SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, President
3270 Arena Blvd. Suite 400-363
Sacramento, CA 95834
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

September 24, 2009

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

RE: Kern Community College District
Health Fee Elimination
Fiscal Years: 2003-04 through 2006-07
Incorrect Reduction Claim

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced incorrect reduction claim for Kern Community College District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

Thomas Burke, Chief Financial Officer
Kern Community College District
2100 Chester Avenue
Bakersfield, CA 93301

Thank-you.

Sincerely,

Keith B. Petersen

COMMISSION ON STATE MANDATES

1. INCORRECT REDUCTION CLAIM TITLE

1/84, 1118/87 Health Fee Elimination

2. CLAIMANT INFORMATION

Kern Community College District

Thomas Burke, Chief Financial Officer
Kern Community College District
2100 Chester Avenue
Bakersfield, CA 93301
Phone: 661-336-5117
Fax: 661-336-5134
E-mail: tburke@kccd.edu

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834
Voice: (916) 419-7093
Fax: (916) 263-9701
E-mail: Kbpsixten@aol.com

For CSM Use Only

Filing Date:

IRC #: 09-4206-I-21

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

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

5. AMOUNT OF INCORRECT REDUCTION

Fiscal Year	Amount of Reduction
2003-04	$43,319
2004-05	$214,807
2005-06	$336,862
2006-07	$219,093
TOTAL:	$814,081

6. NOTICE OF NO INTENT TO CONSOLIDATE

___ This claim is not being filed with the intent to consolidate on behalf of other claimants.

Sections 7-16 are attached as follows:

7. Written Detailed Narrative:	Pages 1 to 21
8. SCO Results of Review Letters:	Exhibit A
9. Parameters and Guidelines:	Exhibit B
10. SCO Claiming Instructions:	Exhibit C
11. SCO Audit Report:	Exhibit D
12. SCO Mandated Cost Manual:	Exhibit E
13. *San Francisco Taxpayers Assn. V. Board of Supervisors:*	Exhibit F
14. Student Fee Handbook: Legal Opinion M 06-11	Exhibit G
15. *Santa Clara Valley Transportation Authority v. REA*	Exhibit H
16. Annual Reimbursement Claims:	Exhibit I

17. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Thomas Burke
Chief Financial Officer

Signature

9-14-09
Date

Claim Prepared by:
Keith B. Petersen
SixTen and Associates
3270 Arena Blvd.,Suite 400-363
Sacramento, California 95834
Voice: (916) 419-7093
Fax: (916) 263-9701
E-mail: kbpsixten@aol.com

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

INCORRECT REDUCTION CLAIM OF: **KERN Community College District**, Claimant.	No. CSM _____ Chapter 1, Statutes of 1984, 2nd E.S. Chapter 1118, Statutes of 1987 Education Code Section 76355 **Health Fee Elimination** Annual Reimbursement Claims: Fiscal Year 2003-2004 Fiscal Year 2004-2005 Fiscal Year 2005-2006 Fiscal Year 2006-2007

INCORRECT REDUCTION CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(d) to "hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561." Kern Community College District (hereinafter "District" or

"Claimant") is a school district as defined in Government Code Section 17519.[1] Title 2, California Code of Regulations (CCR), Section 1185(a), requires claimants to file an incorrect reduction claim with the Commission.

This Incorrect Reduction Claim is timely filed. Title 2, CCR, Section 1185(b), requires incorrect reduction claims to be filed no later than three years following the date of the Controller's "written notice of adjustment notifying the claimant of a reduction." A Controller's audit report dated June 30, 2009, has been issued. The audit report constitutes a demand for repayment and adjudication of the claim. The Claimant also received four "result of review" letters dated July 9, 2009. Copies of these letters are attached as Exhibit "A."

There is no alternative dispute resolution process available from the Controller's office. The audit report states that an incorrect reduction claim should be filed with the Commission if the claimant disagrees with the findings.

PART II. SUMMARY OF THE CLAIM

The Controller has conducted a field audit of the District's annual reimbursement claims for the actual costs of complying with the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and Chapter 1118, Statutes of 1987) for the period of July 1, 2003 through June 30, 2007.

---

[1] Government Code Section 17519, added by Chapter 1459, Statutes of 1984:

"School district" means any school district, community college district, or county superintendent of schools.

As a result of the audit, the Controller determined that $814,081 of the claimed costs were unallowable:

Fiscal Year	Amount Claimed	Audit Adjustment	SCO Payments	Amount Due <State>
2003-04	$121,723[2]	$43,319	$0	$78,404
2004-05	$403,725	$214,807	$0	$188,918
2005-06	$344,353	$336,862	$0	$7,491
2006-07[3]	$219,093[4]	$219,093	$219,065	<$219,065>
Totals	$1,088,894	$814,081	$219,065	$55,748

Since the District has been paid $219,065 for these claims, the audit report concludes that $55,748 is due to the District.

PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

The District has not filed any previous incorrect reduction claims for this mandate program. The District is not aware of any incorrect reduction claims having been adjudicated on the specific issues or subject matter raised by this incorrect reduction claim.

/

---

[2] The original amount of the FY 2003-04 annual claim was $122,723, less a late filing penalty of $1,000.

[3] The FY 2006-07 annual claim was amended February 2, 2009 while the audit was in progress.

[4] The amended FY 2006-07 annual claim amount was $229,093, less a late filing penalty of $1,000.

PART IV. BASIS FOR REIMBURSEMENT

1. Mandate Legislation

Chapter 1, Statutes of 1984, 2nd Extraordinary Session, repealed Education Code Section 72246 and added new Education Code Section 72246, which authorized community college districts to charge a student health services fee for the purposes of providing health supervision and services, and operating student health centers. This statute also required that the scope of student health services provided by any community college district during the 1983-84 fiscal year be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute were to automatically repeal on December 31, 1987.

Chapter 1118, Statutes of 1987, amended Education Code Section 72246 to require any community college district that provided student health services in fiscal year 1986-87 to maintain student health services at that level in 1987-88 and each fiscal year thereafter.

Chapter 753, Statutes of 1992, amended Education Code Section 72246 to increase the maximum fee that community college districts were permitted to charge for student health services. This statute also provided for future increases in the amount of the authorized fees that were linked to the Implicit Price Deflator for State and Local Government Purchase of Goods and Services.

Chapter 8, Statutes of 1993, repealed Education Code Section 72246, and

added Education Code Section 76355[5] containing substantially the same provisions as

[5] Education Code Section 76355, added by Chapter 8, Statutes of 1993, effective April 15, 1993, as last amended by Chapter 758, Statutes of 1995:

> (a) 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.
> The governing board of each community college district may increase this 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).
> (b) If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.
> (c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):
> (1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.
> (2) Students who are attending a community college under an approved apprenticeship training program.
> (3) Low-income students, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.
> (d) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.
> Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services, the salaries of health

former Section 72246, effective April 15, 1993. Chapter 320, Statutes of 2005, amended Education Code Section 76355 to remove the fee exemption for low-income students under 76355(c)(3).

2. Test Claim

On November 27, 1985, Rio Hondo Community College District filed a test claim alleging that Chapter 1, Statutes of 1984, 2nd Extraordinary Session mandated increased costs within the meaning of California Constitution Article XIII B, Section 6, by requiring the provision of student health services that were previously provided at the discretion of the community college districts.

On November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd Extraordinary Session, imposed a new program upon community college districts by requiring any community college district that provided student health services for which it was authorized to charge a fee pursuant to former

---

professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.
(e) Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.
(f) A district that begins charging a health fee may use funds for startup costs from other district funds and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.
(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program.

Section 72246 in the 1983-1984 fiscal year, to maintain student health services at that level in the 1984-1985 fiscal year and each fiscal year thereafter.

At a hearing on April 27, 1989, the Commission on State Mandates determined that Chapter 1118, Statutes of 1987, amended this requirement to apply to all community college districts that provided student health services in fiscal year 1986-1987, and required them to maintain that level of student health services in fiscal year 1987-1988 and each fiscal year thereafter.

3. Parameters and Guidelines

On August 27, 1987, the original parameters and guidelines were adopted. On May 25, 1989, those parameters and guidelines were amended. A copy of the May 25, 1989, parameters and guidelines is attached as Exhibit "B."

4. Claiming Instructions

The Controller has periodically issued or revised claiming instructions for the Health Fee Elimination mandate. A copy of the September 2003 revision of the claiming instructions is attached as Exhibit "C." The September 2003 claiming instructions are believed to be substantially similar to the version extant at the time the claims that are the subject of this Incorrect Reduction Claim were filed. However, because the Controller's claim forms and instructions have not been adopted as regulations, they have no force of law and no effect on the outcome of this claim.

PART V. STATE CONTROLLER CLAIM ADJUDICATION

The Controller conducted an audit of the District's annual reimbursement claims

for fiscal years 2003-04, 2004-05, 2005-06, and 2006-07. The audit concluded that $274,813 of the District's costs claimed were allowable. A copy of the June 30, 2009, final audit report is attached as Exhibit "D."

VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER

By letter dated April 24, 2009, the Controller transmitted a copy of its draft audit report. The District objected to the proposed adjustments set forth in the draft audit report by letter dated May 18, 2009. A copy of the District's response is included in Exhibit "D," the final audit report. The Controller then issued the final audit report without making any substantive changes.

PART VII. STATEMENT OF THE ISSUES

Finding 1- Misstated services and supplies

The District does not dispute this finding.

Finding 2- Unallowable indirect cost rates

The Controller asserts that the District overstated indirect costs by $167,604 for the audit period because the District "did not correctly compute the FAM-29C rate." The auditors recalculated the indirect cost rates using the Controller's claiming instructions for each fiscal year. However, the Controller's claiming instructions are unenforceable because they have not been adopted as regulations under the Administrative Procedure Act.

Parameters and Guidelines

No particular indirect cost rate calculation is required by law. The Controller

insists that the rate be calculated according to the claiming instructions. The parameters and guidelines state that "[i]ndirect costs *may be claimed* in the manner described by the State Controller in his claiming instructions." (Emphasis added.) The District claimed these indirect costs "in the manner" described by the Controller. The correct forms were used and the claimed amounts were entered at the correct locations. Further, "may" is not "shall"; the parameters and guidelines do not *require* that indirect costs be claimed in the manner specified by the Controller. The audit report asserts that because the parameters and guidelines specifically reference the claiming instructions, the claiming instructions thereby become authoritative criteria. Since the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are a statement of the Controller's interpretation and not law.

The Controller's interpretation of Section VI of the parameters and guidelines would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The Controller's claiming instructions are unilaterally created and modified without public notice or comment. The Commission would violate the Administrative Procedure Act if it held that the Controller's claiming instructions are enforceable as standards or regulations. In fact, until 2005, the Controller regularly included a "forward" in the Mandated Cost Manual for Community Colleges (September 30, 2003 version attached as Exhibit "E") that explicitly stated the claiming instructions were "issued for the sole purpose of assisting claimants" and "should not be construed in any

manner to be statutes, regulations, or standards."

Neither State law nor the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. The burden of proof is on the Controller to prove that the product of the District's calculation is unreasonable, not to recalculate the rate according to its unenforceable ministerial preferences.

Prior Year CCFS-311

The audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. While the audit report is correct that there is "no mandate-related authoritative criteria" supporting the District's method, there is also none that supports the Controller's method. As a practical matter, the CCFS-311 for the current year is often not available at the time that mandate reimbursement claims are due. Therefore, since a claimant does not always have current year data, it must determine its indirect cost rates based on the prior year CCFS-311.

The audit report asserts that the Controller's use of the most recent CCFS-311 is supported by the need to claim only actual costs. However, this is inconsistent with the parameters and guidelines and the Controller's claiming instructions. The parameters and guidelines do not specify any particular method of calculating indirect costs, nor do they require any particular source for the data used in the computation. The Controller's

claiming instructions, while not enforceable, are also silent as to whether the prior or current year CCFS-311 should be used in the FAM-29C methodology. Additionally, the claiming instructions for some mandate programs accept the use of a federally approved rate or a flat 7% rate, which has no relationship at all to actual indirect costs incurred. Therefore, the Controller's insistence on the use of the most recent CCFS-311 because it represents actual costs is inconsistent with his own claiming instructions.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that federally approved indirect cost rates are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five years removed from the last fiscal year in which the federal rate is used. The longstanding practice of the Controller prior to FY 2004-05 had been to accept federally approved rates. The audit report provides no explanation as to why using data from prior years to calculate indirect cost rates is acceptable for federally approved rates but not acceptable for rates derived under its FAM29-C method.

Excessive or Unreasonable

The Controller did not conclude that the District's indirect cost rates were excessive. The Controller is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable. Here, the District has computed its indirect cost rates using the CCFS-311 report, and the Controller has disallowed it without a determination of whether the product of the District's calculation is excessive, unreasonable, or

inconsistent with cost accounting principles.

The Controller has the burden to show that the indirect cost rate used by the District is excessive or unreasonable, pursuant to Government Code Section 17561(d)(2). In response to this assertion, the audit report states:

> Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines to be excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment."

The audit report then concludes, without any further discussion, that "the district's contention is invalid." The Controller has failed to demonstrate how the cited Government Code Sections relieve him of the burden to demonstrate that costs are excessive or unreasonable prior to reducing an annual reimbursement claim.

Section 12410 is found in the part of the Government Code that provides a general description of the duties of the Controller. It is not specific to the audit of mandate reimbursement claims. It is a well-settled maxim of statutory interpretation that "'[a] specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.'"[6] The audit authority in Section 17561(d)(2) is more specific than the Controller's general audit authority contained in Government Code Section 12410. Therefore, the Controller

[6] *San Francisco Taxpayers Assn. V. Board of Supervisors* (1992) 2 Cal.4th 571, 577. Attached as Exhibit "F."

only has the audit authority granted by Government Code Section 17561(d)(2) when auditing mandate reimbursement claims.

Further, the Controller has not asserted or demonstrated that, if Section 12410 was the applicable standard, the audit adjustments were made in accordance with this standard. The District's claim was correct, in that it reported the actual costs incurred. There is also no allegation in the audit report that the claim was in any way illegal. Finally, the phrase "sufficient provisions of law for payment" refers to the requirement that there be adequate appropriations prior to the disbursement of any funds. There is no indication that any funds were disbursed without sufficient appropriations. Thus, even if the standards of Section 12410 were somehow applicable to mandate reimbursement audits, the Controller has failed to put forth any evidence that these standards are not met.

There is no indication that the Controller is actually relying on the audit standards put forth in Section 12410 for the adjustments to the District's reimbursement claims. The audit report claims that the Controller determined that the District's costs were excessive, as required by Section 17561(d)(2), because the indirect cost rates used did not match the rates derived by the auditors using the Controller's alternative methodology. This merely restates the Controller's conclusion that indirect cost rates may only be derived using its preferred methodology, and in no way demonstrates that the District's rates were actually excessive.

Neither State law nor the parameters and guidelines make compliance with the

Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. The burden of proof is on the Controller to prove that the product of the District's calculation is unreasonable, not to recalculate the rate according to its unenforceable ministerial preferences.

Finding 3- Understated authorized health service fees

The Controller asserts that the District understated offsetting health service fees by $1,145,224 for the audit period because the District claimed health service fees actually collected, rather than the amounts authorized by Education Code Section 76355. The District complied with the parameters and guidelines for the Health Fee Elimination mandate when it properly reported revenue actually received from student health service fees.

The audit report states that it used data from the California Community College Chancellor's Office to calculate health service fees authorized for each of the fiscal years, without explanation as to how this data, which is "extracted" from data reported by the District, is more reliable or relevant than the District's own records. However, this issue is unimportant since the proper health service fee revenue offset amount is the fees actually received in accordance with the parameters and guidelines.

Parameters and Guidelines

The parameters and guidelines, which control reimbursement under the Health Fee Elimination mandate, state:

> Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for

> this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)[7].

In order for the District to "experience" these "offsetting savings" the District must actually have collected these fees. Note that the student health fees are named as a potential source of the reimbursement *received* in the preceding sentence. The use of the term "any offsetting savings" further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not. Thus, the Controller's conclusion is based on an illogical interpretation of the parameters and guidelines.

The audit report claims that the Commission's intent was for claimed costs to be reduced by fees authorized, rather than fees received as stated in the parameters and guidelines. It is true that the Department of Finance proposed, as part of the amendments that were adopted on May 25, 1989, that a sentence be added to the offsetting savings section expressly stating that if no health service fee was charged, the claimant would be required to deduct the amount authorized. However, the Commission declined to add this requirement and adopted the parameters and guidelines without this language.

The fact that the Commission staff and the California Community College Chancellors Office agreed with the Department of Finance's interpretation does not

---

[7] Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, and was replaced by Education Code Section 76355.

negate the fact that the Commission adopted parameters and guidelines that *did not* include the additional language. It would be nonsensical if the Commission held that every proposal that is discussed was somehow implied into the adopted document, because the proposals of the various parties are often contradictory. Therefore, it is evident that the Commission intends the language of the parameters and guidelines to be construed as written, and only those savings that are *experienced* are to be deducted.

Education Code Section 17556

The Controller continues to rely on Education Code Section 17556(d), while neglecting its context and omitting a crucial clause. Section 17556(d) does specify that the Commission on State Mandates shall not find costs mandated by the state if the local agency has the authority to levy fees, but only if those fees are "*sufficient to pay for the mandated program*" (emphasis added). Section 17556 pertains specifically to the Commission's determination on a test claim, and does not concern the development of parameters and guidelines or the claiming process. The Commission has already found state-mandated costs for this program, and the Controller cannot substitute its judgment for that of the Commission through the audit process.

The two court cases the audit report relies upon (*County of Fresno v. California* (1991) 53 Cal.3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are similarly misplaced. Both cases concern the approval of a test claim by the Commission. They do not address the issue of offsetting revenue in the reimbursement

stages, only whether there is fee authority *sufficient to fully fund* the mandate that would prevent the Commission from approving the test claim.

In *County of Fresno*, the Commission had specifically found that the fee authority was sufficient to fully fund the test claim activities and denied the test claim. The court simply agreed to uphold this determination because Government Code Section 17556(d) was consistent with the California Constitution. The Health Fee Elimination mandate, decided by the Commission, found that the fee authority is not sufficient to fully fund the mandate. Thus, *County of Fresno* is not applicable because it concerns the activity of approving or denying a test claim and has no bearing on the annual claim reimbursement process.

Similarly, although a test claim had been approved and parameters and guidelines were adopted, the court in *Connell* focused its determination on whether the initial approval of the test claim had been proper. It did not evaluate the parameters and guidelines or the reimbursement process because it found that the initial approval of the test claim had been in violation of Section 17556(d).

Students not Paying Health Service Fees

The District has three colleges and several Learning Centers. Cerro Coso College and the Learning Centers do not collect student health service fees because no such services are provided at those locations. Cerro Coso College (Ridgecrest) and the Learning Centers (Mammoth Lakes) are located several hours from either the Porterville or Bakersfield college campuses where the student health service programs

are located. The audit report improperly relies on a legal opinion from the California Community College Chancellor's Office[8] for the proposition that:

> The district had the ability to collect health fees from students at Cerro Cost [sic] College and Learning Centers, even if no health centers were present. Furthermore, as noted in the district's response, student health service programs are located at the Porterville and Bakersfield college campuses.

Apparently, the Controller believes that Education Code Section 76355 grants community college districts the authority to charge a health service fee even if no health services are offered at all. The plain language of Education Code Section 76355(a)(1) states that community college districts may charge a fee in the amounts specified "*for health supervision and services*." (Emphasis added.) Therefore, the Controller's conclusion that the District was authorized to collect health fees "even if no health centers were present" is in direct contradiction to Section 76355(a)(1). A fee cannot be collected *for health supervision and services* if the District does not provide such services.

The Chancellor's legal opinion is also not binding on community college districts or the Commission. It is merely an opinion, and does not even cite the source of its conclusions regarding the health service fee authority, other than Education Code Section 76355 itself. "'Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of

[8] Student Fee Handbook: Legal Opinion M 06-11, issued October 31, 2006, which is attached as Exhibit "G."

little worth.'"[9] Here, the issue is the interpretation of Section 76355 and whether the District even had the authority to charge student health fees to those students who attended classes hours away from the nearest student health centers. The Chancellor's legal opinion may be considered, but it should be given little weight because it does not provide a legal basis for the conclusion in question, and the passage relied upon by the Controller appears contrary to the plain language of the statute.

While the Chancellor legal opinion is correct in pointing out that the student health fee is not a "use" fee, in that it is not charged for actual usage of the student health services, it is a fee charged to maintain the availability of student health services. Student health centers that are located hours away from the location where students attend classes are not practically available to those students. The District cannot charge a fee "for health services" if no health services are actually available to these remotely located students. Therefore, the District did not actually have the authority to charge a health services fee to the students at Cero Coso College and the Learning Centers, and their enrollment cannot be included in calculating authorized health service fees.

PART VIII. RELIEF REQUESTED

The District filed its annual reimbursement claims within the time limits prescribed by the Government Code. The amounts claimed by the District for reimbursement of the costs of implementing the program imposed by Chapter 1,

[9] *Santa Clara Valley Transportation Authority v. Rea (American Federation of State, County, and Municipal Employees)* (2006) 140 Cal.App.4th 1303, 1314. Attached as Exhibit "H."

Statutes of 1984, 2nd Extraordinary Session, Chapter 1118, Statutes of 1987, and Education Code Section 76355 represent the actual costs incurred by the District to carry out this program. These costs were properly claimed pursuant to the Commission's parameters and guidelines. Reimbursement of these costs is required under Article XIII B, Section 6 of the California Constitution. The Controller denied reimbursement without any basis in law or fact. The District has met its burden of going forward on this claim by complying with the requirements of Section 1185, Title 2, CCR. Because the Controller has enforced and is seeking to enforce these adjustments without benefit of statute or regulation, the burden of proof is now upon the Controller to establish a legal basis for its actions.

The District requests that the Commission make findings of fact and law on each and every adjustment made by the Controller and each and every procedural and jurisdictional issue raised in this claim, and order the Controller to correct its audit report findings therefrom.

/

/

/

/

/

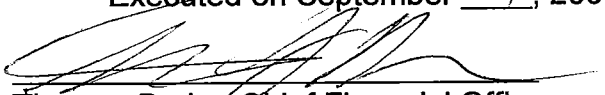
/

/

PART IX. CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents are true and correct copies of documents received from or sent by the state agency that originated the document.

Executed on September 19, 2009, at Bakersfield, California, by



Thomas Burke, Chief Financial Officer
Kern Community College District
2100 Chester Avenue
Bakersfield, CA 93301
Phone: 661-336-5117
Fax: 661-336-5134
E-mail: tburke@kccd.edu

APPOINTMENT OF REPRESENTATIVE

Kern Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this incorrect reduction claim.

9-14-09

Thomas Burke, Chief Financial Officer
Kern Community College District

Date

Attachments:

Exhibit "A"	Controller's "results of review" letters dated July 9, 2009
Exhibit "B"	Parameters and Guidelines as amended May 25, 1989
Exhibit "C"	Controllers claiming instructions, September 2003
Exhibit "D"	Controller's Audit Report, and the District's response, June 30, 2009
Exhibit "E"	Controller's Mandated Cost Manual Community Colleges September 2003 version
Exhibit "F"	*San Francisco Taxpayers Assn. V. Board of Supervisors* (1992) 2 Cal.4th 571
Exhibit "G"	Student Fee Handbook: Legal Opinion M 06-11, issued October 31, 2006
Exhibit "H"	*Santa Clara Valley Transportation Authority v. Rea (American Federation of State, County, and Municipal Employees)* (2006) 140 Cal.App.4th 1303
Exhibit "I"	Annual Reimbursement Claims

Exhibit A

JOHN CHIANG
California State Controller
Division of Accounting and Reporting
JULY 9, 2009

CC15095
00234
2009/07/09

BOARD OF TRUSTEES
KERN COMM COLL DIST
KERN COUNTY
2100 CHESTER AVE
BAKERSFIELD CA 93301

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2003/2004 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED			122,723.00
ADJUSTMENT TO CLAIM:			
FIELD AUDIT FINDINGS	-	43,319.00	
LATE CLAIM PENALTY	-	1,000.00	
TOTAL ADJUSTMENTS			- 44,319.00
AMOUNT DUE CLAIMANT			$ 78,404.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

JOHN CHIANG
California State Controller
Division of Accounting and Reporting
JULY 9, 2009

00234
2009/07/09

BOARD OF TRUSTEES
KERN COMM COLL DIST
KERN COUNTY
2100 CHESTER AVE
BAKERSFIELD CA 93301

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2004/2005 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		403,725.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	- 214,807.00	
TOTAL ADJUSTMENTS		- 214,807.00
AMOUNT DUE CLAIMANT		$ 188,918.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Fran Stuart

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

CC15095
00254
2009/07/09

JULY 9, 2009

BOARD OF TRUSTEES
KERN COMM COLL DIST
KERN COUNTY
2100 CHESTER AVE
BAKERSFIELD CA 93301

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2005/2006 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		344,353.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	- 336,862.00	
TOTAL ADJUSTMENTS		- 336,862.00
AMOUNT DUE CLAIMANT		$ 7,491.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

CC15095
00234
2009/07/09

JULY 9, 2009

BOARD OF TRUSTEES
KERN COMM COLL DIST
KERN COUNTY
2100 CHESTER AVE
BAKERSFIELD CA 93301

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2006/2007 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		229,093.00
TOTAL ADJUSTMENTS (DETAILS BELOW)	-	229,093.00
TOTAL PRIOR PAYMENTS (DETAILS BELOW)		-219,065.00
AMOUNT DUE STATE		$ 219,065.00

PLEASE REMIT A WARRANT IN THE AMOUNT OF $ 219,065.00 WITHIN 30 DAYS FROM THE DATE OF THIS LETTER, PAYABLE TO THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875 WITH A COPY OF THIS LETTER. FAILURE TO REMIT THE AMOUNT DUE WILL RESULT IN OUR OFFICE PROCEEDING TO OFFSET THE AMOUNT FROM THE NEXT PAYMENTS DUE TO YOUR AGENCY FOR STATE MANDATED COST PROGRAMS.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE ABOVE ADDRESS.

ADJUSTMENT TO CLAIM:			
FIELD AUDIT FINDINGS	-	219,093.00	
LATE CLAIM PENALTY	-	10,000.00	
TOTAL ADJUSTMENTS			- 229,093.00
PRIOR PAYMENTS:			
SCHEDULE NO. MA64147E			
PAID 03-12-2007		-219,065.00	
TOTAL PRIOR PAYMENTS			-219,065.00

SINCERELY,

A. D

Exhibit B

Adopted: 8/27/87
Amended: 5/25/89

PARAMETERS AND GUIDELINES
Chapter 1, Statutes of 1984, 2nd E.S.
Chapter 1118, Statutes of 1987
Health Fee Elimination

I. SUMMARY OF MANDATE

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during the 1983-84 fiscal year had to be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community colleges districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 to require any community college district that provided health services in 1986-87 to maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter.

II. COMMISSION ON STATE MANDATES' DECISION

At its hearing on November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year to maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement applies to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal year level.

At its hearing of April 27, 1989, the Commission determined that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to apply to all community college districts which provided health services in fiscal year 1986-87 and required them to maintain that level in fiscal year 1987-88 and each fiscal year thereafter.

III. ELIGIBLE CLAIMANTS

Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1, Statutes of 1984, 2nd E.S., became effective July 1, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30th following a given fiscal year to establish for that fiscal year. The test claim for this mandate was filed on November 27, 1985; therefore, costs incurred on or after July 1, 1984, are reimbursable. Chapter 1118, Statutes of 1987, became effective January 1, 1988. Title 2, California Code of Regulations, section 1185.3(a) states that a parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines; therefore, costs incurred on or after January 1, 1988, for Chapter 1118, Statutes of 1987, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code Section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Eligible community college districts shall be reimbursed for the costs of providing a health services program. Only services provided in 1986-87 fiscal year may be claimed.

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year 1986-87:

ACCIDENT REPORTS

APPOINTMENTS
- College Physician - Surgeon
  - Dermatology, Family Practice, Internal Medicine
- Outside Physician
- Dental Services
- Outside Labs (X-ray, etc.)
- Psychologist, full services
- Cancel/Change Appointments
- R.N.
- Check Appointments

ASSESSMENT, INTERVENTION & COUNSELING
- Birth Control
- Lab Reports
- Nutrition
- Test Results (office)
- VD
- Other Medical Problems
- CD
- URI
- ENT
- Eye/Vision
- Derm./Allergy
- Gyn/Pregnancy Services
- Neuro
- Ortho
- GU
- Dental
- GI
- Stress Counseling
- Crisis Intervention
- Child Abuse Reporting and Counseling
- Substance Abuse Identification and Counseling
- Aids
- Eating Disorders
- Weight Control
- Personal Hygiene
- Burnout

EXAMINATIONS (Minor Illnesses)
- Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION
- Sexually Transmitted Disease
- Drugs
- Aids
- Child Abuse
- Birth Control/Family Planning
- Stop Smoking
- Etc.
- Library - videos and cassettes

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS
- Diptheria/Tetanus
- Measles/Rubella
- Influenza
- Information

INSURANCE
- On Campus Accident
- Voluntary
- Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE
- Inquiry/Interpretation
- Pap Smears

PHYSICALS
- Employees
- Students
- Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)
- Antacids
- Antidiarrhial
- Antihistamines
- Aspirin, Tylenol, etc.
- Skin rash preparations
- Misc.
- Eye drops
- Ear drops
- Toothache - Oil cloves
- Stingkill
- Midol - Menstrual Cramps

PARKING CARDS/ELEVATOR KEYS
- Tokens
- Return card/key
- Parking inquiry
- Elevator passes
- Temporary handicapped parking permits

REFERRALS TO OUTSIDE AGENCIES
- Private Medical Doctor
- Health Department
- Clinic
- Dental
- Counseling Centers
- Crisis Centers
- Transitional Living Facilities (Battered/Homeless Women)
- Family Planning Facilities
- Other Health Agencies

TESTS
- Blood Pressure
- Hearing
- Tuberculosis
  - Reading
  - Information
- Vision
- Glucometer
- Urinalysis

- Hemoglobin
- E.K.G.
- Strep A testing
- P.G. testing
- Monospot
- Hemacult
- Misc.

MISCELLANEOUS
- Absence Excuses/PE Waiver
- Allergy Injections
- Bandaids
- Booklets/Pamphlets
- Dressing Change
- Rest
- Suture Removal
- Temperature
- Weigh
- Misc.
- Information
- Report/Form
- Wart Removal

COMMITTEES
- Safety
- Environmental
- Disaster Planning

SAFETY DATA SHEETS
- Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS
- Test Anxiety
- Stress Management
- Communication Skills
- Weight Loss
- Assertiveness Skills

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a list of each item for which reimbursement is claimed under this mandate.

A. Description of Activity

1. Show the total number of full-time students enrolled per semester/quarter.

2. Show the total number of full-time students enrolled in the summer program.

3. Show the total number of part-time students enrolled per semester/quarter.

4. Show the total number of part-time students enrolled in the summer program.

B. Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) 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. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no

less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of $7.50 per full-time student per semester, $5.00 per full-time student for summer school, or $5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative	Date
Title	Telephone No.

0350d

Exhibit C

HEALTH FEE ELIMINATION

1. Summary of Chapters 1/84, 2nd E.S., and Chapter 1118/87

Chapter 1, Statutes of 1984, 2nd E.S., repealed Education Code § 72246 which authorized community college districts to charge a fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required community college districts that charged a fee in the 1983/84 fiscal year to maintain that level of health services in the 1984/85 fiscal year and each fiscal year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community college districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987 amended Education Code § 72246 to require any community college district that provided health services in the 1986/87 fiscal year to maintain health services at that level in the 1986/87 fiscal year and each fiscal year thereafter. Chapter 8, Statutes of 1993, has revised the numbering of § 72246 to § 76355.

2. Eligible Claimants

Any community college district incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to community college presidents.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds $200 per program per fiscal year.

5. Filing Deadline

(1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement

claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See item 3 above).

(2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Components

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 § 76355.

After January 1, 1993, pursuant to Chapter 8, Statutes of 1993, the fees students were required to pay for health supervision and services were not more than:

$10.00 per semester

$5.00 for summer school

$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

$11.00 per semester

$8.00 for summer school or

$8.00 for each quarter

The district may increase fees by the same percentage increase as the Implicit Price Deflator (IPD) for the state and local government purchase of goods and services. Whenever the IPD calculates an increase of one dollar ($1) above the existing amount, the fees may be increased by one dollar ($1).

7. Reimbursement Limitations

A. If the level at which health services were provided during the fiscal year of reimbursement is less than the level of health services that were provided in the 1986/87 fiscal year, no reimbursement is forthcoming.

B. Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms HFE-1.0, HFE-1.1, and form HFE-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. **Form HFE- 2, Health Services**

This form is used to list the health services the community college provided during the 1986/87 fiscal year and the fiscal year of the reimbursement claim.

B. **Form HFE-1.1, Claim Summary**

This form is used to compute the allowable increased costs an individual college of the community college district has incurred to comply with the state mandate. The level of health services reported on this form must be supported by official financial records of the community college district. A copy of the document must be submitted with the claim. The amount shown on line (13) of this form is carried to form HFE-1.0.

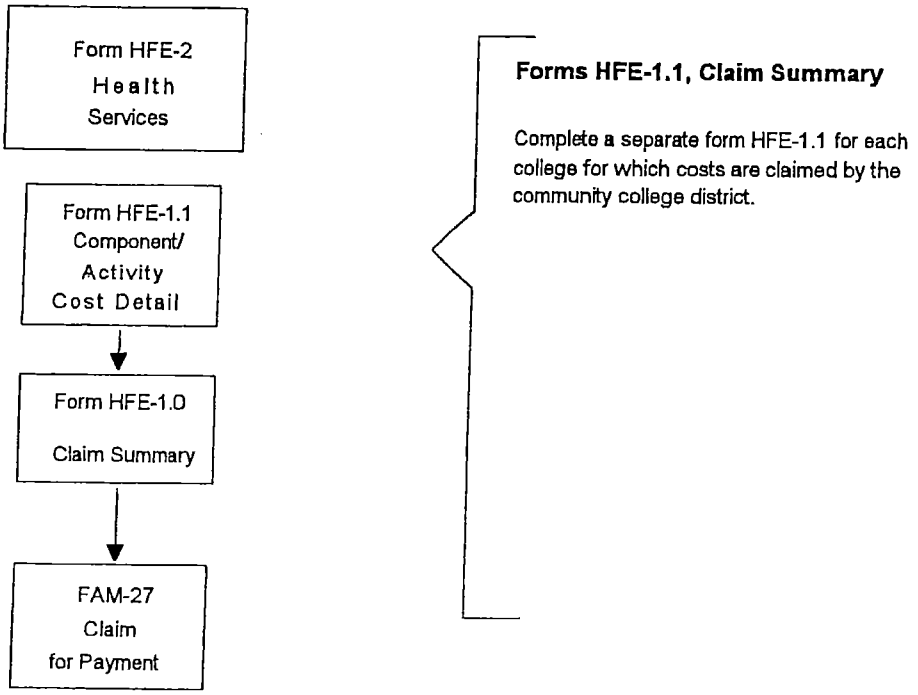
C. **Form HFE-1.0, Claim Summary**

This form is used to list the individual colleges that had increased costs due to the state mandate and to compute a total claimable cost for the district. The "Total Amount Claimed", line (04) on this form is carried forward to form FAM-27, line 13, for the reimbursement claim, or line (07) for the estimated claim.

