ca.gov

**Jill Kanemasu**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-9891  
jkanemasu@sco.ca.gov

**Jay Lal**, *State Controller's Office (B-08)*  
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0256  
JLal@sco.ca.gov

**Kathleen Lynch**, *Department of Finance (A-15)*  
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
kathleen.lynch@dof.ca.gov

**Yazmin Meza**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
Yazmin.meza@dof.ca.gov

**Robert Miyashiro**, *Education Mandated Cost Network*  
1121 L Street, Suite 1060, Sacramento, CA 95814  
Phone: (916) 446-7517  
robertm@sscal.com

**Jameel Naqvi**, Analyst, *Legislative Analysts' Office*  
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8331  
Jameel.naqvi@lao.ca.gov

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Christian Osmena**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

**Arthur Palkowitz**, *Stutz Artiano Shinoff & Holtz*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@sashlaw.com

**Keith Petersen**, *SixTen & Associates*  
**Claimant Representative**  
P.O. Box 340430, Sacramento, CA 95834-0430

Phone: (916) 419-7093

kbpsixten@aol.com

**Sandra Reynolds**, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589

Phone: (951) 303-3034

sandrareynolds\_30@msn.com

**Kathy Rios**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-5919

krios@sco.ca.gov

**David Scribner**, *Max8550*

2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670

Phone: (916) 852-8970

dscribner@max8550.com

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849

jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

DSpeciale@sco.ca.gov

**Beverly Yoha**, Finance Manager, *Sierra Joint Community College District*

5000 Rocklin Road, Rocklin, CA 95677

Phone: (916) 660-7616

byoha@sierracollege.edu