

**COMMISSION ON STATE MANDATES**

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November 14, 2014

Mr. Keith B. Petersen  
SixTen & Associates  
P.O. Box 340430  
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Ms. Jill Kanemasu  
State Controller's Office  
Accounting and Reporting  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining and Collective Bargaining Agreement Disclosure*  
09-4425-I-17 and 10-4425-I-18  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213  
Fiscal Years 2002-2003 through 2005-2006  
Sierra Joint Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

**Written Comments**


Written comments may be filed on the draft proposed decision by **December 5, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Friday, January 23, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 9, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

  
Heather Halsey  
Executive Director

**ITEM \_\_**

**INCORRECT REDUCTION CLAIM**

**DRAFT PROPOSED DECISION**

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213

*Collective Bargaining and Collective Bargaining Agreement Disclosure*

Fiscal Years 2002-2003 through 2005-2006

09-4425-I-17 and 10-4425-I-18

Sierra Joint Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses two consolidated incorrect reduction claims (IRCs) filed by Sierra Joint Community College District (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for fiscal years 2002-2003 through 2005-2006 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program.

The following issues are in dispute in this IRC:

- The statutory deadlines applicable to audits;
- Unallowable costs related to salaries and benefits;
- Whether underclaimed costs are required to be paid in favor of a local government claimant in excess of the amount claimed;

*Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates*

On July 17, 1978, the Board of Control, predecessor to the Commission on State Mandates (Commission), found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and were amended on January 27, 2000.

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and "regulations promulgated by the Public Employment Relations Board," including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;

- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.<sup>1</sup>

### **Procedural History**

On June 9, 2008, the Controller issued its draft audit report for the fiscal years at issue. On July 3, 2008, the claimant notified the Controller that it was disputing some of the proposed adjustments. On April 17, 2009, the Controller issued its final audit report for fiscal years 2002-2003 through 2005-2006.<sup>2</sup> On August 4, 2009, the claimant submitted the first of these consolidated IRCs, which was numbered 09-4425-I-17.<sup>3</sup> On August 25, 2010, the Controller issued a revised final audit report.<sup>4</sup> On February 4, 2011, the claimant submitted the second of these consolidated IRCs, numbered 10-4425-I-18.<sup>5</sup> On November 14, 2014, Commission staff issued a draft proposed decision on the consolidated IRC.

### **Commission Responsibilities**

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced,

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<sup>1</sup> Exhibit A, Incorrect Reduction Claim, page 24 (Exhibit B to the IRC, Parameters and Guidelines amended January 27, 2000).

<sup>2</sup> Exhibit A, Incorrect Reduction Claim 09-4425-I-17, at p. 8.

<sup>3</sup> Exhibit A, Incorrect Reduction Claim 09-4425-I-17, at p. 2.

<sup>4</sup> Exhibit B, Incorrect Reduction Claim 10-4425-I-18, at p. 4.

<sup>5</sup> Exhibit B, Incorrect Reduction Claim 10-4425-I-18, at p. 1.

section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>6</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>7</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>8</sup>

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>9</sup> In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>10</sup>

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<sup>6</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>7</sup> *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>8</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>9</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>10</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

## Claims

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

Issue	Description	Staff Recommendation
Statutory deadline to initiate the audit of claimant's 2002-2003 through 2005-2006 reimbursement claims.	At the time the underlying reimbursement claims were filed, Government Code section 17558.5 stated: "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." Claimant argues that tolling the deadline in the case of a claim for which no funds are appropriated or no payment is made is void for vagueness. Therefore, claimant asserts that the first sentence, which relies on the filing date of the claim only, controls, and the audit of its fiscal year 2002-2003 claim, filed on January 13, 2004, was therefore not timely, because it was not initiated on or before January 13, 2007.	<i>The audit was timely initiated.</i> — Staff presumes that the plain language of section 17558.5 is valid and enforceable, and finds that the because the fiscal year 2002-2003 reimbursement claim was not paid until October 30, 2006, the statutory deadline to initiate an audit was tolled until October 30, 2009. The audit was initiated no later than April 17, 2007, and is therefore timely initiated as to all subject fiscal years.
Statutory deadline to complete the audits.	As of January 1, 2005, section 17558.5 also provided: "In any case, an audit shall be completed not later than two years after the date that the audit is commenced."  The claimant argues that based on the initiation date of April 17, 2007, an audit report completed on or after April 17, 2009 is not timely.	<i>The original final audit report was timely completed, but the revised audit report was not timely</i> – Staff finds that the audit was initiated on April 17, 2007, and completed on April 17, 2009, exactly two years after the date commenced. However, the revised audit, issuing August 25, 2010, was not timely, because it was completed later than two years after the audit was commenced.