D. **Form FAM-27, Claim for Payment**

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form HFE-1.0 and HFE 1.1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

HEALTH FEE ELIMINATION

For State Controller Use Only

(19) Program Number 00234

(20) Date Filed ___/___/___

(21) LRS Input ___/___/___

Program 234

LABEL HERE

(01) Claimant Identification Number

(02) Claimant Name

County of Location

Street Address or P.O. Box Suite

City State Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 20___/20___	(12) 20___/20___
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, not to exceed $1,000		(14)
Less: Prior Claim Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data	
(22) HFE-1.0, (04)(b)	
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer Date

Type or Print Name Title

(38) Name of Contact Person for Claim

Telephone Number ( ) - Ext.

E-Mail Address

Program 234	HEALTH FEE ELIMINATION Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) Leave blank.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form HFE-1.1 and enter the amount from line (13).

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) Leave blank.

(11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of the reimbursement claim from form HFE-1.1, line (13). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or $1,000, whichever is less.

(15) If filing an actusl reimbursement claim and an estimated claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line (14) and line (15) from line (13).

(17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.

(18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.

(19) to (21) Leave blank.

(22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., HFE-1.0, (04)(b), means the information is located on form HFE-1.0, block (04), column (b). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. **Completion of this data block will expedite the payment process.**

(37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person whom this office should contact if additional information is required.

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. **(To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)** Use the following mailing addresses:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0

(01) Claimant	(02) Type of Claim Reimbursement ☐ Estimated ☐	Fiscal Year 19___/19___

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) **Total Amount Claimed**	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	

HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.0

(01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.

(02) Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which the expenses were/are to be incurred. A separate claim must be filed for each fiscal year.

Form HFE-1.0 must be filed for a reimbursement claim. Do not complete form HFE-1.0 if you are filing an estimated claim and the estimate is not more than 110% of the previous fiscal year's actual costs. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, forms HFE-1.0 and HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) List all the colleges of the community college district which have increased costs. A separate form HFE-1.1 must be completed for each college showing how costs were derived.

(04) Enter the total claimed amount of all colleges by adding the Claimed Amount, line (3.1b) + line (3.2b) ...+ (3.21b).

Program 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1

(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement ☐	
	Estimated ☐	20___/20___

(03) Name of College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is checked, **STOP**, do not complete the form. No reimbursement is allowed.

LESS ☐ SAME ☐ MORE ☐

	Direct Cost	Indirect Cost	Total
(05) Cost of health services for the fiscal year of claim			
(06) Cost of providing current fiscal year health services in excess of 1986-87			
(07) Cost of providing current fiscal year health services at 1986-87 level [Line (05) - line (06)]			

(08) Complete columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Students Enrolled	(b) Students Exempt per EC 76355(c)(1)	(c) Students Exempt per EC 76355(c)(2)	(d) Students Exempt per EC 76355(c)(3)	(e) Number of Students Subject to Health Fee (a)-(b)-(-c)-(d)	(f) Unit Cost Per Student Per EC 76355	(g) Student Health Fees (e) x (f)
1.	Per Fall Semester							
2.	Per Spring Semester							
3.	Per Summer Session							
4.	Per First Quarter							
5.	Per Second Quarter							
6.	Per third Quarter							

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)	
(10) Subtotal [Line (07) - line (09)]	
Cost Reduction	
(11) Less: Offsetting Savings	
(12) Less: Other Reimbursements	
(13) Total Claimed Amount [Line (10) - {line (11) + line (12)}]	

Program 234	HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.1

(01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office (SCO) on behalf of its colleges.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.

Form HFE-1.1 must be filed for a reimbursement claim. Do not complete form HFE-1.1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) Enter the name of the college or community college district that provided student health services in the 1986-87 fiscal year and continue to provide the same services during the fiscal year of claim.

(04) Compare the level of services provided during the fiscal year of reimbursement to the 1986-87 fiscal year and indicate the result by marking a check in the appropriate box. If the "Less" box is checked, STOP and do not complete the remaining part of this claim form. No reimbursement is forthcoming.

(05) Enter the direct cost, indirect cost, and total cost of health services for the fiscal year of claim on line (05). Direct cost of health services is identified on the college expenditure report authorized by Education Code §76355 and included in the Community College Annual Financial and Budget Report CCFS-311, EDP Code 6440, column 5. If the amount of direct costs claimed is different than that shown on the expenditure report, provide a schedule listing those community college costs that are in addition to, or a reduction to expenditures shown on the report. For claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, form FAM-29C, or a 7% indirect cost rate.

(06) Enter the direct cost, indirect cost, and total cost of health services that are in excess of the level provided in the 1986-87 fiscal year.

(07) Enter the difference of the cost of health services for the fiscal year of claim, line (05) and the cost of providing current fiscal year services that are in excess of the level provided in the 1986-87 fiscal year line (06).

(08) Complete columns (a) through (g) to provide details on the number of students enrolled, the number of students exempt per EC Section 76355(c)(1), (2), and (3), and the amount of health service fees that could have been collected. After 05/01/01, the student fees for health supervision and services are $12.00 per semester, $9.00 for summer school, and $9 for each quarter.

(09) Enter the sum of student health fees that could have been collected, other than exempt students.

(10) Enter the difference of the cost of providing health services at the 1986-87 level, line (07) and the total health fee that could have been collected, line (09). If line (09) is greater than line (07), no claim shall be filed.

(11) Enter the total savings experienced by the school identified in line (03) as a direct cost of this mandate. Submit a detailed schedule of savings with the claim.

(12) Enter the total of other reimbursements received from any source, (i.e., federal, other state programs, etc.,) Submit a detailed schedule of reimbursements with the claim.

(13) Subtract the sum of Offsetting Savings, line (11), and Other Reimbursements, line (12), from Total 1986-87 Health Service Cost excluding Student Health Fees.

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES	FORM HFE-2

(01) Claimant:	(02) Fiscal Year costs were incurred:

(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.	(a) FY 1986/87	(b) FY of Claim
Accident Reports		
Appointments		
College Physician, surgeon		
Dermatology, family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.)		
Psychologist, full services		
Cancel/Change Appointments		
Registered Nurse		
Check Appointments		
Assessment, Intervention and Counseling		
Birth Control		
Lab Reports		
Nutrition		
Test Results, office		
Venereal Disease		
Communicable Disease		
Upper Respiratory Infection		
Eyes, Nose and Throat		
Eye/Vision		
Dermatology/Allergy		
Gynecology/Pregnancy Service		
Neuralgic		
Orthopedic		
Genito/Urinary		
Dental		
Gastro-Intestinal		
Stress Counseling		
Crisis Intervention		
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling		
Acquired Immune Deficiency Syndrome		
Eating Disorders		
Weight Control		
Personal Hygiene		
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury		
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		

MANDATED COSTS
HEALTH ELIMINATION FEE
HEALTH SERVICES

FORM HFE-2

(01) Claimant:	(02) Fiscal Year costs were incurred:	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.	(a) FY 1986/87	(b) FY of Claim
Child Abuse		
Birth Control/Family Planning		
Stop Smoking		
Library, Videos and Cassettes		
First Aid, Major Emergencies		
First Aid, Minor Emergencies		
First Aid Kits, Filled		
Immunizations		
Diphtheria/Tetanus		
Measles/Rubella		
Influenza		
Information		
Insurance		
On Campus Accident		
Voluntary		
Insurance Inquiry/Claim Administration		
Laboratory Tests Done		
Inquiry/Interpretation		
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes		
Medications		
Antacids		
Antidiarrheal		
Aspirin, Tylenol, Etc		
Skin Rash Preparations		
Eye Drops		
Ear Drops		
Toothache, oil cloves		
Stingkill		
Midol, Menstrual Cramps		
Other, list		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES	FORM HFE-2

(01) Claimant:	(02) Fiscal Year costs were incurred:

(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor		
Health Department		
Clinic		
Dental		
Counseling Centers		
Crisis Centers		
Transitional Living Facilities, battered/homeless women		
Family Planning Facilities		
Other Health Agencies		
Tests		
Blood Pressure		
Hearing		
Tuberculosis		
Reading		
Information		
Vision		
Glucometer		
Urinalysis		
Hemoglobin		
EKG		
Strep A testing		
PG Testing		
Monospot		
Hemacult		
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver		
Allergy Injections		
Bandaids		
Booklets/Pamphlets		
Dressing Change		
Rest		
Suture Removal		
Temperature		
Weigh		
Information		
Report/Form		
Wart Removal		
Others, list		
Committees		
Safety		
Environmental		
Disaster Planning		

Exhibit D

KERN COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987

July 1, 2003, through June 30, 2007

JOHN CHIANG
California State Controller

June 2009

JOHN CHIANG
California State Controller

June 30, 2009

Stuart Witt, President
Board of Trustees
Kern Community College District
2100 Chester Avenue
Bakersfield, CA 93301

Dear Mr. Witt:

The State Controller's Office audited the costs claimed by the Kern Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2007.

The district claimed $1,088,894 ($1,099,894 less an $11,000 penalty for filing late claims) for the mandated program. Our audit disclosed that $274,813 is allowable and $814,081 is unallowable. The costs are unallowable because the district understated services and supplies, overstated indirect costs rates, and understated authorized health service fees. The State paid the district $219,065. Allowable costs claimed exceed the amount paid by $55,748.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Angela M. Guadian-Mendez, Interim Dean of Students
Bakersfield College
Steven D. Schultz, Vice President of Student Services
Porterville College
Tom Burke, Chief Financial Officer
Kern Community College District
Kuldeep Kaur, Specialist
Fiscal Planning and Administration
California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance

Contents

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Kern Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2007.

The district claimed $1,088,894 ($1,099,894 less an $11,000 penalty for filing late claims) for the mandated program. Our audit disclosed that $274,813 is allowable and $814,081 is unallowable. The costs are unallowable because the district understated services and supplies, overstated indirect cost rates, and understated authorized health service fees. The State paid the district $219,065. Allowable costs claimed exceed the amount paid by $55,748.

Background

Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.) repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as section 76355 by Chapter 8, Statues of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year for FY 1987-88 and for each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year for FY 1984-85 and for each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level in FY 1987-88 and for each fiscal year thereafter.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on August 27, 1987, and amended them on May 25, 1989. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2003, through June 30, 2007.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. Except for the issue described below, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We were unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment. The district did not respond to our inquiries, based on its consultant's advice. Accordingly, we increased our substantive testing; however, these measures would not necessarily identify fraud or abuse that may have occurred.

We limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the Kern Community College District claimed $1,088,894 ($1,099,894 less an $11,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that $274,813 is allowable and $814,081 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the district. Our audit disclosed that $78,404 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $78,404, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the district. Our audit disclosed that $188,918 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $188,918, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that $7,491 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $7,491, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district $219,065. Our audit disclosed that the entire amount is unallowable. The State will offset $219,065 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

Views of Responsible Official

We issued a draft audit report on April 24, 2009. Tom Burke, Chief Financial Officer for Kern Community College District, responded by letter dated May 18, 2009 (Attachment), agreeing with the audit results except for Findings 2 and 3. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the Kern Community College District, the Kern County Office of Education, the California Department of Education, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

June 30, 2009

Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2007

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 2003, through June 30, 2004				
Direct costs:				
Salaries and benefits	$ 197,775	$ 197,775	$ —	
Services and supplies	94,707	210,773	116,066	Finding 1
Total direct costs	292,482	408,548	116,066	
Indirect costs	115,325	99,931	(15,394)	Finding 1, 2
Total direct and indirect costs	407,807	508,479	100,672	
Less authorized health service fees	(285,084)	(429,075)	(143,991)	Finding 3
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	$ 121,723	78,404	$ (43,319)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 78,404		
July 1, 2004, through June 30, 2005				
Direct costs:				
Salaries and benefits	$ 217,009	$ 217,009	$ —	
Services and supplies	246,130	232,352	(13,778)	Finding 1
Total direct costs	463,139	449,361	(13,778)	
Indirect costs	198,640	154,036	(44,604)	Finding 1, 2
Total direct and indirect costs	661,779	603,397	(58,382)	
Less authorized health service fees	(258,054)	(414,479)	(156,425)	Finding 3
Total program costs	$ 403,725	188,918	$ (214,807)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 188,918		
July 1, 2005, through June 30, 2006				
Direct costs:				
Salaries and benefits	$ 240,352	$ 240,352	$ —	
Services and supplies	100,198	205,556	105,358	Finding 1
Total direct costs	340,550	445,908	105,358	
Indirect costs	135,914	148,397	12,483	Finding 1, 2
Total direct and indirect costs	476,464	594,305	117,841	
Less authorized health service fees	(132,111)	(586,814)	(454,703)	Finding 3
Total program costs	$ 344,353	7,491	$ (336,862)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 7,491		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference[1]
July 1, 2006, through June 30, 2007				
Direct costs:				
Salaries and benefits	$ 206,732	$ 206,732	$ —	
Services and supplies	315,630	315,630	—	
Total direct costs	522,362	522,362	—	
Indirect costs	221,117	182,932	(38,185)	Finding 2
Total direct and indirect costs	743,479	705,294	(38,185)	
Less authorized health service fees	(514,386)	(904,491)	(390,105)	Finding 3
Less late filing penalty	(10,000)	(10,000)	—	
Audit adjustments that exceed cost claimed	—	209,197	209,197	
Total program costs	$ 219,093	—	$ (219,093)	
Less amount paid by the State		(219,065)		
Allowable costs claimed in excess of (less than) amount paid		$ (219,065)		
Summary: July 1, 2003, through June 30, 2007				
Direct costs:				
Salaries and benefits	$ 861,868	$ 861,868	$ —	
Services and supplies	756,665	964,311	207,646	
Total direct costs	1,618,533	1,826,179	207,646	
Indirect costs	670,996	585,296	(85,700)	
Total direct and indirect costs	2,289,529	2,411,475	121,946	
Less authorized health service fees	(1,189,635)	(2,334,859)	(1,145,224)	
Less late filing penalty	(11,000)	(11,000)	—	
Audit adjustments that exceed cost claimed	—	209,197	209,197	
Total program costs	$ 1,088,894	274,813	$ (814,081)	
Less amount paid by the State		(219,065)		
Allowable costs claimed in excess of (less than) amount paid		$ 55,748		

[1] See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Misstated services and supplies

The district understated allowable services and supplies by $207,646 for the audit period. The related indirect costs total $81,904.

The understatement occurred because:

- For fiscal year (FY) 2003-04 and FY 2005-06, the district did not claim student insurance costs. We allowed such costs based on documentation provided by the district.
- For FY 2004-05, the district claimed $13,778 that was recorded in its books as "Out-indirect Cost (Expense)." The district did not provide support for this expenditure.

The following table summarizes the audit adjustment:

	Fiscal Year			
	2003-04	2004-05	2005-06	Total
Unclaimed student insurance	$ 116,066	$ —	$ 105,358	$ 221,424
Nonreimbursable costs	—	(13,778)	—	(13,778)
Total services and supplies	116,066	(13,778)	105,358	207,646
Indirect costs	45,765	(5,909)	42,048	81,904
Audit adjustment	$ 161,831	$ (19,687)	$ 147,406	$ 289,550

For services and supplies, the parameters and guidelines state that the district may claim expenditures that can be identified as direct costs of the mandated program. They also state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that the district claim actual mandate-related costs that are supported by its accounting records and source documentation.

District's Response

The District does not dispute this finding.

SCO's Comment

Our finding and recommendation remain unchanged.

FINDING 2—Unallowable indirect costs

The district claimed unallowable indirect costs totaling $167,604 because it overstated allowable indirect cost rates.

For the audit period, the district prepared its indirect cost rate proposal (ICRP) using the SCO's FAM-29C methodology. However, the district did not correctly compute the FAM-29C rate.

We calculated indirect cost rates based on the SCO's claiming instructions applicable to each year by using the information contained in the California Colleges Annual Financial and Budget Report, Expenditure by Activity (CCFS-311). Our calculations revealed that, for all four fiscal years, the district overstated the indirect cost rates.

The following table summarizes the claimed and allowable indirect cost rates and the resulting audit adjustments:

	Fiscal Year				
	2003-04	2004-05	2005-06	2006-07	Total
Allowable indirect cost rate	24.46%	34.28%	33.28%	35.02%	
Less claimed indirect cost rate	(39.43)%	(42.89)%	(39.91)%	(42.33)%	
Overstated indirect cost rate	(14.97)%	(8.61)%	(6.63)%	(7.31)%	
Allowable direct costs claimed	× $408,548	× $449,416	× $445,908	× $522,362	
Audit adjustment	$ (61,160)	$ (38,695)	$ (29,564)	$ (38,185)	$ (167,604)

The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." For FY 2003-04, the SCO's claiming instructions state:

> 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 [FAM-29C] methodology. . . .

For FY 2004-05 forward, the SCO's claiming instructions state:

> A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C). . . . If specifically allowed by a mandated program's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions:* or (2) a flat 7% rate.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions.

District's Response

The draft audit report concludes that the District overstated indirect costs by $167,604 for the four-year audit period. The draft audit report states that for FY 2003-04 the District developed an indirect cost rate proposal based on OMB Circular A-21 that was not federally approved as required by the Controller's claiming instructions. In fact, the District used the FAM-29C method for all four fiscal years and used the same source document as the auditor, the CCFS-311, except that each year the District used the prior year CCFS-311 and the auditor used the current year CCFS-311.

The draft audit report asserts that the District "did not correctly compute the FAM-29C rate." The District's calculation of the indirect cost rates was not "incorrect." Rather, it differed from the audited rates because the District included the CCFS-311 capital costs rather than annual financial statement depreciation expense for the first three fiscal years.

There were also differences in how certain other groups of costs were categorized as either direct or indirect for all four fiscal years.

Fiscal Year	As Claimed	Claimed Source	As Audited	Audit Report Source
2003-04	39.43%	CCFS-311	24.46%	CCFS-311 w/out depreciation
2004-05	42.89%	CCFS-311	34.28%	CCFS-311 with depreciation
2005-06	39.91%	CCFS-311	33.28%	CCFS-311 with depreciation
2006-07 (amended)	42.33%	CCFS-311 with depreciation	35.02%	CCFS-311 with depreciation

CHOICE OF METHODS

FY 2003-04

Contrary to the statement in the draft audit report, the District did not utilize a federal indirect cost rate in accordance with OMB A-21 for FY 2003-04. The District used the Controller's FAM-29C method based on the CCFS-311, including capital costs. The auditor also used the FAM-29C method, but without the capital costs, consistent with the Controller's audit policy at that time. There were also differences in how certain other groups of costs were categorized as either direct or indirect.

FY 2004-05 and FY 2005-06

The District used the Controller's FAM-29C method based on the CCFS-311, including capital costs. The auditor also used the FAM-29C method, but deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements. This use of depreciation was a result of a change in the Controller's audit policy. Claimants were not on notice of this new method of treating depreciation costs at the time the FY 2004-05 and FY 2005-06 annual claims were filed. The audit report uses this new method retroactively to FY 2004-05. There were also differences in how certain other groups of costs were categorized as either direct or indirect.

FY 2006-07

After the release of the preliminary audit findings, in February 2009, the District submitted an amended FY 2006-07 claim. The District used the same FAM-29C method based on the CCFS-311 as did the auditor. The District deleted the capital costs stated in the CCFS-311 and substituted the depreciation expense as reported in the District's annual financial statements, consistent with the Controller's new audit policy. The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of how certain other groups of costs were categorized as either direct or indirect.

The Parameters and Guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the Parameters and Guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law.

The burden is on the Controller to show that the indirect cost rate used by the claimant is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). The District's calculated rates vary only by about three percent (39.43%-42.89%). The audited rates vary significantly (24.46%-35.02%). For the four fiscal years audited, the Controller's policy regarding capital costs and depreciation expense changed without statutory or regulatory bases. If the Controller wishes to enforce different audit standards for mandated cost reimbursement other than Section 17561, the Controller should comply with the Administrative Procedure Act.

PRIOR YEAR CCFS-311

The draft audit report did not disclose that the audit used the current audit year CCFS-311 for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that the federally approved indirect cost rates which the Controller accepts are approved for periods of tow to four years. This means the data from which the rates were calculated can be from three to five years prior to the last year in which the federal rate is used.

Since the Parameters and Guidelines *do not require* that indirect costs be claimed in the manner described by the Controller, and the Controller's claiming instructions were never adopted as rules or regulations, the choice of which CCFS-311 to use is based on factual relevance only. The later CCFS-311 and financial statement depreciation expense used by the Controller is not always available to claimants at the time the claim is due to the state. The draft audit report

has stated no legal basis to disallow the indirect cost rate calculation method used by the District and has not shown a factual basis to reject the rates as unreasonable or excessive.

SCO's Comments

The fiscal effect of the finding remains unchanged.

FY 2003-04

We agree that the district prepared its FY 2003-04 indirect cost rates using the SCO's FAM-29C methodology. Consequently, we updated the finding to clarify the methodology used by the district.

FY 2004-05 and FY 2005-06

For FY 2004-05 and FY 2005-06, the district claims that "claimants were not on notice of this new method of treating depreciation costs at the time the FY 2004-05 and FY 2005-06 annual claims were filed." The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The claiming instructions for FY 2004-05 and FY 2005-06 both state, in reference to the FAM-29C method of calculating indirect costs, that "indirect cost rate computation(s) include any depreciation or use allowance applicable to district buildings and equipment."

FY 2006-07

We agree with the district that it used FAM-29C method based on the CCFS-311. However, the district did not allocate direct and indirect costs as specified in the SCO's claiming instructions.

Parameters and Guidelines

The parameters and guidelines (sections VI) state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district interprets "may be claimed" in compliance with the claiming instructions as voluntary. Instead, "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions.

The district contends that "The burden is on the Controller to show that the indirect cost rate used by the claimant is excessive or unreasonable, which is the only mandated cost audit standard in statute. . . ."Government Code section 17558.5 required the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines to be excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is invalid.

Nevertheless, the SCO did, in fact, conclude that the district's indirect cost rates for FY 2003-04 through FY 2006-07 were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ."[1] The SCO calculated indirect cost rates using the FAM-29C methodology allowed in the claiming instructions. This method did not support the rates that the district claimed; thus, the rates claimed were excessive.

[1] Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

PRIOR YEAR CCFS-311

The district states, "The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year." Although this is how the district used its data, there are no mandate-related authoritative criteria supporting this methodology. Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. In addition, the parameters and guidelines require the district to report actual costs. For each fiscal year, "actual costs" are costs of the current fiscal year, not costs from a prior fiscal year.

FINDING 3—
Understated authorized health service fees

The district understated authorized health service fees by $1,145,224. The district reported actual health service fees that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized health service fees. Government Code section 17514 states that "costs mandated by the state" means any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. The California Community Colleges Chancellor's Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). For FY 2003-04, the authorized fees were $12 per semester and $9 per summer session. For FY 2004-05, the authorized fees were $13 per semester and $10 per summer session. For FY 2005-06, the authorized fees were $14 per semester and $11 per summer session. For FY 2006-07, the authorized fees were $15 per semester and $12 per summer session. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCO. The CCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. The CCCCO identified the district's enrollment based on the CCCCO's MIS data element STD 7, codes A through G. The CCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, the CCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F.

The following table shows the authorized health service fees calculation and audit adjustment:

	Fiscal Year			
	Summer	Fall	Spring	Total
Fiscal Year 2003-04				
Student enrollment	9,766	24,997	27,277	
Less BOGG waivers	(3,259)	(10,180)	(10,533)	
Less apprenticeship waivers	—	(358)	(327)	
Subtotal	6,507	14,459	16,417	
Authorized health service fee rate	× $ (9)	× $(12)	× $(12)	
Authorized student health fees	$ (58,563)	$ (173,508)	$ (197,004)	$ (429,075)
Less authorized health service fees claimed				285,084
Audit adjustment, FY 2003-04				(143,991)
Fiscal Year 2004-05				
Student enrollment	10,101	24,631	25,319	
Less BOGG waivers	(3,653)	(11,061)	(11,384)	
Less apprenticeship waivers	—	(302)	(280)	
Subtotal	6,448	13,268	13,655	
Authorized health service fee rate	× $(10)	× $(13)	× $(13)	
Authorized student health fees	$ (64,480)	$ (172,484)	$ (177,515)	(414,479)
Less authorized health service fees claimed				258,054
Audit adjustment, FY 2004-05				(156,425)
Fiscal Year 2005-06				
Student enrollment	10,269	24,108	24,454	
Less BOGG waivers	(3,877)	(11,173)	—	
Less apprenticeship waivers	—	(235)	(261)	
Subtotal	6,392	12,700	24,193	
Authorized health service fee rate	× $(11)	× $(14)	× $(14)	
Authorized student health fees	$ (70,312)	$ (177,800)	$ (338,702)	(586,814)
Less authorized health service fees claimed				132,111
Audit adjustment, FY 2005-06				(454,703)
Fiscal Year 2006-07				
Student enrollment	11,013	25,669	26,344	
Less apprenticeship waivers	—	(267)	(257)	
Subtotal	11,013	25,402	26,087	
Authorized health service fee rate	× $(12)	× $(15)	× $(15)	
Authorized student health fees	$ (132,156)	$ (381,030)	$ (391,305)	(904,491)
Less authorized health service fees claimed				514,386
Audit adjustment, FY 2006-07				(390,105)
Total audit adjustment				$ (1,145,224)

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCO data element STD 7, codes A through G. We also recommend that the district identify the number of apprenticeship program enrollees based on data elements SB 23, code 1, and STD 7, codes A through G.

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district excludes any students from receiving health services, the district should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

The draft audit report states that student health service fee revenues offsets were understated by $1,145,224 for the four-year audit period. The difference between the claimed amount and the audited amount is that the District utilized actual revenues received rather than a calculation of the student health service fees potentially collectible. The auditor calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health serve fee chargeable to all eligible students, rather than the full-time or part-time student health service fee actually charged by the District to the students not exempted by state law (e.g., BOGG waiver students) or District policy.

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to claimants at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the claimant. As a separate issue, the audit also included in the calculation of collectible fees the enrollment of Cerro Coso College and District Learning Centers that do not have a student health service program and whose students do not pay a student health service fee. However, since the District did not calculate student health service fee revenue based on student enrollment, this is a Controller's audit adjustment rationale and not a District annual claim issue.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" student health service fee amount other than the amounts stated in Education Code Section 76355. The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal basis for any state entity to

"authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), state that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee... for health supervision and services..." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b), which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional*." (Emphasis supplied in both instances) Therefore, districts have the option of charging a fee to some or all of its students.

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that "[t]o the extent community college districts can charge a fee, they are not required to incur a cost." First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

> "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenues to increased cost, or any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that "the Commission on State Mandates shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service." Government Code Section 17556 as amended by Statutes of 2004, Chapter 895, actually states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .
>
> (d) The local agency or school district ahs the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, which means approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The Parameters and Guidelines, as last amended on May 25, 1989, states, in relevant part:

> "*Any* offsetting savings that eh claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a) [1]."

[1] Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

The use of the term "*any* offsetting savings" further illustrates the permissive nature of the fees. Student fees actually collected must be sued to offset costs, but not student fees that could have been collected and were not, because uncollected fees are "offsetting savings" that were not "experienced." The Parameters and Guidelines do not allow the Controller to reduce claimed costs by revenues never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

STUDENTS NOT PAYING HEALTH SERVICES FEES

The District has three colleges and several Learning Centers. Cerro Coso College and the Learning Centers do not collect student health service fees because no such services are provided at those locations. Cerro Coso College (Ridgecrest) and the Learning Centers (Mammoth Lakes) are located several hours from either the Porterville or Bakersfield college campuses where the student health service programs are located.

The collection of student health service fees is controlled by Education Code Section 76355, but also requires independent action by the district governing board. Section 76355, at subdivision (e) requires that "[a]ny community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter." Kern Community College District is subject to this requirement. However, Section 75355 does not require community college district governing boards to provide a student health services program at every district location. The District did not provide such a program at Cerro Coso College or the Learning Centers and did not collect a student health services fee at those locations. Therefore, there are no collected or collectible fees from Cerro Coso College or the Learning Centers.

Legal requirements and the facts aside, the audit process is subject to generally accepted accounting principles and procedures that, amount other things, require revenues and expenses to be "matched." If the enrollment of Cerro Coso College and the Learning Centers is included in the calculation of collectible fees, the audit is applying revenues with no corresponding matching expenses.

In sum, there is no legal compulsion or factual circumstance to support the position that the Cerro Coso College and Learning Centers student enrollment should be included in the mandated cost claim, and to do so would be contrary to accounting principles.

Public Records Request

The District request that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefor. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

The District requests that the final audit report comply with the appropriate application of the Parameters and Guidelines regarding allowable activity costs and the Government Code sections concerning audits of mandate claims.

SCO's Comments

Our finding and recommendation remain unchanged.

The district states, "The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to district at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the claimant. . ." This is the district's own data. In addition, the district implies that the SCO used data that is somehow different from "enrollment data maintained by the claimant". Our audit used data retrieved from the California Community Colleges Chancellor's Office (CCCCO). The CCCCO data is extracted directly from enrollment information that the district submitted. Districts are required to submit this data to the CCCCO within one month after each term ends; thus, the district has its fiscal year enrollment data available approximately seven months before its mandated program claims are due to the State.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

"Authorized" Fee Amount

We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district's decision to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy a fee. The CCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Education Code Section 76355

Education Code section 76355 (specifically, subdivision (a)) authorizes the health service fee rate. The statutory section also provides the basis for calculating the authorized rate applicable to each fiscal year. The statutory section states:

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.

2. The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for the 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 ($1).

Government Code Section 17514

Government Code section 17514 states, "'Costs mandated by the state' means any increased costs which a local agency or school district is *required* (emphasis added) to incur. . . ." The district ignores the direct correlation that if the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

Government Code Section 17556

The district argues that the statutory language applies only when the fee authority is sufficient to offset the "entire" mandated costs. The CSM recognized that the Health Fee Elimination Program's costs are not uniform between districts. Districts provided different levels of service in FY 1986-87 (the "base year"). Furthermore, districts provided these services at varying costs. As a result, the fee authority may be sufficient to pay for some district's mandated program costs, while it may be

insufficient to pay the "entire" costs of other districts. Meanwhile, Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the CSM adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost.

Two court cases addressed the issue of fee authority[2]. Both cases concluded that "costs" as used in the constitutional provision, exclude "expenses that are recoverable from sources other than taxes." In both cases, the source other than taxes was fee authority.

[2] County of Fresno v. California (1991) 53 CAL. 3d 482; Connell v. Santa Margarita (1997) 59 Cal. App. 4th 382.

Parameters and Guidelines

The district incorrectly interprets the parameters and guidelines' requirement regarding authorized health service fees. The CSM clearly recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The CSM's staff analysis of May 25, 1989, states the following regarding the proposed parameters and guidelines amendments that the CSM adopted that day:

> Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of [the] fee authority.
>
> In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:
>
> "If a claimant does not levy the fee authorized by Education Code Section 72246 (a), it shall deduct an amount equal to what it would have received had the fee been levied."
>
> Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, CSM intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from CCCCO dated April 3, 1989. In that letter, the CCCCO concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, since the CSM's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language. The CSM's meeting minutes of May 25, 1989, show that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM's interpretation regarding authorized health service fees.

The district states that "such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched." This statement is presented out of context; generally accepted accounting principles are not controlling criteria in identifying authorized health fee revenues attributable to the Health Fee Elimination mandated program. If a district voluntarily assesses less than the authorized health service fees, or fails to collect fees assessed, is it the district's responsibility to "match" health service expenditures with other district revenue sources.

STUDENTS NOT PAYING HEALTH SERVICE FEES

On October 31, 2006, the California Community Colleges Chancellor's Office issued a legal opinion titled "Student Fee Handbook: Legal Opinion M 06-11," which represents a summary of advice regarding community college student fees. Chapter 3, "Fees for Services," addressed the student health fee per Education Code section 76355, which authorizes a community college to charge a fee for "health supervision and health services." Specifically, the opinion states:

> . . . we believe that the health fee may be charged to students who take only online classes or who attend classes at sites away from where the health services center is physically located. The health fee is not designated as a "use" fee. . . the fact that their classes may not be physically proximate to a student health center does not remove the fee obligation. Additionally, even though students may take online classes or be enrolled in classes that are offered at sites away from the student health center, that does not necessarily mean that such students will not travel to the health center or otherwise receive student health services.

The district states that "there is no legal compulsion or factual circumstance to support the position that Cerro Coso College and Learning Centers' student enrollment should be included in the mandated cost claim and to do so would be contrary to accounting principles." Again, the generally accepted accounting principles are not controlling criteria in identifying authorized health fee revenues attributable to the Health Fee Elimination mandated program. The district had the ability to collect health fees from students at Cerro Cost College and Learning Centers, even if no health centers were present. Furthermore, as noted in the district's response, student health service programs are located at the Porterville and Bakersfield college campuses.

OTHER ISSUE—
Public records request

The district's response included a public records request. The district's response and SCO's comment are as follows:

District's Response

> The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (calculation of the student health services fees offset).

SCO's Comment

SCO has made available to the district the requested records via letter and attachments dated June 19, 2009.

Attachment—
District's Response to
Draft Audit Report

KCCD
KERN COMMUNITY COLLEGE DISTRICT

OFFICE OF THE CHANCELLOR
2100 CHESTER AVENUE
BAKERSFIELD, CA 93301-4099
(661) 336-5104

May 18, 2009

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984, 2nd Ex. Session
Health Fee Elimination
Annual Claim Fiscal Years: 2003-04, 2004-05, 2005-06, and 2006-07

Dear Mr. Spano:

This letter is the response of the Kern Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated April 24, 2009, and received by the District on May 1, 2009.

Finding 1 - Misstated services and supplies

The District does not dispute this finding.

Finding 2 - Unallowable indirect costs

The draft audit report concludes that the District overstated indirect costs by $167,604 for the four-year audit period. The draft audit report states that for FY 2003-04 the District developed an indirect cost rate proposal based on OMB Circular A-21 that was not federally approved as required by the Controller's claiming instructions. In fact, the District used the FAM-29C method for all four fiscal years and used the same source document as the auditor, the CCFS-311, except that each year the District used the prior year CCFS-311 and the auditor used the current year CCFS-311.

The draft audit report asserts that the District "did not correctly compute the FAM-29C rate." The District's calculation of the indirect cost rates was not "incorrect." Rather, it differed from the audited rates because the District included the CCFS-311 capital costs rather than annual financial statement depreciation expense for the first three fiscal years.

There were also differences in how certain other groups of costs were categorized as either direct or indirect for all four fiscal years.

Indirect Cost Rates Claimed and Audited

Fiscal Year	As Claimed	Claimed Source	As Audited	Audit Report Source
2003-04	39.43%	CCFS-311	24.46%	CCFS-311 w/out depreciation
2004-05	42.89%	CCFS-311	34.28%	CCFS-311 with depreciation
2005-06	39.91%	CCFS-311	33.28%	CCFS-311 with depreciation
2006-07 (amended)	42.33%	CCFS-311 with depreciation	35.02%	CCFS-311 with depreciation

CHOICE OF METHODS

FY 2003-04

Contrary to the statement in the draft audit report, the District did not utilize a federal indirect cost rate in accordance with OMB A-21 for FY 2003-04. The District used the Controller's FAM-29C method based on the CCFS-311, including capital costs. The auditor also used the FAM-29C method, but without the capital costs, consistent with the Controller's audit policy at that time. There were also differences in how certain other groups of costs were categorized as either direct or indirect.

FY 2004-05 and FY 2005-06

The District used the Controller's FAM-29C method based on the CCFS-311, including capital costs. The auditor also used the FAM-29C method, but deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements. This use of depreciation was a result of a change in the Controller's audit policy. Claimants were not on notice of this new method of treating depreciation costs at the time the FY 2004-05 and FY 2005-06 annual claims were filed. The audit report uses this new method retroactively to FY 2004-05. There were also differences in how certain other groups of costs were categorized as either direct or indirect.

