



September 21, 2018

Mr. William Tunick
Dannis Woliver Kelly
275 Battery Street, Suite 1150
San Francisco, CA 94111

Ms. Jill Kanemasu
Division of Accounting and Reporting
State Controller's Office
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
Enrollment Fee Collection and Waivers, 15-9913-I-02
Education Code Section 76300; California Code of Regulations, Title 5,
Sections 58501-58503, 58611-58613, 58620, and 58630
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011
North Orange County Community College District, Claimant

Dear Mr. Tunick and Ms. Kanemasu:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **October 12, 2018**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (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.

¹ 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.

Mr. Tunick and Ms. Kanemasu

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Hearing

This matter is set for hearing on **Friday, November 30, 2018**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about November 16, 2018. 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

Education Code Section 76300;
Statutes 1984, 2d Ex. Sess., Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136;
Statutes 1991, Chapter 114; Statutes 1992, Chapter 703;
Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422;
Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58501-58503, 58611-58613,
58620, and 58630

Enrollment Fee Collection and Waivers

Fiscal Years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

15-9913-I-02

North Orange County Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of costs claimed by North Orange County Community College District (claimant) for the *Enrollment Fee Collection and Waivers* program for fiscal years 1998-1999 through 2010-2011. Of the \$15,955,585 claimed during the audit period, the Controller found that the entire amount is unallowable. The claimant challenges the reduction of costs claimed for salaries and benefits for the ongoing enrollment fee collection activities (Audit Findings 1 and 6) and enrollment fee waiver activities (Audit Findings 3 and 6), and the adjustments to offsetting revenues (Audit Finding 5).

Staff finds that the IRC is timely filed, and that Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Staff recommends that the Commission deny this IRC.

The *Enrollment Fee Collection and Waivers* Program

The test claim statutes require community colleges to perform activities related to calculating and collecting student enrollment fees, and waiving enrollment fees for students who fall into eligible categories, including those with low incomes or receive public assistance. The test claim Statement of Decision was adopted on April 24, 2003. The Parameters and Guidelines were adopted on January 26, 2006, and provide reimbursement for six activities related to enrollment

fee collection: (1) referencing student accounts; (2) calculating the fee; (3) answering questions; (4) updating records; (5) collecting delinquent fees; and (6) providing a refund for fee waiver eligibility. The Parameters and Guidelines also provide reimbursement for six activities related to enrollment fee waivers: (7) answering questions; (8) receiving applications; (9) evaluating applications; (10) notifying students of incomplete applications; (11) approving applications; and (12) reviewing appealed waiver denials.

The test claim statutes and the Parameters and Guidelines include offsetting revenue provisions, requiring claimants to identify and offset from their mandate claims two percent of the revenue received from the enrollment fees collected pursuant to Education Code section 76300(c), which provided that “[f]or the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.” The Parameters and Guidelines also included as offsetting revenues, two percent of the enrollment fees waived for eligible students, and after July 5, 2000, \$0.91 per credit unit waived for eligible students, which are allocated to community college districts by the Board of Governors from funds in the State Budget Act pursuant to Education Code section 76300(m).

In 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature’s intent that the offsetting revenues identified above shall “directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers).”¹

Procedural History

The claimant signed its reimbursement claim forms for fiscal years 1998-1999 through 2004-2005 on July 27, 2006.² The claimant signed the reimbursement claim form for fiscal year 2005-2006 on January 10, 2007.³ The claimant signed the reimbursement claim form for fiscal year 2006-2007 on January 24, 2008.⁴ The claimant signed the reimbursement claim form for fiscal year 2007-2008 on January 6, 2009.⁵ The claimant signed the reimbursement claim form for fiscal year 2008-2009 on February 9, 2010.⁶ The claimant signed the reimbursement claim form for fiscal year 2009-2010 on February 9, 2011.⁷ The claimant signed the reimbursement claim form for fiscal year 2010-2011 on March 12, 2012.⁸

¹ Statutes 2008, chapter 757, section 31 (AB 757).

² Exhibit A, pages 282, 321, 373, 425, 479, 539, 597 (dated reimbursement claims).

³ Exhibit A, IRC, page 848.

⁴ Exhibit A, IRC, page 897.

⁵ Exhibit A, IRC, page 1076.

⁶ Exhibit A, IRC, page 1277.

⁷ Exhibit A, IRC, page 1476.

⁸ Exhibit A, IRC, page 1635.

The Controller states that it commenced the audit on September 1, 2011.⁹ The audit was completed August 6, 2013.¹⁰ The claimant filed the IRC on June 27, 2016.¹¹ The Controller filed late comments on the IRC on October 6, 2016.¹² The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on September 21, 2018.¹³

Commission Responsibilities

Government Code section 17561(d) 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 incorrectly reduced costs be reinstated.

The Commission must review questions of law, including interpretation of 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 of the California Constitution.¹⁴ 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."¹⁵

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.¹⁶

⁹ Exhibit B, Controller's Late Comments on the IRC, page 5.

¹⁰ Exhibit A, IRC, page 53 (Final Audit Report cover letter).

¹¹ Exhibit A, IRC.

¹² Exhibit B, Controller's Late Comments on the IRC.

¹³ Exhibit C, Draft Proposed Decision.

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.

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.¹⁷ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁸

Claims

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

Issue	Description	Staff Recommendation
Was the IRC was timely filed?	Section 1185.1 of the Commission’s regulations required IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).	<i>The IRC was timely filed</i> – The Final Audit Report is dated August 6, 2013, and complies with the requirements of Government Code section 17558.5(c). The IRC was filed on June 27, 2016, less than three years from the date of the Final Audit Report, and is therefore timely filed.
Does the Commission have jurisdiction to determine whether the Controller’s adjustment of the number of students for Enrollment Fee Waiver activity number 10 is correct?	Pusuant to Government Code section 17551(d), the Commission’s jurisdiction for IRCs is limited to determining whether “the Controller has incorrectly reduced payments to the local agency.”	<i>The Commission has no jurisdiction to determine the correctness of an adjustment to Enrollment Fee Waiver activity number 10, which does not result in a reduction.</i> The plain language of Government Code section 17551(d) limits the Commission’s jurisdiction on IRC to the issue of whether payments have been “incorrectly reduced”. And here, with regard to activity 10, there has been no reduction of costs claimed.

¹⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁸ 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.

Issue	Description	Staff Recommendation
<p>Was the Controller's reduction to the salaries and benefits claimed for the <i>enrollment fee collection activities</i> correct?</p>	<p>The Parameters and Guidelines, adopted in 2006, require that reimbursement claims be based on actual costs incurred that are traceable and supported by contemporaneous source documents. The claimant estimated the staff time to perform the mandated activities for all fiscal years in question and submitted time surveys certified by claimant's employees to support the average times reported.</p> <p>The Controller found that each of the factors that goes into the calculation of costs for salaries and benefits was overstated by the claimant.</p> <p>To determine if the time estimates were reasonable, the Controller's Office held discussions with claimant's staff, observed and contemporaneously recorded claimant's staff performing activities 1 through 4 for 178 payment transactions during the open enrollment period of January 23-26, 2012. The Controller found that the claimant's time estimate of 22.10 to 27.90 minutes to perform activities 1 through 4 (or between 3.40 to 5.90 minutes per activity) was overstated and instead was shown to take only 2.76 minutes for all</p>	<p><i>The reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support –</i></p> <p>The contemporaneous source document rule cannot apply to the reimbursement claims for costs incurred before the Parameters and Guidelines were adopted in January 2006 without violating due process principles since the claimants were not on notice of the requirements.¹⁹ However, the Controller could have reduced the costs claimed for salaries and benefits to zero for fiscal years 2006-2007 through 2010-2011, and would have been correct as a matter of law.²⁰</p> <p>Instead, the Controller exercised its audit authority to determine if the estimated average times claimed for all fiscal years were reasonable, and conducted a time study of the mandated activities. The claimant has provided no evidence that the Controller's reductions of the estimated times to perform activities 1 through 4 are wrong, or arbitrary, capricious, or without evidentiary support.</p> <p>In addition, the claimant has provided no evidence that the</p>

¹⁹ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

²⁰ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

Issue	Description	Staff Recommendation
	<p>four activities, or 0.69 minutes per activity.</p> <p>The Controller also reduced the number of students reported by the claimant for activities 1 through 4 by 1,099,609 students based on the Chancellor’s Office Management Information System (MIS) enrollment and fee waiver data.</p> <p>The Controller also reduced the claimant’s productive hourly rates for activities 1 through 6 by \$4.19 to \$11.50 because the claimant included some staff in its calculations who did not perform the mandate, and weighted all employee classifications at the same level as if they all performed the reimbursable activities to the same extent.</p>	<p>reduction of the number of students in the calculation for salaries and benefits is wrong, or arbitrary or capricious. The MIS data used by the Controller is reported annually by community college districts to the Chancellor’s Office, includes a student headcount, and eliminates any duplicate students by term based on the students’ Social Security numbers. The Chancellor’s official duty to maintain the MIS data is presumed to have been regularly performed and to be correct, absent evidence to the contrary.²¹</p> <p>Finally, the Controller’s reductions to productive hourly rates are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed and, thus, require the claimant to specifically identify and weigh staff involvement in the mandate when claiming costs for salaries and benefits. The Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the claimant’s reimbursement</p>

²¹ Evidence Code section 664 establishes a presumption that official duty has been regularly performed.