Reduction of salaries and benefits claimed based on asserted inaccurate productive hourly rates.	The claimant asserts that the Controller reduced salaries and benefits claimed in fiscal year 2002-2003 based on a determination that the claimant provided inaccurate productive hourly rates, but the Controller did not provide any explanation or evidence to support its determination.	<i>This reduction is incorrect because it is entirely lacking in evidentiary support</i> – Staff finds that the Controller failed to provide any evidence in the record of the reasons for the reduction, and its factual assertions that productive hourly rates were “inaccurate” must be supported by evidence in the record.
Recalculation based on asserted flaws in the development of indirect cost rates.	The claimant asserts that the Controller’s recalculation of indirect costs claimed was arbitrary, capricious, or entirely lacking in evidentiary support, because the Controller did not articulate a factually accurate and enforceable reason to recalculate indirect costs. Claimant further argues that upon recalculation, the Controller is required to pay the claimant for the underclaimed amount of indirect costs, and the Controller cannot unilaterally determined that it will not adjust the payment.	<i>Commission has no jurisdiction where there has not been a reduction</i> – Staff finds that even if the Controller had no legally supportable reason to recalculate the claimant’s indirect costs, the result of the recalculation was a determination that the claimant had underclaimed its indirect costs, and therefore there is no reduction over which the Commission can take jurisdiction.

**Staff Analysis**

Staff finds that the original audit report was timely initiated and timely completed, but that the revised audit report was not timely completed. Government Code section 17558.5 provides that if no funds are appropriated “or no payment is made to a claimant...the time for the Controller to initiate an audit [three years] shall commence to run from the date of initial payment of the claim.”<sup>11</sup> Here, the claimant’s fiscal year 2002-2003 claim was first paid October 30, 2006, while the remaining years were not paid until at least September 9, 2010. Therefore, the time period subject to audit, for the earliest of the relevant claim years, was extended until October 30, 2009, and the audit was initiated April 17, 2007. The claimant asserts that the provision of section 17558.5 that tolls the deadline to initiate an audit in the case no payment is made to a claimant is void because it is vague and ambiguous. Staff finds that the Commission is required to presume the statute is valid and enforceable under article III, section 3.5. Staff therefore concludes that the original audit was timely initiated.

Section 17558.5 also requires that an audit be completed “not later than two years after the date that the audit is commenced.” Based on the April 17, 2007 entrance conference, the April 17,

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<sup>11</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128, (AB 2834)).

2009 audit report (the first “final” audit report) was timely completed, but the “revised final audit report” issued August 25, 2010, fell outside the two year completion requirement, and was therefore not timely. Based on the foregoing, staff concludes that the first “final” audit report was timely initiated and timely completed, but the revised audit report was not timely completed, in accordance with section 17558.5. Nevertheless, the Commission may take official notice of the revised audit report to the extent that it resolves any disputed issues, or mitigates the amounts in dispute in the claimant’s favor.

Next, the claimant alleges that the Controller incorrectly reduced costs claimed for salaries and benefits, by \$6,944. The Controller recalculated the productive hourly rates claimed and found that salaries and benefits were overstated in fiscal year 2002-2003 by \$9,186; and understated in fiscal year 2004-2005 by \$2,242. The claimant states that the Controller has not explained this adjustment, but neither has the claimant provided any supporting evidence or rebuttal to the adjustment. Staff concludes that the Controller’s assertion that the calculation of productive hourly rates was inaccurate is not based on any evidence or explanation in the record and, thus, does not comply with section 1185.2(c) of the Commission’s regulations, which requires that all representations of fact shall be supported by documentary evidence. Therefore, staff finds that this adjustment is entirely lacking in evidentiary support and therefore these costs should be reinstated.

Finally, the claimant identifies the Controller’s findings that the claimant understated its indirect costs during the audit period by \$103,032. The Controller applied the understated amount to offset reductions made to other audit items, but declined to reimburse the claimant in excess of the amount claimed for each fiscal year of the audit. The claimant argues that the Controller’s determination not to pay the claimant in excess of its claims is arbitrary and capricious. However, because the Controller offset other reduced audit items to the full extent of the claim for fiscal years 2003-2004, 2004-2005, and 2005-2006, there is a net zero reduction for those years, and the claimant cannot allege an incorrect reduction under sections 17551 and 17561. Staff concludes that there is no longer a reduction in issue and the Commission does not have jurisdiction to require the Controller to reimburse amounts that have not been claimed.

### **Conclusion**

Based on the foregoing, staff recommends that the Commission partially approve this IRC, and request that the Controller reinstate the following reduction:

- Reduction of \$6,944 based on unallowable salaries and benefits in fiscal year 2002-2003.

### **Staff Recommendation**

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

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961 ; Statutes 1991,  
Chapter 1213

Fiscal Years 2002-2003 through 2005-2006

Sierra Joint Community College District,  
Claimant.

Case Nos.: 09-4425-I-17 and 10-4425-I-18

*Collective Bargaining and Collective  
Bargaining Agreement Disclosure*

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

*(Adopted January 23, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this consolidated incorrect reduction claim (IRC) during a regularly scheduled hearing on January 23, 2015. [Witness list will be included in the adopted decision.]

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

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

**Summary of the Findings**

This consolidated IRC was filed, by Sierra Joint Community College District (claimant), in response to the Controller’s audit of the claimant’s annual reimbursement claims for fiscal years 2002-2003 through 2005-2006, which resulted in a total reduction of \$12,116 for unallowable salaries and benefits, of which only \$6,944 is in dispute.<sup>12</sup> The reduction was made on the ground that the claimant did not accurately calculate productive hourly rates. In addition, the Controller found that the claimant underclaimed its indirect costs by \$103,032 during the audit period,<sup>13</sup> a portion of which the Controller has determined it is not required to pay, because it exceeds, in each claim year, the total amount claimed.