FY 2006-07

After the release of the preliminary audit findings, in February 2009, the District submitted an amended FY 2006-07 claim. The District used the same FAM-29C method based on the CCFS-311 as did the auditor. The District deleted the capital costs stated in the CCFS-311 and substituted the depreciation expense as reported in the District's annual financial statements, consistent with the Controller's new audit policy. The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of how certain other groups of costs were categorized as either direct or indirect.

The Parameters and Guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the Parameters and Guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law.

The burden is on the Controller to show that the indirect cost rate used by the claimant is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). The District's calculated rates vary only by about three percent (39.43%-42.89%). The audited rates vary significantly (24.46% - 35.02%). For the four fiscal years audited, the Controller's policy regarding capital costs and depreciation expense changed without statutory or regulatory bases. If the Controller wishes to enforce different audit standards for mandated cost reimbursement other than Section 17561, the Controller should comply with the Administrative Procedure Act.

PRIOR YEAR CCFS-311

The draft audit report did not disclose that the audit used the current audit year CCFS-311 for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that the federally approved indirect cost rates which the Controller accepts are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five years prior to the last year in which the federal rate is used.

Since the Parameters and Guidelines *do not require* that indirect costs be claimed in the manner described by the Controller, and the Controller's claiming instructions were never adopted as rules or regulations, the choice of which CCFS-311 to use is based on factual relevance only. The later CCFS-311 and financial statement depreciation expense used by the Controller is not always available to claimants at the time the claim is due to the state. The draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District and has not shown a factual basis to reject the rates as unreasonable or excessive.

Finding 3 - Understated authorized health fee service fees

The draft audit report states that student health service fee revenue offsets were understated by $1,145,224 for the four-year audit period. The difference between the

claimed amount and the audited amount is that the District utilized actual revenues received rather than a calculation of the student health service fees potentially collectible. The auditor calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable to all eligible students, rather than the full-time or part-time student health service fee actually charged by the District to the students not exempted by state law (e.g., BOGG waiver students) or District policy.

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to claimants at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the claimant. As a separate issue, the audit also included in the calculation of collectible fees the enrollment of Cerro Coso College and District Learning Centers that do not have a student health service program and whose students do not pay a student health service fee. However, since the District did not calculate student health service fee revenue based on student enrollment, this is a Controller's audit adjustment rationale and not a District annual claim issue.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" student health service fee amount other than the amounts stated in Education Code Section 76355. The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal basis for any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee . . . for health supervision and services . . . ". There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b), which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional*." (Emphasis supplied in both instances) Therefore, districts have the option of charging a fee to some or all of its students.

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that "[t]o the extent community college districts can charge a fee, they are not required to incur a cost." First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

> "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenue to increased cost, or any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that "the Commission on State Mandates shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service." Government Code Section 17556 as amended by Statutes of 2004, Chapter 895, actually states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, which means approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The Parameters and Guidelines, as last amended on May 25, 1989, state, in relevant part:

> "*Any* offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)[1]."

The use of the term "*any* offsetting savings" further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are "offsetting savings" that were not "experienced." The Parameters and Guidelines do not allow the Controller to reduce claimed costs by revenue never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

STUDENTS NOT PAYING HEALTH SERVICES FEES

The District has three colleges and several Learning Centers. Cerro Coso College and the Learning Centers do not collect student health service fees because no such services are provided at those locations. Cerro Coso College (Ridgecrest) and the Learning Centers (Mammoth Lakes) are located several hours from either the Porterville or Bakersfield college campuses where the student health service programs are located.

The collection of student health service fees is controlled by Education Code Section 76355, but also requires independent action by the district governing board. Section 76355, at subdivision (e) requires that "[a]ny community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter." Kern Community College District is subject to this requirement. However, Section 75355 does not require community college district governing boards to provide a student health services program at every district location. The District did not provide such a program at Cerro Coso College or the Learning Centers and did not collect a student health services fee at those locations. Therefore, there are no collected or collectible fees from Cerro Coso College or the Learning Centers.

Legal requirements and the facts aside, the audit process is subject to generally accepted accounting principles and procedures that, among other things, require revenues and expenses to be "matched." If the enrollment of Cerro Coso College and the Learning Centers is included in the calculation of collectible fees, the audit is applying revenues with no corresponding matching expenses.

In sum, there is no legal compulsion or factual circumstance to support the position that the Cerro Coso College and Learning Centers' student enrollment should be included in the mandated cost claim, and to do so would be contrary to accounting principles.

---

[1] Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, Section 29, and was replaced by Education Code Section 76355.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefor. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

O O O

The District requests that the final audit report comply with the appropriate application of the Parameters and Guidelines regarding allowable activity costs and the Goverment Code sections concerning audits of mandate claims.

Sincerely,

Thomas J. Burke, Chief Financial Officer
Kern Community College District

State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

http://www.sco.ca.gov

Exhibit E

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA

STEVE WESTLY
STATE CONTROLLER

FOREWORD

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

If you have any questions concerning the enclosed material, write to the address below or call the Local Reimbursements Section at (916) 324-5729, or email to lrsdar@sco.ca.gov.

State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Prepared by the State Controller's Office
Updated September 30, 2003

TABLE OF CONTENTS

TABLE OF CONTENTS

REIMBURSABLE STATE MANDATED COST PROGRAMS

Claims for the following State mandated cost programs may be filed with the SCO. For your convenience, the programs are listed in alphabetical order by program name. An "X" indicates the fiscal year for which a claim may be filed.

2002-03 Reimbursement Claims	2003-04 Estimated Claims	Community College Districts		
x	x	Chapter	77/78	Absentee Ballots
x	x	Chapter	961/75	Collective Bargaining
x	x	Chapter	1120/96	Health Benefits for Survivors of Peace Officers & Firefighters
x	x	Chapter	1/84	Health Fee Elimination
x	x	Chapter	783/95	Investment Reports
x	x	Chapter	284/98	Law Enforcement College Jurisdiction Agreements
x	x	Chapter	126/93	Law Enforcement Sexual Harassment Training
x	x	Chapter	486/75	Mandate Reimbursement Process
x	x	Chapter	641/86	Open Meetings Act/Brown Act Reform
x	x	Chapter	465/76	Peace Officers Procedural Bill of Rights
x	x	Chapter	875/85	Photographic Record of Evidence
x	x	Chapter	908/96	Sex Offenders: Disclosure by Law Enforcement Officers
x	x	Chapter	1249/92	Threats Against Peace Officers

APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR

Source of State Mandated Cost Appropriations

Schedule			Program	Amount Appropriated
Chapter 379/02, Item 6110-295-0001[1]				
(1)	Chapter	77/78	Absentee Ballots	$ 0
(2)	Chapter	961/75	Collective Bargaining	0
(3)	Chapter	1120/96	Health Benefits for Survivors of Peace Officers and Firefighters	0
(4)	Chapter	783/95	Investment Reports	0
(5)	Chapter	284/98	Law Enforcement College Jurisdiction Agreements	0
(6)	Chapter	126/93	Law Enforcement Sexual Harassment Training	0
(7)	Chapter	486/75	Mandate Reimbursement Process	0
(8)	Chapter	641/86	Open Meetings Act/Brown Act Reform	0
(9)	Chapter	465/76	Peace Officers Procedural Bill of Rights	0
(10)	Chapter	875/85	Photographic Record of Evidence	0
(11)	Chapter	908/96	Sex Offenders: Disclosure by Law Enforcement Officers	0
(12)	Chapter	1249/92	Threats Against Peace Officers	0
Total Appropriations, Item 6110-295-001				**$ 0**
Chapter 379/02, Item 6870-295-0001				
(13)	Chapter	1/84	Health Fee Elimination	1,000
TOTAL - Funding for the 2003-04 Fiscal Year				**$1,000**

[1] Pursuant to provision 5, "The Controller shall not make any payment from this item to reimburse community college districts for claimed costs of state-mandated education programs. Reimbursements to community college districts for education mandates shall be paid from the appropriate item within the community colleges budget."

FILING A CLAIM

1. Introduction

The law in the State of California, (Government Code Sections 17500 through 17616), provides for the reimbursement of costs incurred by school districts for costs mandated by the State. Costs mandated by the State means any increased costs which a school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing such statute which mandates a new program or higher level of service of an existing program.

Estimated claims that show costs to be incurred in the current fiscal year and reimbursement claims that detail the costs actually incurred for the prior fiscal year may be filed with the State Controller's Office (SCO). Claims for on-going programs are filed annually by January 15. Claims for new programs are filed within 120 days from the date claiming instructions are issued for the program. A 10 percent penalty, (up to $1,000 for continuing claims, no limit for initial claims), is assessed for late claims. The SCO may audit the records of any school district to verify the actual amount of mandated costs and may reduce any claim that is excessive or unreasonable.

When a program has been reimbursed for three or more years, the COSM may approve the program for inclusion in the State Mandates Apportionment System (SMAS). For programs included in SMAS, the SCO determines the amount of each claimant's entitlement based on an average of three consecutive fiscal years of actual costs adjusted by any changes in the Implicit Price Deflator (IPD). Claimants with an established entitlement receive an annual apportionment adjusted by any changes in the IPD and, under certain circumstances, by any changes in workload. Claimants with an established entitlement do not file further claims for the program.

The SCO is authorized to make payments for costs of mandated programs from amounts appropriated by the State Budget Act, by the State Mandates Claims Fund, or by specific legislation. In the event the appropriation is insufficient to pay claims in full, claimants will receive prorated payments in proportion to the dollar amount of approved claims for the program. Balances of prorated payments will be made when supplementary funds are made available.

The instructions contained in this manual are intended to provide general guidance for filing a mandated cost claim. Since each mandate is administered separately, it is important to refer to the specific program for information relating to established policies on eligible reimbursable costs.

2. Types of Claims

There are three types of claims: Reimbursement, Estimated, and Entitlement. A claimant may file a reimbursement claim for actual mandated costs incurred in the prior fiscal year or may file an estimated claim for mandated costs to be incurred during the current fiscal year. An entitlement claim may be filed for the purpose of establishing a base year entitlement amount for mandated programs included in SMAS. A claimant who has established a base year entitlement for a program would receive an automatic annual payment which is reflective of the current costs for the program.

All claims received by the SCO will be reviewed to verify actual costs. An adjustment of the claim will be made if the amount claimed is determined to be excessive, improper, or unreasonable. The claim must be filed with sufficient documentation to support the costs claimed. The types of documentation required to substantiate a claim are identified in the instructions for the program. The certification of claim, form FAM-27, must be signed and dated by the entity's authorized officer in order for the SCO to make payment on the claim.

A. Reimbursement Claim

A reimbursement claim is defined in GC Section 17522 as any claim filed with the SCO by a local agency for reimbursement of costs incurred for which an appropriation is made for the purpose of paying the claim. The claim must include supporting documentation to substantiate the costs claimed.

Initial reimbursement claims are first-time claims for reimbursement of costs for one or more prior fiscal years of a program that was previously unfunded. Claims are due 120 days from the date of issuance of the claiming instructions for the program by the SCO. The first statute that appropriates funds for the mandated program will specify the fiscal years for which costs are eligible for reimbursement.

Annual reimbursement claims must be filed by January 15 following the fiscal year in which costs were incurred for the program. A reimbursement claim must detail the costs actually incurred in the prior fiscal year.

An actual claim for the 2002-03 fiscal year may be filed by January 15, 2004, without a late penalty. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed $1,000. However, initial reimbursement claims will be reduced by a late penalty of 10% with no limitation. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. Claims filed more than one year after the deadline or without the requested supporting documentation will not be accepted.

B. Estimated Claim

An estimated claim is defined in GC Section 17522 as any claim filed with the SCO, during the fiscal year in which the mandated costs are to be incurred by the local agency, against an appropriation made to the SCO for the purpose of paying those costs.

An estimated claim may be filed in conjunction with an initial reimbursement claim, annual reimbursement claim, or at other times for estimated costs to be incurred during the current fiscal year. Annual estimated claims are due January 15 of the fiscal year in which the costs are to be incurred. Initial estimated claims are due on the date specified in the claiming instructions. Timely filed estimated claims are paid before those filed after the deadline.

After receiving payment for an estimated claim, the claimant must file a reimbursement claim by January 15 following the fiscal year in which costs were incurred. If the claimant fails to file a reimbursement claim, monies received for the estimated claims must be returned to the State.

C. Entitlement Claim

An entitlement claim is defined in GC Section 17522 as any claim filed by a local agency with the SCO for the sole purpose of establishing or adjusting a base year entitlement for a mandated program that has been included in SMAS. An entitlement claim should not contain nonrecurring or initial start-up costs. There is no statutory deadline for the filing of entitlement claims. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. When the claims are approved and a base year entitlement amount is determined, the claimant will receive an apportionment reflective of the program's current year costs. School mandates included in SMAS are listed in Section 2, number 6.

Once a mandate has been included in SMAS and the claimant has established a base year entitlement, the claimant will receive automatic payments from the SCO for the mandate. The automatic apportionment is determined by adjusting the claimant's base year entitlement for changes in the implicit price deflator of costs of goods and services to governmental agencies, as determined by the State Department of Finance. For programs approved by the COSM for inclusion in SMAS on or after January 1, 1988, the payment for each year succeeding the three year base period is adjusted according to any changes by both the deflator and average daily attendance. Annual apportionments for programs included in the system are paid on or before November 30 of each year.

A base year entitlement is determined by computing an average of the claimant's costs for any three consecutive years after the program has been approved for the SMAS process. The amount is first adjusted according to any changes in the deflator. The deflator is applied separately to each year's costs for the three years, which comprise the base year. The SCO will perform this computation for each claimant who has filed claims for three consecutive years. If a claimant has incurred costs for three consecutive years but has not filed a claim in each of those years, the claimant may file an entitlement claim, form FAM-43, to establish a base year entitlement. An entitlement claim does not result in the claimant being reimbursed for the costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

3. Minimum Claim Amount

For initial claims and annual claims filed on or after September 30, 2002, if the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by GC Section 17564. The county shall determine if the submission of a combined claim is economically feasible and shall be responsible for disbursing the funds to each special district. Combined claims may be filed only when the county is the fiscal agent for the special districts. A combined claim must show the individual claim costs for each eligible school district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a special district, provides to the county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

GC Section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds one thousand dollars ($1,000), provided that a county superintendent of schools may submit a combined claim on behalf of school districts within their county if the combined claim exceeds $1,000, even if the individual school district's claim does not each exceed $1,000. The county superintendent of schools shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school district. These combined claims may be filed only when the county superintendent of schools is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district provides a written notice of its intent to file a separate claim to the county superintendent of schools and to the SCO at least 180 days prior to the deadline for filing the claim.

4. Filing Deadline for Claims

Initial reimbursement claims (first-time claims) for reimbursement of costs of a previously unfunded mandated program must be filed within 120 days from the date of issuance of the program's claiming instructions by the SCO. If the initial reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% penalty. A claim filed more than one year after the deadline cannot be accepted for reimbursement.

Annual reimbursement claims for costs incurred during the previous fiscal year and estimated claims for costs to be incurred during the current fiscal year must be filed with the SCO and postmarked on or before January 15. If the annual or estimated reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% late penalty, not to exceed $1,000. Claims must include supporting data to show how the amount claimed was derived. Without this information, the claim cannot be accepted.

Entitlement claims do not have a filing deadline. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. Entitlement claims are used to establish a base year entitlement amount for calculating automatic annual payments. Entitlement does not result in the claimant being reimbursed for costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

5. Payment of Claims

In order for the SCO to authorize payment of a claim, the Certification of Claim, form FAM-27, must be properly filled out, signed, and dated by the entity's authorized officer.

Reimbursement and estimated claims are paid within 60 days of the filing deadline for the claim. A claimant is entitled to receive accrued interest at the pooled money investment account rate if the payment was made more than 60 days after the claim filing deadline or the actual date of claim receipt, whichever is later. For an initial claim, interest begins to accrue when the payment is made more than 365 days after the adoption of the program's statewide cost estimate. The SCO may withhold up to 20 percent of the amount of an initial claim until the claim is audited to verify the actual amount of the mandated costs. The 20 percent withheld is not subject to accrued interest.

In the event the amount appropriated by the Legislature is insufficient to pay the approved amount in full for a program, claimants will receive a prorated payment in proportion to the amount of approved claims timely filed and on hand at the time of proration.

The SCO reports the amounts of insufficient appropriations to the State Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature which considers appropriations in order to assure appropriation of these funds in the Budget Act. If these funds cannot be appropriated on a timely basis in the Budget Act, this information is transmitted to the COSM which will include these amounts in its report to assure that an appropriation sufficient to pay the claims is included in the next local government claims bill or other appropriation bills. When the supplementary funds are made available, the balance of the claims will be paid.

Unless specified in the statutes, regulations, or parameters and guidelines, the determination of allowable and unallowable costs for mandates is based on the Parameters and Guidelines adopted by the COSM. The determination of allowable reimbursable mandated costs for unfunded mandates is made by the COSM. The SCO determines allowable reimbursable costs, subject to amendment by the COSM, for mandates funded by special legislation. Unless specified, allowable costs are those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. In order for costs to be allowable and thus eligible for reimbursement, the costs must meet the following general criteria:

1. The cost is necessary and reasonable for proper and efficient administration of the mandate and not a general expense required to carry out the overall responsibilities of government.
2. The cost is allocable to a particular cost objective identified in the Parameters and Guidelines.
3. The cost is net of any applicable credits that offset or reduce expenses of items allocable to the mandate.

The SCO has identified certain costs that, for the purpose of claiming mandated costs, are unallowable and should not be claimed on the claim forms unless specified as reimbursable under the program. These expenses include, but are not limited to, subscriptions, depreciation, memberships, conferences, workshops general education, and travel costs.

6. State Mandates Apportionment System (SMAS)

Chapter 1534, Statutes of 1985, established SMAS, a method of paying certain mandated programs as apportionments. This method is utilized whenever a program has been approved for inclusion in SMAS by the COSM.

When a mandated program has been included in SMAS, the SCO will determine a base year entitlement amount for each school district that has submitted reimbursement claims, (or entitlement claims), for three consecutive fiscal years. A base year entitlement amount is determined by averaging the approved reimbursement claims, (or entitlement claims), for 1982-83, 1983-84, and 1984-85 years or any three consecutive fiscal years thereafter. The amounts are first adjusted by any change in IPD, which is applied separately to each year's costs for the three years

that comprise the base period. The base period means the three fiscal years immediately succeeding the COSM's approval.

Each school district with an established base year entitlement for the program will receive automatic annual payments from the SCO reflective of the program's current year costs. The amount of apportionment is adjusted annually for any change in the IPD. If the mandated program was included in SMAS after January 1, 1988, the annual apportionment is adjusted for any change in both the IPD and workload.

In the event a school district has incurred costs for three consecutive fiscal years but did not file a reimbursement claim in one or more of those fiscal years, the school district may file an entitlement claim for each of those missed years to establish a base year entitlement. An "entitlement claim" means any claim filed by a county with the SCO for the sole purpose of establishing a base year entitlement. A base year entitlement shall not include any nonrecurring or initial start-up costs.

Initial apportionments are made on an individual program basis. After the initial year, all apportionments are made by November 30. The amount to be apportioned is the base year entitlement adjusted by annual changes in the IPD for the cost of goods and services to governmental agencies as determined by the State Department of Finance.

In the event the county determines that the amount of apportionment does not accurately reflect costs incurred to comply with a mandate, the process of adjusting an established base year entitlement upon which the apportionment is based, is set forth in GC Section 17615.8 and requires the approval of the COSM.

School Mandates Included In SMAS

Program Name	Chapter/Statute	Program Number
Immunization Records	Ch. 1176/77	32

Pupil Expulsion Transcripts, program #91, Chapter 1253/75 was removed from SMAS for the 2002-03 fiscal year. This program was consolidated with other mandate programs that are included in Pupil Suspension, Expulsions, and Expulsion Appeals, program #176.

7. Direct Costs

A direct cost is a cost that can be identified specifically with a particular program or activity. Each claimed reimbursable cost must be supported by documentation as described in Section 12. Costs that are typically classified as direct costs are:

(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 a productive hourly rate:

(a) Productive Hourly Rate Options

A local agency may use one of the following methods to compute productive hourly rates:

- Actual annual productive hours for each employee
- The weighted-average annual productive hours for each job title, or
- 1,800* annual productive hours for all employees

If actual annual productive hours or weighted-average annual productive hours for each job title is chosen, the claim must include a computation of how these hours were computed.

* 1,800 annual productive hours excludes the following employee time:
- o Paid holidays
- o Vacation earned
- o Sick leave taken
- o Informal time off
- o Jury duty
- o Military leave taken.

(b) Compute a Productive Hourly Rate

1. Compute a productive hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a productive hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual productive hours.

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

Formula:	**Description:**
[(EAS + Benefits) ÷ APH] = PHR	EAS = Employee's Annual Salary
	APH = Annual Productive Hours
[($26,000 + $8,099)] ÷ 1,800 hrs = 18.94	PHR = Productive Hourly Rate

- As illustrated in Table 1, if you assume an employee's compensation was $26,000 and $8,099 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the productive hourly rate would be $18.94. To convert a biweekly salary to EAS, multiply the biweekly salary by 26. To convert a monthly salary to EAS, multiply the monthly salary by 12. Use the same methodology to convert other salary periods.

2. A claimant may also compute the productive hourly rate by using the "Percent of Salary Method."

Table 2 Productive Hourly Rate, Percent of Salary Method

Example:		
Step 1: *Fringe Benefits as a Percent of Salary*		**Step 2:** *Productive Hourly Rate*
Retirement	15.00 %	**Formula:**
Social Security & Medicare	7.65	[(EAS x (1 + FBR)) ÷ APH] = PHR
Health & Dental Insurance	5.25	
Workers Compensation	3.25	[($26,000 x (1.3115)) ÷ 1,800] = $18.94
Total	**31.15 %**	
Description:		
EAS = Employee's Annual Salary		APH = Annual Productive Hours
FBR = Fringe Benefit Rate		PHR = Productive Hourly Rate

- As illustrated in Table 3, both methods produce the same productive hourly rate.

Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include 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. Whether these costs are allowable is based on the following presumptions:

- The amount of compensation is reasonable for the service rendered.
- The compensation paid and benefits received are appropriately authorized by the governing board.
- Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
- The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs.

For each of the employees included in the claim, the claimant must use reasonable rates and hours in computing the wage cost. If a person of a higher-level job position performs an activity which normally would be performed by a lower-level position, reimbursement for time spent is allowable at the average salary range for the lower-level position. The salary rate of the person at the higher level position may be claimed if it can be shown that it was more cost effective in comparison to the performance by a person at the lower-level position under normal circumstances and conditions. The number of hours charged to an activity should reflect the time expected to complete the activity under normal circumstances and conditions. The numbers of hours in excess of normal expected hours are not reimbursable.

(c) Calculating an Average Productive Hourly Rate

In those instances where the claiming instructions allow a unit as a basis of claiming costs, the direct labor component of the unit cost should be expressed as an average productive hourly rate and can be determined as follows:

Table 4 Calculating an Average Productive Hourly Rate

	Time Spent	Productive Hourly Rate	Total Cost by Employee
Employee A	1.25 hrs	$6.00	$7.50
Employee B	0.75 hrs	4.50	3.38
Employee C	3.50 hrs	10.00	35.00
Total	5.50 hrs		$45.88
Average Productive Hourly Rate is $45.88/5.50 hrs. = $8.34			

(d) Employer's Fringe Benefits Contribution

A local agency has the option of claiming actual employer's fringe benefit contributions or may compute an average fringe benefit cost for the employee's job classification and claim it as a percentage of direct labor. The same time base should be used for both salary and fringe benefits when computing a percentage. For example, if health and dental insurance payments are made annually, use an annual salary. After the percentage of salary for each fringe benefit is computed, total them.

For example:

Employer's Contribution	% of Salary
Retirement	15.00%
Social Security	7.65%
Health and Dental Insurance	5.25%
Worker's Compensation	0.75%
Total	28.65%

(e) Materials and Supplies

Only actual expenses can be claimed for materials and supplies, which were acquired and consumed specifically for the purpose of a mandated program. The claimant must list the materials and supplies that were used to perform the mandated activity, the number of units consumed, the cost per unit, and the total dollar amount claimed. Materials and supplies purchased to perform a particular mandated activity are expected to be reasonable in quality, quantity and cost. Purchases in excess of reasonable quality, quantity and cost are not reimbursable. Materials and supplies withdrawn from inventory and charged to the mandated activity must be based on a recognized method of pricing, consistently applied. Purchases shall be claimed at the actual price after deducting discounts, rebates and allowances received by local agencies.

(f) Calculating a Unit Cost for Materials and Supplies

In those instances where the claiming instructions suggest that a unit cost be developed for use as a basis of claiming costs mandated by the State, the materials and supplies component of the unit cost should be expressed as a unit cost of materials and supplies as shown in Table 1 or Table 2:

Table 1 Calculating A Unit Cost for Materials and Supplies

Supplies	Cost Per Unit	Amount of Supplies Used Per Activity	Unit Cost of Supplies Per Activity
Paper	0.02	4	$0.08
Files	0.10	1	0.10
Envelopes	0.03	2	0.06
Photocopies	0.10	4	0.40
			$0.64

Table 2 Calculating a Unit Cost for Materials and Supplies

Supplies	Supplies Used	Unit Cost of Supplies Per Activity
Paper ($10.00 for 500 sheet ream)	250 Sheets	$5.00
Files ($2.50 for box of 25)	10 Folders	1.00
Envelopes ($3.00 for box of 100)	50 Envelopes	1.50
Photocopies ($0.05 per copy)	40 Copies	2.00
		$9.50

If the number of reimbursable instances, is 25, then the unit cost of supplies is $0.38 per reimbursable instance ($9.50 / 25).

(g) Contract Services

The cost of contract services is allowable if the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity. The claimant must give the name of the contractor; explain the reason for having to hire a contractor; describe the mandated activities performed; give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the claiming instructions for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the claiming instructions for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the claiming instructions specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the claiming instructions may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation,

number of private auto mileage traveled, and the cost of tolls and parking with receipts required for charges over $10.00.

(k) **Documentation**

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits derived by the mandate.

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. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The 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.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES				FORM FAM-29C		
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	$19,590,357	$1,339,059	$18,251,298	$0	$18,251,298
Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		$24,201,764	$1,576,523	$22,625,241	$0	$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES				FORM FAM-29C		
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Extended Opportunity Programs & Services	6430					
Health Services	6440	0	0	0	0	0
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735
Job Placement Services	6470	83,663	0	83,663	0	83,663
Veterans Services	6480	25,427	0	25,427	0	25,427
Miscellaneous Student Services	6490	0	0	0	0	0
Operation & Maintenance of Plant	6500					
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	0	1,035,221
Custodial Services	6530	1,227,668	33,677	1,193,991	0	1,193,991
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	0	525,450
Utilities	6570	1,236,305	0	1,236,305	0	1,236,305
Other	6590	3,454	3,454	0	0	0
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0
General Inst. Support Services	6700					
Community Relations	6710	0	0	0	0	0
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151
Human Resources Management	6730					
Noninstructional Staff Benefits & Incentives	6740					
Staff Development	6750					
Staff Diversity	6760					
Logistical Services	6770					
Management Information Systems	6780					
Subtotal		$30,357,605	$1,801,898	$28,555,707	$1,118,550	$27,437,157

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES					FORM FAM-29C	
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
General Inst. Sup. Serv. (cont.)	6700					
Other General Institutional Support Services	6790					
Community Services	6800					
Community Recreation	6810	703,858	20,509	683,349	0	683,349
Community Service Classes	6820	423,188	24,826	398,362	0	398,362
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781
Economic Development	6840					
Other Community Svcs. & Economic Development	6890					
Ancillary Services	6900					
Bookstores	6910	0	0	0	0	0
Child Development Center	6920	89,051	1,206	87,845	0	87,845
Farm Operations	6930	0	0	0	0	0
Food Services	6940	0	0	0	0	0
Parking	6950	420,274	6,857	413,417	0	413,417
Student Activities	6960	0	0	0	0	0
Student Housing	6970	0	0	0	0	0
Other	6990	0	0	0	0	0
Auxiliary Operations	7000					
Auxiliary Classes	7010	1,124,557	12,401	1,112,156	0	1,112,156
Other Auxiliary Operations	7090	0	0	0	0	0
Physical Property Acquisitions	7100	814,318	814,318	0	0	0
(05) Total		$34,022,728	$2,692,111	$31,330,617	$1,118,550	$30,212,067
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				3,70233%		
(07) Notes (a) Mandated Cost activities designated as direct costs per claim instructions.						

9. Offset Against Mandated Claims

As noted previously, allowable costs are defined as those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. When all or part of the costs of a mandated program are specifically reimbursable from local assistance revenue sources (e.g., state, federal, foundation, etc.), only that portion of any increased costs payable from school district funds is eligible for reimbursement under the provisions of GC Section 17561.

Example 1:

As illustrated in Table 5, this example shows how the "Offset against State Mandated Claims" is determined for school districts receiving block grant revenues not based on a formula allocation. Program costs for each of the situations equals $100,000.

Table 5 Offset Against State Mandates, Example 1

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	$100,000	$95,000	$2,500	$-0-	$2,500
2.	100,000	97,000	2,500	-0-	2,500
3.	100,000	98,000	2,500	500	2,000
4.	100,000	100,000	2,500	2,500	-0-
5.	100,000 *	50,000	2,500	1,250	1,250
6.	100,000 *	49,000	2,500	250	2,250

* School district share is $50,000 of the program cost.

Numbers (1) through (4), in Table 5, show intended funding at 100% from local assistance revenue sources. Numbers (5) and (6) show cost sharing on a 50/50 basis with the district. In numbers (1) through (6), included in the program costs of $100,000 are state mandated costs of $2,500. The offset against state mandated claims is the amount of actual local assistance revenues which exceeds the difference between program costs and state mandated costs. This offset cannot exceed the amount of state mandated costs.

In (1), local assistance revenues were less than expected. Local assistance funding was not in excess of the difference between program costs and state mandated costs. As a result, the offset against state mandated claims is zero and $2,500 is claimable as mandated costs.

In (4), local assistance revenues were fully realized to cover the entire cost of the program, including the state mandate activity; therefore, the offset against state mandated claims is $2,500, and claimable costs are $0..

In (5), the district is sharing 50% of the project cost. Since local assistance revenues of $50,000 were fully realized, the offset against state mandated claims is $1,250.

In (6), local assistance revenues were less than the amount expended and the offset against state mandated claims is $250. Therefore, the claimable mandated costs are $2,250.

Example 2:

As illustrated in Table 6, this example shows how the offset against state mandated claims is determined for school districts receiving special project funds based on approved actual costs. Local assistance revenues for special projects must be applied proportionately to approved costs.

Table 6 Offset Against State Mandates, Example 2

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	$100,000	$100,000	$2,500	$2,500	$-0-
2.	100,000 **	75,000	2,500	1,875	625
3.	100,000 **	45,000	1,500	1,125	375

** School district share is $25,000 of the program cost.

In (2), the entire program cost was approved. Since the local assistance revenue source covers 75% of the program cost, it also proportionately covered 75% of the $2,500 state mandated costs, or $1,875.

If in (3) local assistance revenues are less than the amount expected because only $60,000 of the $100,000 program costs were determined to be valid by the contracting agency, then a proportionate share of state mandated costs is likewise reduced to $1,500. The offset against state mandated claims is $1,125. Therefore, the claimable mandated costs are $375.

Federal and State Funding Sources

The listing in Appendix C is not inclusive of all funding sources that should be offset against mandated claims but contains some of the more common ones. State school fund apportionments and federal aid for education, which are based on average daily attendance and are part of the general system of financing public schools as well as block grants which do not provide for specific reimbursement of costs (i.e., allocation formulas not tied to expenditures), should not be included as reimbursements from local assistance revenue sources.

Governing Authority

The costs of salaries and expenses of the governing authority, such as the school superintendent and governing board, are not reimbursable. These are costs of general government as described in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments ".

10. Notice of Claim Adjustment

All claims submitted to the SCO are reviewed to determine if the claim was prepared in accordance with the claiming instructions. If any adjustments are made to a claim, the claimant will receive a "Notice of Claim Adjustments" detailing adjustments made by the SCO.

11. Audit of Costs

All claims submitted to the State Controller's Office (SCO) are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instrucitons and the Parameters and Guidelines (P's & G's) adopted by the Commission on State Mandates (COSM). If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to Government Code (GC) Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, must be

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of three years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for three years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

12. Source Documents

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

13. Claim Forms and Instructions

A claimant may submit a computer generated report in substitution for Form-1 and Form-2, provided the format of the report and data fields contained within the report are identical to the claim forms included with these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file an estimated or reimbursement claim. The SCO will revise the manual and claim forms as necessary.

A. Form-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by the official financial records of the claimant and copies of supporting documentation, as specified in the claiming instructions, must be submitted with the claims. All supporting documents must be retained for a period of not less than three years after the reimbursement claim was filed or last amended.

B. Form-1, Claim Summary

This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from Form-2 and are carried forward to form FAM-27.

Community colleges have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21) or form FAM-29C.

C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized officer of the county. All applicable information from Form-1 must be carried forward onto this form in order for the SCO to process the claim for payment. An original and one copy of the FAM-27 is required.

Claims should be rounded to the nearest dollar. Submit a signed original and one copy of form FAM-27, Claim for Payment, and all other forms and supporting documents **(To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)** Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
Other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

14. RETENTION OF CLAIMING INSTRUCTIONS

For your convenience, the revised claiming instructions in this package have been arranged in alphabetical order by program name. These revisions should be inserted in the School Mandated Cost Manual and the old forms they replace should be removed. The instructions should then be retained permanently for future reference, and the forms should be duplicated to meet your filing requirements. Annually, updated forms and any other information or instructions claimants may need to file claims, as well as instructions and forms for all new programs released throughout the year will be placed on the SCO's web site at **www.sco.ca.gov/ard/local/locreim/index/shtml.**

If you have any questions concerning mandated cost reimbursements, please write to us at the address listed for filing claims, send e-mail to lrsdar@sco.ca.gov, or call the Local Reimbursements Section at (916) 324-5729.

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the COSM's P's and G's. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district is subject to audit by the State Controller no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and shall be made available to the SCO on request.

Exhibit F

San Francisco Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal.4th 571 , 7 Cal.Rptr.2d 245; 828 P.2d 147

[No. S018200. May 4, 1992.]

SAN FRANCISCO TAXPAYERS ASSOCIATION, Plaintiff and Respondent, v. BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Appellant.

(Superior Court of the City and County of San Francisco, No. 901018, Raymond J. Arata, Jr., Judge.)

(Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate dissenting opinions by Mosk and Kennard, JJ.)

COUNSEL

Louise H. Renne, City Attorney, Burke E. DeLeventhal and Thomas J. Owen, Deputy City Attorneys, for Defendant and Appellant.

Ronald A. Zumbrun, Anthony T. Caso and Jonathan M. Coupal for Plaintiff and Respondent.

OPINION

PANELLI, J.

California's voters, by adopting Proposition 4, placed a constitutional spending limit on appropriations by the state and local governments. (See Cal. Const., art. XIII B, § 1, added by initiative measure in **[2 Cal.4th 574]** Special Statewide Elec. (Nov. 6, 1979).) The measure sets out, for the purpose of calculating each governmental entity's spending limit, those categories of appropriations that are and are not subject to limitation. We granted review to decide which of the measure's provisions determines the treatment of a city's contributions to employee retirement funds that were established before Proposition 4 took effect. Section 5 fn. 1 provides that appropriations to "retirement" funds are "subject to limitation." Section 9 provides that appropriations for "debt service" are not. In accordance with the plain language of section 5, the more specific provision, we hold that retirement contributions are subject to limitation.