Issue	Description	Staff Recommendation
		claims, and determined the level of involvement of the claimants' staff after discussions with the claimant's staff, and by observing claimant's staff performing the reimbursable activities.
Was the Controller's reduction to the salaries and benefits claimed for the enrollment <i>fee waiver activities</i> correct?	<p>The Parameters and Guidelines, adopted in 2006, require that reimbursement claims be based on actual costs incurred that are traceable and supported by contemporaneous source documents. The claimant estimated the staff time to perform the mandated activities for all fiscal years in question, and submitted time surveys certified by claimant's employees and developed by the claimant's mandated cost consultant after the Parameters and Guidelines were adopted, to support the average times reported. The Controller found that each of the factors that goes into the calculation of costs for salaries and benefits was overstated by the claimant.</p> <p>The Controller reduced the average staff times claimed for activities to perform the mandated enrollment fee collection activities 7 through 12. To determine if the time estimates were reasonable, the Controller's Office held discussions with claimant's staff, observed 225 fee waiver transactions handled by the claimant's employees on October 12, 2011, and December 5-9, 2011, and contemporaneously recorded the</p>	<p><i>The reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support –</i></p> <p>The claimant has provided no evidence that the Controller's reduction of the estimated times to perform activities 7 through 12 are wrong, or arbitrary, capricious, or without evidentiary support.</p> <p>In addition, the claimant has provided no evidence that the reduction of the number of students in the calculation for salaries and benefits is wrong, or arbitrary or capricious. The MIS data is reported annually by community college districts to the Chancellor's Office, includes a student headcount, and eliminates any duplicate students by term based on the students' Social Security numbers. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and to be correct, absent evidence to the contrary.²²</p> <p>Finally, the Controller's reductions to productive hourly rates are correct as a matter of</p>

²² Evidence Code section 664.

Issue	Description	Staff Recommendation
	<p>time taken to perform activities 7 through 11 during those days. Controller determined that the claimant's time estimates were overstated, and that the average time to perform the fee waiver activities 7 through 11 was 2.60 minutes, or 0.52 minutes per activity. The Controller did not apply any time increments to activity 12 (appeals of denied Board of Governors (BOG) fee waiver applications) because the Controller determined that the claimant has no formal appeal process and, thus, incurred no costs to comply with activity 12. Instead, the student is instructed to apply for financial aid using the FAFSA website (a process that is not part of the mandate).</p> <p>The Controller also reduced the number of students reported by the claimant for activities 7 through 9 and 11 by 7,479 students for each activity based on the Chancellor's MIS fee waiver and BOG grant recipient data. The Controller increased the number of students for activity 10.</p> <p>The Controller also reduced the claimant's productive hourly rates for activities 7 through 11 by \$7.17 to \$13.77 because the claimant included some staff in its calculations who did not perform the mandate, and weighted all employee classifications at the same level as if they all performed the reimbursable activities to the same extent.</p>	<p>law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed and, thus, require the claimant to specifically identify and weigh staff involvement in the mandate when claiming costs for salaries and benefits. The Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the claimant's reimbursement claims, and determined the level of involvement of the claimants' staff after discussions with the claimant's staff, and by observing claimant's staff performing the reimbursable activities.</p>

Issue	Description	Staff Recommendation
Were the Controller's adjustments to offsetting revenues correct?	The Controller found that offsetting revenues identified by the claimant were understated because the claimant did not accurately report the amounts received in offsetting revenues from the Chancellor's Office.	<p><i>The adjustments are correct as a matter of law –</i></p> <p>The plain language of the Parameters and Guidelines and Education Code section 76300(m) requires that funds allocated from the Board of Governors for the fee collection and fee waiver programs be identified as offsetting revenues against the costs incurred under both programs. Moreover, in 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature's intent that the offsetting revenues identified above shall "directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers)."²³</p> <p>The claimant does not provide any evidence to indicate that the amounts identified by the Chancellor's Office are wrong.</p>

Staff Analysis

A. The IRC Was Timely Filed Within Three Years of the Claimant's Receipt of Notice of the Adjustment, as Required by the Commission's Regulations.

At the time this IRC was filed, the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.²⁴

²³ Statutes 2008, chapter 757, section 31 (AB 757).

²⁴ Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: "All incorrect reduction claims shall be filed with the Commission no later than three years following

The Final Audit Report, dated August 6, 2013, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c). The claimant filed the IRC on June 27, 2016, less than three years from the date of the Final Audit Report. Therefore, staff finds that the IRC was timely filed

B. The Commission Has No Jurisdiction to Determine The Correctness Of an Adjustment to the Number of Students for Enrollment Fee Waiver Activity Number 10, Which Does Not Result in a Reduction.

Pusuant to Government Code section 17551(d), the Commission's jurisdiction for IRCs is limited to determining whether "the Controller has incorrectly reduced payments to the local agency." The plain language of Government Code section 17551(d) limits the Commission's jurisdiction on IRC to the issue of whether payments have been "incorrectly *reduced*". And here, with regard to to adjusting (i.e. increasing) the number of students activity 10, there has been no reduction of costs claimed.

Therefore, staff finds that the Commission has no jurisdiction over the adjustment to the number of students for Enrollment Fee Waiver activity number 10.

C. The Controller's Reductions to the Salaries and Benefits Claimed for the Enrollment Fee Collection Activities Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller calculated costs for salaries and benefits by multiplying the staff time to perform the ongoing activities, by number of students who paid enrollment fees (the multiplier), by the employee's productive hourly rate.²⁵ The Controller found that each of these factors was overstated by the claimant.

The Controller reduced the average staff times claimed for activities to perform the enrollment fee collection activities 1 through 4. The claimant estimated the staff time to perform these activities for all fiscal years in question and submitted time surveys certified by claimant's employees after the Parameters and Guidelines were adopted, to support the average times reported. To determine if the time estimates were reasonable, the Controller's Office held discussions with claimant's staff, observed claimant's staff performing activities 1 through 4 for 178 payment transactions during the open enrollment period of January 23-26, 2012, and contemporaneously recorded the time taken to perform activities 1 through 4. As a result, the Controller found that the claimant's time estimate of 22.10 to 27.90 minutes to perform activities 1 through 4 (or between 3.40 to 5.90 minutes per activity) was overstated and instead was shown to take only 2.76 minutes for all four activities, or 0.69 minutes per activity.

the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

²⁵ Exhibit A, IRC, pages 70-85, 108-109 (Final Audit Report).

Staff finds that the reduction to estimated staff time for activities 1 through 4 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require that reimbursement claims be based on actual costs incurred that are traceable and supported by contemporaneous source documents. The contemporaneous source document rule cannot apply to the reimbursement claims for costs incurred before the Parameters and Guidelines were adopted in January 2006 without violating due process principles since the claimants were not on notice of the requirements.²⁶ However, since the claimant had actual notice of the claiming requirements after the Parameters and Guidelines were issued, the Controller could have reduced the costs claimed for salaries and benefits to zero in fiscal years 2006-2007 through 2010-2011, which would have been correct as a matter of law.²⁷ Instead, the Controller exercised its audit authority to determine if the estimated average times claimed were reasonable.

Based on this record, staff finds that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the” state-mandated program, and thus the Controller’s findings are not arbitrary, capricious, or without evidentiary support.²⁸ The claimant has the burden to prove the actual costs mandated by the state and claimed in a reimbursement claim.²⁹ In this case, the claimant provided estimates based on time surveys that were completed mostly in 2006. Those estimates varied widely and were not supported by any other information provided by the claimant. The Controller questioned claimant’s staff about the enrollment fee calculation and collection procedures and observed district staff performing the mandate,³⁰ which took less time than the claimant’s estimates reported. The Controller’s reported times are based on contemporaneous observations and, thus, are more reliable than a best or “good faith” guess. The Controller then invited the claimant to perform a time study “to provide actual source documentation for its claims”, but the claimant declined³¹ and has provided no evidence that the Controller’s findings are incorrect, or arbitrary and capricious.

The Controller also reduced the number of students reported by the claimant for activities 1 through 4 by 1,099,609 students based on the Chancellor’s Office management information system (MIS) enrollment and fee waiver data. The claimant has provided no evidence that the

²⁶ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

²⁷ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

²⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁹ Government Code section 17564(b); Exhibit A, IRC, pages 127, 130 (Parameters and Guidelines, Sections IV and V); Evidence Code section 500; and *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³⁰ Exhibit A, IRC, page 73 (Final Audit Report).

³¹ Exhibit A, IRC, page 83 (Final Audit Report).

reduction of the number of students in the calculation for salaries and benefits is wrong, or arbitrary or capricious. The MIS data is reported annually by community college districts to the Chancellor's Office, includes a student headcount, and eliminates any duplicate students by term based on the students' Social Security numbers. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and correct, absent evidence to the contrary.³² The claimant has provided no evidence that the Controller's calculations are wrong, or arbitrary or capricious.

In addition, the Controller reduced the claimant's productive hourly rates for activities 1 through 6 by \$4.19 to \$11.50 because the claimant included staff in its calculations who did not perform the mandate, and weighted all employee classifications at the same level as if they all performed the reimbursable activities to the same extent. Staff finds that the Controller's reductions to productive hourly rates are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed and, thus, require the claimant to specifically identify and weigh staff involvement in the mandate when claiming costs for salaries and benefits. The Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the claimant's reimbursement claims, and determined the level of involvement of the claimants' staff after discussions with the claimant's staff, and by observing claimant's staff performing the reimbursable activities. The claimant has provided no evidence that the Controller's calculations are wrong, or arbitrary or capricious.