The Commission finds that Government Code section 17558.5 does not bar the original “final” audit report issued April 17, 2009. In addition, the Commission finds that the *revised* audit

<sup>12</sup> Exhibit A, IRC 09-4425-I-17, at pp. 8-9.

<sup>13</sup> Exhibit B, IRC 10-4425-I-18, at p. 7.



report issued August 25, 2010 falls outside the two year deadline to complete an audit with respect to *all* relevant claim years. April 17, 2007 constitutes “the date that the audit is commenced,” for purposes of Government Code section 17558.5, and therefore the revised final audit report issued August 25, 2010 is not timely. However, even though the revised final audit report is not timely, the Commission takes official notice of the report to the extent that the revised audit report resolves any disputed issues, or mitigates the amounts in dispute in the earlier audit.

The Commission further finds that the Controller incorrectly reduced \$6,944 in costs based on the assertion that the claimant’s calculation of productive hourly rates was inaccurate. There is no evidence in the record demonstrating the Controller’s recalculation of productive hourly rates, or why such recalculation was necessary. The Controller states that the productive hourly rates were “inaccurate,” but does specify any particular flaw in the calculations, or any particular employee or employees for whom productive hourly rates were disallowed. Section 1185.2(c) of the Commission’s regulations requires that all representations of fact be supported by documentary evidence. With no explanation or evidence in the record to support the Controller’s factual assertion that the productive hourly rates were inaccurate, the Commission finds that audit determination is entirely lacking in evidentiary support, and that the full amount reduced, \$6,944, is required to be reinstated to the claimant.

Finally, the Commission finds that aside from the reductions for unsupported services and supplies, primarily confined to fiscal year 2002-2003, the claimant has not alleged any reductions in the subsequent years. As explained below, the Controller found underclaimed indirect costs in each claim year, and applied the underclaimed amounts to offset reductions for other audit items up to the total amount of the claim for each relevant fiscal year. In so doing the Controller left the claimant with a net reduction of zero for fiscal years 2003-2004, 2004-2005, and 2005-2006, and therefore the claimant can no longer allege any reduction of its fiscal year 2003-2004 through 2005-2006 claims.

Accordingly, the Commission partially approves this IRC, and directs the Controller to reinstate the following reduction:

- Reduction of \$6,944 based on unallowable salaries and benefits in fiscal year 2002-2003.

## **COMMISSION FINDINGS**

### **I. Chronology**

01/15/2004	Claimant filed its fiscal year 2002-2003 annual reimbursement claim. <sup>14</sup>
01/10/2005	Claimant filed its fiscal year 2003-2004 annual reimbursement claim. <sup>15</sup>
01/17/2006	Claimant filed its fiscal year 2004-2005 annual reimbursement claim. <sup>16</sup>
12/21/2006	Claimant filed its fiscal year 2005-2006 annual reimbursement claim. <sup>17</sup>

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<sup>14</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>15</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>16</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

06/9/2008	Controller issued the draft audit report. <sup>18</sup>
07/03/2008	Claimant notified Controller of disputed adjustments. <sup>19</sup>
04/17/2009	Controller issued the final audit report. <sup>20</sup>
08/04/2009	Claimant filed the first of two consolidated IRCs. <sup>21</sup>
08/10/2009	Commission staff deemed the IRC complete and issued it for comment.
08/25/2010	Controller issued the revised final audit report. <sup>22</sup>
09/09/2010	Controller issued adjustment letters and a “results of review” letter. <sup>23</sup>
02/04/2011	Claimant filed the second of two consolidated IRCs. <sup>24</sup>
02/10/2011	The executive director deemed the second IRC complete, and consolidated the two IRCs and issued them for comments.
11/14/2014	Commission staff issued the draft proposed decision.

## II. Background

### Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

The Board of Control, predecessor to the Commission, found a reimbursable state mandate at its July 17, 1978 hearing, on the basis of Statutes 1975, chapter 961. Then, on March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213.<sup>25</sup> Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000.<sup>26</sup>

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and “regulations promulgated by the Public Employment Relations Board,” including:

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<sup>17</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>18</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>19</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>20</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>21</sup> Exhibit A, IRC 09-4425-I-17, at p. 2.

<sup>22</sup> Exhibit B, IRC 10-4425-I-18, at p. 4.

<sup>23</sup> Exhibit B, IRC 10-4425-I-18, at p. 4.

<sup>24</sup> Exhibit B, IRC 10-4425-I-18, at p. 2.

<sup>25</sup> Exhibit X, Test Claim Statement of Decision, 97-TC-08.

<sup>26</sup> See Exhibit X, Parameters and Guidelines, *Collective Bargaining and Collective Bargaining Agreement Disclosure*, August 20, 1998; Exhibit X, Amended Parameters and Guidelines, January 27, 2000.

