



JOHN CHIANG
California State Controller

April 14, 2011

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Keith Petersen
SixTen and Associates
P.O. Box 340430
Sacramento, CA 95834-0430

Re: Consolidated Incorrect Reduction Claims

Health Fee Elimination (09-4206-I-19, 09-4206-I-20, 09-4206-I-23, 09-4206-I-26, 09-4206-I-27, 09-4206-I-28, and 09-4206-I-30)

Education Code Section 76355

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

Claimants:

Citrus Community College District (FYs 2002-03 to 2006-07)

Cerritos Community College District (FYs 2002-03 to 2006-07)

Los Rios Community College District (FYs 2005-06 to 2007-08)

Redwood Community College District (FYs 2002-03 to 2008-09)

Allan Hancock Joint Community College District (FYs 2002-03 to 2006-07)

Rancho Santiago Community College District (FYs 2005-06 to 2008-09)

Pasadena Community College District (FYs 2004-05 and 2005-06)

This letter constitutes the Controller's response to the Consolidated IRCs identified above. As noted in the letter of consolidation, it appears that the issues in all seven IRCs revolve predominately around questions of law, not of fact. However, we have attached the standard documentation for each IRC to ensure there is a complete administrative record.

We believe the issues surrounding offsetting revenue based on authorized health fees have been fully resolved by the court in the *Clovis*¹ case. In that case the court concluded that the "Health Fee Rule" implemented by the Controller's Office, which reduced reimbursement by the amount of the health fee authorized, was valid². This is precisely the basis on which the Controller's Office made its adjustments to the claims in question.

¹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App.4th 794.

² *Id* at 812.

Therefore, the adjustments made pursuant to the “Health Fee Rule” should be upheld by the Commission.

In four of the IRCs the Claimant asserts that the reviews of certain fiscal years are precluded by the statute of limitations, specifically Government Code section 17558.5. The basis for this assertion is the allegation that the statutory language of Section 17558.5 is “impermissibly vague”. However, the language of the statute is not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the “date of initial payment”, in cases where no funds are appropriated or no payment is made. As a recipient of said payment, the Claimants would be in a position to know when the “clock” has started, and thus when it would end. Ultimately, the argument concerning vagueness is moot, as the commission has no authority to determine that a statute, or any portion thereof, is unconstitutional³. This power is reserved to the Judiciary. For this reason, the Commission should reject the Claimants’ vagueness argument and hold that the statute of limitations begins to run on the date of initial payment.

In the case of Citrus Community College District, the District claims that the adjustments to the 2002-03 and 2003-04 fiscal year claims are precluded by the statute of limitations. For the 2002-03 FY the initial payment was made on October 25, 2006 (Att. H). For the 2003-04 FY no payment was made (Att. A, Ex. A, Pg. 2). Thus, the statute of limitations would have begun to run on October 25, 2006, and expired on October 25, 2009. The review of both fiscal years began on May 8, 2009 (Att. L, Pg. 3) and was complete on October 20, 2009 (Att. A, Tab 5, Pg. 1). Therefore, those reviews were completed timely.

Cerritos Community College District claims that the adjustments for fiscal years 2002-03 and 2003-04 were precluded by the statute of limitations. The initial payment for the 2002-03 FY was made on October 25, 2006 (Att. I). No payment was made for FY 2003-04 (Att. B, Ex. A, Pg. 2). Therefore, the statute of limitations began to run on October 25, 2006, and would have expired on October 25, 2009. The review was initiated on May 8, 2009 (Att. L, Pg. 5) and completed on October 20, 2009 (Att. B, Tab 5, Pg. 1), within the required time frame.

Redwood Community College District also disputes the reviews of fiscal years 2002-03 and 2003-04 based on the statute of limitations. The initial payment for FY 2002-03 was made on October 25, 2006 (Att. J). No payment was made for FY 2003-04 (Att. D, Ex. A, Pg. 2). Based on the initial date of payment, the statute of limitations commenced on October 25, 2006 and expired on October 25, 2009. The review was commenced on May 11, 2009 (Att. L, Pg. 7), and completed on October 20, 2009 (Att. D, Tab 5, Pg. 1). Therefore, the review was timely and the adjustments made therein, valid.

³ California Constitution, Art. 3, Sec. 3.5.

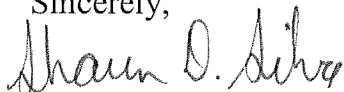
April 14, 2011

Page 3

Claimant Allan Hancock Joint Community College District asserts that the review of fiscal years 2002-03, 2003-04, and 2004-05 are beyond the statute of limitations. The initial payment for FY 2003-03 was made October 25, 2006 (Att. K). No payments were made for FYs 2003-04 and 2004-05 (Att. E, Ex. A, Pgs. 3 & 4). Therefore, the statute of limitations began on October 25, 2006, expiring on October 25, 2009. The reviews were initiated on May 8, 2009 (Att. E, Ex. B, Pg. 6) and completed on October 21, 2009 (Att. E, Ex. B, Pg. 15), within the statute of limitations, and thus timely.

For a more detailed analysis of the claims, see the State Controller's Office, Division of Audits individual response to each IRC, as attachments A through G respectively. Also, included as attachments H through K, are the warrants constituting the initial payment to each claimant asserting a statute of limitations defense. Attachment L contains three emails which initiated the reviews in the cases of Citrus, Cerritos, and Redwood.

Sincerely,



SHAWN D. SILVA
Senior Staff Counsel

cc: Jim Spano, Division of Audits (w/o attachments)
Ms. Berlanti Rizkallah, Cerritos CCD
Jon Sharpe, Los Rios CCD
Richard Van Pelt, Pasadena CCD
Peter Hardash, Rancho Santiago CCD