Therefore, staff finds that the Controller's reductions to the salaries and benefits claimed for the enrollment fee collection activities are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reductions to the Salaries and Benefits Claimed for the Enrollment Fee Waiver Activities Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced the average staff times claimed for enrollment fee waiver activities 7 through 12. The claimant estimated the staff time to perform these activities for all fiscal years in question and submitted time surveys certified by claimant's employees and developed by the claimant's mandated cost consultant after the Parameters and Guidelines were adopted, to support the average times reported. To determine if the time estimates were reasonable, the Controller's Office held discussions with claimant's staff, observed 225 fee waiver transactions handled by the claimant's employees on October 12, 2011, and December 5-9, 2011, and contemporaneously recorded the time taken to perform these activities. Controller determined that the claimant's time estimates were overstated, and that the average time to perform the fee waiver activities 7 through 11 was 2.60 minutes, or 0.52 minutes per activity. The Controller did not apply any time increments to activity 12 (appeals of denied BOG fee waiver applications) because the Controller determined that the claimant has no formal appeal process and, thus, incurred no costs to comply with activity 12. Instead, the student is instructed to apply for financial aid using the FAFSA website (a process that is not part of the mandate).

³² Evidence Code section 664.

Based on this record, staff finds that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the” state-mandated program, and thus the Controller’s findings are not arbitrary, capricious, or without evidentiary support.³³ The claimant has the burden to prove the actual costs mandated by the state and claimed in a reimbursement claim.³⁴ In this case, the claimant provided estimates based on time surveys completed by employees, some of which did not perform the mandate. The estimates for activities 7 through 11 varied widely and were not supported by any actual cost data or other information provided by the claimant. The Controller questioned claimant’s staff about the enrollment fee waiver procedures and observed district staff performing the mandate,³⁵ which took less time than the claimant’s estimates reported. The Controller’s reported times are based on contemporaneous observations of claimant’s staff and, thus, are more reliable than a best or “good faith” guess. The claimant has provided no evidence that these findings are incorrect.

With respect to activity 12, the claimant asserts that it reported more than 10,000 appeals for the audit period, and argues that it did not receive any appeals during the Controller’s fieldwork on October 12, 2011, and December 5-9, 2011, and, thus, the “audit report defaults to total disallowance of this activity based on lack of documentation.”³⁶ However, the Controller’s finding, based on discussions with the claimant’s staff, is that the claimant *does not have* an appeal process for denied BOG fee waiver applications. As the Controller noted in its comments on the IRC, for the few denied BOG fee waiver applications that the claimant may have, the claimant’s staff told students to apply for financial aid using the FAFSA website. Although the claimant has procedures in place to process appeals of denied financial aid applications, these appeals are not reimbursable.³⁷ In addition, the claimant has provided no evidence to support the assertion that it incurred costs for the appeals process for a denied BOG fee waiver. Part of the reimbursable activity for the denial of a BOG fee waiver appealed by a student is to “provide written notification to the student of the results of the appeal or any change in eligibility status.”³⁸ The claimant has not provided these notices, or any other evidence to support its allegations.

The Controller also reduced the number of students reported by the claimant for activities 7 through 9 and 11 by 7,479 students, each activity based on data from the Chancellor’s Office management information system (MIS) on fee waivers and Board of Governors (BOG) grant

³³ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

³⁴ Government Code section 17564(b); Exhibit A, IRC, pages 127, 130 (Parameters and Guidelines, Sections IV and V); Evidence Code section 500; and *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³⁵ Exhibit A, IRC, page 73 (Final Audit Report).

³⁶ Exhibit A, IRC, page 30.

³⁷ Exhibit B, Controller’s Late Comments on the IRC, page 39.

³⁸ Exhibit A, IRC, page 129 (Parameters and Guidelines); Exhibit B, Controller’s Late Comments on the IRC, page 39.

recipients. However, the claimant has provided no evidence that the reduction of the number of students in the calculation for salaries and benefits for activities 7 through 9 and 11 is wrong, or arbitrary or capricious. The MIS data is reported annually by community college districts to the Chancellor's Office, includes a student headcount, and eliminates any duplicate students by term based on the students' Social Security numbers. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and to be correct, absent evidence to the contrary.³⁹ The claimant has provided no evidence that the Controller's calculations are wrong, or arbitrary or capricious.

The Controller also reduced the claimant's productive hourly rates for activities 7 through 11 by \$7.17 to \$13.77 because the claimant included some staff in its calculations who did not perform the mandate, and weighted all employee classifications at the same level as if they all performed the reimbursable activities to the same extent. Staff finds that the Controller's reduction to productive hourly rates are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed and, thus, require the claimant to specifically identify and weigh staff involvement in the mandate when claiming costs for salaries and benefits. The Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the claimant's reimbursement claims, and determined the level of involvement of the claimants' staff after discussions with the claimant's staff, and by observing claimant's staff performing the reimbursable activities. The claimant has provided no evidence that the Controller's calculations are wrong, or arbitrary or capricious.

Therefore, staff finds that the Controller's reductions to the salaries and benefits claimed for the enrollment fee waiver activities are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Adjustments to Offsetting Revenues Are Correct as a Matter of Law.

The Controller found that offsetting revenues identified by the claimant for the enrollment fee collection and enrollment fee waiver activities were understated because the claimant did not accurately report the amounts received in offsetting revenues from the Chancellor's Office. Staff finds that the adjustments are correct as a matter of law.

The plain language of the Parameters and Guidelines and Education Code section 76300(m) require that funds allocated from the Board of Governors for the fee collection and fee waiver programs be identified as offsetting revenues against the costs incurred under both programs. Moreover, in 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature's intent that the offsetting revenues identified above shall "directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee

³⁹ Evidence Code section 664.

Waivers).”⁴⁰ The claimant does not provide any evidence to indicate that the amounts identified by the Chancellor’s Office are wrong.

Therefore, staff finds that the Controller’s adjustments to offsetting revenues are correct as a matter of law.

Conclusion

Staff concludes that the Controller’s reductions are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

⁴⁰ Statutes 2008, chapter 757, section 31 (AB 757).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 76300;

Statutes 1984, 2d Ex. Sess., Chapter 1;
Statutes 1984, Chapters 274, and 1401;
Statutes 1985, Chapters 920 and 1454;
Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes
1989, Chapter 136; Statutes 1991,
Chapter 114; Statutes 1992, Chapter
703; Statutes 1993, Chapters 8, 66, 67
and 1124; Statutes 1994, Chapters 153
and 422; Statutes 1995, Chapter 308;
Statutes 1996, Chapter 63;
Statutes 1999, Chapter 72;

California Code of Regulations, Title 5,
Sections 58501-58503, 58611-58613,
58620, and 58630

Fiscal Years 1998-1999, 1999-2000, 2000-
2001, 2001-2002, 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007, 2007-
2008, 2008-2009, 2009-2010, and 2010-2011

Filed on June 27, 2016

North Orange County Community College
District, Claimant

Case No.: 15-9913-I-02

Enrollment Fee Collection and Waivers

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

(Adopted November 30, 2018)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on November 30, 2018. [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 by a vote of [vote count will appear in the Decision] as follows:

Member	Vote
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

This IRC challenges the State Controller’s (Controller’s) reduction of costs claimed by North Orange County Community College District (claimant) for the *Enrollment Fee Collection and Waivers* program for fiscal years 1998-1999 through 2010-2011 (audit period). Of the \$15,955,585 claimed during the audit period, the Controller found that the entire amount is unallowable. The claimant challenges the reductions of costs claimed for salaries and benefits for the ongoing enrollment fee collection activities (Audit Findings 1 and 6/enrollment fee collection activities 1 through 4) and enrollment fee waiver activities (Audit Findings 3 and 6/enrollment fee waiver activities 7 through 12), and offsetting revenues (Audit Finding 5).

The Commission finds that the IRC is timely filed, and that Controller’s reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission also finds that the Controller’s reductions to the salaries and benefits claimed for the enrollment fee collection and waiver activities and based on understated offsetting revenues are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission also finds that the plain language of Government Code section 17551(d) limits the Commission’s jurisdiction on IRC to the issue of whether payments have been “incorrectly reduced”. And, with regard to the adjustment (i.e. increase) of the number of students for Enrollment Fee Waiver activity 10, there has been no reduction of costs claimed. Therefore, the Commission has no jurisdiction over the adjustment to the number of students for Enrollment Fee Waiver activity 10.

The Parameters and Guidelines require that reimbursement claims be based on actual costs incurred that are traceable and supported by contemporaneous source documents. This is known as the “contemporaneous source document rule”. However, the claimant estimated the staff time to perform the mandated activities for all fiscal years in question and submitted time surveys certified by claimant’s employees to support the average times reported.

The contemporaneous source document rule cannot apply to the reimbursement claims for costs incurred before the Parameters and Guidelines were adopted in January 2006 without violating

due process principles since the claimants were not on notice of the requirements.⁴¹ However, since the claimant had actual notice of the claiming requirements after the Parameters and Guidelines were issued, the Controller could have reduced the costs claimed for salaries and benefits to zero in fiscal years 2006-2007 through 2010-2011, and that would have been correct as a matter of law.⁴²

Instead, the Controller exercised its audit authority to determine if the estimated average times claimed were reasonable by discussing the program with claimant's staff and conducting a time study during an open enrollment period, which contemporaneously logged the times taken to perform the enrollment fee collection and waiver activities. The Controller found that the average times estimated by the claimant to perform the mandated activities were overstated. The claimant has provided no evidence that the Controller's reduction of the estimated times are wrong, or arbitrary, or capricious.

The Controller also reduced the number of students reported by the claimant for each ongoing reimbursable activity based on data from the Chancellor's Office Management Information System (MIS) on enrollment fee waivers and Board of Governors (BOG) grant recipients. The MIS data is reported annually by community college districts to the Chancellor's Office, includes a student headcount, and eliminates any duplicate students by term based on the students' Social Security numbers. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and to be correct, absent evidence to the contrary.⁴³ The claimant has provided no evidence that the reduction of the number of students in the calculation for salaries and benefits is wrong, or arbitrary or capricious.