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.<sup>27</sup>

#### Controller’s Audit and Summary of the Issues

Controller’s reductions are based primarily on a lack or insufficiency of supporting documentation for costs claimed. In addition, the Controller found that the claimant failed to obtain federal approval for its indirect cost rates for at least two of the four audited years, and based upon the alternative state method of calculating indirect costs, underclaimed its indirect costs by \$103,032.<sup>28</sup> However, despite finding that the claimant underclaimed its indirect costs, the Controller determined that the underclaimed amount cannot be paid, because “only the total costs included in the initial or amended claim may be reimbursed within one year of the filing deadline...” and section 17561 “allows the SCO to adjust the payment to correct for any underpayments or overpayments based on allowable costs claimed.”<sup>29</sup>

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<sup>27</sup> Exhibit A, Incorrect Reduction Claim, page 24 (Exhibit B to the IRC, Parameters and Guidelines amended January 27, 2000).

<sup>28</sup> See Exhibit A, IRC 09-4425-I-17, at pp. 53-72 [Controller’s Final Audit Report, Issued April 17, 2009]; Exhibit B, IRC 10-4425-I-18, at pp. 25-44 [Controller’s Revised Final Audit Report, Issued August 25, 2010].

<sup>29</sup> Exhibit B, IRC 10-4425-I-18, at p. 43 [Revised Final Audit Report].

### III. Positions of the Parties

#### Sierra Joint Community College District

The portion of reduced salaries and benefits that the claimant disputes is attributed to “inaccurate productive hourly rates, resulting in costs that were overstated by \$9,186 for [fiscal year] 2002-03 and understated by \$2,242 for [fiscal year] 2004-05, leaving a net audit adjustment of \$6,944.”<sup>30</sup> The claimant states that “[n]o explanation was provided for any of these adjustments, and there is no indication as to why the payroll information reported by the District needed to be adjusted for purposes of the productive hourly rate computation.”<sup>31</sup>

For fiscal years 2003-2004 through 2005-2006, the Controller found *underclaimed* indirect costs, which were offset against all other adjustments for those years, and the net reduction in claimed costs for those years was zero.<sup>32</sup> The claimant disputes the Controller’s findings that “the District improperly determined and applied the indirect cost rate.” The claimant argues that the “difference in the claimed and audited rates is the determination of which of those cost elements are direct costs and which are indirect costs.” The claimant maintains that “federally ‘approved’ rates, which the Controller will accept without further action prior to [fiscal year] 2004-05, are ‘negotiated’ rates calculated by the District and submitted for approval, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used.”<sup>33</sup>

In addition, the claimant argues that the Controller is applying an incorrect auditing standard, in part relying on Government Code 12410, and also failing to make express findings that the claimant’s reimbursement claims were unreasonable or excessive.<sup>34</sup>

Finally, the claimant points out that after recalculating the claimed indirect cost rates by the alternative state method “[t]he final audit report concludes that the District failed to claim \$6,515 for [fiscal year] 2002-03, \$20,662 for [fiscal year] 2003-04, \$18,431 for [fiscal year] 2004-05, and \$49,210 for [fiscal year] 2005-06.” The claimant concludes that “[t]his results in \$94,818 in total unclaimed costs that are due to the District not applying its indirect cost rate to contract services costs in accordance with the claiming instructions.”<sup>35</sup> In the revised audit report, the total underclaimed amount is determined to be \$103,032.<sup>36</sup>

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<sup>30</sup> Exhibit A, IRC 09-4425-I-17, at pp. 8-9 [The claimant states that the first “final” audit report, issued April 17, 2009, finds overstated costs for unallowable salaries and benefits totaling \$14,489, not including indirect costs. That amount includes \$4,468 in unsupported hours, which the claimant does not dispute; and \$3,077 in ineligible expenses for two District administrators to attend a manager’s conference, which the claimant does not dispute.].

<sup>31</sup> Exhibit A, IRC 09-4425-I-17, at p. 9.

<sup>32</sup> Exhibit A, IRC 09-4425-I-17, at p. 5.

<sup>33</sup> Exhibit A, IRC 09-4425-I-17, at p. 11.

<sup>34</sup> Exhibit A, IRC 09-4425-I-17, at pp. 11-13.

<sup>35</sup> Exhibit A, IRC 09-4425-I-17, at p. 13.

<sup>36</sup> Exhibit B, IRC 10-4425-I-18, at p. 7.

However, the claimant states that “the final audit report concludes that this amount cannot be paid to the District because it exceeds the amount originally claimed.”<sup>37</sup> The claimant argues that the Controller “does not have the discretion to unilaterally determine that it will require reimbursement for audit adjustments in favor of the State and simply ignore audit adjustments in favor of the claimants.” The claimant cites section 17561, which provides that the Controller may audit and reduce claims that are excessive or unreasonable, and “shall adjust the payment to correct for any underpayment or overpayments that occurred in previous fiscal years.” The claimant concludes that the Controller “has the obligation to pay claimants any unclaimed allowable mandate cost it discovers as the result of an audit.”<sup>38</sup> Finally, the claimant argues that “the adjustment from Finding 1 was mitigated by \$3,159 attributed to the District’s understated productive hourly rate for [fiscal year] 2004-05,” and that there is “no practical difference between allowing an understated cost to mitigate one of the Controller’s adjustments and reimbursing the District for their total actual costs.”<sup>39</sup>