Background

The electorate approved Proposition 4 in 1979, thus adding article XIII B to the state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called "Spirit of 13," imposed a complementary limit on the rate of growth in governmental spending. Article XIII B operates by subjecting each state and local governmental entity's appropriations to a limit equal to the entity's appropriations in the prior year, adjusted for changes in population and the cost of living. (§§ 1, 8, subds. (e), (f).)

Not all appropriations are subject to the constitutional spending limit. In general, " '[a]ppropriations subject to limitation' " include "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity ...." (§ 8, subd. (b) [applicable to local governments].) However, the voters specifically excluded some categories of appropriations from the spending limit. Section 9, for example, permits appropriations beyond the limit for "[d]ebt service" and to "comply[ ] with mandates of the courts or the federal government ...." (§ 9, subds. (a), (b).) Conversely, the voters specifically determined that the spending limit would apply to other types of appropriations. The provision at issue in this case, section 5, declares that contributions to a "retirement" fund are "subject to limitation."

Article XIII B took effect during the 1980-1981 fiscal year. Pursuant to its provisions, defendant and appellant Board of Supervisors (Board) of the City **[2 Cal.4th 575]** and County of San Francisco (City) established an appropriations limit that included the City's contributions to retirement funds. The Board continued to treat such contributions as subject to the spending limit for six consecutive fiscal years.

The Board changed its historical position in 1986. That year, the City Attorney advised the Board that appropriations for certain "mandatory employee benefits," including retirement contributions, were exempt from the spending limit as "debt service" under section 9. fn. 2 Adopting that position, the Board revised the City's base-year spending limit by subtracting $59,388,698, which represented the amount of the City's appropriations for such benefits in the year the voters approved Proposition 4. The Board derived the 1986-1987 spending limit by adjusting the revised base-year limit to reflect intervening increases in population and the cost of living. (See § 1.) Each subsequent fiscal year's spending limit has excluded retirement contributions.

In September 1987, a decision of the Court of Appeal cast doubt on the City Attorney's interpretation of article XIII B. The County of Santa Barbara, like the City of San Francisco, had decided several years after Proposition 4 to exclude retirement contributions from its spending limit as "debt service." The Second District Court of Appeal rejected the county's position, holding that "the plain language of section 5 requires the inclusion of such contributions as appropriations subject to the appropriations limit" and that the more specific language of section 5 takes precedence over section 9, the more general provision governing debt service. (Santa Barbara County Taxpayers Assn. v. County of Santa Barbara (1987) 194 Cal.App.3d 674, 678 [239 Cal.Rptr. 769] [hereafter Santa Barbara Taxpayers].) We denied a petition for review in that case on November 18, 1987.

In calculating the City's spending limit for the 1988-1989 fiscal year, the Board recognized that its exclusion of retirement contributions was inconsistent with the Santa Barbara Taxpayers decision. Even without the benefit of the exclusion, the City's projected "appropriations subject to limitation" did not exceed its annual spending limit. However, based on the City Attorney's advice that the Court of Appeal's opinion was "wrongly decided" the Board determined to continue to exclude retirement contributions. **[2 Cal.4th 576]**

The consequence of the Board's decision was to increase by $40,336,171 the total amount ($97,640,070) by which the City's spending limit exceeded its appropriations subject to limitation in the 1988- 1989 fiscal year. fn. 3 However, based on the City Attorney's opinion that the decision would "entail time consuming and difficult litigation," the City Controller recommended that the Board not "collect or appropriate revenues based upon [the $40 million] spread until the impact of the Santa Barbara [Taxpayers] decision on the City of San Francisco has been clarified."

In December 1988, plaintiff and respondent San Francisco Taxpayers Association (hereafter Taxpayers) initiated this action to challenge the Board's exclusion of retirement contributions from the City's spending limit. Taxpayers alleged that the Board's action violated section 5, which provides that "contributions" to "retirement" funds are "subject to limitation." Following the Second District's decision in Santa Barbara Taxpayers (supra, 194 Cal.App.3d 674), the superior court granted Taxpayers' motion for summary judgment and entered judgment against the Board. In its judgment, the court declared the Board's action invalid and ordered the Board, by injunction and writ of mandate, to revise the City's appropriations limit to include retirement contributions. On appeal, the First District declined to follow Santa Barbara Taxpayers and reversed the judgment. We granted review to resolve the conflict.

Discussion

[1a] The question before us is whether section 5 or section 9 governs the treatment of retirement contributions for the purpose of calculating the City's spending limit. Section 5 expressly provides that a governmental entity's contributions to "retirement" funds are "subject to limitation." fn. 4 **[2 Cal.4th 577]** Section 9, which does not mention retirement contributions, provides that appropriations for "debt service" are not subject to limitation. fn. 5

Ordinary principles of interpretation point to the conclusion that section 5, the more specific provision, governs. [2] "It is well settled ... that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (Rose v. State of California (1942) 19 Cal.2d 713, 723-724 [123 P.2d 505].) [1b] Thus, even if we were to assume for argument's sake that the term "debt service" (§§ 8(g), 9(a)) might be broad enough to include retirement contributions, the treatment of such contributions is nevertheless governed by the voters' specific declaration that they are "subject to limitation." (§ 5.) This was the correct conclusion of the Court of Appeal in Santa Barbara Taxpayers (supra, 194 Cal.App.3d at pp. 681-682). fn. 6

The Board does not view this case as an example of a specific provision taking precedence over a general provision. Instead, the Board argues that sections 5 and 9(a) conflict and that we should "harmonize" them by giving effect to both so far as possible. (Cf. Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299]; Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) The Board would achieve harmony by distinguishing between payments required

by pension contracts, on one hand, and discretionary payments to reserve funds, on the other. As the Board would interpret the law, required payments constitute debt service while discretionary payments do not.

Two flaws render the Board's argument untenable. First, there is no conflict between sections 5 and 9(a) unless one assumes that the voters did not mean what they said in section 5-that "retirement" contributions are "subject to limitation." Read according to its plain meaning, section 5 creates an exception to section 9(a) rather than a conflict. **[2 Cal.4th 578]**

Second, the Board's argument would permit the City to evade section 5 completely, simply by satisfying its contractual obligations. According to the Board, so long as the City does not employ reserve funds for its own convenience its retirement contributions will never become subject to limitation. The voters could not reasonably have intended such a result, which would in effect nullify their express declaration that retirement contributions are subject to limitation. Such an interpretation is obviously to be avoided. (See, e.g., Lungren v. Deukmejian, supra, 45 Cal.3d at p. 735; People v. Craft (1986) 41 Cal.3d 554, 561 [224 Cal.Rptr. 626, 715 P.2d 585].) In contrast, to give full effect to section 5 does not nullify section 9(a), which continues to apply to a wide variety of other obligations.

The Board offers several additional arguments against this conclusion. None is persuasive.

First, the Board argues that retirement contributions must be treated as debt service in order to achieve consistency with article XIII A. Article XIII A limits the maximum rate of ad valorem taxes on real property but permits taxes in excess of that rate to repay certain voter-approved indebtedness. fn. 7 In Carman v. Alvord (1982) 31 Cal.3d 318, 324-333 [182 Cal.Rptr. 506, 644 P.2d 192] (Carman), we held that article XIII A's exemption for "indebtedness" was broad enough to include a city's retirement obligations. Thus, a city may levy taxes in excess of the maximum rate to satisfy such obligations. (Ibid.)

Because articles XIII A and XIII B address the treatment of indebtedness in similar language, the Board argues that retirement contributions cannot be debt service under the former (see Carman, supra, 31 Cal.3d 318) but not under the latter. The argument, however, ignores both the reasoning of Carman and the language of article XIII B. Our conclusion in Carman that retirement obligations constituted "indebtedness" was expressly based on article XIII A's failure to articulate a distinction for retirement contributions. (Carman, supra, 31 Cal.3d at p. 330.) In contrast, article XIII B does articulate a distinction between retirement contributions and other obligations. (§ 5.) Article XIII B also provides that its definition of "debt service" applies only in the context of that article and is subject to exceptions as "expressly provided" therein. (§ 8.) As already discussed, the specific provision governing retirement contributions (§ 5) must be viewed as an **[2 Cal.4th 579]** exception to the more general provisions governing debt service (§§ 8(g), 9(a)).

The Board's argument for "consistent" interpretations of articles XIII A and XIII B is not based solely on similarities in language. It would also be "meaningless," according to the Board, to permit the City to raise taxes to satisfy retirement obligations while denying it the power to spend the resulting revenues. However, the argument misconceives the purpose of subjecting retirement contributions to the overall spending limit. The purpose is not to prevent the City from satisfying its contractual obligations but simply to control the overall rate of growth in appropriations, if necessary by reducing other spending. Indeed, each year's spending limit reflects the fact that the City made retirement contributions in the prior year and the assumption that it will continue to do so. (See §§ 1, 5.) In contrast, to exclude a category of appropriations from the spending limit would in effect remove that category from the budget, permitting both it and overall spending to increase faster than the rate that the voters adopted as the measure of acceptable growth. (§ 1.)

The relationship between the Carman rule and the treatment of retirement contributions under article XIII B must be understood in this light. Carman permits the City to pass through directly to the voters the cost of any retirement contributions, regardless of the maximum tax rate set out in article XIII A. Unless such contributions are subject to the spending limit set out in article XIII B, as the voters expressly provided (§ 5), one of the largest categories of local governmental spending fn. 8 would be completely insulated from fiscal control. The result would be a material impairment of article XIII B's effectiveness in limiting the overall growth of appropriations.

The Board finds support for its contrary interpretation of article XIII B in a remark by the Legislative Analyst. In his report on the proposed measure, the Legislative Analyst concluded that "a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal 'indebtedness' under this ballot measure." (Ballot Pamp., Special Statewide Elec. (Nov. 6, 1979) p. 20.) [3a] In this case, as always, we consider the Legislative Analyst's views because we assume the voters considered them along with the other materials in the ballot pamphlet. (See, e.g., Raven v. Deukmejian (1990) 52 Cal.3d 336, 349 [276 Cal.Rptr. 326, 801 P.2d 1077].) **[2 Cal.4th 580]**

Nevertheless, a nonjudicial interpretation of the Constitution is entitled only to as much deference as its logic and persuasiveness demand. [1c] In this case, the Legislative Analyst's views are not persuasive because there is no indication that they take into account the most directly relevant provision, section 5.

[3b] The Legislative Analyst's comment regarding the treatment of retirement contributions is based on a memorandum to him from the Legislative Counsel dated June 15, 1979. In the memorandum, the Legislative Counsel concludes that "any legally binding obligation existing or legally authorized as of January 1, 1979, would be considered as 'indebtedness' for purposes of subdivision (g) of Section 8" and that "such a legally binding obligation would include the unfunded liability of a public employee retirement system." However, the memorandum does not mention or consider the effect of section 5, which expressly contradicts the memorandum's conclusion. In the Ballot Pamphlet, the Legislative Analyst merely repeated the Legislative Counsel's conclusion, again without any consideration of section 5.

The Legislative Analyst's comments, like other materials presented to the voters, "may be helpful but are not conclusive in determining the probable meaning of initiative language." (Carman, supra, 31 Cal.3d at p. 330.) Thus, when other statements in the election materials contradict the Legislative Analyst's comments we do not automatically assume that the latter accurately reflects the voters' understanding. (Id., at pp. 330- 331.) In Carman, for example, the official title and summary of Proposition 13 led us to reject the Legislative Analyst's conclusion that the measure's exemption from the maximum tax rate for voter-approved indebtedness applied only to bonded debt. (Ibid.) [1d] The case for rejecting the Legislative Analyst's views is even more compelling here, where the contradiction is in the language of the initiative. (§ 5.) Under circumstances such as these, to prefer an "extrinsic source" over "a clear statement in the Constitution itself" would be "a strained approach to constitutional analysis." (Cf. Delaney v. Superior Court (1990) 50 Cal.3d 785, 802-803 [268 Cal.Rptr. 753, 789 P.2d 934] [rejecting, as contrary to the language of the proposed measure, the Legislative Analyst's inference that the newsperson's shield law would apply only to confidential information].)

[4a] The Board's final argument for interpreting article XIII B to exclude retirement contributions is that such an interpretation will "eliminate doubts" as to the measure's constitutionality. According to the Board, to restrict the City's spending power impairs the security of its pension obligations and, thus, constitutes a "potential" violation of the contract clause of **[2 Cal.4th 581]** the federal Constitution. fn. 9 The Board expressly disclaims any intent to assert a cause of action or to raise an affirmative defense under the clause. "Rather," to quote the Board's brief, "the City has raised the potential impairment of contracts to explain and support its choice among competing interpretations of Article XIII B."

Taxpayers contend that the Board lacks standing to make the constitutional argument for two reasons. First, as a creation of the state, the City may not invoke the contract clause "in opposition to the will of [its] creator." (Coleman v. Miller (1939) 307 U.S. 433, 441 [83 L.Ed. 1385, 1390, 59 S.Ct. 972, 122 A.L.R. 695]; see also Williams v. Mayor (1933) 289 U.S. 36, 40 [77 L.Ed. 1015, 1020, 53 S.Ct. 431]; State of California v. Marin Mun. W. Dist. (1941) 17 Cal.2d 699, 705 [111 P.2d 651]; Cox Cable San Diego, Inc. v. City of San Diego (1987) 188 Cal.App.3d 952, 967 [233 Cal.Rptr. 735].) Second, any impairment of the City's retirement obligations would cause actual harm only to those persons entitled to receive retirement benefits. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 242 [149 Cal.Rptr. 239, 583 P.2d 1281] [in dictum].)

These arguments about the Board's standing are irrelevant because the Board is not challenging article XIII B's validity under the contract clause. Instead, we are called upon to decide what the article means. [5] In doing so, we assume that the voters intended the measure to be valid and construe it to avoid "serious" doubts as to its constitutionality if that can be done "without doing violence to the reasonable meaning of the language." (Miller v. Municipal Court (1943) 22 Cal.2d 818, 828 [142 P.2d 297]; see also Gollust v. Mendell (1991) ___ U.S. ___ [115 L.Ed.2d 109, 111 S.Ct. 2173, 2181]; Crowell v. Benson (1932) 285 U.S. 22, 62 [76 L.Ed. 598, 619, 52 S.Ct. 285].) [4b] These well established rules provide us with ample warrant to consider the Board's argument about how the contract clause should affect our interpretation of article XIII B.

We turn, then, to the argument's merits. In essence, the Board contends that the City's power to spend is the security for its pension obligations and that any restriction of the power ipso facto reduces the value of its employees' pension rights. This reduction in value, according to the Board, constitutes a "potential" impairment of the City's contractual obligations.

To establish this point on summary judgment, the Board submitted declarations in which experts applied techniques of financial analysis to predict **[2 Cal.4th 582]** the effect of a spending limit on the hypothetical market value of an employee's interest in retirement benefits. The trial court sustained objections to these declarations on relevance grounds. Even without such declarations, however, we may assume for argument's sake, as do the parties, that a spending limit has at least a theoretical effect on the security of the City's retirement obligations. In the Board's view, "an impairment occurs when the State changes the law so as to erode the ability of the City to perform, whether a breach necessarily follows or not." fn. 10

The Board relies, by analogy, on cases in which the high court refused to enforce state laws that purported to disable cities from levying taxes to repay municipal bonds. (See, e.g., Wolff v. New Orleans (1881) 103 U.S. 358, 365-369 [26 L.Ed. 395, 398-399]; Von Hoffman v. City of Quincy (1867) 71 U.S. 535, 554-555 [18 L.Ed. 403, 410].) These cases stand for the proposition that a state may not authorize a city to contract and then restrict its taxing power so that it cannot fulfill its obligations. fn. 11 (Wolff v. New Orleans, supra, 103 U.S. at pp. 367-369 [26 L.Ed. at pp. 399-400]; Von Hoffman v. City of Quincy, supra, 71 U.S. at pp. 554-555 [18 L.Ed. at p.

410]; cf. United States Trust Co. v. New Jersey (1977) 431 U.S. 1, 24, fn. 22 [52 L.Ed.2d 92, 111, 97 S.Ct. 1505].) Underlying such decisions, at least implicitly, is the idea that "[t]he principal asset of a municipality is its taxing power" and that "[a]n unsecured municipal security is therefore merely a draft on the good faith of a municipality in exercising its taxing power." (Faitoute Co. v. Asbury Park (1942) 316 U.S. 502, 509 [86 L.Ed. 1629, 1635, 62 S.Ct. 1129]; cf. Von Hoffman v. City of Quincy, supra, 71 U.S. at p. 555 [18 L.Ed. at p. 410].)

By analogy to these cases, the Board argues that the contract clause would also invalidate a state law purporting to disable a municipality from spending money to satisfy its contractual obligations. While there is support for the proposition, the relevant cases involve statutes specifically enacted for the purpose of repudiating particular contractual duties rather than laws imposing budgetary restrictions. In United States Trust Co. v. New Jersey (supra, 431 U.S. 1, 17-28 [52 L.Ed.2d 92, 106-113]) the high court declared unenforceable a statute intended to abrogate a port authority's express covenant to its bondholders not to make unauthorized expenditures out of revenues designated for repayment of the bonds. Similarly, in Valdes v. Cory ((1983) 139 Cal.App.3d 773, 789-791 [189 Cal.Rptr. 212]), the Court of Appeal ordered the state Controller and other public employers to make **[2 Cal.4th 583]** periodic payments to the Public Employees' Retirement Fund despite legislation intended to abrogate the underlying contractual and statutory duties.

Unlike the laws at issue in the cited cases, article XIII B does not repudiate, or even modify, any contractual right or obligation. fn. 12 Article XIII B can more accurately be said to bring retirement obligations under the umbrella of an overall spending limit, but even this limited statement is an oversimplification. In fact, other provisions of the law provide substantial protection for retirement obligations, even in the face of budgetary competition. Specifically, the City has mandatory duties to make periodic payments to its retirement funds in amounts sufficient to keep the funds actuarially sound (Gov. Code, §§ 20741 et seq. [contributions to Public Employees' Retirement Fund], 45341 et seq. [contributions to single-employer plans]; see generally Valdes v. Cory, supra, 139 Cal.App.3d 773); and article XIII A permits the City to recover the cost of such contributions without regard to the constitutional maximum tax rate. (See Carman, supra, 31 Cal.3d 318.)

Nor does article XIII B provide a strong incentive for a governmental entity to attempt to avoid its retirement obligations. This is because each year's spending limit reflects the prior year's retirement contributions and other appropriations, adjusted to account for the change in population and the cost of living. fn. 13 (§§ 1, 5.) Thus, the City's high retirement costs in the base year have been reflected in subsequent years by higher and higher adjusted spending limits. Under section 11, this court's determination that retirement contributions are subject to limitation will entail a corresponding increase in the City's base-year and current spending limits. Moreover, if the voters wish to increase discretionary spending in other areas they may do so by the vote of a simple majority. (§ 4.) We note that as of March 1990, voters in 117 jurisdictions had considered proposals to increase spending limits to permit the appropriation of revenues already collected. Of these proposals, 106 were approved. (Cal. Leg., 1990 Revenue and Taxation Reference Book, at p. 196 (1990).)

While it can be argued that any budget entails a theoretical reduction in the security of the budgeted obligations, more is required to establish a serious doubt as to a law's validity under the contract clause. Particularly in **[2 Cal.4th 584]** this area, " '[t]he Constitution is "intended to preserve practical and substantial rights, not to maintain theories" [citation].' " (City of El Paso v. Simmon (1965) 379 U.S. 497, 515 [13 L.Ed.2d 446, 458, 85 S.Ct. 577], quoting Faitoute Co. v. City of Asbury Park, supra, 316 U.S. at p. 514 [86 L.Ed. at p. 1637].) While the contract clause "appears literally to proscribe 'any' impairment ... 'the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.' " (United States Trust Co. v. New Jersey, supra, 431 U.S. at p. 21 [52 L.Ed. 2d at p. 109], quoting Home Building & Loan Assn. v. Blaisdell (1934) 290 U.S. 398, 428 [78 L.Ed. 413, 423, 54 S.Ct. 231, 88 A.L.R. 1481].)

The threshold inquiry under the contract clause is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." (Allied Structural Steel Co. v. Spannaus (1978) 438 U.S. 234, 2441 [57 L.Ed.2d 727, 736, 98 S.Ct. 2716].) Viewing article XIII B with reference to the whole system of law of which it is a part (cf. Bowland v. Municipal Court (1976) 18 Cal.3d 479, 489 [134 Cal.Rptr. 630, 556 P.2d 1081]), it cannot fairly be said that article XIII B has operated as a substantial impairment. Its effect, rather, has been to require governmental entities to reduce the overall growth in appropriations by reducing expenditures not required by law, except where the voters have chosen to increase the spending limit. A governmental entity that decided to make discretionary appropriations in other areas rather than legally required contributions to retirement funds might well thereby violate the contract clause (Valdes v. Cory, supra, 139 Cal.App.3d 773), but it would not be acting under the aegis or compulsion of article XIII B.

While we must construe a provision to avoid serious doubts as to its constitutionality, the "avoidance of a difficulty will not be pressed to the point of disingenuous evasion." (Moore Ice Cream Co. v. Rose (1933) 289 U.S. 373, 379 [77 L.Ed. 1265, 1270, 53 S.Ct. 620].) The manifest purpose of Proposition 4 was to limit the overall growth of governmental appropriations. To remove from the spending limit such a large category of appropriations as retirement contributions would do violence to that goal. Under these circumstances, the Board's constitutional arguments do not justify a departure from the plain statement that contributions to retirement funds are subject to limitation.

Disposition

The decision of the Court of Appeal is reversed.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred. **[2 Cal.4th 585]**

MOSK, J.

I dissent. The majority's holding that retirement contributions are subject to the limitation of section 1 of article XIII B of the California Constitution is based entirely on a literal reading of the language of section 5 of article XIII B (hereafter section 5) and the rule of statutory construction that a specific provision relating to a particular subject will govern over a more general provision relating to the same subject. That is, even though retirement contributions may be classified as an indebtedness under subdivision (a) of section 9 of article XIII B (hereafter section 9(a)), the majority conclude that section 5 must prevail because it refers specifically to contributions to retirement funds. In the view of the majority, the section 5 inclusion of retirement fund contributions is an exception to the general provision of section 9(a).

This holding is not only in violation of well-established rules of statutory construction, but is contrary to the intent of the voters in adopting article XIII B of the state Constitution (hereafter article XIII B). It is clear from the legislative history of that provision that the voters intended to exclude retirement contributions as an indebtedness under section 9(a). They were specifically told in the ballot pamphlet analysis by the Legislative Analyst that the government's liability to make payments into a retirement fund was an "indebtedness" under article XIII B. This statement is a persuasive indication of the intent of the voters since, as the majority recognize, it must be assumed that they considered it in voting on the measure.

The majority reject the conclusion that logically follows from the Legislative Analyst's statement. They cast doubt on its correctness because it is a "nonjudicial interpretation" of the language of article XIII B. But this may be said of any statement in the ballot pamphlet. In attempting to discern the intent of the voters, the legal persuasiveness of the analysis is not the standard; the purpose of consulting the ballot pamphlet is to determine what the voters intended, assuming, as we must, that they considered the statements made therein. The majority find the Legislative Analyst's conclusion to be unpersuasive because "there is no indication" that he considered the language of section 5 in making his analysis. But there is no reason to suppose that he informed the voters that pension contributions are an indebtedness under article XIII B without considering the other provisions of the article, including section 5. The issue is not whether he was correct in his analysis of the measure in the hindsight of a court considering the issue more than a decade after it was adopted, but the understanding of the voters as to the meaning of these provisions.

Another reason given by the majority for rejecting the Legislative Analyst's conclusion is that it contradicts section 5. But this is circular reasoning, for it assumes the answer to the question at issue. The problem posed by **[2 Cal.4th 586]** this case is whether pension contributions are excluded from the spending limitation as an indebtedness under section 9(a), or whether they are included in view of the language of section 5. To conclude, as do the majority, that contributions are not an indebtedness because such a determination would be contrary to the meaning of section 5, presupposes that section 5 prevails over section 9(a). That, of course, is the very issue under consideration.

In sum, there is no escaping the fact that the voters were expressly told by the Legislative Analyst that pension contributions were exempt from the spending limitation under article XIII B. The majority, instead of accepting the fact that this was the voters' understanding and attempting to harmonize sections 5 and 9(a) in accordance with that understanding, hold that section 5 dominates, thereby disregarding the intent of the electorate.

The result reached by the majority is particularly inappropriate in the present case because sections 5 and 9(a) may be harmonized so as to give effect to both provisions. The majority disregard a rule of construction critical in the present context, i.e., that a court must attempt to reconcile provisions relating to the same subject matter to the extent possible, so as to avoid substantially nullifying the effect of any part of an enactment. (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299]; County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202]; People v. Craft (1986) 41 Cal.3d 554, 560 [224 Cal.Rptr. 626, 715 P.2d 585].) The holding that section 5 is an exception to section 9(a) results in practically nullifying the effect of the latter provision. According to the majority's own analysis, retirement contributions constitute "one of the largest categories of local governmental spending." Such contributions are undoubtedly indebtedness of the city, a proposition the majority accept, at least for the sake of argument. To assume that the electorate chose in section 9(a) to except all indebtedness existing on January 1, 1979, from the spending limitation, fn. 1 but not to include within such indebtedness "one of the largest categories of governmental spending," results in a significant abrogation of section 9(a).

This consequence is particularly unwarranted in the present case because sections 5 and 9(a) may be reconciled so as to give effect to both provisions. That is, section 5 may be construed as referring to pension funds established **[2 Cal.4th 587]** after January 1, 1979. Section 9(a), on the other hand, applies to funds established prior to that date to fulfill the city's obligations to meet an "indebtedness." This construction is consistent with both the language of section 5-it provides that a government entity "may establish" such funds

as it "shall deem reasonable and proper," implying establishment of funds at a future time-and the general rule that constitutional provisions are applied prospectively. (In re Marriage of Bouquet (1976) 16 Cal.3d 583, 587 [128 Cal.Rptr. 427, 546 P.2d 1371]; Mannheim v. Superior Court (1970) 3 Cal.3d 678, 686 [91 Cal.Rptr. 585, 478 P.2d 17].)

The majority reject an alternate means offered by the Board of Supervisors for the City and County of San Francisco (board) to harmonize the two sections. The board asserts that if the government is required by contract to satisfy its obligation to pay pensions by making appropriations to a fund for that purpose, this constitutes a debt, not subject to the spending limitation under section 9(a). But if no such contractual requirement exists, and the government chooses as a matter of discretion to establish a pension fund as a means of accruing a reserve for the payment of pensions, then this is not an indebtedness, and the contributions to such a fund would be subject to the limitation.

The majority respond to this suggested means of harmonizing the two sections by asserting that section 5 creates an exception to section 9(a), and therefore there is no reason to attempt to harmonize the two sections. As discussed above, however, the view that section 5 is an exception to section 9(a) is untenable because it results in practically negating the effect of the latter provision.

The second answer to the board's theory offered by the majority is that the city could evade section 5 by "satisfying its contractual obligations." But this is exactly what section 9(a) requires, if such obligations are indebtedness incurred before January 1, 1979. Contrary to the majority, the board's suggestion would not nullify the express declaration in section 5 that retirement contributions are subject to limitation, for contributions to a pension fund not required to be established by contract would be included in the limitation.

Finally, in my view Carman v. Alvord (1982) 31 Cal.3d 318 [182 Cal.Rptr. 506, 644 P.2d 192] (Carman), supports the conclusion that retirement contributions are an indebtedness under section 9(a). Carman involved the construction of article XIII A of the California Constitution (hereafter article XIII A). Subdivision (b) of section 1 of article XIII A (hereafter subdivision **[2 Cal.4th 588]** (b)) exempts from the 1 percent limit on ad valorem taxes on real property imposed by section 1, subdivision (a) of the article "taxes to pay the interest and redemption charges on ... any indebtedness approved by the voters prior to January 1, 1978 ...." The voters of the City of San Gabriel had, many years prior to 1978, approved a measure authorizing the city to levy a tax to fund the city's employee retirement system. After article XIII A became effective, the city levied a special tax for that purpose. The plaintiff filed an action alleging that the tax was unconstitutional because it exceeded the 1 percent limit on ad valorem real property taxes.

We held that an employer's duty to pay pensions promised and earned on terms substantially equivalent to those offered when the employee entered public service was a vested contractual right. Our opinion reasoned that the term "any indebtedness," as used in subdivision (b), includes obligations arising out of a city's pension plan, and the term "interest and redemption charges" refers to "the sums ... necessary to avoid default on obligations to pay money, including those for pensions." (Carman, supra, 31 Cal.3d at p. 328; accord, City of Fresno v. Superior Court (1984) 156 Cal.App.3d 1137, 1145-1146 [202 Cal.Rptr. 313]; City of Watsonville v. Merrill (1982) 137 Cal.App.3d 185, 193 [186 Cal.Rptr. 857].)

The language of subdivision (b) is similar to that of sections 9(a) and 8(g) of article XIII B. Unless there is some persuasive reason to interpret the provisions in the two articles differently, they should be construed as having the same meaning. Nevertheless the majority assert that the term "indebtedness" has a different meaning in the two provisions because article XIII A does not have a provision similar to section 5, making contributions to retirement funds subject to the spending limitation.

But the majority fail to point to any substantive difference in a city's obligations under article XIII A and article XIII B which would justify the conclusion that the duty to pay pensions or to fund a pension system for that purpose constitutes an "indebtedness" under one but not the other. Even if the meaning of the term "indebtedness" may vary, depending on the context in which it is used, the meaning attributed to it must relate to the nature of the obligation involved. Carman points out that the term "indebtedness" encompasses " 'obligations which are yet to become due as [well as] those which are already matured' " (31 Cal.3d at p. 327), and in support of its conclusion it relies on a case holding that the term "indebtedness" means "a complete and absolute liability to the extent that payment must ultimately be made ...." (County of Shasta v. County of Trinity (1980) 106 Cal.App.3d 30, 38 [165 Cal.Rptr. 18].) There can be no question that the obligation to **[2 Cal.4th 589]** pay pensions comes within these definitions. It is, therefore, an indebtedness, and is exempt from the spending limitation.

Moreover, as the Court of Appeal noted, articles XIII A and XIII B "are complementary fiscal measures designed to limit the government's ability to raise and spend tax revenues." This view is subscribed to by this court. (City of Sacramento v. State of California (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Since, as we held in Carman, a government entity may impose a tax to fund pension payments without regard to the tax limitation of article XIII A, it is anomalous to hold, as do the majority, that the voters intended to prohibit the use of the funds generated for this purpose without a compensating reduction in other government expenditures.

I would affirm the judgment of the Court of Appeal.

KENNARD, J.

I dissent. Article XIII B of the California Constitution (hereafter article XIII B) limits state and local governments' ability to spend tax revenues. In general, a public entity can spend no more than it spent the year before, adjusted for changes in population and the cost of living. This limitation does not apply to all government spending, but only to spending falling within the constitutional definition of "appropriations subject to limitation." (Art. XIII B, § 1.) The majority holds that all contributions that a public entity makes to a retirement fund for its employees are "appropriations subject to limitation" and therefore subject to the article XIII B limit. This holding is based on a superficial analysis of the relevant constitutional provisions. A more complete analysis reveals that contributions to employee retirement funds are exempt from the article XIII B limit when the public entity makes them under an obligation that existed on January 1, 1979.

A provision of article XIII B exempts all "debt service" appropriations from the spending limit. (Art. XIII B, § 9, subd. (a).) In this context, "debt service" is defined as "appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose." (Id., § 8, subd. (g).)

A public entity's mandatory contributions to an employee retirement fund constitute debt service. This court so held in Carman v. Alvord (1982) 31 Cal.3d 318, 327-328 [182 Cal.Rptr. 506, 644 P.2d 192]. Although in that case we construed a provision of article XIII A of the California Constitution, rather than the "debt service" provisions of article XIII B, these two articles **[2 Cal.4th 590]** are closely related and the language of the relevant provisions is virtually identical. fn. 1 There is no sound reason to conclude that the electorate intended to give the same words different meanings in these related and complementary parts of the state Constitution. Accordingly, mandatory contributions to an employee retirement fund are exempt from the article XIII B spending limit as "debt service" if the contributions are made under an obligation existing on January 1, 1979.

The conclusion that mandatory payments to pre-1979 retirement funds are exempt as debt service is fortified by the analysis of the Legislative Analyst included in the voter pamphlet for the election at which article XIII B was enacted. In relevant part, it read: "[A] local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal 'indebtedness' under this ballot measure." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 20, italics added.) Stated more simply, payments to existing employee retirement funds will be exempt from the article XIII B spending limit as debt service. The majority concedes this is what the Legislative Analyst's words mean, but it asserts that the Legislative Analyst was mistaken. On the contrary, the Legislative Analyst's conclusion is the most reasonable interpretation of article XIII B's language. Moreover, the Legislative Analyst's words are persuasive evidence of the voters' intent in enacting article XIII B because the voters had those words before them, as part of the voters' pamphlet, when they were deciding how to vote, and none of the other statements in the pamphlet disputed this interpretation.

The majority relies on a provision of article XIII B that expressly refers to employee retirement contributions. It states: "Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of ... such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation." (Art. XIII B, § 5, italics added.)

To be sure, this provision (hereafter section 5) necessarily contemplates that some contributions to employee retirement funds are subject to the **[2 Cal.4th 591]** article XIII B spending limit. But the majority reads it more expansively. The majority concludes that under section 5 all contributions to employee retirement funds are subject to the article XIII B spending limit, and that the debt service provisions, to the extent they provide a basis for exempting such retirement contributions from the article XIII B spending limit, must be disregarded because they fail to mention retirement fund contributions by name. This reasoning does not withstand scrutiny.

Putting aside retirement contributions, there is a need to reconcile section 5 with article XIII B's "debt service" provisions because both refer expressly to reserve and sinking funds. Section 5 includes payments to reserve and sinking funds with retirement contributions as appropriations subject to the article XIII B spending limit, whereas the "debt service" provisions state that payments to reserve and sinking funds may qualify as debt service that is exempt from the article XIII B limit. The only way to give effect to both provisions, as required by accepted rules of statutory and constitutional construction (see, e.g., County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202]), is to divide reserve and sinking funds into

two categories, so that some of the funds are subject to limitation under section 5 while others are exempt from limitation under the "debt service" provisions. This is easily done.

Section 5 speaks prospectively ("Each entity ... may establish such [reserve and sinking] ... funds ....") and therefore it is reasonably interpreted to apply only to reserve or sinking funds established after article XIII B appeared on the legal horizon. The "debt service" provisions, by contrast, look generally to the past. They provide an exemption for "indebtedness existing or legally authorized as of January 1, 1979." All payments made to reserve or sinking funds in existence on that date, and which otherwise meet the constitutional definition of "debt service," are exempt.

Thus, a fair reading of article XIII B compels the conclusion that payments to reserve and sinking funds can and must be divided between those made to funds established on or before January 1, 1979 (and therefore exempt) and those made to funds established afterward (and so not exempt). If payments to reserve and sinking funds can and must be so divided, then should not contributions to retirement funds (which are a kind of reserve fund) be divided in the same manner? The majority gives no satisfactory answer to this question.