Finally, the claimant calculated productive hourly rates by including staff in its calculations who did not perform the mandate, and weighting all employee classifications at the same level as if all staff performed the reimbursable activities to the same extent. The Parameters and Guidelines require the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed. Thus, the Parameters and Guidelines require the claimant to specifically identify and weigh staff involvement in the mandate when claiming costs for salaries and benefits. The Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the claimant's reimbursement claims. The Controller determined the level of involvement of the claimants' staff after discussions with the claimant's staff, and by observing claimant's staff performing the reimbursable activities. The Controller's reduction to productive hourly rates are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

⁴¹ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

⁴² *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

⁴³ Evidence Code section 664 establishes a presumption that official duty has been regularly performed.

The Commission also finds that the Controller's adjustments to offsetting revenues is correct as a matter of law. The Controller found that offsetting revenues identified by the claimant for the enrollment fee collection and waiver activities were understated because the claimant did not accurately report the amounts received in offsetting revenues from the Chancellor's Office. The plain language of the Parameters and Guidelines and Education Code section 76300(m) require that funds allocated from the Board of Governors for the fee collection and fee waiver programs be identified as offsetting revenues against the costs incurred under both programs. Moreover, in 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature's intent that the offsetting revenues identified above shall "directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers)."⁴⁴ The claimant does not provide any evidence to indicate that the amounts identified by the Chancellor's Office are wrong.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

07/27/2006	Claimant signed the reimbursement claims for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005. ⁴⁵
01/10/2007	Claimant signed the reimbursement claim for fiscal year 2005-2006. ⁴⁶
01/24/2008	Claimant signed the reimbursement claim for fiscal year 2006-2007. ⁴⁷
01/06/2009	Claimant signed the reimbursement claim for fiscal year 2007-2008. ⁴⁸
02/09/2010	Claimant signed the reimbursement claim for fiscal year 2008-2009. ⁴⁹
02/09/2011	Claimant signed the reimbursement claim for fiscal year 2009-2010. ⁵⁰
03/12/2012	Claimant signed the reimbursement claim for fiscal year 2010-2011. ⁵¹
09/01/2011	The Controller stated that the audit commenced on this date. ⁵²

⁴⁴ Statutes 2008, chapter 757, section 31 (AB 757).

⁴⁵ Exhibit A, pages 282, 321, 373, 425, 479, 539, 597 (dated reimbursement claims).

⁴⁶ Exhibit A, IRC, page 848.

⁴⁷ Exhibit A, IRC, page 897.

⁴⁸ Exhibit A, IRC, page 1076.

⁴⁹ Exhibit A, IRC, page 1277.

⁵⁰ Exhibit A, IRC, page 1476.

⁵¹ Exhibit A, IRC, page 1635.

⁵² Exhibit B, Controller's Late Comments on the IRC, page 5.

08/06/2013	The date of the Final Audit Report cover letter. ⁵³
06/27/2016	The claimant filed the IRC. ⁵⁴
10/06/2016	The Controller filed late comments on the IRC. ⁵⁵
09/21/2018	Commission staff issued the Draft Proposed Decision. ⁵⁶

II. Background

A. Enrollment Fee Collection and Waivers Program

The test claim statutes and regulations for the *Enrollment Fee Collection and Waivers* program require community colleges to implement enrollment fees and adopt regulations for their collection and specify the groups of students for which fees are waived or exempted and for whom Board of Governors (BOG) waivers are available (e.g., low income students, recipients of public assistance, or students who have been determined financially eligible for federal and/or state need-based financial aid, or other eligible groups).⁵⁷ Community colleges retain two percent of the enrollment fees collected.⁵⁸

On April 24, 2003, the Commission partially approved the consolidated Test Claims *Enrollment Fee Collection*, 99-TC-13 and *Enrollment Fee Waivers*, 00-TC-15 and determined that the *Enrollment Fee Collection and Waiver* program imposed a reimbursable state-mandated program on community college districts.

On January 26, 2006, the Commission adopted the Parameters and Guidelines with the reimbursement period beginning July 1, 1998 (for enrollment fee collection) and July 1, 1999 (for enrollment fee waivers), for the following activities:

Enrollment Fee Collection (Reimbursement Period begins July 1, 1998)

- a. One-time activities of preparing policies and procedures for collecting enrollment fees and related staff training (one-time per employee).
- b. Calculating and collecting the student enrollment fee for each student enrolled, except for nonresidents and special part-time students. This includes the following activities:

⁵³ Exhibit A, IRC, page 53 (Final Audit Report cover letter).

⁵⁴ Exhibit A, IRC.

⁵⁵ Exhibit B, Controller's Late Comments on the IRC.

⁵⁶ Exhibit C, Draft Proposed Decision.

⁵⁷ Education Code section 76300. Statutes 1984, 2d Ex. Sess., chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58501 – 58503, 58611 – 58613, 58620 and 58630.

⁵⁸ Education Code section 76300(c).

1. **[activity 1]** Referencing student accounts and records to determine course workload, status of payments, and eligibility for fee waiver. Printing a list of enrolled courses.
2. **[activity 2]** Calculating the total enrollment fee to be collected. Identifying method of payment. Collecting cash and making change as necessary. Processing credit card and other non-cash payment transactions (however, any fees that may be charged to a community college district by a credit card company or bank are not reimbursable). Preparing a receipt for payment received.
3. **[activity 3]** Answering student's questions regarding enrollment fee collection or referring them to the appropriate person for an answer.
4. **[activity 4]** Updating written and computer records for the enrollment fee information and providing a copy to the student. Copying and filing enrollment fee documentation.
5. **[activity 5]** Collecting delinquent enrollment fees, including written or telephonic collection notices to students, turning accounts over to collection agencies, or small claims court action.
6. **[activity 6]** For students who establish fee waiver eligibility after the enrollment fee has been collected, providing a refund or enrollment fees paid and updating student and district records as required. (Refund process for change in program is not reimbursable).

Enrollment Fee Waivers

- a. One-time activities of preparing policies and procedures for determining which students are eligible for waiver of the enrollment fees, and related staff training (one-time per employee).
- b. Adopting procedures that will document all financial assistance provided, and including in the procedures the rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Recording and maintaining records that document all of the financial assistance for the waiver of enrollment fees.

- c. Waiving student fees in accordance with groups listed in Education Code section 76300(g) and (h), and waiving fees for students who apply and are eligible for the BOG fee waiver. This includes the following activities:
 1. **[activity 7]** Answering student's questions regarding enrollment fee waivers or referring them to the appropriate person for an answer.⁵⁹

⁵⁹ Activities 7-12 are identified consistently with the Controller's analysis in the Final Audit Report. Exhibit A, IRC, page 89 (Final Audit Report).

2. **[activity 8]** Receiving of waiver applications from students by mail, fax, computer online access, or in person, or in the form of eligibility information processed by the financial aid office.
 3. **[activity 9]** Evaluating each application and verification documents (dependency status, household size and income, SSI and TANF/CalWorks, etc.) for compliance with eligibility standards utilizing information provided by the student, from the student financial aid records (e.g., Free Application for Federal Student Aid (FAFSA)), and other records.
 4. **[activity 10]** In the case of an incomplete application or incomplete documentation, notify the student of the additional required information and how to obtain that information. Hold student application and documentation in suspense file until all information is received.
 5. **[activity 11]** In the case of an approved application, copy all documentation and file the information for further review or audit. Entering the approved application information into district records and /or notifying other personnel performing other parts of the process (e.g., cashier's office). Providing the student with proof of eligibility or an award letter, and file paper documents in the annual file.
 6. **[activity 12]** In the case of a denied application, reviewing and evaluating additional information and documentation provided by the student if the denial is appealed by the student. Provide written notification to the student of the results of the appeal or any change in eligibility status.
- d. Reporting to the Chancellor's Office the number of and amounts provided for BOG fee waivers.⁶⁰

Section IV. of the Parameters and Guidelines further provides that reimbursement may be claimed based on actual costs incurred that are traceable and supported by contemporaneous source documents that show the validity of the costs, when they were incurred, and their relationship to the reimbursable activities.⁶¹

Section V. states that when claiming salaries and benefits that are eligible for reimbursement, claimants are required to specify each employee performing the reimbursable activities the employee's job classification, and the productive hourly rate (defined as total wages and related benefits divided by productive hours). Section V. also requires a description of the activities performed and the hours devoted to them.⁶²

Section VII. of the Parameters and Guidelines governs offsetting savings and reimbursements, requiring claimants to offset their claims by revenues received from any source, including services fees collected, federal funds, and other state funds. Offsetting revenues required to be deducted from the costs claimed include the following:

⁶⁰ Exhibit A, IRC, pages 128-129 (Parameters and Guidelines).

⁶¹ Exhibit A, IRC, page 127 (Parameters and Guidelines).

⁶² Exhibit A, IRC, page 130 (Parameters and Guidelines).

- For the *Enrollment Fee Collection* program, two percent of the revenue received from enrollment fees.⁶³
- For the *Enrollment Fee Waivers* program, from July 1, 1999, to July 4, 2000:
 - Two percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for low income students, recipients of public assistance, or dependents or surviving spouses of National Guard soldiers killed or permanently disabled in the line of duty.
 - Seven percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for the determination of financial need and delivery of student financial aid services.⁶⁴
- For the *Enrollment Fee Waivers* program, beginning July 5, 2000:
 - Two percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for low income students, recipients of public assistance, or dependents or surviving spouses of National Guard soldiers killed or permanently disabled in the line of duty.
 - \$0.91 per credit unit waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for the determination of financial need and delivery of student financial aid services.⁶⁵
- Any budget augmentation received under the Board Financial Assistance Program Administrative Allowance, or any other state budget augmentation received for administering the fee waiver.⁶⁶

In 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature’s intent that the offsetting revenues identified above shall “directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers).”⁶⁷

⁶³ At the time the Parameters and Guidelines were adopted, Education Code section 76300(c) stated the following: “For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.”