The claimant also raises the statute of limitations for auditing annual reimbursement claims pursuant to Government Code section 17558.5, and argues that the audit of the earliest fiscal year at issue (2002-2003) and the revised audit, are barred.<sup>40</sup> The claimant asserts that the statute of limitations applicable to the Controller’s audit of its 2002-2003 claim, filed January 15, 2004, expired January 15, 2007, pursuant to section 17558.5, as amended by Statutes 2002, chapter 1128. The audit entrance conference was held on April 17, 2007, which the claimant argues is not a timely initiation of an audit. In addition, the final audit report was issued on April 17, 2009, which the claimant asserts is two years and one day after the audit was initiated and therefore not timely.<sup>41</sup> And, the claimant asserts that the revised audit report “appear[s] to have been initiated as a result of the original incorrect reduction claim filed on August 3, 2009,” but “was not noticed to the District until the revised audit report was published on August 25, 2010, which is more than three years after the last annual claim was filed...” Finally, the claimant asserts that “the date of the revised audit report is more than two years after the original audit.”<sup>42</sup>

#### State Controller’s Office

The Controller did not submit comments on the consolidated IRCs.

However, with respect to the statute of limitations, the Controller argues, in both the original and the revised audit report, that section 17558.5 provides that when no funds are appropriated in the claim year, or payment to the claimant is not promptly made, “the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”<sup>43</sup> The

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<sup>37</sup> Exhibit A, IRC 09-4425-I-17, at p. 14.

<sup>38</sup> Exhibit A, IRC 09-4425-I-17, at p. 14.

<sup>39</sup> Exhibit A, IRC 09-4425-I-17, at pp. 14-15.

<sup>40</sup> See Exhibit A, IRC 09-4425-I-17, at pp. 71; 77; Exhibit B, IRC 10-4425-I-18, at pp. 13-14.

<sup>41</sup> Exhibit B, IRC 10-4425-I-18, at pp. 13-14.

<sup>42</sup> Exhibit B, IRC 10-4425-I-18, at p. 15.

<sup>43</sup> Exhibit A, IRC 09-4425-I-17, at p. 71 [Controller’s Final Audit Report, citing Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128, AB 2834)].

Controller states that “[t]he district filed its initial FY 2002-03 claims on January 15, 2004, and received the initial claim payment on October 30, 2006.”<sup>44</sup> The Controller argues that “[t]herefore, this claim was subject to the initiation of an SCO audit until October 30, 2009.” The Controller asserts that the audit entrance conference conducted on April 17, 2007 was therefore timely.<sup>45</sup>

#### **IV. Discussion**

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>46</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>47</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>48</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was

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<sup>44</sup> Exhibit A, IRC 09-4425-I-17, at p. 71; Exhibit B, IRC 10-4425-I-18, at p. 43.

<sup>45</sup> *Ibid.*

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

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

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

arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.]  
When making that inquiry, the “ “court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”<sup>49</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>50</sup> In addition, section 1185.2(c) of the Commission’s regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>51</sup>

**A. The Controller Met the Statutory Deadline for the Initiation of an Audit, but the Revised Audit Report was not Completed Within the Two Year Statutory Deadline Once the Audit was Commenced.**

The claimant raises a statute of limitations argument applicable to audits, based on Government Code section 17558.5.<sup>52</sup> Section 17558.5, as applicable to the claim years here at issue, requires a valid audit to be initiated no later than three years after the date that the reimbursement claim is filed or last amended. However, the section also provides that 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.”<sup>53</sup> “In any case,” section 17558.5 requires the audit to be completed no later than two years after it is commenced.<sup>54</sup>

*1. The Final Audit Report Issued April 17, 2009 was Timely, Pursuant to Government Code Section 17558.5.*

The claimant asserts that the audit of the 2002-2003 claim was not timely, based on the filing date of the 2002-2003 annual claim (January 15, 2004) and the dates that the audit entrance conference took place (April 17, 2007) and the audit report issued (April 17, 2009). However, the Controller asserts that the fiscal year 2002-2003 claim was not paid until October 30, 2006,

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

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

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

<sup>52</sup> The Controller’s Final Audit Report, issued April 17, 2009, states that the claimant raised the statute of limitations in its response to the draft audit, but the claimant did not reiterate its allegation in IRC 09-4425-I-17. (See IRC 09-4425-I-17, at p. 71.) The claimant reiterated and expanded upon its statute of limitations argument in IRC 10-4425-I-18, at pp. 13-14.