Had section 5 been intended to establish an exception to the "debt service" exemption, as the majority concludes, it would have been logical to place **[2 Cal.4th 592]** section 5 with the "debt service" provisions, or at least to include within section 5 a reference to those provisions. Section 5's location distinctly apart from the "debt service" provisions, and the absence of any cross-reference to those provisions, suggests that section 5 was intended to serve a different purpose. That purpose is not difficult to discern. Rather than specifying whether particular funds are or are not exempt from the article XIII B limit, the primary purpose of section 5 is to explain how the article XIII B limit works when applied to those funds that are not exempt. The main point of section 5 is that in the case of various kinds of nonexempt reserve funds maintained by public entities, the article XIII B limit applies when the government makes payments into the fund, and not when payments are made out of the fund. This overriding purpose is in no way frustrated by a conclusion that certain fund payments (that is, those to service preexisting debt) are not subject to the article XIII B limit at all.

The majority relies on the rule of statutory and constitutional construction that a specific provision prevails over a general provision. But this rule applies only when the provisions at issue are inconsistent. (See Code Civ. Proc., § 1859 ["[W]hen a general and particular provision are inconsistent, the latter is paramount to the former."]; International Assn. of Fire Fighters Union v. City of Pleasanton (1976) 56 Cal.App.3d 959, 976 [129 Cal.Rptr. 68].) "Two statutes dealing with the same subject are given concurrent effect if they can be harmonized, even though one, is specific and the other general." (People v. Price (1991) 1 Cal.4th 324, 385 [3 Cal.Rptr. 106, 821 P.2d 610].) Properly read, section 5 is not inconsistent with the "debt service" provisions of article XIII B; these provisions can and should be harmonized. Under the "debt service" provisions, a public entity's contributions to an employee retirement fund are exempt from the article XIII B limit if they are made to discharge an obligation that existed on January 1, 1979; all other contributions to employee retirement funds are subject to that limit. I would so hold.

FN 1. All further references to section numbers, unless otherwise noted, are to sections of article XIII B of the California Constitution.

FN 2. The Board also excluded appropriations for certain other employee benefits, including contributions to the health service and social security systems. Only the treatment of retirement contributions is at issue in this case.

FN 3. The $40,336,171 amount represents the effect of excluding "mandatory employee benefits" (see fn. 2, ante), which include retirement contributions, from both the base-year limit and the 1988-1989 limit. In other words, $40,336,171 is the amount by which the City's appropriations for "mandatory employee benefits" grew, between the base year and 1988-1989, in excess of the permissible rate of growth set out article XIII B.

FN 4. Section 5 provides: "Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation." (Italics added.)

FN 5. Section 9, subdivision (a) (hereafter section 9(a)), provides: " 'Appropriations subject to limitation' ... do not include ... Appropriations for debt service." (Italics added.)

Section 8, subdivision (g) (hereafter section 8(g)), provides: " 'Debt service' means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose." (Italics added.)

FN 6. The Legislature has similarly concluded that the state's retirement contributions are subject to limitation. (See 1991-1992 Budget, Stats. 1991, ch. 118, § 3.60, subd. (c).)

FN 7. Specifically, the maximum tax rate does not apply "to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition." (Cal. Const., art. XIII A, § 1, subd. (b).)

FN 8. The City, in its Comprehensive Annual Financial Report for the year ended June 30, 1988, reported retirement contributions of approximately $240 million. The City's appropriations limit for that year, which excluded retirement contributions, was approximately $700 million.

FN 9. "No state shall ... pass any ... law impairing the obligation of contracts ...." (U.S. Const., art. I, § 10, cl. 1.)

FN 10. Because the Board's argument is so broad, and because the Board expressly disclaims any intent to assert a cause of action or defense under the contract clause, there is no need to remand for additional evidentiary proceedings.

FN 11. We rejected a similar challenge to article XIII A as premature in Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d at pages 238-242.

FN 12. For this reason, the rule that " 'alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation' " (Miller v. State of California (1977) 18 Cal.3d 808, 816 [135 Cal.Rptr. 386, 557 P.2d 970], quoting Allen v. City of Long Beach (1955) 45 Cal.2d 128, 131 [287 P.2d 765]), has no bearing on this case.

FN 13. Proposition 111 liberalized the definition of "cost of living," thus permitting greater annual increases to the spending limit. (See § 8, subd. (e)(2), added by initiative measure in Primary Elec. (June 5, 1990).)

FN 1. Under subdivision (g) of section 8 of article XIII B (hereafter section 8(g)), "debt service" is defined as "appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979."

FN 1. Article XIII A limits real property taxes, but it exempts from this limit real property taxes imposed "to pay the interest and redemption charges on ... any indebtedness approved by the voters" before article XIII A was enacted. (Cal. Const., art. XIII A, § 1, subd. (b).)

Return to Top

Exhibit G

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

October 31, 2006

TO: Board of Governors
Superintendents and Presidents
Presidents, Boards of Trustees
Consultation Council
Chief Business Officials
Chief Instructional Officers
Chief Student Services Officers
Admissions Officers and Registrars
Financial Aid Officers
Community College Attorneys
Other Interested Parties

FROM: **Steven Bruckman**
Executive Vice Chancellor and General Counsel

SUBJECT: Student Fee Handbook
Legal Opinion M 06-11

Synopsis: In 2004 the Legal Affairs Division of the Chancellor's Office published the Student Fee Handbook. We have now revised and updated the Handbook to reflect the current status of the law on student fees. The new version of the Fee Handbook is attached and is also available through a direct link on the Legal Affairs portion of the Chancellor's Office website at http://www.cccco.edu/divisions/legal/StudentFeeHandbook.

The 2006 Student Fee Handbook reflects changes in student fees resulting from actions of the Legislature and the Board of Governors as well as pertinent formal or informal legal opinions issued from this office through October 31, 2006.

Because this material is lengthy and complex, we have used underlining to indicate changes in the law or our interpretation of the law. Material in boldface is pre-existing information, which we believe continues to deserve particular emphasis.

Action/Date Requested: Districts should ensure that all their fees are authorized and appropriate in amount and that students are properly informed of their rights and responsibilities regarding district fees.

cc: Management

STUDENT FEE HANDBOOK

Legal Affairs
Chancellor's Office
California Community Colleges
Sacramento, California

STUDENT FEE HANDBOOK

(A summary of advice regarding community college student fees reflecting the status of the law as of October 31, 2006)

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE

TABLE OF CONTENTS

STUDENT FEE HANDBOOK

(A summary of advice regarding community college student fees reflecting the status of the law as of October 1, 2006)[1]

Chapter 1

BASIC LAW ON STUDENT FEES

Express statutory authority is required to charge any mandatory student fee; optional student fees or charges may, under certain circumstances, be charged under the authority of the "permissive code" as set forth in section 70902(a) of the Education Code.

Under current law it is well settled that a student may only be **required** to pay a fee if a **statute requires it** (such as the enrollment fee), or if a **statute specifically authorizes a district to require it** (such as the health fee). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (see the following opinions of the California Attorney General: 60 Ops.Cal.Atty.Gen. 353 (1977), and 61 Ops.Cal.Atty.Gen. 75 (1978)). The Board of Governors has underscored this policy through the adoption of a minimum condition regulation (Cal. Code Regs., tit. 5, § 51012) that provides that a district may only establish such mandatory student fees as it is expressly authorized by law to establish.

The statutes establishing many of the mandatory fees provide for exemptions which must be granted to qualifying students. Districts lack the authority to charge mandatory fees to those students who are entitled to an exemption.

If a fee must be paid as a condition of admission to a college; or as a condition of registration, enrollment, or entry into classes; or as a condition to completing the required classroom objectives of a course, or of access to critical functions of the college (such as financial aid), the fee is mandatory (required) in nature. As noted above, mandatory fees must either be required or authorized by law.

On the other hand, if the fee is for materials, services, or privileges that will assist a student, but is not otherwise required for registration, enrollment, entry into class, or

---

[1] This Handbook represents the analysis of the State Chancellor's Office regarding the proper application of fees for community college students. This Handbook is in the nature of advice and includes no mandates. It does, however, interpret existing mandates affecting the imposition of student fees. Any district applying this advice may reasonably assume that the Chancellor's Office will not take legal enforcement action against it in the area of student fees.

Questions regarding financial aid procedures should be directed to Richard Quintana at (916) 324-0925 or Tim Bonnel, Student Financial Assistance Programs Coordinator, tbonnel@cccco.edu. Questions regarding nonresident tuition and treatment of fee revenue should be directed to Elias Regalado at (916) 445-1165. Other questions should be directed to Ginny Riegel at (415) 550-4792.

Because this material is lengthy and complex, we used underlining to indicate changes in the law, our interpretation of the law, or items that our reviews suggest should be emphasized. Material in boldface is pre-existing information, which we believe deserves particular emphasis.

completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, a district may charge a fee that is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established. Examples of optional fees are parking fees (which are also authorized in section 76360 of the Education Code), fees for a student body card, or a student activities fee.

The optional nature of a fee should be made clear to students. Only if students understand that the fee is truly optional can they make an informed decision about paying it. In addition, the processes by which students may claim exemptions from paying a mandatory fee or may decline to pay an optional fee should not be unduly burdensome to students.

If a fee is required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, it can be classified as a "course fee." If a fee is for materials, services, or privileges which will assist a student, but is not otherwise required for completion of the required classroom objectives of a course, it can be classified as a "service fee." Under this classification structure, specific legislative authority is always required to charge any course fee. A variety of service fees are specifically authorized by statute. In addition, service fees meeting the test of the permissive code may be charged under the authority of that provision.

Chapter 2

COURSE FEES

Specific statutory authority is required to charge any fee that is required for registration, enrollment, entry into class, or completion of the required objectives of a course. This Chapter addresses fees that are specifically authorized by statute.

2.1 Enrollment Fee: The basic enrollment fee is required pursuant to Education Code section 76300. The Board of Governors has adopted regulations to implement the enrollment fee. The regulations appear as sections 58500-58509 of title 5 of the California Code of Regulations. The Board's regulations on enrollment fee waivers are set forth at title 5, sections 58600 et seq.

Education Code section 76300 sets an enrollment fee of $20 per unit per semester, effective for the Spring 2006-07 term. The Board of Governors has acted to clarify that the per quarter unit fee will be $13, and that the applicable $20 per semester unit or $13 per quarter unit fees may also be applied to any intersession beginning on or after January 1, 2007. The existing $26 per semester unit fee will remain in effect for Fall 2006.

Unless expressly exempted, or entitled to a waiver, all students enrolling for college credit must pay the enrollment fee. Under title 5, section 58502, students must be charged the enrollment fee at the time of enrollment, but section 58502 also allows districts to defer collection of the enrollment fee.

Where a district permits deferral, a student who registers in advance may be dropped from a course if he or she does not pay the required enrollment fees prior to the beginning of instruction. However, in Legal Opinion O 04-14, we held that a district which defers payment of enrollment fees may not allow a student to enroll and then involuntarily drop him or her from classes after instruction has begun for failure to pay the enrollment fees. In that instance, the unpaid fees become a debt owed the district by the student and the district may rely on the remedies available under title 5, section 59410 to encourage payment of such a debt.

Although districts may defer the payment of enrollment fees, they are not authorized to implement deferral processes that could allow students to avoid payment altogether. For example, districts are not permitted to defer the payment of enrollment fees until such time as a student requests a copy of his/her transcript because the student may never make such a request. Districts that defer the payment of fees for extended periods may expose themselves to a claim that they are not charging enrollment fees as required by statute. Districts that fail to collect the enrollment fee are subject to a potential reduction of their apportionment of up to 10%.

In Legal Opinion O 93-03, we noted that a deferral policy could "provide for collection of the enrollment fee over the course of the semester or quarter (or perhaps even the academic year) for which it is charged." Because apportionment is based on a fiscal year,

and the reduction of apportionment is the remedy for failing to collect the fee, we believe that districts may, but are not required to, defer the payment of enrollment fees until the end of the fiscal year in which the debt occurred. Thus, a student who enrolled in either a fall or spring term could, at most, defer the payment of enrollment fees until the end of the corresponding fiscal year. If the student fails to fully pay the enrollment fee debt by the time set by the district, and no later than the end of the applicable fiscal year, that district can and should prohibit the student from enrolling in subsequent terms. A district that prohibits the enrollment of students who have not paid previously deferred enrollment fees would be able to demonstrate that it took reasonable steps to collect enrollment fees in accordance with section 76300.

Enrollment fees are to be waived through the Board Financial Assistance Program for students who meet income standards established under regulations of the Board of Governors, those who demonstrate financial need in accordance with the methodology set forth in federal financial aid regulations, and those who, at the time of enrollment, are recipients of benefits under the Temporary Assistance to Needy Families Program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

Generally, students must demonstrate eligibility for these Board of Governors Enrollment Fee waivers at the time of enrollment, but the Chancellor's Office takes the position that districts have the discretion to refund enrollment fees if a student later shows that he or she actually qualified for the waiver at the time of enrollment and applied for the waiver within the academic year for which the refund is sought.

Enrollment fees must also be waived for the following:

1. Dependents of certain deceased or disabled veterans and California National Guard members, and recipients of the Congressional Medal of Honor or certain children of recipients of the Congressional Medal of Honor upon certification of fee waiver eligibility by the California Department of Veterans Affairs or the National Guard Adjutant General. (Ed. Code, § 66025.3, and See 4.8, below.)

2. The surviving spouse or the child, natural or adopted, of a deceased person who met all the requirements of Education Code section 68120 regarding active law enforcement service or active fire suppression and prevention. (Ed. Code, §§ 68120 and 76300(i).)

3. The dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements for the Cal Grant A Program pursuant to Education Code section 69432.7 and either the dependent was a resident of California on September 11, 2001, or the individual killed in the attacks was a resident of California on September 11, 2001. The enrollment fee waiver continues until January 1, 2013, for a

surviving spouse, and for a surviving child, the waiver continues until the person reaches the age of 30. (Ed. Code, §§ 68121 and 76300(j)-(l).)

4. K-12 students admitted as special full-time or part-time students pursuant to Education Code section 76001 who are enrolled for college credit in community college courses are subject to the enrollment fee. However, section 76300(f) permits the district governing board to exempt special part-time students (but not special full-time students) from paying the fee. There is nothing that would preclude a K-12 student who is subject to the enrollment fee from applying for a Board of Governors Waiver. Therefore, a district that chooses to exempt only those special part-time students who do not otherwise qualify for a Board of Governors Waiver would be acting consistent with section 76300(f). Special full-time or part-time students enrolled in college courses only for high school credit are not subject to the enrollment fee, and no waiver or exemption is necessary.

5. Students enrolled in specified credit contract education courses are exempted from the enrollment fee if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting, and if these students are not included in the calculation of the FTES of that district.

Districts have no authority to charge more than the pro-rated per unit fee (currently $26 or $20 for terms or intersessions beginning on or after January 1, 2007) when they offer classes for less than a full credit. Thus, a district may not offer a class for a fractional unit and then "round up" the enrollment fee to the next nearest dollar amount if such action would exceed the maximum fee allowed for a single credit unit. For example, with the current fee of $26 per unit, a district awarding 0.4 units for a course would have to charge a student $10.40 and could not round the charge up to $11.

Districts may not charge a higher enrollment fee than is authorized by the Legislature, even if students do not object. In certain high demand fields, some students might be able and willing to pay for the full cost of instruction, but districts have no authority to charge or collect fees in excess of the statutorily authorized level.

It is a fundamental rule in the community college system that districts may not charge student fees without express statutory authority. Charging students who are willing and able to pay at a rate higher than the authorized enrollment fee would violate this fundamental rule. Districts are also prohibited from contracting with third parties through contract education arrangements where the contractor pays the district for the instruction and then charges fees to members of the public who attend the classes. That is, districts cannot indirectly charge unauthorized fees when they cannot charge those fees directly. (See Legal Opinion O 06-08)

The principle of not exceeding the authorized enrollment fee also comes into play when a fee increase is anticipated but has not yet been finalized. We have held that districts may

not **require** students to pay an increased enrollment fee prior to legislative action, even if it is very likely that a fee increase will be mandated. However, districts are not precluded from asking students if they wish to **voluntarily** pay the increased fee in anticipation of the fee increase. Allowing students to pay the higher fee in advance gives students the chance to avoid a supplemental payment process which would be required if the law does change and students are then required to pay the difference in fees.[2]
Similarly, districts may not implement the pending reduction in enrollment fees for any term prior to Spring 2007 even if the district is willing to absorb the loss of revenue.

Districts are generally not authorized to charge a lower enrollment fee than is required by statute. However, because Education Code section 76300(f) allows districts to exempt special part-time students admitted pursuant to section 76001 from the enrollment fee altogether, districts may also charge a lower enrollment fee to this category of students. Districts should be careful to treat this category of students uniformly; districts should not exempt some students in this category from all or part of the fee and require the full fee from other special part-time students.

2.2. Noncredit Courses: While the law appears to authorize fees for certain noncredit courses, districts actually have very little authority in this area. Education Code section 76385 authorizes governing boards to require students to pay a fee for noncredit courses that are not eligible for state apportionment. Noncredit courses that are eligible for state apportionment are listed in section 84757 of the Education Code. Before charging a fee for a noncredit course that is not eligible for state apportionment, a district should ensure that the fee is not expressly prohibited by section 76380 of the Education Code. Section 76380 prohibits fees for adults enrolled in English and citizenship for foreigners, a class in an elementary subject, a class designated by the governing board as a class for which

---

[2] Districts which do allow students to pay anticipated fee increases on an optional basis should do all of the following:

a. provide students a clear explanation of the circumstances related to the expected fee increase;

b. clearly and unambiguously tell students that they may elect to pay the higher fee which the State is reasonably expected to impose when they initially register or to pay the current legally authorized amount when they register and defer payment of the remainder until after the law is changed;

c. tell students that if they elect to pay the higher amount, any fees in excess of the amount legally authorized for the instruction provided will be refunded to them as expeditiously as possible, without any refund penalty, if the legislation does not take effect;

d. refrain from asking students eligible for a Board of Governors fee waiver or who are otherwise exempt from the enrollment fee to pay higher fees; and

e. avoid taking any action to disadvantage students who choose not to pay the higher fees in advance.

high school credit is granted (when the person taking the class does not have a high school diploma), and any class offered pursuant to sections 8531, 8532, 8533, and 8534 of the Education Code. Because almost all noncredit courses are offered pursuant to one of the above provisions, districts have very little authority to charge fees for noncredit courses. (See Legal Opinion E 03-26.)

Finally, it should also be noted that the fact that a district is "over cap" and is not receiving apportionment for some courses it offers does not enable the district to use the authority of section 76385 to charge students a fee for those courses.

2.3. Community Service Classes: Education Code section 78300 authorizes districts to charge students taking community service classes a fee not to exceed the cost of maintaining community service classes. Section 78300 lists areas appropriate for community service classes: civic, vocational, literacy, health, homemaking, technical and general education, including but not limited to, classes in the fields of visual and performing arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. Community service classes are intended to be self-supporting, and districts are prohibited from using state General Fund money to establish and maintain such classes. However, districts may spend district general fund money to establish and maintain community services classes, or may provide instruction for remuneration by contract or with contributions or donations from individuals or groups. Districts may also use a combination of these options to fund the classes.

A number of questions have arisen about the authority of districts to convert noncredit and/or credit offerings to community service classes. This practice is not prohibited by statute; however, it is not possible to award community college credit for taking such community service classes. To allow credit to be awarded within fee-based community service classes would be inconsistent with the enrollment fee statute. On the other hand, in Legal Opinion O 94-25 we concluded that a community college district may convert a noncredit course to a community service class unless the class is a direct and integral part of the credit program (e.g., the class is required as a prerequisite for a credit course).

2.4. Fee to Audit Courses: Education Code section 76370 authorizes districts to charge students who audit courses a fee not to exceed $15 per unit per semester. Students auditing courses are prohibited from changing their enrollment to credit status, and the attendance of auditors is not included for purposes of state apportionment.

Please note that students enrolled for credit in ten or more semester units may audit an additional three or fewer units without paying this fee. There is no authority for districts that establish this fee to allow any other type of waiver.

There is no authority for districts to create alternate options that allow students to participate in a credit course without seeking credit and then impose a fee higher than the audit fee.

2.5. Instructional Materials: Education Code section 76365 allows districts to require students to provide various types of instructional materials and enables districts to sell such materials to students who wish to purchase the required materials from the district. Generally speaking, there are strict limitations on charging a required "instructional materials fee."

Section 76365 has been implemented by regulations of the Board of Governors found in sections 59400-59408 of title 5 of the California Code of Regulations. The law provides that students can only be required to provide materials which are of continuing value to the student outside of the classroom setting. The Chancellor's Office has determined that such materials include, but are not limited to textbooks, tools, equipment, clothing, and those materials which are necessary for a student's vocational training and employment. The regulations further provide that "instructional and other materials" means tangible personal property that is owned or primarily controlled by the student. The definition of "tangible personal property" has been expanded to include electronic data that the student may access during the class and store for personal use after the class in a manner comparable to the use available during the class (see title 5, § 59402). These title 5 sections specifically apply to both credit and noncredit courses, and the requirements would apply to credit and noncredit courses offered through a contract education mechanism. (See Legal Opinion E 03-25.)

"Required instructional and other materials" are materials which the student must procure or possess as a condition of registration, enrollment, or entry into a class; or any material which is necessary to achieve the required objectives of a course.

Finally, the regulations specify that the material must not be solely or exclusively available from the district. A material will not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost, and there are health and safety reasons for the district being the provider, or if the district is providing the material cheaper than it is available elsewhere.

It is important to remember that these regulations only apply to materials that are required as a condition of registration, enrollment, etc. If a material is helpful to students, but is not required, then it may be sold to students under the authority of the permissive code. Material that is optional need not be tangible personal property; it need not be of continuing value outside the classroom setting; and it can be available exclusively from the district so long as it is not needed by the student to achieve the required objectives of the course or as a condition of enrollment. Questions have arisen about the propriety of charging an instructional materials fee to students who audit courses. As a practical matter, an auditing student might not participate in a course in the same way as a regular student, but may be more of an observer. In that case, the instructional materials would not be necessary to achieve the objectives of the course. Auditing students should be advised that they must provide the required instructional materials if they wish to participate in that portion of a course for which the materials are required. Districts should not permit auditing students to use instructional materials paid for by students

who are not auditing the class such that auditing students are effectively subsidized by regular students.

Education Code sections 81457 and 81458 authorize districts to sell to students those materials necessary for the making of articles by persons in the class. The materials are to be sold to the student at the cost to the district, and the article becomes the property of the student.

Please note that districts may not charge an across-the-board or per unit instructional materials fee (see Legal Opinion O 93-12). Where specific course objectives for independent study have not been finalized at the point students register for the course, instructional materials fees generally cannot be assessed at registration because fees must be directly related to course objectives. Students may only be required to pay for instructional materials under the circumstances described above.

The following questions should be answered any time a district wishes to require students to provide materials:

1. What tangible personal property (material) does the student need? If a fee is charged, what does the student get for the fee?

2. How does this material relate to the required objectives of the course? The district should be able to identify a specific course objective that cannot be met but for the use of the materials at issue.

3. Does the material have continuing value outside the classroom?

4. Is the amount of materials the students must supply, or the amount that they receive in exchange for the fee that is charged, consistent with the amount of material necessary to meet the required objectives of the course?

5. If the district charges a fee rather than having students furnish the materials, why do the students have to pay a fee to the district rather than supply the materials themselves? Is the district the only source of the materials? If not, is there some health or safety reason for the district to supply the materials? If not, will the district supply the material more cheaply than the material can be obtained elsewhere AND at the District's actual cost?

Districts should periodically and systematically review the instructional materials they require students to provide, and the instructional materials fees they charge, to ensure that all the standards are met. A review of one college by the Chancellor's Office revealed fees collected from students in one small curricular area amounting to twice the college's actual costs. Such discrepancies may be attributable to fluctuating costs, but whatever

the cause, they point to the need for on-going monitoring of required materials and materials fees.

Districts should carefully review the fees described in their catalogs, class schedules, and their websites to ensure that optional fees are clearly described as optional and cannot be mistaken for required charges. Students should be clearly advised when they have the option of providing their own materials or of purchasing those materials at the listed price from the district. When optional fees are not properly described, the appearance is that the district may be charging an impermissible mandatory fee.

When students have the option of providing necessary materials, districts should provide readily available information about what materials are required so that students can make an informed choice as to whether to provide their own materials or to purchase them from the district. Districts should establish a workable mechanism to notify students of the materials they must provide to ensure that students have a real opportunity to provide the materials themselves and are not forced to pay a fee to the district merely because they did not know what materials were needed.

Districts should also review their refund policies related to instructional materials fees. Students may have already paid instructional materials fees when they find they must withdraw from a class. Unless a district refunds an amount corresponding to the tangible personal property that was not provided prior to an early withdrawal, or provides the material to the student, the appearance is that the district is retaining the fee as well as the materials for which the fee was paid.

Appendix A contains a detailed analysis of the kinds of materials that may and may not be required under the instructional materials regulations.

2.6. Nonresident Tuition: Section 76140 requires districts to charge a nonresident tuition fee in the event it chooses to admit nonresidents.[3] The statute provides various methods/options for computing the nonresident tuition fee.

A special option exists for districts that are in close proximity to other states. Section 76140 provides that any district that has fewer than 1500 FTES and whose boundary is within 10 miles of another state that has an interstate attendance ("reciprocity") agreement with California may exempt students from that state from paying nonresident

---

[3] For holders of a TN/TD visa created for business persons and professionals who are citizens of Canada and Mexico under the North American Free Trade Agreement (NAFTA), in Carlson v. Trustees, (1999) USDC Case No. 98-8152 R (Ex), the federal district court found that: 1) The holder of a TN/TD does not have the legal capacity to possess the requisite intent to establish domicile and thus cannot be granted residency status in California; and 2) NAFTA did not intend to allow individuals entering the U.S. under its provisions the ability to establish domicile in the U.S.A. Dismissing the plaintiff's case in its entirety, the court confirmed that opinion as a matter of law on May 24, 1999. Districts were notified shortly thereafter to follow the court's ruling in Carlson and deny California residency for purposes of tuition to students with NAFTA TN/TD visas as a matter of law.

tuition. The attendance of such students may be claimed for apportionment, but if so, they must pay a fee of $42 per unit.

Section 76140 also provides that similarly situated districts that have more than 1,500, but less than 3,001, FTES may exempt no more than 100 FTES per year from any bordering state with which California has an interstate attendance agreement and claim the attendance of those students for state apportionment. Again, any students who are claimed for apportionment purposes must pay the $42 per unit fee. A district may, but is not required to, allow students beyond the 100 FTES limit to benefit from the interstate attendance agreement, but in no case may the district claim the attendance of those additional students for state apportionment purposes. If a district does decide to exempt students beyond the 100 FTES limit from the payment of nonresident tuition, we believe the district may, but is not required to, charge those students the lower $42 fee.

The position of the Chancellor's Office is that the $42 fee specified in section 76140(k) is intended to be a fee in lieu of the enrollment fee required by section 76300. Therefore, students charged this fee should not also be required to pay the enrollment fee.

Questions have been raised about charging tuition to students enrolled in distance education courses. At this time, the law does not exempt nonresident students enrolled in distance education courses from paying nonresident tuition. Students enrolled in distance education courses are subject to the same residency determination requirements and exemptions as traditional students. If a student enrolling in a distance education course is deemed to be a nonresident, that student is subject to nonresident tuition. This conclusion is discussed in detail in Legal Opinion L 01-19.

Districts are authorized (but not required) to exempt all nonresidents who take six or fewer units. Districts are also authorized to exempt, on an individual basis, and based on demonstrated financial need, nonresidents who are both citizens and residents of foreign countries. No more than 10% of nonresident foreign students attending the district may be so exempted.

There is no authority to charge a higher nonresident tuition fee to nonresidents who are not citizens of the United States. If the proper procedures are followed and required exemptions are provided, districts may charge students who are citizens and residents of foreign countries capital outlay fees and/or application processing fees in addition to nonresident tuition. (Please see sections 3.9 and 3.10 below.) However, higher nonresident tuition is not authorized.

Districts are required to exempt from nonresident tuition various groups of students including:[4]

1. Students taking noncredit classes. (Ed. Code, § 76380.)

[4] The listing of exemptions is not intended to be comprehensive, and districts should ensure that their exemption processes include all those students who are entitled to an exemption or waiver.

2. Apprentices taking classes of related and supplemental instruction. (Ed. Code, § 76350 and Lab. Code § 3074.)

3. Students who are members of the armed forces of the United States stationed in this state on active duty, except those assigned to California for educational purposes. (Ed. Code, § 68075.)[5]

4. A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces. (Ed. Code, § 68074.) Effective January 1, 2001, the exemption for undergraduate students who otherwise qualify as military dependents became on-going rather than applying only for a one-year period as previously provided.

Districts should ensure that they are applying the continued exemption described above, and that they have revised their catalogs or other information to conform with the revised statute. Districts should ensure that their practices and materials are both consistent with the current requirements.

The language of Education Code sections 68074 and 68075 grants resident classification for affected members of the armed forces of the United States and their dependents "only for the purpose of determining the amount of tuition and fees." The Chancellor's Office considers persons who are entitled to resident classification for nonresident tuition purposes under these sections to also be eligible for BOG fee waivers. However, because the resident classification is expressly provided only for the purpose of determining the amount of tuition and fees, resident classification is not provided for other purposes, such as eligibility to serve as the student member of a board of trustees, which is reserved to California residents under Education Code section 72023.5(a).

5. A parent who is a federal civil service employee and his or her natural or adopted dependent children if the parent moved to California as a result of a military realignment action that involves the relocation of at least 100 employees. (Ed. Code, § 68084.)

6. Certain job transferees. (Ed. Code, § 76143.)

7. Nonresident minor students taking a class for high school credit only.[6]

---

[5] The Chancellor's Office has determined that service in the California National Guard does not constitute being a member of the armed forces of the United States for purposes of Education Code sections 68074 and 68075.

[6] When the minor takes a class for college credit, the nonresident fee should be charged.

8. Students who attended high school in California for three or more years and graduated from a California high school or attained the equivalent thereof. In the case of a person without lawful immigration status, the student must file an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so. (Ed. Code, § 68130.5.)

Nonimmigrant alien students, as defined by federal law, are not eligible for the exemption. The law was intended to enhance access to California's colleges and universities by providing a fair tuition policy for all high school students in California. Students who are exempt from the payment of nonresident tuition under Education Code section 68130.5 may be reported for apportionment purposes by community college districts.

The Chancellor's Office has issued guidelines for the implementation of section 68130.5. The guidelines address specific issues that may arise under the section and may be useful to districts in meeting their responsibilities. The guidelines are available under the Student Services and Special Programs portion of the Chancellor's Office website at http://www.cccco.edu/divisions/ss/student_services/attachments/ab540_guide_3rd_ed.doc. The Board of Governors adopted regulations to implement section 68130.5, and those regulations appear in title 5 as sections 54045.5 and 58003.6.

9. A dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements for the Cal Grant A Program pursuant to Education Code section 69432.7 and either the dependent was a resident of California on September 11, 2001, or the individual killed in the attacks was a resident of California on September 11, 2001. If the dependent is the spouse, the exemption applies until January 1, 2013. If the dependent is a child, the exemption applies until the person reaches the age of 30. (Ed. Code, §§ 68121 and 76300(j)-(l).)

10. Students who audit a credit course. Nonresident tuition is charged based on the number of units of credit to be awarded for courses in which the student enrolls. A student who audits a course does not receive credit, so nonresident tuition does not apply.

11. For the 2005-2006 academic year, students who were enrolled in an accredited institution of higher education in Alabama, Louisiana or Mississippi and who could not continue as a direct consequence of Hurricane Katrina. (Ed. Code, § 76140(a)(3).)

Districts are also permitted, but not required, to exempt certain students from nonresident tuition. For example police academy trainees may be exempted under certain circumstances. (Ed. Code, § 76140.5.) In Legal Opinion L 89-36, we concluded that Education Code section 76140.5 could be construed to permit all types of nonresident peace officer trainees to be classified as residents. Districts should be familiar with all the available optional exemptions.

Finally, it is important to keep in mind that students who are exempted from paying nonresident tuition are still required to pay the enrollment fee unless explicitly exempted from that fee. Students charged nonresident tuition are also subject to the enrollment fee.

2.7. Athletic Insurance: Prior to January 1, 1991, Education Code section 76470 authorized districts to make medical or hospital service available through group, blanket, or individual policies to students of the district participating in athletic activities under the jurisdiction of the district. The cost of the insurance could be paid from district funds, by participating students, or by their parents or guardians. Effective January 1, 1991, section 76470 was repealed. The repealing legislation, however, explicitly stated that even though section 76470 was being repealed, districts continued to have all of the authority of that provision under the general authority of the permissive code (see also Stats. 1990, ch. 1372, § 1). It is the position of the Chancellor's Office that districts continue to have legal authority to require a student to pay a fee for insurance as a condition of enrollment or participation in an athletic program.

2.8. Cross Enrollment: The cross-enrollment program permits students who are enrolled at a community college, a campus of the California State University, or a campus of the University of California, under certain limited circumstances, to cross-enroll in one state-supported course per term at an institution from one of the other systems on a space-available basis at the discretion of the appropriate campus authorities on both campuses.[7] Such students do not need to go through the formal admissions process and are exempt from required fees, except that, effective January 1, 2004, the host campus may charge participating students an administrative fee, not to exceed an amount sufficient for the campus to recover the full amount of the administrative costs it incurs under the chapter. (Ed. Code, § 66753.)

A student is qualified to participate in the cross-enrollment program if he or she is enrolled in any campus of the California Community Colleges, the California State University, or the University of California and meets the following requirements specified in section 66752:

> a. The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term;

[7] The original "sunset" date of January 1, 2004, was deleted by Stats. 2003, c. 457.

b. The student has attained a grade point average of 2.0 for work completed;

c. The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll; and

d. The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

Students who are cross-enrolled from another segment are not required to participate in the community college matriculation program, but such students can be required to meet any course prerequisites or corequisites which have been properly established for the course.

The Chancellor's Office worked with representatives from the California State University and the University of California to establish guidelines for this program. The guidelines were issued in June of 1995 by the Intersegmental Coordinating Council.

2.9. Nondistrict Physical Education Facilities: Education Code section 76395 authorizes districts to impose a fee on participating students for the additional expenses incurred when physical education courses are required to use nondistrict facilities such as bowling alleys and golf courses. Districts are not authorized to make a profit on this fee, and they should ensure that the fee charged to participating students does not exceed the charge to the district.

Chapter 3

FEES FOR SERVICES

Some fees for services are explicitly authorized by statute. Other fees for services may be charged under the authority of the permissive code so long as they are not required as a condition of registration, enrollment or completion of a course, or as a condition of access to functions of the college which are funded by the state (such as financial aid). In other words, the student can be required to pay for a service where the service is truly optional and is not tied to registration, course enrollment, or completion and where the service is not otherwise funded by the state.

In deciding whether to charge for a particular service, we recommend that districts balance the need to cover their operating costs with the reality that even modest additional fees may effectively restrict access for students who are least able to pay. The State has exempted students receiving public benefits and those who demonstrate financial need from many mandatory fees, and districts may wish to consider extending this policy to optional service fees.

Even where fees are authorized, any exemptions from the payment of the fees should be clearly communicated to the students. Similarly, optional fees should be clearly identified as optional.

A reasonable student reviewing district information or going through the registration or enrollment process should be able to understand that he or she may be eligible for an exemption from a particular fee or that a particular fee is optional. The mechanism for claiming an exemption or for declining to pay an optional fee should not be unduly burdensome to students.