⁶⁴ Education Code section 76300 (g) and (h), which identify the students eligible for a fee waiver. Education Code section 76300(m) directed the Board of Governors, from funds provided in the annual Budget Act, to allocate the funds to community college districts.

⁶⁵ Education Code section 76300 (g) and (h), which identify the students eligible for a fee waiver. Education Code section 76300(m) directed the Board of Governors, from funds provided in the annual Budget Act, to allocate the funds to community college districts.

⁶⁶ Exhibit A, IRC, pages 132-133 (Parameters and Guidelines, adopted Jan. 26, 2006).

⁶⁷ Statutes 2008, chapter 757, section 31 (AB 757).

B. The Controller's Audit and Summary of the Issues

The Controller states that it commenced the audit of claimant's reimbursement claims for fiscal years 1998-1999 through 2010-2011 on September 1, 2011, and completed it on August 6, 2013.⁶⁸ The audit concludes that all of the \$15,955,585 claimed during the audit period is unallowable, due to overstated direct and related indirect costs, and understated offsetting revenues.⁶⁹

The Final Audit Report consists of six findings, concluding that unallowable costs were claimed for: calculating and collecting enrollment fees (finding 1); adopting procedures and recording and maintaining records for enrollment fee waivers (finding 2); waiving student fees for eligible students (finding 3); unallowable indirect costs (finding 4); misstated offsetting reimbursements (finding 5); and overstated average productive hourly rates of employees calculating and collecting enrollment fees and waiving student fees (finding 6).⁷⁰ The claimant is not challenging the reductions in findings 2 (adopting procedures and recording and maintaining enrollment fee records) and finding 4 (indirect costs).⁷¹ Thus, findings 1, 3, 5, and 6 are at issue in this IRC.

1. Findings 1 and 6 (salaries and benefits claimed for collecting enrollment fees)

For fiscal years 1998-1999 through 2010-2011, the Controller found that of the \$10,560,754 claimed in salaries and benefits for calculating and collecting enrollment fees during the audit period, only \$873,378 was allowable and \$9,687,376 was unallowable. The Controller determined salaries and benefits for calculating and collecting enrollment fees by multiplying the staff time to perform the six ongoing activities, by number of students who paid enrollment fees (the multiplier), by the employee's productive hourly rate (which is discussed in audit finding 6).⁷²

a. Staff time to perform the reimbursable activities

To claim these costs, the claimant estimated the time required to perform the activities, based on survey forms certified by the claimant's employees.⁷³ The survey forms identify the employee's name, and department and position, and request the claimant's employee to circle the fiscal years [from 1998-1999 through 2010-2011] for which the employee "report[ed] below the average amount of time spent (in minutes) by you to implement each of the reimbursable activities for the mandated program."⁷⁴ The employees estimated the average time in minutes it took them to

⁶⁸ Exhibit B, Controller's Late Comments on the IRC, page 5; Exhibit A, IRC, page 53 (Final Audit Report).

⁶⁹ Exhibit A, IRC, page 53 (Final Audit Report).

⁷⁰ Exhibit A, IRC, pages 52-115 (Final Audit Report).

⁷¹ Exhibit A, IRC, pages 27-28, 31.

⁷² Exhibit A, IRC, pages 70-85, 108-109 (Final Audit Report).

⁷³ Exhibit A, IRC, pages 23, 71 (Final Audit Report).

⁷⁴ Exhibit A, IRC, pages 616-686; Exhibit B, Controller's Late Comments on the IRC, pages 47-54.

perform the six activities per student per year on the forms, and then signed and dated the forms below the certification, which states the following:

The State of California requires that school district personnel maintain a record of data for state mandates in order for the district to receive reimbursement. Your signature on this form certifies that you have reported actual data or have provided a good faith estimate which you “certify (or declare) under penalty of perjury under the laws of the State of California to be true and correct based on your personal knowledge or information.”⁷⁵

The claimant’s time estimates to perform the six activities required to collect enrollment fees ranged from 22.10 to 40.40 minutes.⁷⁶

The claimant did not report actual time spent on the program, or provide any source documentation other than the survey forms, to support the estimated times claimed. Thus, the Controller found that the claimant did not comply with the documentation requirements of the Parameters and Guidelines.⁷⁷ However, the Controller’s Office “realized that district staff performed the reimbursable activities; therefore time spent by SCO auditors conducting interviews was for the purpose of gaining testimonial evidence from district staff that performed the reimbursable activities concerning the relevance of the district’s time estimates.”⁷⁸ Accordingly, “[a]ny allowable costs for these activities were based upon the reasonableness of the time estimates alone, not on the quality or type of documentation provided by the district.”⁷⁹

The Controller’s Office held discussions with claimant’s staff to determine the procedures followed.⁸⁰ In addition, the Controller’s Office observed district staff in the Admissions and Records Office and in the Bursar’s Office who collect enrollment fees from students, and documented the average time increments spent to collect enrollment fees during the open enrollment period from January 23-26, 2012.⁸¹ The Controller determined that the average time to perform activities 1 through 4 (referencing student accounts, calculating the fee, answering

⁷⁵ Exhibit A, IRC, pages 616-686 (survey forms that identify estimated enrollment fee collection costs for fiscal years 1998-1999 through 2005-2006); Exhibit B, Controller’s Late Comments on the IRC, pages 47-50 (survey forms that identify estimated enrollment fee collection costs for fiscal years 1998-1999 through 2005-2006), and pages 51-54 (four survey forms that identify fiscal year 2010-2011 and 2011-2012 estimated costs).

⁷⁶ Exhibit A, IRC, page 72 (Final Audit Report).

⁷⁷ Exhibit A, IRC, page 71 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 25.

⁷⁸ Exhibit B, Controller’s Late Comments on the IRC, page 26; See also, Exhibit A, IRC , page 72 (Final Audit Report).

⁷⁹ Exhibit B, Controller’s Late Comments on the IRC, page 26.

⁸⁰ Exhibit A, IRC, page 72 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 35.

⁸¹ Exhibit A, IRC, page 83 (Final Audit Report); Exhibit B, Controller’s Late Comments on IRC, pages 29, 77-97 [Tab 9, auditor’s observation logs].

questions, and updating records), based on the observation of the claimant's staff performing the mandated activities, was 2.76 minutes, or 0.69 minutes per activity, and that claimant's time estimates for these four activities (between 22.10 and 27.90 minutes for all four activities, or 3.40 to 5.90 minutes per activity) was overstated.⁸² The audit reports states:

Over several days, we observed 178 payment transactions processed by district staff. Of these, 78 involved the payment of enrollment fees encompassing Activities 1 through 4 totaling 214.78 minutes. The average time to perform all four activities was 2.76 minutes, or 0.69 minutes per activity. The Office Supervisors were encouraged to watch over the auditors while our observations were being documented. We documented the average time increments spent by district staff to perform the reimbursable activities based on our observation. We reviewed the observations as they took place with the Office Supervisors. The district's mandated cost consultant and district management staff advised the Office Supervisors and the college campus staff not to comment on any of our analysis results, determinations, or observations. In addition, the district's District Director advised us not to discuss our audit results with management or any other campus staff.⁸³

The Controller found that the claimant's time estimates for activities 5 and 6 (collecting delinquent fees, and providing refunds to students who establish BOG fee waiver eligibility) appeared reasonable, and did not adjust the time claimed for those activities.⁸⁴

b. Number of students who paid enrollment fees (the multiplier)

The Controller also noted variations in the number of students used in the district's calculations for activities 1 through 4. For activities 1, 3, and 4, the claimant used the number of total enrolled students as the multiplier, determined by the "Student Total Headcount" summary report obtained from the Chancellor's website for fiscal years 1998-1999 through 2008-2009. However, this report includes duplicated students by term. In addition, the claimant did not deduct ineligible non-resident and special admit students (students who attend a community college while in high school), as required by the Parameters and Guidelines. For activity 2, the claimant used the number of total enrolled students less the number of BOG fee waivers granted. For activity 4, the claimant used the number of total enrolled students without excluding the number of BOG fee waivers for fiscal years 1998-1999 through 2008-2009, but excluded the number of BOG fee waivers for fiscal years 2009-2010 and 2010-2011.⁸⁵

The Controller updated the claimant's calculation of eligible students for activities 1 and 3 (referencing student accounts and answering questions) based on the number of students enrolled in the district as reported to the California Community College Chancellor's Office and maintained on the Chancellor's management information system (MIS). The MIS system eliminates any duplicative students by term based on their Social Security number. The

⁸² Exhibit A, IRC, page 72 (Final Audit Report).

⁸³ Exhibit A, IRC, page 73 (Final Audit Report).

⁸⁴ Exhibit A, IRC, pages 75, 76 (Final Audit Report).

⁸⁵ Exhibit A, IRC, page 73 (Final Audit Report).

Controller then subtracted those students excluded from the mandate (nonresidents and special admit students who attend a community college while in high school).