<sup>53</sup> Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

<sup>54</sup> Government Code section 17558.5 (as amended, Stats. 2004, ch. 313 (AB 2224)).

and that therefore section 17558.5 provides for a timely audit to be initiated as late as October 30, 2009. The relevant chronology is restated here, as follows:

January 15, 2004	Claimant filed fiscal year 2002-2003 reimbursement claim. <sup>55</sup>
January 10, 2005	Claimant filed fiscal year 2003-2004 reimbursement claim. <sup>56</sup>
January 17, 2006	Claimant filed fiscal year 2004-2005 reimbursement claim. <sup>57</sup>
October, 30, 2006	Claimant received initial payment for fiscal year 2002-2003. <sup>58</sup>
December 21, 2006	Claimant filed fiscal year 2005-2006 reimbursement claim. <sup>59</sup>
April 17, 2007	Audit entrance conference conducted. <sup>60</sup>
June 9, 2008	Controller issued draft audit report. <sup>61</sup>
July 3, 2008	Claimant notified Controller of disputed adjustments. <sup>62</sup>
April 17, 2009	Controller issued final audit report. <sup>63</sup>

The fiscal year 2002-2003 reimbursement claim was filed on January 15, 2004, but was not paid, based on the evidence in the record, until October 30, 2006.<sup>64</sup> Pursuant to section 17558.5, a filing date of January 15, 2004, if paid, would mean that the claim was “subject to the initiation of an audit by the Controller no later than...” January 15, 2007,<sup>65</sup> and would be required to be

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<sup>55</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>56</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>57</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>58</sup> Exhibit B, IRC 10-4425-I-18, at p. 43 [Revised Audit Report]; p. 19 [Claim Adjustment Notice].

<sup>59</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>60</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>61</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>62</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>63</sup> Exhibit A, IRC 09-4425-I-17, at p. 8.

<sup>64</sup> Exhibit B, IRC 10-4425-I-18, at p. 43 [Revised Audit Report]; p. 19 [Claim Adjustment Notice].

<sup>65</sup> Government Code section 17558.5 (as amended, Statutes 2002, ch. 1128 (AB 2834)).



completed within two years of the date commenced.<sup>66</sup> The claimant relies on the filing date to argue that the initiation of the audit was not timely. However, section 17558.5 also states that if funds are not appropriated or no payment is made to the claimant for a given year, the “time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”<sup>67</sup> The claimant argues that this provision “is void because it is impermissibly vague.”<sup>68</sup> However, article III, section 3.5 states that an administrative agency has no power “[t]o declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional...”<sup>69</sup> Therefore, the time to initiate an audit, in this case, commenced to run from October 30, 2006, when the 2002-2003 claim was first paid, and an audit initiated before October 30, 2009 would be timely. Here, the audit was initiated no later than April 17, 2007, the date of the entrance conference, more than two years and six months before the expiration of the limitation period to initiate an audit under section 17558.5. The first audit was therefore timely initiated, with respect to fiscal year 2002-2003.

The Commission further finds that the initiation of the audit with respect to the remaining claim years at issue in this case was also timely. As shown above, the annual claim for fiscal years 2003-2004 was filed January 10, 2005, and therefore an audit initiated on or before January 10, 2008 would have been timely, based on the filing date of the claim. Moreover, notices from the Controller dated September 9, 2010, and pertaining to fiscal years 2003-2004 through 2005-2006, indicate that *no claims* had yet been paid for those audit years, and therefore “the time for the Controller to initiate an audit,” pursuant to section 17558.5, had not commenced to run as of that date.<sup>70</sup> Based on the foregoing, the audit was timely initiated with respect to all successive audit years.<sup>71</sup>

The claimant has also advanced the argument that the audit was not timely completed, based on the audit entrance conference date of April 17, 2007, and the issuance of the final audit report on April 17, 2009. The claimant’s argument fails.

Section 17558.5 provides that “[i]n any case, an audit shall be completed not later than two years after the date that the audit is commenced.”<sup>72</sup> Webster’s Third New International Dictionary

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<sup>66</sup> Government Code section 17558.5 (as amended, Statutes 2002, ch. 1128 (AB 2834)). Neither the filing date of the subject reimbursement claims, nor the date the audit was commenced, controls whether the later-amended version(s) of section 17558.5 are applicable. See *Scheas v. Robertson* (1951) 38 Cal.2d 119, at p. 126 [“It is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period...’”].

<sup>67</sup> Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

<sup>68</sup> Exhibit B, IRC 10-4425-I-18, at p. 11.

<sup>69</sup> California Constitution, article III, section 3.5 (added June 6, 1978, by Proposition 5).

<sup>70</sup> Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

<sup>71</sup> Exhibit B, IRC 10-4425-I-18, at pp. 21-23.

<sup>72</sup> Government Code section 17558.5 (as amended, Stats. 2004, ch. 313 (AB 2224)).

provides that “to commence” and “to initiate” are synonymous.<sup>73</sup> Code of Civil Procedure section 12 prescribes how statutes of limitation shall be calculated, as follows: “[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” The courts have held that “[a]bsent a compelling reason for a departure, this rule governs the calculation of *all* statutorily prescribed time periods.”<sup>74</sup> Here, pursuant to section 17558.5, interpreted in accordance with Code of Civil Procedure section 12, an audit commenced on April 17, 2007 would be required to be completed by April 17, 2009, the date that the final audit report was issued.

Based on the foregoing, the Commission finds that the original audit was timely, with respect to both the initiation and the completion of the audit.

2. *The Revised Audit Issued August 25, 2010 was Issued Beyond the Deadlines Imposed by Section 17558.5, But May be Considered by the Commission to the Extent that it Narrows the Issues in Dispute or Makes Concessions to the Claimant.*

Government Code section 17558.5 provides for an audit to be initiated by the Controller within three years after the date the claim is filed, or three years after the initial payment of the claim. However, section 17558.5 also provides that “[i]n any case, an audit *shall be completed* not later than two years after the date that the audit is commenced.”