3.1. Health Fee: Education Code section 76355 authorizes a community college district to charge a fee not to exceed $10 per semester, up to $7 for summer sessions or for intersessions of at least four weeks in length, or up to $7 per quarter for health supervision and health services. The governing board of a district may increase the health fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever the calculation produces an increase of $1 above the existing fee, the fee may be increased by $1.

Effective with the Summer Session of 2006, districts were authorized to raise the maximum health fees to $15.00 per semester and $12.00 per summer session or intersession of at least four weeks, or $12.00 per quarter. The fee increase was based on calculations by the Department of Finance.

Generally speaking, the fee may be charged of all students, whether or not they choose to use the health services. Districts may choose to charge or exempt noncredit students at their discretion. Part-time students may be exempted or required to pay a portion of the full fee. Section 76355 provides that if a district requires a fee, "the governing board of

the district shall decide the amount of the fee, if any, that a part-time student is required to pay." We believe this language indicates a legislative intent that governing boards need to specifically determine whether part-time students will be charged a health fee. Making a clear determination concerning part-time students demonstrates clear compliance with the statute and may insulate districts from potential claims from part-time students that health fees were collected from them without appropriate board approval.

Section 76355 also requires boards to adopt rules and regulations that exempt certain students from the payment of health fees. Under subsection (c), districts **must** exempt students who depend on prayer for healing, and students attending community college under an approved apprenticeship program. A 2005 amendment to section 76355 eliminated the requirement that low-income students (students eligible for a Board of Governors Enrollment Fee Waiver) be exempted from the health fee. Districts are now free to charge the health fee to low income students or to continue to exempt them if the district so chooses.[8] Districts should ensure that they have appropriate rules and regulations that recognize both of the applicable required exemptions. Districts should also ensure that the existence of the two statutory exemptions is communicated effectively to the students so that they will be aware of potential applicable exemptions.

Questions have arisen about the authority of districts to exempt additional categories of students such as special admit students and students taking only distance education courses. Because the language of the statute is permissive, designating additional categories of students as exempt from the health fee is not prohibited under section 76355 so long as the designation of additional categories does not otherwise violate nondiscrimination laws.

On the other side of the coin, we believe that the health fee may be charged to students who take only online classes or who attend classes at sites away from where the health services center is physically located. The health fee is not designated as a "use" fee, and it appears that so long as the statutory exemptions are offered to all affected students, the fact that their classes may not be physically proximate to a student health center does not remove the fee obligation. Additionally, even though students may take online classes or be enrolled in classes that are offered at sites away from the student health center, that does not necessarily mean that such students will not travel to the health center or otherwise receive student health services.

The Chancellor's Office has been asked whether a district that has previously provided health services may terminate its health services program if it also stops charging students a health services fee. In Legal Opinion 06-06, we concluded that the maintenance of effort requirement contained in Education Code section 76355 applies to

[8] However, districts which choose to continue exempting low-income students after the requirement to do so has been eliminated should be aware that this is likely to result in a reduction in the dollar amount recoverable from any mandate claim.

any district that provided health services in the 1986-87 fiscal year, and that it applies even if the district chooses not to charge the authorized health fee. Therefore, any district that provided health services in fiscal year 1986-87 must continue to offer those services, regardless of whether it charges the health fee.

Regulations that address accounting procedures for, and proper uses of, health fee funds appear in title 5, beginning with section 54700.

3.2. Parking Fee: Section 76360(a) authorizes districts to require students and employees to pay a fee of up to $40 per semester ($20 per intersession) for parking services.[9] "Parking services" means "the purchase, construction, and operation and maintenance of parking facilities." (Ed. Code, § 76360(g).) For students who are ridesharing or carpooling, as defined, section 76360 reduces the maximum fee to $30 per semester and $10 per intersession. Districts may charge a discounted parking fee to students who voluntarily purchase an Associated Student Body card, provided that students who do not choose to purchase the Associated Student Body card are not charged more than the statutory maximum specified in Education Code section 76360.

Districts may charge parking fees above these limits under specific circumstances as follows:

> "(b) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:
>
> > (1) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.
> >
> > (2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.
>
> If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure."

Under section 76360, low income students are exempt from parking fees over $20 per semester. Low income students are described in section 76300(g) as those who demonstrate financial need under federal standards or income standards established by the Board of Governors and students receiving benefits under the Temporary Assistance to Needy Families Program (formerly Aid to Families With Dependent Children), the

[9] Title 5, section 54100 provides that districts may charge the regular parking fee to disabled students, but no additional fee may be imposed on students with disabilities for use of designated disabled parking.

Supplemental Security Income/State Supplemental Payment Program or a general assistance program. (See Legal Opinion L 94-12.)

Parking fees may not exceed the actual cost of providing parking and may only be charged to those who use the parking services. Parking fees may only be expended for parking services or for reducing costs to students and employees using public transportation to and from school. Finally, section 76360(d) allows governing boards to require persons other than students and employees to pay fees for using the parking services. (However, Ed. Code, § 67301(b) requires the Board of Governors to adopt regulations requiring the governing board of each community college district to provide visitor parking at each campus at no charge for disabled persons or veterans and for persons providing transportation services to individuals with disabilities. Regulations in conformance with this requirement are contained in the California Code of Regulations, title 5, § 59306(a).)

The Chancellor's Office has determined that while Education Code section 76360 provides that parking fees collected by a community college "shall be expended only for parking services . . . " the law does not assign any particular priority to the various types of parking service expenses. (Ed. Code, § 76360(e).) As such, districts may use their discretion when allocating parking fees for various parking services such as parking security, repair, and maintenance.

The Chancellor's Office has also determined that alternative authority to charge a fee for the use of a parking facility exists under limited circumstances. Where a parking facility was constructed with the proceeds from revenue bonds under Education Code section 81901, fees may be charged for the use of that facility without regard to section 76360. Section 81901 independently authorizes a charge for the use of such a facility.

3.3. Transportation Fee: Districts may require students and employees to pay a fee for the purpose of reducing fares for services provided to these students and employees by common carriers or municipally-owned transit systems, or to partially or fully recover transportation costs incurred by the district. Only those students and employees who use the transportation services may be required to pay the fees.

If the foregoing option is the basis for a transportation fee, students who take only online classes and do not use the services may not be charged a use fee.

However, in two situations, a district may charge transportation fees regardless of actual usage:

1. All students and employees at a campus may be required to pay a transportation fee if a majority of the students and a majority of the employees at that campus vote for such a proposition; or

2. All students at a campus may be required to pay a transportation fee if a majority of the students at that campus vote that all students will pay. In this instance, the employees are not entitled to use the services.

Elections may be held on a campus-by-campus basis. Fees authorized by election remain valid for "a period of time to be determined by the governing board of the district." (Ed. Code, §§ 76361(b)(1) and 76361(b)(2).)

A recent review of the legislative history of section 76361 suggests that the phrase "a majority of all students/employees on a campus" means a majority of those students/employees voting in the election held for the purpose of authorizing the fee. If the transportation fee results from an election described above, students who take only online classes may be charged the fee, because the assessment does not depend on actual use of the services.

The maximum amount of transportation fees may not exceed the amount needed to reimburse the district for transportation service. The combined amount of transportation fees under section 76361 and parking fees levied by a district under section 76360 may not exceed $60 per semester or $30 per intersession, or a proportionate equivalent for part-time students.

Low income students (as reasonably defined by a district) must be exempted only when a district is, itself providing transportation services. There is no requirement for exempting low-income students where a district establishes a fee pursuant to section 76361 for the purpose of "reducing fares for services provided by common carriers or municipally owned transit systems." (See Legal Opinion L 05-10).

A new provision, Education Code section 76361.1, will be applicable to Los Rios Community College District and Rio Hondo Community College District, effective January 1, 2007. This section allows these two districts to charge a fee to students or employees who use transportation services or to hold an election to determine who will be required to pay fees. Fees for part-time students must be prorated, and the affected governing boards may adopt rules and regulations to exempt low-income students from all or part of the fee. The statute also restricts contracting for transportation services that are funded with transportation fees without a student vote for the fee.

Finally, the governing board may require payment of a fee, to be set by the governing board, for the use of transportation services by persons other than students and employees.

Additional authority for transportation fees is set forth in Education Code section 82305.6. This section provides that when the district provides for the transportation of students to and from the colleges, the governing board may require the "parents and guardians of all or some of the students transported, to pay a portion of the cost of such transportation. . . ." The amount charged can be no greater than that paid for

transportation on a common carrier. Parents and guardians who are indigent are exempt, and no charge can be made for transporting students with disabilities.

It is the opinion of the Chancellor's Office that, under the authority of the permissive code, a district can provide for transportation of students to and from the colleges, and that students who wish to avail themselves of this district service can be required to pay a fee. As long as students are not required to take this transportation, but rather have it available as an option, this is a service that may be provided for a fee under the authority of the permissive code. This authority does not extend to "on-campus shuttles or other transportation services operated on a campus or between the campus and parking facilities owned by the district." Education Code section 76361(f) expressly prohibits such fees.

3.4. Student Representation Fee: Education Code section 76060.5 provides that a mandatory student representation fee of $1 per semester may be charged of all students, upon a favorable vote of two-thirds of students voting in an election on the matter (provided that the number of students who vote equals or exceeds the average of the number of students who voted in the previous three student body elections). Students may refuse to pay the fee for religious, political, financial, or moral reasons. Districts should ensure that students are advised of the options for not paying the fee, and should provide reasonable mechanisms for declining to pay. The statute has been implemented by regulations of the Board of Governors, set forth in title 5, sections 54801-54805.

In Legal Opinion L 98-09, we concluded that a newly formed student government organization cannot order an election for the purpose of having the student body vote to establish a student representation fee without having held three prior student body elections. In specifically requiring three previous student body elections prior to raising the student fee issue, the intent of the Legislature was to ensure meaningful participation in the student body election process. However, under certain circumstances, voting results from student body elections held under a previous and related student government structure may satisfy this requirement.

Although the language of section 76060.5 may be somewhat ambiguous, in our view, the statement that the fee shall be collected at or before registration does not require every student to pay the fee subject to a refund process. The section clearly allows students to "refuse to pay the student representation fee" if they assert any of the statutory bases for nonpayment (i.e., religious, political, financial, or moral reasons). We believe the language concerning collecting the fee at or before registration largely reflects a temporal consideration while the language regarding who must pay is fundamental to collection of the fee. Thus, we believe that students may refuse to pay the fee in the first place and should not be required to pay the fee and then secure a refund.

It is the opinion of the Chancellor's Office that revenues from the student representation fee can be used for any purpose related to representing the views of students with governmental bodies. Such revenue can be used to travel to and from conferences sponsored by student organizations where legislative matters will be discussed, to

purchase computer equipment needed to conduct legislative research, to subscribe to legislative publications, and/or to pay for any other expense reasonably necessary to effectuate student representation activities. (See Legal Opinion O 95-24.)

However, it is our view that revenues from the student representation fee may not, consistent with Education Code section 76060.5, be used to support or oppose ballot measures or candidates.

Section 76060.5 describes a fee for students enrolled in a college where a student body association has been established. If a district has multiple colleges and the same student attends more than one college in the district, that student may be responsible for a student representation fee at each college where a fee under section 76060.5 has been properly established.

3.5. Student Center Fee: Education Code section 76375 authorizes districts to establish an annual building and operating fee, for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center. The fee may be required of all students attending the community college where the center is located. The fee can only be imposed if at least 20% of the students who were enrolled in credit classes as of October 1 of the school year during which the election is held actually vote, and only if at least two-thirds of the students voting in an election held for that purpose vote in favor of the fee. The fee cannot exceed $1 per credit hour, up to a maximum of $10 per student per fiscal year. Noncredit enrollees cannot be required to pay the fee, nor can recipients of Temporary Assistance to Needy Families, SSI/SSP, or general assistance. The Board of Governors has adopted section 58510 of title 5 of the California Code of Regulations to implement this provision.[10]

The governing board needs to be involved at two stages of the process. Title 5, section 58510 requires the governing board to "establish procedures for an election conducted for the purpose of collecting a student body center building and operating fee, and call an election for such purpose." At the conclusion of the election, "the fee shall be imposed by the governing board, at its option, only after a favorable vote of two-thirds of the students voting in an election held for that purpose . . . ." (Ed. Code, § 76375.) (See Legal Opinion L 03-27.) It is important to note that section 58510(d) requires that the ballot specify both the intended duration and the intended use of the fee. In Legal Opinion L 06-01, we determined that a student center fee established pursuant to an election could not be utilized to pay operating expenses where the ballot measure failed to specify the intended use. Districts are cautioned that collection of a student center fee imposed pursuant to an invalid election may require a refund of those fees.

Section 76375 describes fees for students attending the college where the student body center is to be located. If a district has multiple colleges and the same student attends

[10] In Legal Opinion E 01-30, we confirmed that section 58510 of title 5 permits a district to hold an election for a student center fee over a period of several consecutive days, not to exceed a maximum of five days.

more than one college in the district, that student may be responsible for fees at each college where a fee under section 76375 has been properly established.

When a student center is financed by the issuance of revenue bonds, a student **use** fee may be appropriate. See item 3.11 below for a summary of applicable requirements.

3.6. Student Records Fee: Education Code section 76223 authorizes districts to make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record, provided that no charge can be made for furnishing up to two transcripts or up to two verifications of various types of student records. Districts should have clear policies and practices that provide for two transcripts and two verifications free of charge. No charge may be made for the cost to search for or retrieve any student record. It should be noted that federal law and regulation prohibit the charging of fees for any documentation required for a student's receipt of Title IV student financial aid.

Flat fees for transcripts and verifications should be approached cautiously because districts must be able to demonstrate that the actual cost of providing transcripts and verifications exceeds the flat fee amount charged in every instance.

In Legal Opinion L 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided the purchase of such a card is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied once the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making two copies of a verification of enrollment documents the student would otherwise be required to obtain. (See also 4.4, Mandatory Student Identification Card Fees, below.)

Districts may offer expedited copying for an additional fee, when a student requests the transcript or enrollment verification copy without having to wait the usual waiting period. The expedited service fee is an optional fee so long as students are otherwise able to receive records without an enhanced charge for expedited service.

3.7. Dormitory Fee: Education Code section 81670 authorizes districts to construct and maintain dormitories, and to fix the rates that will be charged to students for quarters in the dormitories.

3.8. Child Care Fees: Section 79121 et seq. and section 66060 authorize the operation of child development programs. Section 79121(c) requires fees for student families. Additionally, it is the opinion of the Chancellor's Office that districts have the authority to charge student parents a fee for child care services for their children in programs that are not specifically established as child development programs under sections 66060 and 79120 et seq. The fees are being charged to parents who voluntarily choose to use this

service. However, a district cannot charge a student a fee other than the enrollment fee to enroll in child development classes.

3.9. Foreign Citizen/Resident Capital Outlay Fee: Education Code section 76141 authorizes community college districts to charge nonresident students who are both citizens and residents of a foreign country a capital outlay fee. The amount of the fee cannot exceed the amount that was expended for capital outlay in the preceding fiscal year divided by the total full-time equivalent students in the preceding fiscal year. Additionally, the fee cannot be more than 50% of the nonresident tuition fee charged under section 76140.

Governing boards of districts that choose to charge this fee must adopt a definition of "economic hardship" as defined in section 76141, and they must then exempt from payment of the fee each student who demonstrates either economic hardship or that he/she is a victim of persecution or discrimination in his/her home country.

In addition, the Chancellor's Office has concluded that students who are exempt from nonresident tuition fees under Education Code section 68130.5 cannot be charged the capital outlay fee. (See Legal Opinion M 04-15.)

These mandatory exemptions should be clearly communicated to students.

3.10. Foreign Citizen/Resident Application Processing Fee: Education Code section 76142 authorizes community college districts to charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of (1) the actual cost of processing an application and other documentation required by the federal government, or (2) $100, which may be deducted from the tuition fee at the time of enrollment. No processing fee can be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Education Code section 76140, or who can demonstrate economic hardship (as defined by the district in accordance with certain parameters specified in section 76142).

3.11. Use Fee for Facilities Financed by Revenue Bonds: When the construction of a facility is financed by the issuance of revenue bonds, Education Code section 81901(b)(3) authorizes the governing board of a community college district to "fix rates, rents, or other charges for the *use* of any project acquired, constructed, equipped, furnished, operated, or maintained by the board, or for services rendered in connection therewith. . . ." In Legal Opinion L 97-17 we held that section 81901(b)(3) allows districts to charge students a fee for the use of such facilities. In particular, where a student center is constructed using revenue bonds, this allows the district to charge a fee that exceeds the maximum $10 student center fee provided for in Education Code section 76375. However, Opinion L 97-17 also notes that section 81901(b)(3) authorizes a use fee, and thus does not authorize districts to charge a blanket fee to all students.

It would be justifiable for all students attending classes where the facility is located to be assessed a fee for use of such a facility. It would be reasonable to charge a use fee to

students attending classes at other nearby locations, if those students occasionally come to the main campus to use the facility. However, in our view, it is not permissible to charge such use fees to students attending classes at remote locations, especially sites outside of the district, unless there is evidence that students in those classes use the facility on at least an occasional basis. One possible approach would be to give students attending classes at remote locations the option to decline to pay the fee, with the understanding that they then lose any right to use the facility.

Even when use fees are authorized by section 81901, the amount of the fees must fall within the parameters of Education Code section 81956. That section authorizes districts to charge rents, charges, and fees to cover annual operating and maintenance expenses, and to make bond payments. Fees that exceed the amount of these expenditures are not authorized. Districts that charge fees under these provisions should undertake an annual calculation of the fee necessary to cover annual costs, and charge use fees that are reasonably designed to raise that amount.

3.12. Credit by Examination Fee: Fees charged for credit by examination offered pursuant to title 5, section 55753 have been determined to be optional fees for service. A reasonable fee for credit by examination is the per unit enrollment fee established by Education Code section 76300.

Districts that incur additional verifiable expenses in connection with offering credit by examination may be able to demonstrate reasonable fees beyond the fee established by Education Code section 76300.

Districts lack the authority to charge different types of students different credit by examination fees unless they can demonstrate that different services and different corresponding costs are involved. For example, it is not appropriate to charge international students a higher credit by examination fee if they receive the same service as students who are residents of California.

3.13. Refund Processing Fee: Section 58508 of title 5 of the California Code of Regulations permits districts to retain a maximum $10 from enrollment fees as a refund processing fee. Section 58508 is not general authority to retain portions of other mandatory fees or to charge a processing fee to refund other mandatory fees.

However, we believe that districts may charge a refund processing fee for optional fees that students voluntarily pay, if certain conditions are satisfied. Fees that are fully optional are those which a student may freely elect to pay or not pay; payment of the fee is not a condition of registration, enrollment, or attendance in any course; the choice not to pay the fee will not adversely affect the student in any essential district program or activity; and the fee is not charged in areas for which the district receives state funding. If the student chooses to pay the fee and then later withdraws or decides to discontinue use of the optional service, districts may charge a reasonable refund processing fee (that does not exceed the district's actual processing costs) if certain preconditions are met.

In particular, districts would have to advise students specifically, in writing and in advance of their payment of the optional fee, that if they choose to pay that optional fee and then seek a refund, a processing fee in a specified amount will be withheld. A statement to this effect would need to be clear and unambiguous so that students are fully informed when they are considering whether to pay an optional fee, that they will not be able to secure a full refund of that optional fee. If a district meets these conditions, it may then charge a reasonable processing fee to those students who choose to pay the optional fee and who then seek a refund or credit.

3.14. Telephone/Internet Registration Fee: Districts that provide the optional service of telephone or internet registration may charge students who choose to use this service a nominal use fee under the authority of Education Code section 70902(a). However, students must be advised as to the amount of the telephone or internet registration fee in advance of registration and further advised that they may register in person (or by other applicable means) at no charge.

3.15. Physical Fitness Test Fee: Districts that offer optional physical fitness or wellness testing that may involve computerized analyses of various body conditions may charge a reasonable optional fee for the service.

3.16. Instructional Video Leases/Deposits: Video tapes or DVDs provide instructional content for many programs. Charging a "leasing fee" or a "nonrefundable deposit" to students to allow them to take these videos home to view may be allowable depending on the circumstances. In general, students must be provided access to instruction without additional unauthorized charges beyond the enrollment fee. If all students have ample opportunities to access the instructional materials free of charge, an optional lease or deposit fee may be charged to students who want more convenience.

However, a key issue will be the nature of the free access. Thus, where 12 monitors were available in the library for viewing instructional tapes and 1187 students were enrolled in the class, there was no real opportunity for all the students to access the tapes free of charge. No optional leasing/deposit fee is appropriate under these circumstances.

By contrast, if a district shows instructional videos necessary for a class at numerous and varied times in a campus auditorium during each week of instruction such that all enrolled students have ample opportunities to access the instruction without charge, a district may charge a reasonable optional leasing/deposit fee to students who would prefer to take the video home for their viewing convenience.

3.17. Credit Card Use or Noncash Fee: Students should have a reasonable mechanism for paying their fees without incurring additional charges.

There is no statutory authority for a fee for using a credit card to pay student financial obligations. Students may be charged an optional service fee for the convenience of being able to use a credit card. However, students must always be given the option of paying by cash, check, or other means that do not involve paying the service charge.

Additionally, students must be notified in advance what the fee will be and of the alternative free payment methods available to them.

Districts are encouraged to exercise caution in establishing credit card payment systems to avoid the proliferation of credit card debt by students. As educational options become more expensive for our students, more students will be unable to accumulate all the funds necessary at the beginning of a term to pay their full expenses and may be forced to use credit cards as a means of deferring some of the expense. Districts may wish to consider the deferral mechanism described in section 58502 of title 5. That section provides in pertinent part: "The district governing board may establish a policy authorizing the collection of the [enrollment] fee to be deferred under conditions determined by the governing board." In establishing the conditions of a deferral process, districts are authorized to withhold grades, transcripts, diplomas and registration privileges from any student who fails to pay a proper financial obligation to the district. (Cal. Code of Regs., tit. 5, § 59410.) If a district permits deferral, a student who registers in advance may be dropped from a course if he or she does not pay the required enrollment fees **prior to the beginning of instruction**. However, a district which permits deferral **may not** allow a student to enroll and then involuntarily drop him or her from classes **after instruction has begun** for failure to pay the enrollment fees. (See Legal Opinion O 04-14.)

There is no authority for charging a fee to students who wish to participate in a process for deferring the payment of their enrollment fees. Such a fee would be a prohibited late payment fee. (See 4.16, below.) For a further discussion of deferring enrollment fees, see 2.1 above.

It has also been suggested that students may be charged a fee each time they make a payment to the district except when they pay by cash. That is, all credit card, check, money order, or other transactions would carry a fee. In order to justify this approach, a district would need to demonstrate that cash payments are truly a reasonable and viable free option. Districts might be able to do so by demonstrating that most students recently paid their fees with cash. Districts should also be able to demonstrate the ability to accommodate larger numbers of students paying fees in person because they are using cash. Absent such proof, it appears that cash payments do not provide a reasonable free option. Absent a reasonable free option, the proposed noncash fees would be improper. Districts might also consider any potential consequences, such as greater security issues, that might be associated with the increased use of cash.

3.18. International Student Medical Insurance Fee. To the extent that federal requirements mandate that international students have medical insurance, districts may offer students the option to demonstrate that they have their own appropriate insurance or may offer the student the option of paying for a medical plan provided through the district.

3.19. Fees for Criminal Background Checks. There is no statute or regulation authorizing a district to charge a fee to conduct a criminal background check on a student. Thus, as a general matter, a district may not impose a mandatory fee for this function.

However, where a district has properly established a criminal background clearance as a prerequisite or enrollment limitation for enrollment in a clinical course, it may offer to process the request on the student's behalf in exchange for a fee to cover the costs it incurs. It is important to note that this approach is only permissible provided that the district allows a student to obtain his or her own criminal background clearance from other appropriate sources.[11] (See Advisory 05-02 for a detailed Q&A regarding criminal background clearances.)

3.20. Fees for Providing Special Certificates. Students sometimes ask for special documentation to verify that they completed coursework. For example, students may request certificates to document to the California Board of Registered Nursing that they completed continuing education contact hours.

If a district offers special certificates or other verifications that contain specialized information that would not normally be included in standard district records (e.g., a registered nurse number or a printed statement that the certificate must be retained by the licensee for a period of years after the course ends), the district may charge an optional fee to cover the cost of producing the certificate.

[11] Individuals are authorized to obtain their own criminal history information from the Department of Justice pursuant to Penal Code section 11105(b)(11) and Penal Code sections 11120 et seq.

Chapter 4

PROHIBITED PRACTICES

As noted at the outset of this Handbook, only fees that are specifically required or authorized by law may be imposed as mandatory fees. Under certain circumstances, districts may charge students optional fees. This Chapter considers kinds of fees that may not be charged under current law.

4.1. Late Application Fee: There is no statutory authority for a late application fee, and the Chancellor's Office has determined that a late application fee cannot be charged under the authority of the permissive code.

4.2. Add/Drop Fee: Statutory authority for a fee for the cost of making program changes initiated by a student no longer exists, and the Chancellor's Office has determined that an add/drop fee cannot be charged under the authority of the permissive code.

4.3. Mandatory Student Activities Fee: There is no statutory authority for charging a mandatory student activities fee. However, an optional or voluntary student activities fee is permissible. It is imperative that the optional nature of the fee be communicated to students and that student have an effective means of declining to pay the fee.

Questions have been raised regarding the legality of the "negative check-off" approach to collecting a student activities fee. Under this approach the student, when registering or enrolling, is given the option of checking a box indicating that he or she does not choose to pay a student activities fee. If the student checks the box, he or she will not be charged the fee. If the student does not check the box, the fee will be assessed. Because this negative check-off approach preserves a student's option to pay or not pay the fee, it is both legal and appropriate. The test to be applied in implementing a negative check-off approach is that a reasonable student going through the enrollment process and reading the forms must understand that he or she has the option of paying or not paying the student activities fee.

Questions have also been raised about the legality of a system of student activity fee collection that requires the student to obtain a signature of a district official to waive the fee. Because the student's option to pay is preserved, the method is technically legal. However, because additional tasks are required of both the student and the district to process a student's desire to reject an optional fee, this method is fraught with potential problems. To implement a sign-off system, the district should take every precaution to ensure that officials authorized to sign off the fee for students are on-site and **easily accessible** during the registration period. The test to be applied here is whether opting not to pay the fee is unduly burdensome. For obvious reasons, mail, on-line, or telephone registration processes will require even more careful assessment.

In Legal Opinion L 01-03, we assessed a telephone registration system that automatically calculates all mandatory and optional fees and then allows the student seven working days to pay the fees and secure waivers for optional fees they do not wish to pay. Although the Chancellor's Office does not recommend such a process, we analyzed whether the fee waiver process was unduly burdensome to the students. We concluded that requiring a student to secure and sign one form that was simple to complete to waive optional fees that are automatically assessed during phone registration was not unduly burdensome. Conversely, if students were required to secure and sign multiple forms from multiple sources, that process would be unduly burdensome and would be unacceptable.

4.4. Mandatory Student Identification Card Fees: In Legal Opinion L 97-11, we concluded that a district cannot charge a mandatory fee for a student identification card, even if the card also has other purposes, such as use as a debit card for purchase of instructional materials. Education Code section 76365, and the implementing regulations contained in title 5, section 59400 et seq., permit districts to require students to provide certain instructional materials at the students' own expense. However, Legal Opinion L 97-11 specifically concluded that student ID cards do not fall under the definition of "instructional materials" contained in title 5, section 59402(b), and thus, charging a fee for a student ID card cannot be justified. Similarly, because there is no statutory authority for such a fee, a district may not charge a fee to replace a student ID card that was initially issued at no charge. (See also 2.5, Instructional Materials, above.) Districts should review their practices regarding replacement ID cards to ensure that replacement cards do not carry a mandatory charge.

The prohibition to mandatory fees for student identification cards does not mean that a district cannot offer students the option to purchase such a card in order to obtain certain optional benefits such as faster registration, ease of purchasing at the bookstore, etc. We also find no reason to believe that a district may not provide students, at district expense, with a card which students are then required to use for certain identification purposes. In Legal Opinion L 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card allowing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain. (See also 3.6, Student Records Fee, above.)

Districts should ensure that all of their materials describing optional student ID card fees clearly describe the optional nature of the fees.

4.5. Fees Charged Through Student Body Organizations: Unless expressly authorized by statute, a student body organization cannot charge a fee that a district governing board does not have authority to levy. It should be noted, however, that student body organizations may charge students a student activity fee or sell them a student body card so long as the fee or charge is optional as discussed under 4.3, Mandatory Student Activities Fee, above.

4.6. Nonresident Application Fee: The Chancellor's Office has determined that a nonresident application fee cannot be imposed on residents of other states under the authority of the permissive code. Because payment of the fee would be a condition of enrollment in or attendance in classes, it cannot be imposed without specific legislative authorization. However, as discussed in 3.10 above, such a fee is authorized with respect to citizens and residents of foreign countries under Education Code section 76142. Districts should note that students exempt from nonresident tuition under AB 540 should not be charged a nonresident application fee pursuant to Education Code section 76142.

4.7. Field Trips: The provisions on field trips are found in sections 55450-55451 of title 5 of the California Code of Regulations. We interpret section 55450(d) to prohibit districts from charging students a fee for planning and organizing a field trip, for participating in a field trip, and for the use of district equipment and supplies such as gasoline during the field trip. Section 55450 permits districts to charge students who participate in field trips for the costs of their meals, lodging, and other "incidental expenses." However, section 55450(d) provides that no student may be prevented from participating in a field trip due to lack of funds. Essentially, districts may not charge a mandatory fee for a field trip unless it exempts students who do not have sufficient funds to pay the fee. This means that students can be asked, but not forced, to pay the costs of their meals, lodging, and other incidental expenses associated with an instructionally related field trip. This is true for both optional and required field trips. Also, while a district is authorized to arrange a meals and lodging package, a student has the option of purchasing the district's package or securing his or her own meal and lodging accommodations. Similarly, as we held in Legal Opinion L 05-12, a district can charge an optional fee for transportation associated with a field trip, so long as the student has the option of paying the fee or securing his or her own transportation.

Questions have been raised regarding districts charging students "entrance fees" for field trips to concerts, museums, plays, etc. In Legal Opinion M 96-17 we held that entrance fees should be considered "incidental expenses" which students can be asked to pay. However, as with other types of field trips, a student cannot be excluded from the event due to lack of funds.

4.8. Fees for Dependents of Certain Veterans: Education Code section 66025.3 provides that community college districts are prohibited from charging "any mandatory systemwide tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees" to any of the following who are determined to be California residents:

1. Any dependent eligible to receive assistance under Article 2 (commencing with § 890) of chapter 4 of division 4 of the Military and Veterans Code.

2. Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the Department of Veterans Affairs determines the child eligible on the basis that the annual income of the child, including the value of any support received from a parent, does not exceed the national poverty level for one person as most recently calculated by the Bureau of the Census of the United States Department of Commerce.

3. Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

4. Any undergraduate student who is a recipient of a Medal of Honor, commonly known as a Congressional Medal of Honor, or any student who is the child of a recipient of a Medal of Honor and who is under 27 years old, provided that his or her income, including parental support, does not exceed the national poverty level and the parental recipient of the Medal of Honor was a California resident at the time of his or her death.

Section 66025.3 (formerly § 32320) excludes a dependent of a veteran who is declared missing in action or a prisoner of war as provided in paragraph (4) of subdivision (a) of section 890 of the Military and Veterans Code. Thus, these students may continue to be charged such fees.

A person who is eligible for the waiver of tuition or fees under these provisions may receive a waiver for each academic year during which he or she applies for that waiver, but an eligible person may not receive a waiver of tuition or fees for a prior academic year. The waiver of tuition and fees under section 66025.3 applies only to persons who are determined to be California residents.

Because the waiver applies to "any mandatory systemwide tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees," the first step in applying this waiver is to exclude enrollment fees because they are explicitly covered. Nonresident tuition is not an issue because the waiver only applies to California residents who do not pay nonresident tuition in any case. Because the Legislature has authorized very few "mandatory" or "systemwide" fees for community college students, the application of this section is limited in the community college system. Certainly, the many optional fees that are authorized would not be covered. Should future fees be set

by the Legislature, a review of whether those fees are "mandatory" and "systemwide" will be required.

4.9. Fees for Required or Funded Services: It is the opinion of the Chancellor's Office that community college districts may not charge students a fee for the use of a service that the district is required to provide by state law or that the district is already funded to provide. For example, in Legal Opinion L 95-23 we concluded that a district may not charge students a fee for counseling services that the district is required to provide under Education Code section 72620 or title 5, section 51018.

Services such as graduation evaluation and general education evaluation are often performed as a counseling function, and we have determined that charges may not be made for counseling services. The IGETC evaluation is another example of an activity that districts are funded to perform and/or that is part of the counseling function. As such, fees for these services are not appropriate. Similarly, a district may not charge students an additional fee for use of health services which are already funded from student health fees collected pursuant to Education Code section 76355, or for the use of computers, computer maintenance or Internet service which were paid for by state funds which the district was either required or specifically permitted to use for these purposes.

Additionally, districts are required to graduate those students who meet applicable graduation standards, and they may not charge a graduation application fee as a condition to being able to graduate or a fee to petition for an earned degree. For the same reason, districts may not charge students for their diplomas, nor may districts charge students a mandatory fee for a diploma cover or require students to purchase a cover from the bookstore or elsewhere.

No authority exists for a general mandatory "student services fee."

There is no authority to charge a fee to students for assessment tests that are a part of the matriculation process. The matriculation allocation pays the colleges for their testing programs, so levying a charge for testing would be charging for a program that is already state supported. Similarly, it is impermissible to charge for assessments conducted as part of counseling services which are either funded through the matriculation program or required under title 5, section 51018.

A question has been raised as to whether districts may charge when students take assessment tests multiple times. If the tests are part of the matriculation or counseling programs, retesting does not change the fact that these programs are already funded or required by the state. If a test is to determine whether a student has met a course prerequisite, no fee may be charged because mandatory charges are not permissible for anything that is a condition of enrollment in a course, unless the charge is specifically required or authorized by law.

Although districts may offer retesting within their matriculation programs, they are not required to do so. A district might have a policy which provides students the option to go

through initial assessment and then be tested again if they withdraw and are not enrolled for a long period of time. Retesting may also be indicated if a student can show extenuating circumstances that might have adversely affected the initial testing results (e.g., student illness, death in the student's family, etc.). Beyond such circumstances that may indicate a high potential for significant differences in the testing results, districts should consider whether multiple retesting constitutes an unnecessary expenditure of matriculation funding.

We have been advised that students from districts that do not permit multiple retesting may seek retesting from neighboring districts that offer multiple retesting options. In our view, testing and retesting services should be offered to persons who are at least admitted and preparing to enroll in the district where the testing is performed. Additionally, districts may wish to encourage student focus on assessment scores rather than test scores alone.

4.10. Refundable Deposits: In Legal Opinion L 95-23 we held that a "refundable deposit" amounts to a fee if it is required as a condition of registration, enrollment, or entry into classes, or as a condition of completing the required classroom objectives of a course. Therefore, statutory authority is required in order to impose such a charge on a student regardless of whether it is characterized as a "refundable deposit" or as an ordinary nonrefundable fee.

4.11. Fees for Distance Education (Internet Access): In Legal Opinion L 95-33 we held that a district may not charge an additional mandatory fee for a credit course delivered via Internet where the additional fee is intended to cover the cost of Internet access. If instruction is offered as a community service class without credit, a district could charge students for the cost of Internet access necessary to participate in the class. Such a fee could also be charged for a credit course if the fee is truly optional (the student can participate effectively without paying the additional fee), but, there is no statutory authority for charging such a fee for a credit course if the fee is mandatory.