The Controller also updated the claimant's calculations of eligible students for activities 2 and 4 (calculating the fee and updating the records) by deducting the number of BOG waiver recipients by term based on the Chancellor's MIS data. The Controller then added the number of students who received refunds because they were subsequently granted a BOG waiver, and subtracted the number of students who paid their enrollment fee through the claimant's online system (based on documentation provided by the claimant for fiscal years 2002-2003 through 2010-2011, and based on an agreement with the claimant that 75 percent of students paid enrollment fees in person in the earlier fiscal years of 1998-1999 through 2000-2001).⁸⁶

The Controller's adjustment to the multiplier for activities 1 through 4 resulted in a decrease of 1,099,609 students over the audit period.⁸⁷

The Controller did not adjust the multiplier for activities 5 and 6.⁸⁸

c. Productive hourly rates

The Controller determined that the claimant overstated the average productive hourly rates used for activities 1 through 6. The claimant's productive hourly rates included staff that did not perform activities 1 through 6 (staff in the Financial Aid Department); and excluded staff that did not complete the time survey form, but performed the reimbursable activities. In addition, the claimant did not weigh the average rates by employee classification. The Controller recalculated the average productive hourly rates based on employees actually involved in calculating and collecting enrollment fee activities and made changes to the claimed rates, as summarized below.⁸⁹

We accepted the rates that the district claimed per staff and made minor changes to the claimed rates when the supporting documentation showed different information than what was claimed. We excluded staff that did not perform the reimbursable activities for Calculating and Collecting Enrollment Fees Based on our observations of the reimbursable activities being performed; we determined the following level of involvement by district staff to perform the reimbursable activities:

- Student Hourly Staff – 45%
- Classified Salaried Staff – 50%
- Supervisory Staff – 5%

We provided the district with our analysis and attempted to engage in a dialogue with them in an effort to advise us of any issues involving the weight of

⁸⁶ Exhibit A, IRC, page 74 (Final Audit Report).

⁸⁷ Exhibit A, IRC, page 77 (Final Audit Report).

⁸⁸ Exhibit A, IRC, pages 75, 76 (Final Audit Report).

⁸⁹ Exhibit A, IRC, pages 74, 108-109 (Final Audit Report).

involvement percentages that we calculated, in addition to any variances in the level of effort for the different colleges in the district and/or the different years during the audit period. However, the district declined to comment on our analysis or provide any additional information.⁹⁰

The Controller's calculation of productive hourly rates reduced the rates used by the claimant for each fiscal year in the audit period by \$4.19 to \$11.50.⁹¹

2. Findings 3 and 6 (salaries and benefits claimed for waiving student fees)

For fiscal years 1999-2000 through 2010-2011, the Controller found that of the \$4,285,990 claimed for salaries and benefits for activities related to waiving student fees for student groups identified in Education Code section 76300(g) and (h), and for students who apply for and are eligible for a BOG fee waiver, only \$236,628 was allowable and \$4,049,362 was unallowable. Salaries and benefits for waiving student fees is determined by multiplying the staff time to perform the six ongoing activities (activities 7 through 12), by number of students who receive the waiver (the multiplier), by the employee's productive hourly rate (which is discussed in audit finding 6).⁹²

a. Staff time to perform the reimbursable activities

To claim these costs, the claimant estimated the time required to perform the six activities, as identified on the survey forms certified by the employees and developed by the district's mandated cost consultant. The time estimates for activities 7 through 12 ranged from 16.70 to 67.50 minutes during the audit period. The claimant did not report actual time spent on the program, or provide source documentation other than the employee certification forms to support the estimated times claimed.⁹³

The Controller realized that the mandated activities were performed and assessed whether the claimant's time estimates were reasonable.⁹⁴ The Controller held discussions with the claimant's staff to determine the procedures followed for each of the activities. In addition, the Controller observed 225 fee waiver transactions handled by the claimant's employees on October 12, 2011, and December 5-9, 2011. Based on these observations, the Controller determined that the claimant's time estimates were overstated, and that the average time to perform activities 7 through 11 was 2.60 minutes, or 0.52 minutes per activity.⁹⁵

The Controller did not apply any time increments to activity 12 (appeals of denied BOG fee waiver applications), because the claimant does not have a process in place to review denied

⁹⁰ Exhibit A, IRC, page 109 (Final Audit Report).

⁹¹ Exhibit A, IRC, page 109 (Final Audit Report).

⁹² Exhibit A, pages 87-98, 108, 110-113 (Final Audit Report).

⁹³ Exhibit A, IRC, page 89 (Final Audit Report).

⁹⁴ Exhibit A, IRC, page 89 (Final Audit Report).

⁹⁵ Exhibit A, IRC, pages 93, 95 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, pages 30, 78-115 (time study logs).

BOG fee waiver applications. Instead, students are instructed to apply for Financial Aid. Thus, the costs claimed for activity 12 were reduced to zero (\$0).⁹⁶

b. Number of students who received the fee waiver (multiplier)

The Controller also adjusted the claimant's multiplier of students who receive the waiver. For activities 7 (answering student questions), 8 (receiving enrollment fee waiver applications), and 9 (evaluating applications and verifying documentation), the claimant used the number of students who received a BOG fee waiver plus the number of denied and incomplete BOG fee waiver applications, based on district records. For activity 10 (notifying students of additional required information for incomplete applications), the claimant used the number of incomplete BOG fee waiver applications at the end of the year. For activity 11 (copy and file all documentation for approved applications), the claimant used the number of students who received a BOG fee waiver. For activity 12 (appealing a BOG fee waiver application), the claimant used the same number of BOG fee waivers that were incomplete at the end of the year as the number of applications that were appealed by students for incorrect information.⁹⁷

For activities 7 through 9, the Controller used the number of students that received BOG fee waivers according to statistics provided by the Chancellor's Office. Using the data the claimant reported, the Chancellor's Office identified the unduplicated number of BOG recipients by term based on MIS data, and then the Controller adjusted the information by including students whose fee waiver applications were incomplete and denied at the end of the year.⁹⁸ This resulted in a decrease of 7,479 students for each of activities 7, 8, and 9.⁹⁹

For activity 10 (notifying students of additional required information for incomplete applications), the Controller used the number of incomplete BOG fee waiver applications at the end of the year claimed by the district and included the number of students that received BOG fee waivers according to statistics provided by the Chancellor's Office. This represents the maximum number of incomplete applications that may have been processed by the claimant.¹⁰⁰ The Controller's recalculation *increased* the student multiplier by 256,475 students, which increased costs.¹⁰¹

For activity 11 (copy and file all documentation for approved applications), the Controller used the number of students that received BOG fee waivers according to statistics by the Chancellor's Office. Using the data the claimant reported, the Chancellor's Office identified the unduplicated

⁹⁶ Exhibit A, IRC, pages 93-95 (Final Audit Report).

⁹⁷ Exhibit A, IRC, page 94 (Final Audit Report).

⁹⁸ Exhibit A, IRC, page 94 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 40.

⁹⁹ Exhibit A, IRC, page 95 (Final Audit Report).

¹⁰⁰ Exhibit A, IRC, page 94 (Final Audit Report).

¹⁰¹ Exhibit A, IRC, page 95 (Final Audit Report).

number of BOG recipients by term based on MIS data.¹⁰² This resulted in a decrease of 7,479 students.¹⁰³

And for activity 12 (appeals), the Controller did not allow any multiplier because the claimant does not have a process in place to review denied BOG fee waiver applications. Students are instead instructed to apply for financial aid.¹⁰⁴

c. Productive hourly rates

The Controller also determined that the claimant overstated the average productive hourly rates used for activities 7 through 11. The claimant's average productive hourly rates for waiving student fees included staff that did not perform the reimbursable activities and excluded staff that did perform the reimbursable activities. The excluded staff were those employees who did not receive a time survey form, including student hourly staff. In addition, the claimant did not weigh the average rate by employee classification. Instead, all employee classifications were weighted at the same level as if they performed the reimbursable activities to the same extent.

The Controller provided the claimant an opportunity to revisit the average productive hourly rates to appropriately reflect the weight of involvement based on employee classification, but the claimant declined.¹⁰⁵ Therefore, the Controller recalculated productive hourly rates by excluding staff that did not perform the mandated activities, and applied weighted rates by employee classification (45% for the student hourly classification, 50% for the classified salary classification, and 5% for supervisory classification).

In addition, the Controller determined that the rates claimed for the Director of Financial Aid were understated and, thus, the Controller made adjustments accordingly.¹⁰⁶

As a result, the Controller's calculation of productive hourly rates for activities 7 through 11 reduced the rates used by the claimant during each fiscal year in the audit period by \$7.17 to \$13.77.¹⁰⁷

3. Finding 5 (offsetting revenues)

The Controller found that offsetting revenues identified for the enrollment fee collection and waiver activities by the claimant were misstated because the claimant did not accurately report the amounts received in offsetting revenues from the Chancellor's Office in any fiscal year of the audit period.¹⁰⁸

For enrollment fee collection activities, the claimant identified \$1,152,929 in offsetting revenues based on two percent of the revenues from the enrollment fee. The Controller obtained a report

¹⁰² Exhibit A, IRC, page 94 (Final Audit Report).

¹⁰³ Exhibit A, IRC, page 95 (Final Audit Report).

¹⁰⁴ Exhibit A, IRC, page 94 (Final Audit Report).

¹⁰⁵ Exhibit A, IRC, page 108 (Final Audit Report).

¹⁰⁶ Exhibit A, IRC, pages 87-93, 108-111 (Final Audit Report).

¹⁰⁷ Exhibit A, IRC, page 111 (Final Audit Report).

¹⁰⁸ Exhibit A, IRC, pages 102-107 (Final Audit Report).

from the Chancellor's Office confirming offsetting revenues paid to the claimant during the audit period for enrollment fee collection, totaling \$2,030,411. The Controller limited offsetting revenues to allowable direct and indirect costs totaling \$1,202,950.¹⁰⁹

For enrollment fee waivers, the claimant identified \$3,266,094 in offsetting revenues based on the seven or two percent offset from the enrollment fees waived, and the \$0.91 per credit unit waived. The Controller obtained a report from the Chancellor's Office confirming offsetting revenues paid to the claimant during the audit period totaling \$3,272,412. The Controller limited offsetting revenues to allowable direct and indirect costs totaling \$374,793.¹¹⁰

III. Positions of the Parties

A. North Orange County Community College District

The claimant contends that the Controller incorrectly reduced the costs claimed and requests that the Commission direct the Controller to reinstate the costs reduced. The arguments raised by the claimant are summarized below.