Here, the Controller’s audit of the relevant claim years was “commenced,” within the meaning of section 17558.5, no later than April 17, 2007. Therefore, a timely audit must be completed by April 17, 2009, when the first “final” audit report was issued. The revised audit report is a continuation of the *original* “final” audit report, and was issued on August 25, 2010. It therefore falls outside the statutory two year completion requirement imposed by section 17558.5. To hold otherwise would be to provide to the Controller an “end-run” around a validly enacted statutory deadline for completion of an audit, and to hold claimants subject to open-ended “revision” of audit findings.

However, the claimant maintains that even if the revised audit is barred, “[n]otwithstanding, the changes made by the Controller in the revised audit report are for substantive reasons that are now a matter of record for the original incorrect reduction claim and can be adjudicated by the Commission.”<sup>75</sup> The Commission agrees that it may take official notice<sup>76</sup> of the revised audit report, and treat the revised audit as substantive comments from the Controller on the IRC, to the extent that the revised audit report narrows the issues in dispute or mitigates the amount of reductions originally asserted by the Controller.

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<sup>73</sup> The definition of “commence” includes “to begin,” “to initiate,” and “to enter upon,” while the definition of “initiate” provides: “to begin or set going: make a beginning of: perform or facilitate the first actions, steps, or stages of...”

<sup>74</sup> *In re Anthony B.* (2002) 104 Cal.App.4th 677, at pp. 681-682 [emphasis in original].

<sup>75</sup> Exhibit B, IRC 10-4425-I-18, at p. 15.

<sup>76</sup> Code of Regulations, title 2, section 1187.5(c) [“Official notice may be taken in the manner and of the information described in Government Code section 11515.”].

Based on the foregoing, the Commission finds that the revised final audit report issued August 25, 2010 was not completed within the deadline required by section 17558.5, but may be considered by the Commission to the extent that it narrows the issues in dispute or makes concessions to the claimant with respect to its allegations in the IRC.

**B. Reductions of Costs Claimed Based on Unsupported Hours or Productive Hourly Rates are Entirely Lacking in Evidentiary Support, and must be Reinstated.**

The disputed reductions for productive hourly rates were determined to be “overstated by \$9,186 for FY 2002-2003 and understated by \$2,242 for FY 2004-2005, leaving a net audit adjustment of \$6,944.”<sup>77</sup> In the final audit report the Controller notes the claimant’s dispute with respect to this reduction, but states that “[t]he district’s response did not provide any specific objection to this issue.”<sup>78</sup>

In its IRC, the claimant asserts that the reason for the Controller’s adjustment is not clear, as follows:

The single difference between the rates calculated by the Controller and the District is the salary component. The Controller altered the salary component for specific employees and then necessarily arrived at productive hourly rates that differed from the rates calculated by the District. No explanation was provided for any of these adjustments, and there is no indication as to why the payroll information reported by the District needed to be adjusted for purposes of the productive hourly rate computation. The propriety of these adjustments cannot be determined until the Controller states the reason for each change to the employee payroll information.<sup>79</sup>

There is no evidence in the record indicating how productive hourly rates were calculated and claimed. The claiming instructions describe a menu of options for claimants to calculate productive hourly rates, but the record does not make clear which option was chosen by the claimant. However, there is a similar lack of evidence in the record demonstrating the Controller’s recalculation of productive hourly rates, or why such recalculation was necessary. The Controller states that the productive hourly rates were “inaccurate,” but does not specify any particular flaw in the calculations, or any particular employee or employees for whom productive hourly rates were disallowed. Section 1185.2(c) of the Commission’s regulations requires that all representations of fact shall be supported by documentary evidence and submitted with the comments. The Commission finds that there is no explanation or evidence in the record to support the Controller’s factual assertion that the productive hourly rates were inaccurate.

Therefore, based on the evidence in the record, the Commission finds that the Controller’s audit determination is entirely lacking in evidentiary support, and that the full amount reduced, \$6,944, is required to be reinstated to the claimant.

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<sup>77</sup> Exhibit A, IRC 09-4425-I-17, at pp. 8-9.

<sup>78</sup> Exhibit A, IRC 09-4425-I-17, at p. 65 [Final Audit Report, issued April 17, 2009].

<sup>79</sup> Exhibit A, IRC 09-4425-I-17, at p. 9.