The recent revision to title 5, section 59402, which permits charging instructional materials fees for access to certain electronic materials, does not alter the above analysis with respect to Internet access. As amended, section 59402 defines the term "tangible personal property" to include "electronic data that the student may access during the class and store for personal use after the class in a manner comparable to the use available during the class." While this would permit charging for access to an online textbook or other specific instructional material, it does not justify charging for Internet access because the student cannot store every document available on the Internet and cannot conduct research after the course for which access is purchased has ended. (See also Appendix A.)

4.12. Mandatory Mailing Fees: There is no express authority for requiring students, as a condition of enrollment, to pay a fee to cover the costs of mailing grade reports, registration packets, and other student documents. As discussed in 3.6, above, Education Code section 76223 authorizes charging students for "the actual cost" of providing copies

of student records. Except as discussed below, districts should absorb the costs of their basic required communications with their students. In Legal Opinion M 96-17, we explained that districts may charge a flat fee for mailing costs only if all the following conditions are met:

1. Students are not charged for mailing documents other than individual student records (e.g., published class schedules or registration packets that do not relate specifically to a particular student);

2. Each student is not charged an amount in excess of the actual cost of furnishing the records he or she receives;

3. Students are advised that they will not be barred from registering or enrolling in any course if they decline to pay the fee; and

4. Students are advised that if they do not wish to be charged for mailing costs they may come to campus to obtain and pay for copies of student records.

4.13. Mandatory Fee for Use of Practice Rooms: In Legal Opinion M 96-17 we considered a situation where a college charged music students a mandatory fee for the use of practice rooms which they were required to use as a part of their class assignments. We held that this could not be justified as an instructional materials fee and that there was no other statutory authority for the practice. However, it would be permissible for a college to make practice rooms available for students who are willing to pay an optional service fee for their use.

4.14. Apprenticeship Course Fees: Education Code section 76350 prohibits community colleges from imposing resident or nonresident charges or fees for apprenticeship courses offered pursuant to Labor Code section 3074. On the other hand, in Legal Opinion E 00-22 we concluded that enrollment fees may be charged to apprentices enrolled in courses which are not counted toward satisfying the related and supplemental instruction required under the apprenticeship agreement described in Labor Code section 3074.

4.15. Technology Fee. The Chancellor's Office has also considered the viability of a fee that gave students access to computer labs and computers, the Internet, and e-mail. About 98% of available computers were covered by the fee; the remaining 2% of the computers (approximately 30 out of 1500) were available without charge to any student.

It was concluded that the fee would be a permissible optional fee with respect to students who were not in courses where such technology was required. However, as noted in 4.9 above, even an optional fee would be prohibited if the district received state funds for this purpose. Costs associated with the purchase of the computers, maintenance of such computers or other related costs, may be recovered through an optional fee only to the extent that such state funds were not used to support those expenses. That is, a district

may not use funds that are required or expressly authorized for a specific purpose and also charge students a fee to cover the same costs, even if the fee is optional.

4.16. Late Payment Fee. It is not permissible to charge a late payment fee to students who are allowed to start attending classes before they have paid their enrollment fees.

Title 5, section 58502 requires the enrollment fee to be charged at the time of enrollment. However, the section also permits deferral of the collection of the fee under conditions established by the governing board. Therefore, assuming a governing board has authorized a deferral process, students may pay their enrollment fees at some point after enrollment. Section 59410 of title 5 permits districts to withhold grades, transcripts, diplomas, and registration privileges from those students who fail to pay outstanding financial obligations, such as outstanding fees. Section 59410 establishes the mechanism for addressing unpaid fee obligations, and an additional late payment charge is not authorized. For those students who ultimately fail to pay their enrollment fees, districts may also pursue recovery through the COTOP system.

4.17. Nursing/Healing Arts Student Liability/Malpractice Insurance. Section 55234 of title 5 of the California Code of Regulations provides in pertinent part that districts that offer nursing programs, or related programs in the healing arts may maintain classes at hospitals. The same section provides "The governing board may purchase liability insurance for the students with district funds." Thus, districts are authorized to pay for student liability insurance for these programs. Absent statutory authority to require students to pay for such insurance, we believe that the authorization of section 55234 is the exclusive means for covering the cost of the insurance.

4.18. Cleaning Fees. In Legal Opinion L 02-13, we analyzed a flat fee that was charged to students who failed to clean out their chemistry class lockers at the end of the term. The district required students to use the lockers and it provided the locks. The fee was charged if the lock had to be cut off and the contents of the locker removed, cleaned, and inventoried.

There is no statutory authority that mandates or permits a fee to remove the lock and to clean and inventory the contents of a locker. The flat fee had no direct relationship to the work required because the fee was the same whether there was little or no cleanup or a lot of cleanup work. The fee cannot be justified as an instructional materials fee because no tangible personal property is involved. The fee cannot be justified as a service to students because the student receives no service. Instead, the fee merely permits a district to offset some of the cost of cleaning its own equipment or supplies. Even if there were a discernable service to the students, the fee would have to be optional, not mandatory. Based on the foregoing, we concluded that such a fee is not allowed.

4.19. Breakage Fees. In Legal Opinion L 02-13, we assessed a breakage fee charged to chemistry students. The fee covered breakage that occurred during student laboratory work. We noted that breakage fees are neither mandated nor authorized by statute, nor

are they "instructional materials" fees. Instead, the fee appeared to be designed to reimburse the district for the cost of replacing district equipment or materials that students break. A certain amount of breakage must be absorbed by districts in their normal operations, and insurance may be secured against breakage in appropriate cases.

If students intentionally destroy district property, districts may wish to pursue disciplinary action under their rules of student conduct.

In September 2005, Governor Schwarzenegger vetoed AB 1070 that would have allowed community college districts to charge students for the cost of replacing or repairing instructional equipment that was lost or damaged. The veto reflected the Governor's concern that it could deter students of limited means from pursuing courses of study that require the use of costly equipment, particularly in areas such as science, medicine, or nursing.

4.20. Test Proctoring Fees. There is no authority that permits a district to charge students a fee to cover the costs of having someone present while students are taking tests to ensure that the students do not cheat on the tests.

APPENDIX A

APPLICATION OF INSTRUCTIONAL MATERIALS REGULATIONS TO SPECIFIC Situations

Chapter 2, item 2.5, sets forth a series of questions which are designed to help districts determine whether they have the authority to require students to provide materials or to charge students a fee for materials provided by the district. Those questions should assist districts in analyzing the application of Education Code section 76365 and title 5 regulations on instructional materials (§§ 59400-59408) in specific instances.

Over the years, a number of specific items have been considered under the instructional materials standards.

Ammunition - Ammunition that is used in connection with police science courses (shooting at the practice range) is a material that students can be required to provide. To the extent that shell casings can be reloaded, they can be taken from the course setting, and they are not wholly consumed, used up or rendered valueless as they are applied in achieving the required objectives of a course.

Bluebooks - Used bluebooks if returned to students, are materials of continuing value to the student outside of the classroom setting. If the district is the sole provider of bluebooks, they must be provided to students at the district's actual cost. If used bluebooks are not returned they are not of continuing value to the student and thus should be provided by the district.

Chemicals - see **Welding Rods (and other transformed materials)** below.

Clay - Clay is an example of a "transformed" material that, under most circumstances, can retain continuing value outside of the classroom setting. For instance, a district could require that a student provide 20 pounds of a given type of clay in order to take a course. The clay can be sold through the college bookstore if the student wishes to purchase it there. The clay, when converted into objects and fired in a kiln, can be taken from the classroom by the student. The clay is not wholly consumed, used up or rendered valueless in the process of becoming an object.

A critical distinction to apply with respect to transformed materials is whether the transformed material becomes part of something that a student will take from a class, or part of something that is just used for practice, and will not become the property of a student. Materials used in practice--objects that don't become the property of the student--should be provided by the district; whereas if the material is part of an object that becomes the property of the student, it can be required.

Another method to handle transformed materials such as clay is to provide the material for free, but to charge the student for any transformed material that he or she wishes to take from the classroom. Under this method, the material doesn't become the permanent property of the

student until he or she chooses to buy it. In any case, if students are required to provide clay, the transformed objects must become their property.

Other examples of transformed materials which can have value to the student outside of the classroom setting include wood, metal, film, photographic paper, oil paints, canvas, cloth, food and paper generally.

Clothing - see **Uniforms and Clothing**, below.

Computer Paper - Computer paper is a material which can be used by many students, but which can have continuing value to students based on the information preserved on the paper during the course. For instance, a district could require that each student provide a specified quantity and brand of computer paper in order to enroll in a course. A student wouldn't necessarily be using the box of computer paper he or she bought, but as long as he or she was entitled to keep all printouts, and as long as the student would generate roughly the quantity of paper he or she provided, a student could be required to provide computer paper.

CD-ROMS - see **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, below.

Diesel Fuel - see **Welding Rods (and other transformed materials)** below.

Equipment - Education Code section 76365 specifically mentions equipment as a material that has continuing value to the student outside of the classroom setting. Thus, students can be required to provide their own equipment for classes.

Equipment Use Charge - In lieu of requiring students to provide certain expensive equipment, one suggestion is that students be given the option to "rent" the equipment from the district for the duration of the course. The instructional materials regulations do not address rental of equipment that is required by a district. Rather, the regulations only address the authority of districts to require the equipment.

Generally speaking, rental of equipment should be classified as an "optional fee," and thus would be authorized within the parameters of the permissive code. Districts should not subsidize their equipment budgets by renting equipment which students should not be expected to own. For instance, it would be improper to require students to provide a certain $5,000 television camera and then offer them the "option" of renting one for use during the class for $20 per semester.

Floppy Discs - See **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, below.

Flowers and Food - Flowers for a flower arrangement class are an example of a material which can be required, with the student having the option to purchase them from the district. The district can specify the required flowers which the student needs and then provide the student with an option to purchase all necessary flowers from the district for a specified price. The same is true of food for a cooking class. It is contemplated that students in culinary programs will be able to consume and/or to take food items purchased with their instructional materials fees. For example, students may consume or take away pastries they prepare in class. It would not be

appropriate, however, for students to be required to supply all of the food for a culinary class unless those food materials have continuing value to the students outside the class. It would not be appropriate for students to pay for food that they prepare for non-students, such as through a dining room or food service program. Similarly, an instructional materials fee would be appropriate in a wine-making class if students are able to keep the wine that they bottle.

Gasoline - see **Welding Rods (and other transformed materials)** below.

Gym Towels - If having a towel is mandatory to the class, districts may require students to provide their own towels, or the district may provide them. However, the towels cannot be solely or exclusively available from the district based on the health and safety definition of section 59402(c)(1) because district-only towels do not fulfill a health and safety requirement.

Instructional Tapes/Videos - Instructional tapes or videos that must be returned to the district cannot be the basis for an instructional materials fee. Students retain no tangible personal property when the materials must be returned. (See section 3.16 above.)

Instructor-created Materials - Instructor-created textbooks, syllabi and other instructional materials are generally prepared for specific courses offered by a college or district, and are often solely or exclusively provided by a district. Such materials, in most instances, have continuing value outside of the classroom setting. The district is required to provide these materials unless the exception to title 5, section 59402(c) can be applied. Specifically, the instructor-prepared instructional materials must be provided at the district's actual cost, in lieu of other generally available but more expensive material which would otherwise be required.

By way of example, a textbook, syllabus, or instructor-prepared material costing a district $15.00 to provide to a student could be required in lieu of requiring the students to secure a nationally published textbook on the same subject which retailed for $30.00. A district's "actual cost" of producing materials which it solely or exclusively provides can include a small markup necessary for selling the item through the college bookstore. The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides.

Instructor-prepared material can be classified as "optional" if it is not required by the district, or is not required to complete the required objectives of a course to be accomplished under the direction of an instructor during class hours. In this regard, a syllabus or other material could be "highly recommended" without being required. Also a material could be designated for "required reading" without it actually being a required material.

In Legal Opinion L 02-29 we addressed several issues concerning faculty authors, subsidy publishers, and the payment of royalties. We concluded that under current law a faculty author may require his or her students to purchase mandatory instructional materials the faculty member created and paid a subsidy publisher to produce even if the price of said materials includes a royalty payment provided the materials are not exclusively available from the district and

provided that local employment agreements or local conflict of interest rules do not prohibit the practice.

In Legal Opinion L 04-11, we addressed whether a student could be required to present proof of "recently purchased lecture notes" as a condition of enrollment. We determined that requiring a proof of purchase was inappropriate, and also determined that payment of a royalty for the instructor's lecture notes was problematic. Requiring "recently purchased lecture notes" raises the question of why a "purchase" is necessary, as opposed to other means of securing materials, such as using a library copy or copies already purchased by other students. Regardless of how they are acquired, unless materials are reasonably related to the achievement of the course objectives, they cannot be established as "required instructional materials" and students cannot be required to provide (or purchase) them. If the lecture notes **do not qualify** as required instructional materials, they can still be offered to students on a purely optional basis and students could be charged a reasonable optional fee.

If a district determines that lecture notes **do qualify** as a required instructional material, and the lecture notes are solely available through the college bookstore, a fee in the form of the bookstore purchase price may be appropriate, but the price may not include a faculty royalty.

Lab Books, Workbooks, and Sheet Music - Lab books and workbooks are distinguished from texts and instructor-produced materials in that they are written in extensively or have various exercises which result in pages being torn out. Generally speaking, even though such materials are altered, they retain some value to the student outside of the classroom setting, and therefore can be required of students. Sheet music is another example of workbook-type material which can be required.

Laboratory Animals - Under most conditions, required laboratory animals must be provided by the district because they have no continuing value to the student outside of the classroom setting. This general rule, however, does not require a district to provide an unlimited supply of laboratory animals. Laboratory animals in addition to those reasonably needed for completion of course objectives can be sold as "optional" materials.

Decomposable materials used in dissection are not instructional materials because students cannot reasonably retain the materials for future use outside of the classroom.

License Fees and Access Codes - License fees, access code fees, or software subscription fees that allow students to have temporary access to computer or internet programs are not tangible personal property as to the student. Additionally, such access is usually restricted to the term of the class and does not represent a continuing value to the student outside the classroom. For these reasons, access to such software or services generally do not qualify as instructional materials that students can be required to provide or for which instructional materials fees may be charged.

However, recent revisions to title 5, section 59402 allow districts to charge students instructional materials fees for access to instructional materials in electronic form, under certain circumstances. Under this regulation, the definition of "tangible personal property" was

amended to verify that electronic data may be considered instructional materials, so long as the student has the ability to use the materials after the class in a manner comparable to the student's ability to use the materials during the class. If students are to be charged for electronic data, the tangible personal property should have a continuing educational value to students. The continuing educational value could be in the form of the electronic course content being equivalent to a textbook, study guide, solutions manual, or test bank that students have access to beyond the class session for which the instructional materials were purchased. Additionally, the student must be able to store and readily print the text, lessons, or problem materials. If the student can store and print materials that are of continuing educational value, charging students for access codes is permissible. (See also **Textbooks**, below.)

On the other hand, the amendments to section 59402 do not permit charging mandatory instructional materials fees for access to the Internet or large searchable databases. In this instance a student would not realistically be able to store and print every document available through the service and would not be able to conduct searches once the course for which access is provided has ended. (See section 4.11 above.)

Medical Supplies (such as Band-Aids, sterile syringes, and catheters) - see **Welding Rods (and other transformed materials)** below.

Models for Art Classes - Models for art classes have no continuing value to the student outside of the classroom setting. They are not owned or primarily controlled by individual students. Therefore, students cannot be required to pay for models in art classes.

Performances - Requiring a student to see a play, film, concert, or other performance is not an instructional or other material, and is not covered by the regulations. A district may require a student to see a specified play, film, concert or performance, but in order to generate FTES for the student's attendance at the performance, the district must provide for attendance free of charge to the student. If seeing a performance is accomplished through a field trip, students may be asked to pay for incidental expenses, including entrance fees to the performance, but no student can be denied the right to participate in the field trip due to lack of funds. (See Cal. Code Regs., tit. 5, §§ 55450-55451.)

Photographic Chemicals - Photographic chemicals are a material which can be used by many students, but which usually will have no continuing value to students outside of the classroom setting. Unlike computer paper, photographic chemicals can be tainted through misuse and tend to become used up in the classroom setting. If photographic chemicals are kept separate for each student and are given to students upon completion of the class, students can be required to provide them.

Recording Tape, Video Tape, Floppy Discs, CD-ROMs - Recording tape, video tape, floppy discs and other such reusable recording materials generally have continuing value to students outside of the classroom setting. They are generally available, tangible personal property of continuing value that is owned or controlled by the student.

Sheet Music - See **Lab Books, Workbooks, and Sheet Music**, above.

Syllabi - See **Instructor-created Materials,** above, and **Textbooks**, below.

Tests (Required) - Required tests are instructional materials, and have continuing value to the student, if they are returned. However, in instances where districts are the sole or exclusive provider of tests and neither of the exceptions in title 5, section 59402(c) apply, tests should be provided free.

Under the authority of the "permissive code" (Ed. Code, § 70902(a)) a district may charge for optional tests not required for entry or enrollment into a class.

Please note that this item describes tests that are used to evaluate classroom performance, as opposed to placement tests or assessments. See 4.9 of the Handbook for a discussion of fees for placement tests.

Textbooks - Education Code section 76365 specifically mentions textbooks as materials which have continuing value outside of the classroom. As such, the general rule is that districts may require students to provide their own textbooks. However, these textbooks can't be solely or exclusively available from the district unless the exception of title 5, section 59402(c) applies. If a district is the sole publisher of a textbook, placing copies of the text in local bookstores will not automatically make it generally available.

Until recently, it was not permissible to charge for online access to an electronic version of a textbook. However, title 5, section 59402 was amended in January 2006 to permit this, provided that the student can store and print the textbook for use after the course is over. Of course, as with any other type of instructional material, the district cannot charge for access to an online textbook if this access is solely or exclusively available from the district, unless one of the exceptions to the "solely and exclusively available" rule are applicable.

Uniforms and Clothing - Education Code section 76365 specifically itemizes clothing as a material which is of continuing value to a student outside of the classroom setting. Students can be required to provide their own uniforms and clothing.

Video Tape - see **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, above.

Welding Rods (and other transformed materials) - Welding rods are an example of a "transformed" material which, under most circumstances, have no continuing value outside of the classroom setting after being used. A welding rod is rendered valueless in the process of being used for practice welds. Hence, a district must provide those rods necessary to complete those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours. Extra welding rods for practice or in addition to those needed to complete required objectives may be sold to the student as optional material.

Welding rods and other transformed materials can have continuing value under limited circumstances, however. If welding rods are used to make a project or material that a student will take from the class, the student can be required to provide the rods that will be used for the

project. For instance, if the welding rods are used to make an art object and the art object becomes the property of the student, welding rods may be required.

Other examples of transformed materials that are usually rendered valueless after use include chemicals, gasoline, diesel fuel, and medical supplies such as Band-Aids, sterile syringes, and catheters.

Workbooks - See **Lab Book, Workbooks, and Sheet Music**, above

M 06-11

Exhibit H

Santa Clara Valley Transportation Authority v. Rea (American Federation of State, County, and Municipal Employees) (2006)140 Cal.App.4th 1303 , 45 Cal.Rptr.3d 511

[No. H028841. Sixth Dist. June 28, 2006.]

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, Plaintiff and Respondent, v. JOHN M. REA, as Director, etc. et al., Defendants and Appellants; AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 101, AFL-CIO, Real Party in Interest and Appellant.

(Superior Court of Santa Clara County, No. 1-03-CV006149, Kevin E. McKenney, Judge.)

(Opinion by Premo, Acting P.J., with Bamattre-Manoukian, J., and Duffy, J., concurring.)

COUNSEL

Beeson Tayer & Bodine, Sheila K. Sexton, Teague P. Paterson, for Petitioner/Appellant: AFSCME Local 101

Department of Industrial Relations, Office of the Director-Legal Unit, Vanessa L. Holton, A. Roger Jeanson, for Cross-Respondent/Appellant: John M. Rea, as Director, etc.

Suzanne B. Gifford, Richard A. Katzman, for Defendant/Respondent: Santa Clara Valley Transportation Authority. **[140 Cal.App.4th 1306]**

OPINION

PREMO, ACTING P.J.-

I. INTRODUCTION

The issue in this case is whether state law requires the Santa Clara Valley Transportation Authority (VTA) to bargain with a certain labor union when the bargaining unit the union represents includes supervisory and management personnel. Resolution of the issue turns upon interpretation of two arguably contradictory sections of the Public Utilities Code. fn. 1 Section 100301 states that all questions relating to the collective bargaining rights of VTA employees are to be resolved by application of relevant provisions of the federal Labor Management Relations Act of 1947 (29 U.S.C. § 141 et seq.) (LMRA). Section 100309 applies to a subset of employees who transferred to VTA from other public entities in 1995 as a result of reorganizing legislation. This section requires VTA to recognize the employee organizations that represented the transferring employees immediately prior to their employment by VTA. The apparent contradiction between the two code sections is that under the LMRA, an employer may not be compelled to bargain with supervisors and managers, but section 100309 appears to require VTA to bargain with a group of supervisory and managerial employees that transferred to VTA in 1995.

We conclude that section 100309, the more recent and more specific of the code sections, granted collective bargaining rights to the entire subset of employees involved in the 1995 reorganization regardless of their position in the employment hierarchy.

II. THE STATUTORY CONTEXT

Analysis of the problem before us requires reference to three separate labor relations schemes. First, there is VTA's scheme. In 1969, the Legislature **[140 Cal.App.4th 1307]** passed the Santa Clara County Transit

District Act (§ 100000 et seq.) (the Act), which created the transit district now known as VTA. (See § 100002.) The Act is one of a number of different acts governing transit districts around the state. (See, e.g., §§ 25051 et seq. [Alameda-Contra Costa Transit District]; 28850 et seq. [San Francisco Bay Area Rapid Transit District]; 30750 et seq. [Los Angeles County Metropolitan Transportation Authority]; 40120 et seq. [Orange County Transit District]; 98160 et seq. [Santa Cruz Metropolitan Transit District].) Each of the transit acts contains its own labor relations provisions.

Section 100300 is the Act's grant of collective bargaining rights: "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 100302 provides: "Whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization and upon determining, as provided in Section 100301, that said labor organization represents at least a majority of the employees in the appropriate unit, the board and the accredited representative of employees shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, hours and working conditions." Subsequent sections provide for mediation and arbitration and referral to the State Conciliation Service for resolution of contract disputes. (§§ 100304-100306.)

Questions of representation are resolved by reference to the LMRA. Specifically, section 100301 provides: "Any question which may arise with respect to whether a majority of employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the Director of the Department of Industrial Relations [DIR].[fn. 2] In resolving such questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, *the [DIR] shall apply the relevant federal law and administrative practice developed under the [LMRA* (29 U.S.C.A. § 141 et seq.)] and for this purpose shall adopt appropriate rules and regulations." (Italics added.) The Act does not define the term "employee."

The LMRA is the comprehensive federal labor law, which, by its terms, is applicable only to labor relations in the private sector. The LMRA defines **[140 Cal.App.4th 1308]** "employee" as "any employee" except, among other things, any individual "employed as a supervisor" and any individual employed by someone not defined as an employer. (29 U.S.C. § 152(3).) The LMRA further provides that "no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." (29 U.S.C. § 164(a).) Managers are also excluded from the rights granted under the LMRA. (*NLRB v. Bell Aerospace Co.* (1974) 416 U.S. 267.) VTA is not an employer under the terms of the LMRA because public entities are not "employers" within the meaning of the federal law. (29 U.S.C. § 152(2).) Application of the LMRA in this case comes about solely as a result of the directive in section 100301.

The third set of labor relations laws pertinent to our analysis is the Myers-Milias-Brown Act (Gov. Code, § 3500 et seq.) (MMBA), which is a state law that defines the collective bargaining rights of public employees. The MMBA definition of "public employee" includes supervisory and management employees. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338; *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 537; Gov. Code, § 3501, subd. (d).) Although the MMBA applies generally to local public entities, the Act expressly provides that the MMBA does not apply to VTA. (§ 100307, subd. (a).)

III. BACKGROUND

A. *History of VTA*

VTA was formed to take over the operation of public transportation functions that had historically been provided by private companies. When it was first created, VTA was primarily an operating entity. Its employees were bus drivers, dispatchers, mechanics, and maintenance personnel. Support services such as management, administration, and clerical services were provided by employees of the County of Santa Clara or by the Santa Clara County Congestion Management Agency (collectively, county employees).

In 1994, the Legislature amended the Public Utilities Code, consolidating all transit functions under the VTA umbrella, which meant that the county employees who had been providing services to VTA would become employees of VTA instead. As part of the reorganization, the Legislature passed sections 100308 and 100309, which preserved benefits and rights that the county employees had earned and enjoyed while employed by the county. Among other things, section 100309 required VTA to recognize "those employee organizations which served as the recognized representatives of the **[140 Cal.App.4th 1309]** former county employees described in Section 100308 immediately prior to their employment by [VTA]" and to "observe all applicable provisions" of existing labor contracts for the remainder of the term of each such contract.

The transfer of employees took place on January 1, 1995. At least two employee organizations represented the county employees at the time: Service Employees International Union Local 715 (SEIU) and County Employees Management Association (CEMA). The group of employees represented by CEMA was identified as the

Supervisory-Administrative bargaining unit. This unit included employees classified as supervisors or managers.

After the transfer was accomplished, the union that had been representing the original VTA employees, the Amalgamated Transit Union Division 265 (ATU), complained that the transferred employees should be part of the ATU bargaining unit. VTA filed petitions with the DIR, seeking a declaration of its obligations to recognize and bargain with each of the three labor organizations and to resolve a dispute over "which of the Unions is entitled to be the exclusive bargaining representative of which [VTA] employees." The consolidated petitions became case No. 95-1495.

In the decision and award in case No. 95-1495, the DIR concluded that when the Legislature passed the reorganizing legislation, it intended to maintain the status quo with respect to existing labor relationships so that the unions representing the county employees would continue to represent them. Furthermore, the DIR decided that even though section 100309 required VTA to honor the existing labor agreements only until those agreements expired, it required VTA to continue to recognize and bargain with the representatives of the employee organizations (SEIU and CEMA) after expiration of the existing agreements.

The DIR defined the CEMA-represented bargaining unit as: "All classified and unclassified employees in the coded classifications, and the positions held by such employees, in the Supervisory-Administrative bargaining unit, who transferred to the District effective as of January 1, 1995, as a result of the statutory reorganization mandated by Assembly Bill 2442 and who, prior to the transfer, held positions covered by a labor agreement in effect between [CEMA] and the County of Santa Clara."

B. *The Present Controversy*

After the transfer, VTA recognized and bargained with CEMA as the representative of the Supervisory-Administrative unit and entered into labor agreements with it. The most recent agreement between VTA and CEMA expired on June 8, 2003. In March 2003, the American Federation of State, **[140 Cal.App.4th 1310]** County and Municipal Employees, Local 101, AFL-CIO (AFSCME) petitioned the DIR to certify it as the representative of the Supervisory-Administrative bargaining unit. In April 2003, and again in August, VTA filed petitions requesting clarification of the existing bargaining unit. VTA wanted to exclude all supervisors and managers, leaving only rank-and-file employees in the unit. According to VTA, the unit included approximately 41 managers, 181 supervisors, and 44 rank-and-file employees. VTA's petitions were based upon its contention that under the LMRA, it could not be compelled to bargain collectively with supervisory or managerial personnel. (29 U.S.C. § 152(3); 29 U.S.C. § 164(a); *NLRB v. Bell Aerospace Co.*, *supra*, 416 U.S. 267.) The DIR dismissed both petitions without prejudice, citing National Labor Relations Board (NLRB) regulations that precluded entertaining a clarification petition when a question of representation was pending.

The DIR appointed a hearing officer and set a hearing to consider AFSCME's petition for certification as the unit's bargaining representative. The DIR instructed the hearing officer to determine "whether an election is to be held, and, if so, the appropriate unit or units within which such election shall be held and the categories of employees who shall be eligible to vote in such unit or units."

VTA's position at the hearing was the same as its position in the dismissed unit clarification petitions: The hearing officer should exclude the supervisory and managerial employees from its determination of the appropriate unit because, under the LMRA, VTA was not required to bargain with supervisors or managers. VTA also argued that it was an unfair labor practice to allow a unit containing rank-and-file employees to be dominated by supervisors and managers, and for that reason as well, the supervisors and managers should be excluded. There was no evidence that the job descriptions or responsibilities of the employees in the Supervisory-Administrative unit were any different than they were prior to the 1995 transfer. Indeed, the parties stipulated that the unit described in AFSCME's petition was the same unit that had been organized for collective bargaining purposes since at least 1974, and was the same Supervisory-Administrative unit described by the DIR in case No. 95-1495.

The hearing officer issued a proposed decision and order in which she concluded that an election should be held and that the appropriate unit was the unit the DIR defined in case No. 95-1495. The DIR adopted the proposed decision, specifying that section 100309 was the basis for concluding that the existing bargaining unit was the appropriate unit within which to hold the election. The election was held in March 2004. The employees were offered the choice of CEMA, AFSCME, or no representation. The employees rejected CEMA and elected AFSCME as their exclusive bargaining representative. **[140 Cal.App.4th 1311]**

VTA filed a petition for writ review, seeking, in substance, reversal of the DIR's decision ordering an election to be held within the existing bargaining unit. VTA's petition named the DIR as respondent and CEMA and AFSCME as real parties in interest. fn. 3 The superior court granted the petition. The court concluded that "the DIR acted in excess of its jurisdiction by failing to apply relevant federal law, including the express statutory declaration in [29] U.S.C. §§ 152 and 164 [exempting supervisors from bargaining rights under the LMRA], and by making findings unsupported by substantial evidence in determining AFSCME's certification petition and the matters at issue." The court reasoned that although sections 100308 and 100309 require VTA to grant recognition to the representative of the transferring employees, nothing in those sections "expressly refers to

supervisors or managers, and nothing in the legislation presupposes [that] any transferring unit of employees is an appropriate unit for unit determinations." The judgment directed the clerk to issue a peremptory writ of administrative mandate instructing the DIR to set aside its final order and reconsider its action in light of the court's decision. The DIR and AFSCME appeal from the judgment.

IV. DISCUSSION

A. *Collateral Estoppel*

Before proceeding to the substantive issue, we first dispose of appellants' contention that VTA is estopped from challenging the composition of the bargaining unit because the DIR had defined the unit five years earlier, in case No. 95-1495.

[1] Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings only if, among other things, the issue sought to be precluded from relitigation is identical to that decided in a former proceeding. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943.) The party asserting the doctrine has the burden to prove that the doctrine applies. (*Ibid.*)

In the present case, there is no record of the former proceeding other than the final and interim decisions. It is true that one of the interim decisions notes that there remained to be decided the question of "whether post-reorganization positions held by true managers and supervisors, who are exempt under LMRA standards, can be declared to be within a statutorily recognized bargaining unit." Although one might surmise that the issue was decided affirmatively because the DIR ultimately identified the existing unit **[140 Cal.App.4th 1312]** as appropriate, given the incompleteness of the record we cannot tell to what extent the issue was actually litigated. Accordingly, appellants have not carried their burden and we cannot apply collateral estoppel in this case.

B. *The Arguments of the Parties*

Turning now to the substance of the appeal, we first describe the various arguments advanced by the parties.

AFSCME argues that the Act as a whole extends collective bargaining rights to supervisors. AFSCME points out that under the LMRA, the term "employee" expressly excludes supervisors (29 U.S.C. § 152(2)) but the Act does not contain the same definition. In fact, there is no definition of "employee" in the Act. AFSCME maintains that since the Act does not specify otherwise, it must be read to extend self-organization and collective bargaining rights to all VTA employees, supervisory as well as rank and file. Thus, although section 100301 requires the DIR to apply "relevant" federal law to questions of representation, the portion of the LMRA excluding supervisory employees is not "relevant" to questions of representation in this or any other case involving VTA.

The DIR contends that the LMRA is not relevant to the narrower question of whether VTA must bargain collectively with supervisors and managers in the bargaining unit previously represented by CEMA. According to the DIR, we need not consider whether the Act extends bargaining rights to supervisors generally, since section 100309 by itself controls resolution of the issue.

VTA's position, which the trial court adopted, is that since the Act requires the DIR to apply the LMRA to questions of representation, and since the LMRA expressly exempts supervisors from the rights granted under that act, VTA may never be compelled to bargain with a unit containing supervisory or management employees. fn. 4 **[140 Cal.App.4th 1313]**

C. *The Issue*

The parties' arguments boil down to a single substantive issue: Under the undisputed facts of this case, does section 100309 require VTA to recognize and bargain with the representative of the Supervisory-Administrative unit even though that unit includes employees classified as supervisors and managers?

Because we conclude that section 100309 requires VTA to bargain with the existing unit, we need not reach the broader issue of whether, as a general matter, section 100300 extends collective bargaining rights to supervisory and managerial personnel.

D. *Standard of Review*

The operative pleading is VTA's First Amended Cross Petition for Writ of Certiorari or, Alternatively, for Writ of Mandamus, or, Alternatively, for Writ of Administrative Mandamus. The superior court treated the petition as one for administrative mandamus. The parties do not challenge this decision and we find it to be appropriate.

"Judicial review of most public agency decisions is obtained by a proceeding for a writ of ordinary or administrative mandate. (Code Civ. Proc., §§ 1085, 1094.5.) The applicable type of mandate is determined by the nature of the administrative action or decision. [Citation.] Usually, quasi-legislative acts are reviewed by ordinary mandate and quasi-judicial acts are reviewed by administrative mandate." (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1785.) There are subtle differences between the scope of

judicial review applied to ordinary mandamus and that used for administrative mandamus. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 849.) Regardless of the writ involved, however, where the facts are undisputed, the reviewing court faces a question of law. "On questions of law arising in mandate proceedings, we exercise independent judgment." (*Ibid.*) In those circumstances, the trial and appellate courts perform the same function. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 233.) Accordingly, to decide the meaning of sections 100301 and 100309, we apply our independent review without reference to the trial court's actions. (*McGill v. Regents of University of California, supra*, 44 Cal.App.4th at p. 1786.)

[2] In exercising our independent judgment, we rely upon settled rules of statutory construction. " 'Statutes are to be interpreted in accordance with their apparent purpose. . . .' (*Kaiser Foundation Health Plan, Inc. v.* ***[140 Cal.App.4th 1314]*** *Lifeguard, Inc.* (1993) 18 Cal.App.4th 1753, 1762.) First and foremost, we look for that purpose in the actual language of the statute. (*Mercer v. Department of Motor Vehicles* (1991) 53 Cal.3d 753, 763.) If the meaning is without ambiguity, doubt, or uncertainty, then the language controls. (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.) If the meaning of the words is not clear, we may refer to various extrinsic aids, including the history of the statute, to determine the intent of the Legislature. (*Kaiser Foundation Health Plan, Inc. v. Lifeguard, Inc., supra*, 18 Cal.App.4th at p. 1762.) Finally, if neither the words of the statute nor its legislative history reveal[s] a clear meaning, we apply reason and practicality, and interpret the statute in accord with common sense and justice, and to avoid an absurd result. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1240.)" (*In re Marriage of Campbell* (2006) 136 Cal.App.4th 502, 506.)

Although our review is independent, we do not necessarily disregard the DIR's interpretation of the law. "Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See *Traverso v. People ex rel. Dept. of Transportation* (1996) 46 Cal.App.4th 1197, 1206.) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, 'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action.' (Judicial Review of Agency Action (Feb. 1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)" (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8.) It follows that if application of the settled rules of statutory interpretation does not clearly reveal the Legislature's intent, the DIR's interpretation of the statutes in the context of this case may be helpful.