Audit Standards: The claimant asserts that the Controller either used the wrong standard for the audit or has misrepresented the actual nature and scope of the audit because the citations given for the audit authority either do not provide an audit standard or provide a standard not specific to mandate reimbursement claims. If Government Code section 12410 is the standard, the Controller has not shown that the audit adjustments were made in accordance with this standard. As to Generally Accepted Government Auditing (or Yellow Book) standards, the Controller does not cite any law, agreement or policy that makes these standards applicable to audits of state-mandated costs. Nonetheless, the audit makes no findings on Yellow Book criteria for a performance audit, but instead is a documentation audit.¹¹¹

Documentation Standards: According to the claimant, the audit incorrectly applied the documentation standards in the Parameters and Guidelines, which require contemporaneous source documentation. Instead, the audit relied on post facto anecdotal information.¹¹² The claimant points out that the Parameters and Guidelines were adopted and first claiming instructions issued seven years after the first fiscal year in the audit period, so claimants were not on notice of the activities approved for reimbursement that should be documented until the eighth year of the eligibility period. The claimant disputes the Controller's contention that the claimant should have developed "actual cost documentation" or performed a time study, arguing that these could not have been done before the reimbursable activities were published by the State. While admitting that some historic staff time can be reconstructed, the claimant argues that "staff time cannot and must be reported as a good-faith estimate where the desired

¹⁰⁹ Exhibit A, IRC, page 103 (Final Audit Report).

¹¹⁰ Exhibit A, IRC, page 104 (Final Audit Report).

¹¹¹ Exhibit A, IRC, pages 7-11.

¹¹² Exhibit A, IRC, page 12.

information is not maintained in the regular course of business” and “it would be a more realistic standard when the districts know what documentation is needed.”¹¹³

The claimant states that the Controller (or any other governmental entities that establish the financial accounting standards and reporting requirements that community college districts are subject to) does not publish any standards or reporting requirements for state mandate cost accounting. In the absence of standards, claimants must retroactively rely on documentation produced in the regular course of business as well as forms to collect data on staff time spent on the reimbursable activities. The claimant argues that staff were surveyed seven times over the audit period, and the forms used to document its time are “in the nature of certified declarations of time logs that are within the scope of the parameters and guidelines documentation standards.”¹¹⁴ The claimant further states that the Controller accepted the average staff time per activity in some cases even though it was recorded on the same forms as the rejected average staff time, so the Controller’s inconsistent treatment of similar documentation makes the Controller’s reliance seem “capricious and not credible.”¹¹⁵

Underground Rulemaking: The claimant also asserts that the Controller’s time study (or “stopwatch method”) to determine time spent on activities does not meet the requirements of the Controller’s published guidelines for time studies, nor does the audit report establish that a few days of observation are representative of an entire fiscal year or of the 13-year audit period. The claimant further argues that the time study “stopwatch method” has been used in other audits and is an unenforceable underground regulation.¹¹⁶

The claimant also takes issue with the Controller’s use of the Chancellor’s Office data to calculate the workload multiplier (i.e., the number of student enrollment fee collection or enrollment fee waiver transactions that are reimbursable). According to the claimant, “the auditor simply substitutes the Chancellor’s statistics rather than validating the claimed statistics.” Because it has been used in other audits, the claimant argues that the Controller’s use of this audit method is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable.¹¹⁷

The Controller used an average productive hourly rate in its claims, which the Controller replaced with a weighted productive hourly rate (that weights supervisor and clerical staff time differently), but there is no requirement in the Parameters and Guidelines to use a weighted productive hourly rate, and the Controller provided no factual basis to do so. The Parameters and Guidelines require that the claimant:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided

¹¹³ Exhibit A, IRC, pages 13-14.

¹¹⁴ Exhibit A, IRC, page 14.

¹¹⁵ Exhibit A, IRC, pages 15, 23.

¹¹⁶ Exhibit A, IRC, pages 15-18.

¹¹⁷ Exhibit A, IRC, page 19.

by productive hours). Describe the reimbursable activities performed and the hours devoted to each reimbursable activity performed.¹¹⁸

The claimant did not provide this information for all employees, and the Controller did not use the data required by the Parameters and Guidelines in its audit. Since the Controller used a weighted average productive hourly rate in other audits of this program, the claimant argues that doing so is an unenforceable underground regulation.¹¹⁹

Audit Finding 1: Regarding the audit reduction of the salaries and benefits to perform activities 1 through 4 (collecting the enrollment fee), the claimant argues that the auditor's observation process does not constitute a representative time study sample. The 178 transactions the auditors observed are inadequate to account for the 1.04 million transactions that occurred during the 13-year audit period, so the observation sample size is statistically meaningless. "For these and many other reasons the auditor's observation process does not constitute a representative "time study" sample."¹²⁰ And the Controller did not observe activity 5, collecting delinquent fees, or activity 6, providing a refund for fee waiver eligibility, yet the auditor determined that the time claimed appeared to be reasonable, even though the same claimant forms and time survey method was used for all activities claimed.¹²¹

The claimed workload multipliers for activities 1 through 4 treated all enrollment fee collection transactions as an "in-person" transaction at the cashier's office. The claimant does not dispute a plausible reduction of the multiplier by the number of online transactions. The audit findings, however, do not replace the claimed staff time lost from these eliminated in-person transactions with the costs to operate the online payment collections. Thus, no costs are recognized by the audit for the online transactions. The claimant disagrees with the Controller's statement in the audit report that this adjustment is "not the SCO's responsibility."¹²²

Audit Finding 3: Regarding the unallowable ongoing costs for waiving enrollment fees, the claimant argues that the sample size for the Controller's time study is statistically meaningless because the audited number of fee waiver transactions is 267,412, but the auditors observed only 225 transactions.¹²³

The claimant also questions the disallowance of claimed time for appealing a denied fee waiver application (activity 12) based on the claimant not having a process in place to review denied fee waiver applications. According to the claimant, "the District did claim average times of 5.5 to 14.3 minutes for 10,937 appeals of denied BOG fee waiver applications for four years of the audit period. The auditor was unable to observe this process during the two weeks of fieldwork

¹¹⁸ Exhibit A, IRC, page 21.

¹¹⁹ Exhibit A, IRC, pages 20-22.

¹²⁰ Exhibit A, IRC, page 24.

¹²¹ Exhibit A, IRC, pages 23-25.

¹²² Exhibit A, IRC, pages 26-27.

¹²³ Exhibit A, IRC, pages 28-29.

because no formal appeals were received.”¹²⁴ The claimant points out that there is no requirement in the Parameters and Guidelines for a formal appeal process and the claimant reported more than 10,000 appeals for the audit period.¹²⁵

The claimant also notes that for activities 7 through 10, which involve processing the enrollment fee waiver application, the Controller adjusted the Chancellor’s Office workload multiplier, but there is no apparent reduction for online transactions.

Audit Finding 5: Regarding misstated offsetting reimbursements, the claimant states that its amounts do not always match the revenue of the Chancellor’s Office reported in the audit, which is “based on a post-facto specific data query to the Chancellor’s data using seasoned data not available at the time of preparation.”¹²⁶ The claimant asserts that this would be a continuing source of minor differences with the annual claims that are based on contemporaneous enrollment information and the source of units waived. The claimant argues that since the audit report does not include the source documentation for the adjusted offsets, there is no way to evaluate this source documentation, and no factual basis for these adjustments.¹²⁷

The claimant disputes the application of offsetting revenues to claimed costs for the preparation of policies and procedures and staff training because the two percent enrollment fee is for the administrative cost of collecting the fee, and the enrollment fee waiver program funds are for determining financial need and delivering student financial aid services.¹²⁸

The claimant also asserts that only the relevant revenue offsets should be applied to the relevant costs claimed or allowed, arguing:

Specifically, in Finding 1 the audited "multiplier calculation" for the enrollment fees collection process is reduced by various percentages for online transaction percentages retroactive to FY 1998-99. That is, the claimed and audited costs are both based only on "in-person" enrollment fee collections. The audit incorrectly applies all of the program revenues, that is, the revenues generated by both the in-person and online computer collections, to the audited enrollment fee in-person only collection costs. The audited revenue offset should be reduced by the same percentage each fiscal year that the cost multiplier is reduced for the percentage of online transactions costs in order to properly match revenues and costs as required by generally accepted accounting principles.¹²⁹

Audit Finding 6: Regarding overstated productive hourly rates because the claimant did not weight the productive hourly rates of staff and supervisors separately, the claimant argues that the Controller’s “choice of methods is not supported by facts or documentation sufficient to

¹²⁴ Exhibit A, IRC, pages 29-30.

¹²⁵ Exhibit A, IRC, page 30.

¹²⁶ Exhibit A, IRC, pages 31-32.

¹²⁷ Exhibit A, IRC, page 32.

¹²⁸ Exhibit A, IRC, page 33.

¹²⁹ Exhibit A, IRC, pages 33-34.

support its universal application or sufficient for annual claims had the same method been used by a claimant.”¹³⁰ The claimant did not provide support or rebuttal for the Controller’s weighted averages because there is no requirement in the Parameters and Guidelines to use weighted productive hourly rates and no factual basis was given by the auditor for doing so. Because the weighted productive hourly rates used by the Controller were based on discussions with staff and observations of staff performing the reimbursable activities, the claimant argues: “This type of anecdotal information does not meet the parameters and guidelines standards nor the Controller’s audit standards because it is unsupported by documentation.”¹³¹

B. State Controller’s Office

The Controller contends that the reductions are correct and that the IRC should be denied. The Controller responds to the IRC as summarized below.