**C. With Regard to the Controller’s Audit of a Reimbursement Claim, the Commission has Jurisdiction Only Where the Controller has Reduced a Claim.**

The claimant asserts that the Controller incorrectly determined that its indirect cost rates were improperly calculated and applied, resulting in an underclaimed amount of \$103,032.<sup>80</sup> The claimant notes that the final audit report incorrectly describes the parameters and guidelines, and that “[f]ederally-approved indirect cost rates remain acceptable pursuant to the Parameters and Guidelines for the Collective Bargaining mandate, despite the Controller’s preference to the contrary.”<sup>81</sup> In addition, the claimant argues that “[s]ince 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.”<sup>82</sup> And, the claimant argues that “[t]he audit did not determine that the District’s rate was excessive or unreasonable, just that it wasn’t federally approved.”<sup>83</sup> Claimant requests that the Commission direct the Controller to reimburse the amounts underclaimed and argues that section 17561(d)(2) requires “the adjustment of *both* underpayments and overpayments...”<sup>84</sup> The claimant argues that “the Controller does not have discretion to unilaterally determine that it will require reimbursement for audit adjustments in favor of the State and simply ignore audit adjustments in favor of the claimants.”<sup>85</sup>

The final audit report issued April 17, 2009 states that “[t]he district developed indirect cost rate proposals (ICRPs) in accordance with Office of Management and Budget (OMB) Circular A-21...” but that “[f]or FY 2004-05 and 2005-06, the parameters and guidelines and SCO’s claiming instructions do not provide districts the option of using a federally-approved rate.” In addition, the Controller asserts that “[f]or FY 2002-03 and FY 2003-04, the SCO’s claiming instructions allow the district to use federally-approved rate prepared in accordance with OMB Circular A-21[.]” but that “the district did not obtain federal approval for the applicable two years.”<sup>86</sup> The Controller concedes that its findings are factually incorrect, and deletes the offending language, in its *revised* final audit report issued August 25, 2010.<sup>87</sup>

Based on its recalculation of indirect costs using the Controller’s preferred FAM-29C method, the Controller determined that the claimant underclaimed its indirect costs by \$94,818 in the final audit report issued April 17, 2009, and \$103,032 in the revised final audit report issued August 25, 2010. However, in both the final audit report and the revised final audit report, the Controller maintained that it is not required to pay the claimant in excess of the total costs claimed. The Controller applied the underclaimed indirect costs to offset other unallowable costs

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<sup>80</sup> Exhibit B, IRC 10-4425-I-18, at p. 7.

<sup>81</sup> Exhibit A, IRC 09-4425-I-17, at p. 10.

<sup>82</sup> Exhibit A, IRC 09-4425-I-17, at p. 11.

<sup>83</sup> Exhibit A, IRC 09-4425-I-17, at p. 13.

<sup>84</sup> Exhibit A, Incorrect Reduction Claim, at p. 77.

<sup>85</sup> Exhibit A, Incorrect Reduction Claim, at p. 77.

<sup>86</sup> Exhibit A, IRC 09-4425-I-17, at p. 67 [Final Audit Report, issued April 17, 2009].

<sup>87</sup> Exhibit B, IRC 10-4425-I-18, at p. 42 [Revised Final Audit Report, issued August 25, 2010].

reduced, resulting in a net adjustment of zero for fiscal years 2003-2004 through 2005-2006.<sup>88</sup> The Controller declined to pay the claimant any more than its total claim for each fiscal year, stating: “*only the total costs* included in the initial or amended claim may be reimbursed within one year of the filing deadline...” and section 17561 “allows the SCO to adjust the payment to correct for any underpayments or overpayments *based on allowable costs claimed.*”<sup>89</sup>

Government Code section 17551 provides that the Commission “shall 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 an audit.<sup>90</sup> The Controller’s audit authority is detailed in Government Code section 17561, which provides that the Controller may audit the claims of a local agency or school district “to verify the actual amount of the mandated costs...” and “may reduce any claim that the Controller determines is excessive or unreasonable.”<sup>91</sup> The claimant focuses on the next sentence of section 17561, which states that the Controller “*shall adjust* the payment to correct for any underpayments or overpayments that occurred in previous fiscal years.” The claimant thus implores the Commission to make a finding that the Controller is required to correct the “underpayment” that it discovered through its audit of the claimant’s indirect cost rates.

However, the plain language of section 17551, which directs the Commission to hear IRCs in the first instance, applies only to claims that are reduced. Here, as explained above, the reductions and underclaimed indirect costs were offset against one another to the extent that a net reduction of zero resulted for fiscal years 2003-2004 through 2005-2006. Without a reduction alleged, the claim is not an IRC, by definition, and the Commission does not have jurisdiction over the claim.

## **V. Conclusion**

Based on the foregoing, the Commission partially approves this IRC, and requests that the Controller reinstate the following reduction:

- Reduction of \$6,944 based on unallowable salaries and benefits in fiscal year 2002-2003.

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<sup>88</sup> See Exhibit A, IRC 09-4425-I-17, at p. 2 [stating reductions of \$0 for fiscal years 2003-2004, 2004-2005, and 2005-2006].

<sup>89</sup> Exhibit B, IRC 10-4425-I-18, at p. 43 [Revised Final Audit Report] [emphasis added].

<sup>90</sup> Government Code section 17551 (Stats. 2007, ch. 329 (AB 2224)) [emphasis added].

<sup>91</sup> Government Code section 17561 (Stats. 2009, ch. 4 (SBX3 8)).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On November 14, 2014, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining and Collective Bargaining Agreement Disclosure*  
09-4425-I-17 and 10-4425-I-18  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213  
Fiscal Years 2002-2003 through 2005-2006  
Sierra Joint Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 14, 2014 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 11/13/14

**Claim Number:** 09-4425-I-17 and 10-4425-I-18

**Matter:** Collective Bargaining

**Claimant:** Sierra Joint Community College District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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