E. *Sections 100308 and 100309*

Sections 100308 and 100309 were part of the 1994 reorganizing legislation (Stats. 1994, ch. 254, §§ 27, 28, pp. 1855-1856). Section 100308 describes the employees who would be transferring to VTA and VTA's obligations pertaining to accrued benefits: "County employees and employees of the Santa Clara County Congestion Management Agency who, on a date or dates determined by the board of directors, terminate their employment and immediately thereafter become employees of [VTA], shall transfer to [VTA], and **[140 Cal.App.4th 1315]** [VTA] shall assume liability for, all of their accrued and unused vacation, sick leave, personal leave, compensating time off and STO balances and days of accrued service in accordance with the records of their former employer in lieu of any payment by the former employer for those balances. Those employees who were covered by a county or congestion management agency pension plan shall be entitled to the same or equivalent rights, options, privileges, benefits, obligations, accrued service, and status under the pension plan of [VTA]."

Section 100309 consists of the following two paragraphs:

"To the extent permitted by law, and until altered or revoked as provided by law, [VTA] shall grant recognition to those employee organizations which served as the recognized representatives of the former county employees described in Section 100308 immediately prior to their employment by [VTA].

"[VTA] shall assume and observe all applicable provisions, including wages, of existing written memoranda of understanding in effect between the county and the above recognized labor organizations for those former county employees described in Section 100308 who are employed by [VTA] in positions which would have been covered by those memoranda if the employees had remained employed by the county. This obligation extends only for the remainder of the term of the respective existing written memoranda of understanding and to the extent not superseded by a successor agreement between [VTA] and a recognized labor organization."

F. *Analysis*

1. *Section 100309*

The first paragraph of section 100309 required VTA to "grant recognition" to any employee organization that, immediately prior to the 1995 transfer, was the recognized representative of the county employees. As the superior court noted, section 100309 says nothing about the composition of the bargaining units that selected

these representatives. That omission does not convince us that the Legislature intended to exclude supervisory and managerial employees from any such unit. To the contrary, in our view, the Legislature intended that VTA accord collective bargaining rights to all the transferring county employees to the extent the employees enjoyed such rights in their prior employment. Our conclusion is based upon the settled principles of statutory interpretation. **[140 Cal.App.4th 1316]**

The plain language of section 100309 requires VTA to grant recognition to the representatives of the "employees described in Section 100308." The employees described in section 100308 are the county employees transferring to VTA as part of the 1995 reorganization. Section 100308 requires VTA to assume liability for all benefits those employees earned in their prior employment, thereby relieving the county of any obligation to cash out those benefits when the employees were terminated. The provision quite plainly applies to all the transferring employees regardless of their job description. It follows that the reference in section 100309 to the "employees described in Section 100308" is to all the transferring employees.

The historical context of the legislation confirms that the Legislature did not intend to exclude supervisory employees from the scope of section 100309. The Legislature would have been aware that county employees transferring to VTA in 1995 had collective bargaining rights under the MMBA during their employment with the county. (See *People v. McGuire* (1993) 14 Cal.App.4th 687, 694 [we assume Legislature was aware of existing law at the time it enacted the statute].) Since the MMBA accords collective bargaining rights to supervisors and managers, the Legislature must have anticipated that there would be organizations of supervisory or managerial employees among those transferring to VTA. Yet the Legislature required VTA to recognize the employees' existing bargaining representatives without expressly limiting the requirement to any particular employment categories.

The unqualified requirement of section 100309 may be contrasted with section 100350, which pertains to the employees of transit facilities acquired by VTA. Section 100350, which was part of the original enabling legislation (Stats. 1969, ch. 180, § 1, p. 449), provides that whenever VTA acquires existing facilities, the employees of the existing facility shall be appointed to positions with VTA and shall retain all benefits they had with their former employer and that VTA shall "assume and observe all existing labor contracts." The section expressly states, however, that these rights "apply only to those officers or supervisory employees of the acquired utility as shall be designated by the [VTA] board." Had the Legislature intended to limit the rights granted under section 100309 to non-supervisory employees, it could have expressed that intent as it did in section 100350. (See *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [Legislature knows how to create an exception when it wishes to do so].) **[140 Cal.App.4th 1317]**

The legislative history of section 100309 further supports the conclusion that the Legislature intended to provide for continuity of collective bargaining rights for all the transferring county employees. Assembly committee analysis of the legislation explains that the bill would reorganize county transit functions and that county employees then providing transit services "will have the opportunity to transfer employment to the district, *and will retain any rights* and pension benefits they previously had. Labor agreements existing before the reorganization will not be impacted." (Assem. Transp. Com., Analysis of Assem. Bill No. 2442, (1994-1995 Reg. Sess.) Mar. 7, 1994, p. 2, italics added.) The pending bill was also described as requiring VTA "to recognize employee organizations which, prior to the reorganization of the district, represented the county employees of the district." (*Id.* at p. 1.) The implication of this language is that all transferring employees would continue to enjoy the same collective bargaining rights they enjoyed while employed by the county.

That the Legislature was concerned with continuity of collective bargaining rights may also be inferred from the requirements of the Urban Mass Transportation Act of 1964. (Pub. L. No. 88-365, now 49 U.S.C. 5301 et seq.) This federal law conditions federal funding for transportation projects upon, among other things, continuation of collective bargaining rights of employees affected by the federal assistance. (49 U.S.C. 5333(b)(2)(B).) A federal funding contingency is certainly one reason the Legislature might have wanted to preserve the collective bargaining rights of all the county employees.

[3] The most compelling reason for concluding that section 100309 applies to all transferring county employees and, therefore, requires VTA to recognize the Supervisory-Administrative bargaining unit as it was composed at the time of transfer, is the absurdity of a contrary conclusion. Section 100309 requires VTA to grant recognition to the recognized representatives of the transferring employees. Selection of the representative always follows determination of the appropriate bargaining unit. (*Pittsburgh Glass Co. v. Board* (1941) 313 U.S. 146, 156.) Under the LMRA, at the time of initial organization the first task is to identify the employees included in the bargaining unit; then, the bargaining unit decides which organization it wants as an exclusive bargaining representative. This is the only way to give effect to the policy of ensuring that the employees have the right to bargain through representatives of their own choosing. (§ 100301; 29 U.S.C. § 151.) Thus, a requirement that VTA grant recognition to the representative necessarily implies that VTA must accept the bargaining unit represented. If the Act allowed VTA to exclude supervisors and managers **[140 Cal.App.4th 1318]** from an existing bargaining unit, the exclusion would alter the composition of the unit that selected the representative in the first place. That would make the requirement of section 100309, that VTA grant recognition to the "recognized representatives of the former county employees," completely meaningless.

[4] VTA's construction of the law would also negate the requirement that VTA grant recognition to the recognized representative of the county employees "until altered or revoked as required by law." (§ 100309.) That is, the statute's recognition requirement persists until the representation is "revoked," which can occur if the unit withdraws its authorization in a decertification election (29 U.S.C. § 159(c)(1)(A)), or until it is "altered." A representation is "altered" when the bargaining unit itself is altered in such a way that the representative no longer validly represents a majority of the employees in the unit. (See §§ 100301, 100302.) fn. 5 Thus, under section 100309, VTA must continue to grant recognition to the recognized representative of the former county employees until the bargaining unit revokes the representation or the bargaining unit is altered in a way that invalidates the representation. This provision would be a nullity if the Act permitted VTA to unilaterally alter the existing bargaining unit on demand by insisting upon the exclusion of supervisors.

[5] Accepting the composition of an existing bargaining unit, as we believe the Legislature intended VTA to do, is not inconsistent with federal law. "Often the [NLRB] is faced with the issue of whether established bargaining units remain appropriate when successor employers commence operations. Generally, the [NLRB] has long given substantial weight to prior bargaining history in deciding whether established bargaining units remain appropriate. In most cases, a historical unit will be found appropriate if the predecessor employer recognized it, even if the unit would not be appropriate under [NLRB] standards if it were being organized for the first time." (*Met Elec. Testing Co.* (2000) 331 NLRB 872, 875-876.)

[6] Finally, it is a rule of statutory interpretation that a specific statute shall take precedence over a more general one touching on the same subject. (*Department of Industrial Relations v. Fidelity Roof Co.* (1997) 60 Cal.App.4th 411, 426.) Section 100309 pertains only to the county employees who transferred to VTA in 1995 who were organized and represented by a recognized bargaining agent at the time of the transfer. Section 100301 is the general rule that applies when representation questions **[140 Cal.App.4th 1319]** arise. It follows that section 100309, which is the more specific statute, should take precedence over whatever limitations section 100301 may impose upon the composition of bargaining units generally.

In challenging AFSCME's petition for certification VTA did not challenge the composition of the unit based upon any change in the duties or responsibilities of the employees contained in the Supervisory-Administrative unit. Rather, VTA attempted to withdraw what it perceived as its voluntary recognition of a unit containing supervisors and managers. This maneuver may be appropriate under federal law, where an employer may never be compelled to bargain with supervisors or managers. (*Newspaper Drivers & Handlers Local 372 v. N.L.R.B.* (1984) 735 F.2d 969, 971.) But VTA's recognition was not voluntary; it was compelled by section 100309.

2. *Section 100301*

[7] Our interpretation of section 100309 is that the Legislature intended VTA to continue the bargaining rights enjoyed by the transferring county employees regardless of their position in the employment hierarchy. Focus upon section 100301 does not alter our conclusion.

The directive of section 100301 is that the DIR apply *relevant* federal law. The first consideration, therefore, is whether the LMRA is relevant to the question presented. VTA's position is, in effect, that federal law is always relevant to questions of representation at VTA. This is a mistake. The Supreme Court confronted a similar problem involving the Agricultural Labor Relations Board (ALRB). In *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, the ALRB had promulgated a rule regulating union access to employer property. Since Labor Code section 1148 required the ALRB to "follow applicable precedents" of federal law, and since the NLRB always resolved accessibility issues on an ad hoc basis, the employer argued that the ALRB had violated section 1148 by adopting a rule rather than by making decisions one case at a time. (*Agricultural Labor Relations Bd. v. Superior Court, supra*, 16 Cal.3d at p. 412.) But the Supreme Court observed that Labor Code section 1148 directed the ALRB to be guided by "applicable" precedents of the LMRA. Since the court's only concern was whether the ALRB had reasonably interpreted the legislative mandate, the ALRB "could fairly have inferred that the Legislature intended it to select and follow only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene." (*Agricultural Labor Relations Bd. v. Superior Court, supra*, 16 Cal.3d at p. 413.) **[140 Cal.App.4th 1320]**

[8] Section 100301 is similar to Labor Code section 1148 in that it requires the DIR to follow "relevant" federal law and administrative practice. This requirement does not demand slavish adherence to the LMRA. The Act itself provides its own labor relations scheme in section 100300 et seq. Where state and federal labor laws substantially differ, it is error to rely upon federal law to construe the state law requirements. (See *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 798.)

The question before the DIR was whether to exclude supervisors and managers from the Supervisory-Administrative bargaining unit in light of the requirements of section 100309. Section 100309 imposes obligations upon VTA that are specific to VTA and a one-time legislative reshuffling of public employees between two public employers. The DIR concluded that by imposing these requirements, the Legislature intended to maintain the existing collective bargaining rights of all the employees involved, including supervisors or managers. That is a requirement that does not exist under the federal law. (Indeed, the LMRA

does not, by its terms, apply to public employees at all.) Thus, the DIR decided that the LMRA's no-supervisors rule was not relevant to the question at hand.

We recognize that the question presented is a close and complicated one. The DIR, much more than this court, is familiar with the practical considerations of labor relations in public transit districts. It is in these circumstances that we accord the DIR's interpretation significant deference.

3. *AB 199*

VTA refers us to the enactment in 2003 of Assembly Bill No. 199 (Stats. 2003, ch. 833, (AB 199) § 1) as support for its position that the Legislature did not intend to extend collective bargaining rights to any supervisors or managers at VTA. AB 199 created the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (§ 99560 et seq.). This act is a comprehensive statute governing employer-employee relations for *supervisory* employees of the Los Angeles County Metropolitan Transportation Authority (LACMTA). (Sen. Rules Com., Analysis of Assem. Bill No. 199 (2003-2004 Reg. Sess.) Aug. 29, 2003.) fn. 6 Prior to enactment of AB 199, the law governing labor relations between LACMTA and its employees was identical to the code sections governing labor relations in general at VTA. Indeed, both section 30751, which pertains to LACMTA, and section 100301 provide: "Any question which may arise with respect to whether a majority **[140 Cal.App.4th 1321]** of the employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the [DIR]. In resolving such questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, the director shall apply the relevant federal law and administrative practice developed under the [LMRA (29 U.S.C.A. § 141 et seq.)]."

AB 199 is described in the legislative history as establishing a law "to give supervisory employees of [LACMTA] the right to form, join, and participate in the activities of their chosen employee organization for the purposes of representation on all employer-employee relations matters" and to permit "these employees to meet, confer, and enter into Memoranda of Understanding (MOUs) on employer-employee relation matters." (Sen. Rules Com., Analysis of Assem. Bill No. 199 (2003-2004 Reg. Sess.) Sept. 4, 2003.) VTA argues that, in light of this stated purpose, the Legislature must have understood that existing law did not provide these rights to supervisors or it would not have needed the new law and, since existing law applicable to VTA is the same as that applicable to LACMTA, supervisors at VTA have no such rights either. Assuming that VTA's analysis of the law applicable to LACMTA is correct, we note one difference between the two transit acts that is fatal to the analogy: The statutes applicable to LACMTA do not include any provision similar to section 100309. Accordingly, VTA's reliance upon AB 199 is inapt.

G. *Conclusion*

We hold that section 100309 requires VTA to continue to grant recognition to the recognized representative of the Supervisory-Administrative unit that transferred to VTA as part of the 1995 reorganization even though the unit includes employees classified as supervisors or managers.

Our holding does not preclude clarification of the appropriate bargaining unit based upon changed circumstances. We merely hold that in light of section 100309, VTA may not demand the exclusion of supervisors or managers from the Supervisory-Administrative unit solely because, under the LMRA, it would not be compelled to bargain collectively with employees in those categories.

It follows that the DIR did not err in ordering an election among the employees of the Supervisory-Administrative unit. **[140 Cal.App.4th 1322]**

V. DISPOSITION

The judgment of the superior court, granting the petition of the Santa Clara Valley Transportation Authority for a writ of administrative mandate, is reversed. The superior court is directed to enter a new judgment denying the petition.

Bamattre-Manoukian, J., and Duffy, J., concurred.

FN 1. Hereafter, all unspecified section references are to the Public Utilities Code.

FN 2. Several persons have served as director, or acting director, of the Department of Industrial Relations during the evolution of this case. Respondent, John M. Rea is the most recent. Hereafter, our reference to "the DIR" is to the person serving as director during the relevant time period.

FN 3. VTA's petition was actually filed as a cross-petition in a case first brought by CEMA. CEMA ultimately dismissed its complaint. CEMA is not a party to this appeal.

FN 4. As an alternative basis upon which to affirm the judgment, VTA argues that the existing bargaining unit contains a mix of supervisory and rank-and-file employees and that such a "mixed unit" is unlawful regardless of the operation of sections 100308 and 100309. But a mixed unit is not unlawful per se. (Cf. *Mon River Towing, Inc. v.NLRB* (9th Cir. 1969) 421 F.2d. 1, 8.) Determining the appropriateness of a mixed unit requires

examination of the actual composition of the bargaining unit. (*Newhouse Broadcasting Corp. v. Surratt* (1972) 198 NLRB 342, 343.) This factual issue was not litigated below. The matter was argued and submitted as the purely legal question of whether the Act required VTA to recognize and bargain with the Supervisory-Administrative unit. Accordingly, there is no basis in the record to support VTA's alternative contention and we do not consider it.

FN 5. Requiring VTA to recognize the designated representative until "altered" does not mean that VTA may withdraw its recognition when, as here, the bargaining unit selects a different representative. Such a requirement would, in effect, deprive the employees of the right to choose their own representative. (§ 100301; 29 U.S.C. § 151.)

FN 6. We have granted, in part, VTA's request that we take judicial notice of the legislative history of sections 99560 et seq.

Return to Top

Exhibit I

Fiscal Year

2003 - 2004

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

Claim File Copy

January 11, 2006

CERTIFIED MAIL # 7004 2510 0004 4007 0633

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claims
Kern Community College District CC15095

Dear Ms. Brummels:

Enclosed please find the original claim and extra copies of the FAM-27 for Kern Community College District's reimbursement claims listed below:

1/84	Health Fee Elimination	2003-2004
1/84	Health Fee Elimination	2004-2005

If you have any questions regarding these claims, please contact me at (858) 514-8605.

Sincerely,

Sergio M. Perez, Vice-President
Claims Processing Manager

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use only
(19) Program Number 00234
(20) Date Filed ___/___/___
(21) LRS Input ___/___/___

Program 234

LABEL HERE

(01) Claimant Identification Number:	CC 15095
(02) Claimant Name	Kern Community College District
County of Location	Kern
Street Address	2100 Chester Avenue
City / State / Zip Code	Bakersfield / CA / 93301

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☒
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐

Fiscal Year of Cost	(06)	(12) **2003-2004**	(30)	
Total Claimed Amount	(07)	(13) **$ 122,723**	(31)	
Less: **10% Late Penalty**		(14) **$ 1,000**	(32)	
Less: **Prior Claim Payment Received**		(15) **$ -**	(33)	
Net Claimed Amount		(16) **$ 121,723**	(34)	
Due from State	(08)	(17) **$ 121,723**	(35)	
Due to State		(18)	(36)	

Reimbursement Claim Data	
(22) HFE-1.0, (04)(b)	122,723
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer **(USE BLUE INK)**

Date 1-3-2006

John Griffith
Type or Print Name

Director, Budget and Payroll Services
Title

(38) Name of Contact Person for Claim

SixTen and Associates

Telephone Number: (858) 514-8605
E-mail Address: kbpsixten@aol.com

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0

(01) Claimant:	(02) Type of Claim:		Fiscal Year
	Reimbursement	X	
Kern Community College District	Estimated		2003-2004

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.	Bakersfield College	$ 59,844.07
2.	Porterville College	$ 62,879.30
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	$ 122,723

PROGRAM 34

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.1

(01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2003-2004

(03) Name of College: Bakersfield College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 39.43%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 212,724	$ 83,877	$ 296,601
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 212,724	$ 83,877	$ 296,601

(08) Complete Columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1.	Per Fall Semester				$ -		$ -	$ -
2.	Per Spring Semester				$ -		$ -	$ -
3.	Per Summer Session				$ -		$ -	$ -
4.	Per First Quarter				$ -		$ -	$ -
5.	Per Second Quarter				$ -		$ -	$ -
6.	Per Third Quarter				$ -		$ -	$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	$ 236,757
(10) Subtotal	[Line (07) - line (09)]	$ 59,844

Cost Reduction

(11) Less: Offsetting Savings, if applicable		$ -
(12) Less: Other Reimbursements, if applicable		$ -
(13) Total Amount Claimed	[Line (10) - {line (11) + line (12)}]	$ 59,844

Revised 09/03

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.2

(01) Claimant: Kern Community College District	(02) Type of Claim: Reimbursement [X]		Fiscal Year 2003-2004
	Estimated [ ]		

(03) Name of College: Porterville College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 39.43%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 79,758	$ 31,449	$ 111,206
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 79,758	$ 31,449	$ 111,206

(08) Complete Columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1.	Per Fall Semester				$ -		$ -	$ -
2.	Per Spring Semester				$ -		$ -	$ -
3.	Per Summer Session				$ -		$ -	$ -
4.	Per First Quarter				$ -		$ -	$ -
5.	Per Second Quarter				$ -		$ -	$ -
6.	Per Third Quarter				$ -		$ -	$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	$ 48,327
(10) Subtotal	[Line (07) - line (09)]	$ 62,879

Cost Reduction

(11) Less: Offsetting Savings, if applicable		$ -
(12) Less: Other Reimbursements, if applicable		$ -
(13) Total Amount Claimed	[Line (10) - {line (11) + line (12)}]	$ 62,879

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant	(02) Fiscal Year costs were incurred:
Kern Community College District	2003-2004

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon	X	X
Dermatology, Family practice		
Internal Medicine	X	X
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services		
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service		
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental		
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Acquired Immune Deficiency Syndrome	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene		
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		
Child Abuse ,		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant	(02) Fiscal Year costs were incurred:
Kern Community College District	2003-2004

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning		
Stop Smoking	X	X
Library, Videos and Cassettes		
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus		
Measles/Rubella	X	X
Influenza		
Information		
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes		
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps		
Other, list---> Cough drops, Advil, Antihistamine(Benadry Chlopheramine)	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant	(02) Fiscal Year costs were incurred:
Kern Community College District	2003-2004

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin		
EKG		
Strep A Testing	X	X
PG Testing	X	X
Monospot		
Hemacult	X	X
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections		
Bandaids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list		
Committees		
Safety	X	X
Environmental		
Disaster Planning	X	X

Fiscal Year

2004 - 2005

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

Claim File Copy

January 11, 2006

CERTIFIED MAIL # 7004 2510 0004 4007 0633

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claims
Kern Community College District CC15095

Dear Ms. Brummels:

Enclosed please find the original claim and extra copies of the FAM-27 for Kern Community College District's reimbursement claims listed below:

1/84	Health Fee Elimination	2003-2004
1/84	Health Fee Elimination	2004-2005

If you have any questions regarding these claims, please contact me at (858) 514-8605.

Sincerely,

Sergio M. Perez, Vice-President
Claims Processing Manager

State Controller's Office

Community College Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use only
(19) Program Number 00234
(20) Date Filed ___/___/___
(21) LRS Input ___/___/___

Program **234**

LABEL HERE

(01) Claimant Identification Number:	CC 15095
(02) Claimant Name	Kern Community College District
County of Location	Kern
Street Address	2100 Chester Avenue
City / State / Zip Code	Bakersfield / CA / 93301

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated [X]	(09) Reimbursement [X]
	(04) Combined [ ]	(10) Combined [ ]
	(05) Amended [ ]	(11) Amended [ ]
Fiscal Year of Cost	(06) 2005-2006	(12) 2004-2005
Total Claimed Amount	(07) $ 444,000	(13) $ 403,725
Less: 10% Late Penalty		(14) $ -
Less: Prior Claim Payment Received		(15) $ -
Net Claimed Amount		(16) $ 403,725
Due from State	(08) $ 444,000	(17) $ 403,725
Due to State		(18)

Reimbursement Claim Data

(22) HFE-1.0, (04)(b)	403,725
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer **(USE BLUE INK)** Date

1-5-2006

John Griffith
Type or Print Name

Director, Budget and Payroll Services
Title

(38) Name of Contact Person for Claim

SixTen and Associates

Telephone Number: (858) 514-8605
E-mail Address: kbpsixten@aol.com

Form FAM-27 (Revised 09/03)

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0

(01) Claimant:	(02) Type of Claim:		Fiscal Year
Kern Community College District	Reimbursement	X	
	Estimated		2004-2005

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.	Bakersfield College	$295,331.95
2.	Porterville College	$108,392.97
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	$ 403,725

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.1

01) Claimant: ern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2004-2005

03) Name of College: Bakersfield College

04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 42.89%	Total
05) Cost of Health Services for the Fiscal year of Claim	$ 356,794	$ 153,029	$ 509,823
06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 356,794	$ 153,029	$ 509,823

08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
Per Fall Semester				$ -		$ -	$ -
Per Spring Semester				$ -		$ -	$ -
Per Summer Session				$ -		$ -	$ -
Per First Quarter				$ -		$ -	$ -
Per Second Quarter				$ -		$ -	$ -
Per Third Quarter				$ -		$ -	$ -

09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) $ 214,491

10) Subtotal [Line (07) - line (09)] $ 295,332

st Reduction

Less: Offsetting Savings, if applicable $ -

11) Other Reimbursements, if applicable $ -

Total Amount Claimed [Line (10) - {line (11) + line (12)}] $ 295,332

ised 09/03

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.2

01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ] Fiscal Year 2004-2005

03) Name of College: Porterville College

04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 42.89%	Total
05) Cost of Health Services for the Fiscal year of Claim	$ 106,345	$ 45,611	$ 151,956
06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 106,345	$ 45,611	$ 151,956

08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
Per Fall Semester				$ -		$ -	$ -
Per Spring Semester				$ -		$ -	$ -
Per Summer Session				$ -		$ -	$ -
Per First Quarter				$ -		$ -	$ -
Per Second Quarter				$ -		$ -	$ -
Per Third Quarter				$ -		$ -	$ -

) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) $ 43,563

) Subtotal [Line (07) - line (09)] $ 108,393

st Reduction

) Less: Offsetting Savings, if applicable $ -

) Other Reimbursements, if applicable $ -

Total Amount Claimed [Line (10) - {line (11) + line (12)}] $ 108,393

ised 09/03

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred:
2004-2005

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon	X	X
Dermatology, Family practice		
Internal Medicine	X	X
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services		
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service		
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental		
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Acquired Immune Deficiency Syndrome	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene		
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		
Child Abuse		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant	(02) Fiscal Year costs were incurred:
Kern Community College District	2004-2005

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning		
Stop Smoking	X	X
Library, Videos and Cassettes		
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus		
Measles/Rubella	X	X
Influenza		
Information		
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes		
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps		
Other, list--->	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant: Kern Community College District

(02) Fiscal Year costs were incurred: 2004-2005

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin		
EKG		
Strep A Testing	X	X
PG Testing	X	X
Monospot		
Hemacult	X	X
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections		
Bandaids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list		
Committees		
Safety	X	X
Environmental		
Disaster Planning	X	X

Fiscal Year

2005 - 2006

Sixten and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

January 16, 2007

Claim File Copy

CERTIFIED MAIL # 7003 3110 0000 2900 4921

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Kern Community College District CC15095

Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Kern Community College District's reimbursement claims listed below:

1/84	Health Fee Elimination	2005-2006

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,

D. J. Branwell

for Keith B. Petersen, President

Claim File Copy

State Controller's Office

Community College Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use only
(19) Program Number 00234
(20) Date Filed ___/___/___
(21) LRS Input ___/___/___

Program **234**

LABEL HERE

(01) Claimant Identification Number:	CC 15095
(02) Claimant Name	Kern Community College District
County of Location	Kern
Street Address	2100 Chester Avenue
City / State / Zip Code	Bakersfield / CA / 93301

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated [X]	(09) Reimbursement [X]
	(04) Combined [ ]	(10) Combined [ ]
	(05) Amended [ ]	(11) Amended [ ]
Fiscal Year of Cost	(06) 2006-2007	(12) 2005-2006
Total Claimed Amount	(07) $ 378,000	(13) $ 344,353
Less: 10% Late Penalty		(14) $ -
Less: Prior Claim Payment Received		(15) $ -
Net Claimed Amount		(16) $ 344,353
Due from State	(08) $ 378,000	(17) $ 344,353
Due to State		(18)

Reimbursement Claim Data	
(22) HFE-1.0, (04)(b)	344,353
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK) — Date 1/9/07

John Griffith
Type or Print Name

Director, Budget and Payroll Services
Title

(38) Name of Contact Person for Claim
SixTen and Associates

Telephone Number: (858) 514-8605
E-mail Address: kbpsixten@aol.com

Form FAM-27 (Revised 09/03)

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0

(01) Claimant:	(02) Type of Claim:		Fiscal Year
Kern Community College District	Reimbursement	X	2005-2006
	Estimated		

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.	Bakersfield College	$213,591.29
2.	Porterville College	$130,761.87
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	$ 344,353

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.1

(01) Claimant: ern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2005-2006

(03) Name of College: Bakersfield College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 39.91%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 241,895	$ 96,540	$ 338,435
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 241,895	$ 96,540	$ 338,435

(08) Complete Columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1.	Per Fall Semester				$ -		$ -	$ -
2.	Per Spring Semester				$ -		$ -	$ -
3.	Per Summer Session				$ -		$ -	$ -
4.	Per First Quarter				$ -		$ -	$ -
5.	Per Second Quarter				$ -		$ -	$ -
6.	Per Third Quarter				$ -		$ -	$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	$ 124,844
(10) Subtotal	[Line (07) - line (09)]	$ 213,591

Cost Reduction

(11) Less: Offsetting Savings, if applicable	$ -
(12) Less: Other Reimbursements, if applicable	$ -
(13) Total Amount Claimed [Line (10) - {line (11) + line (12)}]	$ 213,591

Revised 09/03

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.2

(01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2005-2006

(03) Name of College: Porterville College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 39.91%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 98,655	$ 39,373	$ 138,029
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 98,655	$ 39,373	$ 138,029

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
Per Fall Semester				$ -		$ -	$ -
Per Spring Semester				$ -		$ -	$ -
Per Summer Session				$ -		$ -	$ -
Per First Quarter				$ -		$ -	$ -
Per Second Quarter				$ -		$ -	$ -
Per Third Quarter				$ -		$ -	$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	$ 7,267
(10) Subtotal	[Line (07) - line (09)]	$ 130,762

Cost Reduction

(11) Less: Offsetting Savings, if applicable		$ -
(12) Less: Other Reimbursements, if applicable		$ -
(13) Total Amount Claimed	[Line (10) - (line (11) + line (12))]	$ 130,762

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred: 2005-2006

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon	X	X
Dermatology, Family practice		
Internal Medicine	X	X
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services		
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service		
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental		
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Acquired Immune Deficiency Syndrome	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene		
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		
Child Abuse		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred: 2005-2006

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking		
Library, Videos and Cassettes		
	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled		
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		
Information		
Insurance	X	X
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration		
Laboratory Tests Done	X	X
Inquiry/Interpretation		
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes		
Medications	X	X
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill		
Midol, Menstrual Cramps	X	X
Other, list--->		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred: 2005-2006

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies	X	X
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies		
Tests	X	X
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis		
Hemoglobin		
EKG	X	X
Strep A Testing	X	X
PG Testing		
Monospot	X	X
Hemacult		
Others, list		
Miscellaneous	X	X
Absence Excuses/PE Waiver		
Allergy Injections	X	X
Bandaids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal		
Others, list		
Committees	X	X
Safety		
Environmental	X	X
Disaster Planning		

Fiscal Year

2006 - 2007

Sixten and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

February 11, 2009

CERTIFIED MAIL #7006 3450 0000 3941 8918

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Kern Community College District CC15095

Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Kern Community College District's reimbursement claim listed below:

1/84	Health Fee Elimination (AMENDED)	2006-2007

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,

Sergio M. Perez

CLIENT'S COPY

State Controller's Office

Community College Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use only
(19) Program Number 00234
(20) Date Filed __/__/__
(21) LRS Input __/__/__

Program 234

LABEL HERE

(01) Claimant Identification Number: CC 15095
(02) Claimant Name: Kern Community College District
County of Location: Kern
Street Address: 2100 Chester Avenue
City: Bakersfield | State: CA | Zip Code: 93301

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☒
Fiscal Year of Cost	(06)	(12) 2006-2007
Total Claimed Amount	(07)	(13) $ 229,093
Less: 10% Late Penalty, not to exceed $10,000		(14) $ 10,000
Less: Prior Claim Payment Received		(15) $ 219,065
Ne med Amount		(16) $ 28
Due from State	(08)	(17) $ 28
Due to State		(18)

Reimbursement Claim Data	
(22) HFE-1.0, (04)(b)	229,093
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK) — Date: 2/9/09

Thomas Burke
Type or Print Name

Chief Financial Officer
Title

(38) Name of Contact Person for Claim

SixTen and Associates

Telephone Number: (858) 514-8605
E-mail Address: kbpsixten@aol.com

orm 27 (Revised 09/03)

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.0

(01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year: 2006-2007

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.	Bakersfield College	$ 210,540
2.	Porterville College	$ 18,554
3.		
4.		
5.		
6.		
7.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	$ 229,093

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.1

(01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2006-2007

(03) Name of College: Bakersfield College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 42.33%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 438,100	$ 185,448	$ 623,548
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 438,100	$ 185,448	$ 623,548

(08) Complete Columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1.	Per Fall Semester	16,096						
2.	Per Spring Semester	16,457						
3.	Per Summer Session	6,183						
	Per First Quarter							
	Per Second Quarter							
	Per Third Quarter							

(09) Total health fee that could have been collected:	The sum of {Line (08)(1)(c) through line (08)(6)(c)	$ 413,008
(10) Subtotal	[Line (07) - line (09)]	$ 210,540
Cost Reduction		
(11) Less: Offsetting Savings, if applicable		
(12) Less: Other Reimbursements, if applicable		
(13) Total Amount Claimed	[Line (10) - {line (11) + line (12)}]	$ 210,540

State Controller's Office

Community College Mandated Cost Manual

PROGRAM 234

MANDATED COSTS
HEALTH FEE ELIMINATION
CLAIM SUMMARY

FORM HFE-1.1

(01) Claimant: Kern Community College District

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year 2006-2007

(03) Name of College: Porterville College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS [ ] SAME [X] MORE [ ]

	Direct Cost	Indirect Cost of: 42.33%	Total
(05) Cost of Health Services for the Fiscal year of Claim	$ 84,263	$ 35,669	$ 119,932
(06) Cost of providing current fiscal year health services in excess of 1986/87	$ -	$ -	$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	$ 84,263	$ 35,669	$ 119,932

(08) Complete Columns (a) through (g) to provide detail data for health fees

	Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1.	Per Fall Semester	3,717						
2.	Per Spring Semester	3,655						
3.	Per Summer Session	1,357						
	Per First Quarter							
	Per Second Quarter							
	Per Third Quarter							

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	$ 101,378
(10) Subtotal	[Line (07) - line (09)]	$ 18.554

ost Reduction

(11) Less: Offsetting Savings, if applicable		
(12) Less: Other Reimbursements, if applicable		
(13) Total Amount Claimed	[Line (10) - {line (11) + line (12)}]	$ 18.554

vised 05

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred:
2006-2007

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.

	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice	X	X
Internal Medicine		
Outside Physician	X	X
Dental Services		
Outside Labs, (X-ray, etc.,)		
Psychologist, full services	X	X
Cancel/Change Appointments		
Registered Nurse	X	X
Check Appointments	X	X
	X	X
Assessment, Intervention and Counseling		
Birth Control		
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic		
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal		
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling	X	X
Substance Abuse Identification and Counseling		
Acquired Immune Deficiency Syndrome	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		
Child Abuse		

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred:
2006-2007

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.

	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning		
Stop Smoking		
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies		
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
	X	X
Immunizations		
Diphtheria/Tetanus		
Measles/Rubella		
Influenza	X	X
Information		
Insurance		
On Campus Accident		
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
	X	X
Laboratory Tests Done		
Inquiry/Interpretation		
Pap Smears	X	X
Physical Examinations		
Employees		
Students		
Athletes		
Medications		
Antacids		
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list--->		
	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 234

MANDATED COSTS
34 HEALTH FEE ELIMINATION
COMPONENT/ACTIVITY COST DETAIL

FORM HFE-2

(01) Claimant
Kern Community College District

(02) Fiscal Year costs were incurred:
2006-2007

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.

	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor		
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
	X	X
Tests		
Blood Pressure		
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG		
Strep A Testing		
PG Testing	X	X
Monospot	X	X
Hemacult		
Others, list	X	X
Miscellaneous		
Absence Excuses/PE Waiver		
Allergy Injections	X	X
Bandaids		
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list	X	X
Committees		
Safety		
Environmental	X	X
Disaster Planning	X	X