Audit Standards: The Controller states that it used the correct standard of review for the audit that complies with applicable law and the Generally Accepted Government Auditing Standards (or the Yellow Book).¹³²

The Controller cites Government Code section 17561, which authorizes it to audit the claimant’s records to verify actual mandate-related costs *and* reduce any claim that is excessive or unreasonable. In this case, the claims were excessive and unreasonable. The number of hours claimed was considered unreasonable because they were based on estimates rather than actual source documentation related to the reimbursable activities, and evidence the Controller gathered indicated that the time claimed was excessive.¹³³

Documentation Standards: The Controller disagrees that it is unreasonable to require contemporaneous source documentation when the Parameters and Guidelines were not adopted until the eighth year of the audit period. The Controller points out that the unsupported costs were claimed and the time spent on the activities was estimated, which is not allowed under the Parameters and Guidelines. Estimates are merely corroborating evidence and do not comply with the actual cost documentation requirements of the Parameters and Guidelines. And the claimant did not verify any of its time estimates for reasonableness.

However, realizing that the claimant performed the reimbursable activities, auditors interviewed staff and observed staff performing the reimbursable activities. In some cases, auditors accepted the claimant’s time estimates based on “the reasonableness of the time estimates alone, not on the quality or type of documentation provided by the district.”¹³⁴

¹³⁰ Exhibit A, IRC, page 34.

¹³¹ Exhibit A, IRC, page 35.

¹³² Exhibit B, Controller’s Late Comments on the IRC, pages 21-24.

¹³³ Exhibit B, Controller’s Late Comments on the IRC, pages 23.

¹³⁴ Exhibit B, Controller’s Late Comments on the IRC, page 26.

Underground Rulemaking: The Controller denies that there is a standard of general application that auditors are expected to apply to audits of this program, so the audit methods do not constitute an underground regulation.¹³⁵

The Controller also disputes that its time study does not comply with its own guidelines on time studies. The Controller states that the guidelines are not requirements and have not been adopted as regulations. Additionally, the auditors developed a time study plan by determining the period of time to be studied at one of the claimant's open enrollment periods and coordinated with staff to study activities 1 through 4 for the enrollment fee collection activities, and activities 7 through 11 for the enrollment fee waiver activities. The auditors also, based on discussions with claimant's staff, prepared brief narratives of procedures the staff followed to perform the activities. The auditor further determined which employees to study in the Bursar's Office (for enrollment fee collection) and the Financial Aid Office (for enrollment fee waivers), without knowing the classifications of the employees before performing the time study and without selecting which employees to study.¹³⁶

The auditors documented the time by contemporaneously recording the documentation as the claimant's staff assisted students. Auditors recorded the transaction, the time involved, which employee performed the activity, and relevant comments from January 23-26, 2012 (for enrollment fee collection activities) and on October 12, 2011 and December 5-9, 2011 (for enrollment fee waiver activities). The comments the auditors inserted in the time logs were sufficiently detailed to reflect all mandated and non-mandated activities. The auditors determined that it was unnecessary to conduct the time study over one or more pay periods because the activities were more conducive to open enrollment periods than pay periods.¹³⁷

The Controller also disagrees that observations over a few days are not representative of the 13-year audit period, saying "we do not believe that any one of the district's open enrollment periods would be more representative of any other to determine the time required to perform the reimbursable activities." The Controller also invited the claimant to perform its own time analysis or provide information describing procedures in place during earlier years of the audit period that showed time beyond what the auditors observed, but the district declined to perform its own analysis or provide additional information.¹³⁸

The Controller disagrees that its audit methodology of conducting observations of district staff performing some of the reimbursable activities is a standard of general application requiring rulemaking under the Administrative Procedure Act. There is no standard of general application that auditors are expected to apply during audits of this program. Auditors begin by reviewing the evidence included by the claimants in filing their claims to support their findings and conclusions. The claimant provided auditors with information supporting how its claims were filed, which were all based on estimates of staff time performing the reimbursable activities.

¹³⁵ Exhibit B, Controller's Late Comments on the IRC, pages 26, 31.

¹³⁶ Exhibit B, Controller's Late Comments on the IRC, page 29.

¹³⁷ Exhibit B, Controller's Late Comments on the IRC, pages 29-30, 78-115 (time study logs).

¹³⁸ Exhibit B, Controller's Late Comments on the IRC, page 30.

Instead of determining all the staff time was unallowable, the audit methodology was designed to work with the claimant to provide actual cost documentation on which to base allowable costs.¹³⁹

The Controller notes that the data it used for the workload multiplier was submitted to the Chancellor's Office by the claimant, and the claimant did not apply all the exclusions from the Parameters and Guidelines, or make other adjustments that reflect the reimbursable activities. The Controller disagrees that its data collection is an underground regulation, saying "there is no audit method for the use of data."¹⁴⁰

In response to the claimant's argument that the Parameters and Guidelines do not require weighting the productive hourly rates and no factual basis to do so was provided, the Controller argues that the audit decision to weight the productive hourly rate is consistent with the Parameters and Guidelines, which recognize "that all employees do not perform the reimbursable activities equally."¹⁴¹ For both the multiplier and the productive hourly rate, the Controller states "we do not believe that auditing to the requirements contained in the parameters and guidelines constitutes a standard of general application."¹⁴²

Audit Findings: The audit findings are summarized in the Summary of the Audit and are more fully analyzed in the Discussion below. The Controller stands by its audit findings.

IV. Discussion

Government Code section 17561(d) 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 of the California Constitution.¹⁴³ 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

¹³⁹ Exhibit B, Controller's Late Comments on the IRC, page 31.

¹⁴⁰ Exhibit B, Controller's Late Comments on the IRC, page 31.

¹⁴¹ Exhibit B, Controller's Late Comments on the IRC, page 32.

¹⁴² Exhibit B, Controller's Late Comments on the IRC, pages 31, 32.

¹⁴³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴⁴

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.¹⁴⁵ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]”¹⁴⁶

The Commission must 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.¹⁴⁷ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁴⁸

A. The IRC Was Timely Filed Within Three Years of the Claimant’s Receipt of Notice of the Adjustment, as Required by the Commission’s Regulations.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims

¹⁴⁴ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁴⁵ *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (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.

¹⁴⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁴⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁴⁸ 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.

adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.¹⁴⁹ The claimant may then file an IRC with the Commission “pursuant to regulations adopted by the Commission” contending that the Controller’s reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.¹⁵⁰

At the time this IRC was filed in June 2016, the Commission’s regulations required that an IRC be timely filed “no later than three years following the date of the Office of State Controller’s final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim” in order to be complete.¹⁵¹

The Final Audit Report, dated August 6, 2013, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c). The claimant filed the IRC on June 27, 2016, less than three years from the date of the Final Audit Report.

Therefore, the Commission finds that the IRC was timely filed.

B. The Commission Has No Jurisdiction to Determine the Correctness of an Adjustment to the Number of Students for Enrollment Fee Waiver Activity Number 10, Which Does Not Result in a Reduction.

Pursuant to Government Code section 17551(d), the Commission’s jurisdiction for IRCs is limited to determining whether “the Controller has incorrectly reduced payments to the local agency.” The plain language of Government Code section 17551(d) limits the Commission’s jurisdiction on IRC to the issue of whether payments have been “incorrectly *reduced*.” And here, with regard to adjusting (i.e. increasing) the number of students activity 10, there has been no reduction of costs claimed.

Therefore, the Commission finds that it has no jurisdiction over the adjustment to the number of students for Enrollment Fee Waiver activity number 10.

C. The Controller’s Reduction to the Salaries and Benefits Claimed for the Enrollment Fee Collection Activities Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

¹⁴⁹ Government Code section 17558.5(c).

¹⁵⁰ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

¹⁵¹ Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: “All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met.”

The Parameters and Guidelines, adopted January 26, 2006, authorize reimbursement, beginning July 1, 1998, for the following activities to calculate and collect student enrollment fees:

1. **[activity 1]** Referencing student accounts and records to determine course workload, status of payments, and eligibility for fee waiver. Printing a list of enrolled courses.
2. **[activity 2]** Calculating the total enrollment fee to be collected. Identifying method of payment. Collecting cash and making change as necessary. Processing credit card and other non-cash payment transactions (however, any fees that may be charged to a community college district by a credit card company or bank are not reimbursable). Preparing a receipt for payment received.
3. **[activity 3]** Answering student's questions regarding enrollment fee collection or referring them to the appropriate person for an answer.
4. **[activity 4]** Updating written and computer records for the enrollment fee information and providing a copy to the student. Copying and filing enrollment fee documentation.
5. **[activity 5]** Collecting delinquent enrollment fees, including written or telephonic collection notices to students, turning accounts over to collection agencies, or small claims court action.
6. **[activity 6]** For students who establish fee waiver eligibility after the enrollment fee has been collected, providing a refund or enrollment fees paid and updating student and district records as required. (Refund process for change in program is not reimbursable).¹⁵²

Section IV. of the Parameters and Guidelines requires claims to be based on actual costs that are traceable and supported by contemporaneous source documents.¹⁵³

The claimant calculated these costs by multiplying the staff time to perform the mandated activities, by the number of students who paid enrollment fees and were affected by these activities, by the productive hourly rates of the employees. The Controller made adjustments to each of these factors, resulting in a reduction of costs for the calculation and collection activities. As analyzed below, the Commission finds that the Controller's reductions are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller's reduction of the claimant's estimated staff time to perform activities 1 through 4 to calculate and collect enrollment fees is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller reduced the average time estimates provided by the claimant for activities 1 through 4 to calculate and collect enrollment fees. The Parameters and Guidelines require that reimbursement claims for these activities be based on actual costs incurred that are traceable and

¹⁵² Exhibit A, IRC, pages 70-71 (Final Audit Report), 128 (Parameters and Guidelines).

¹⁵³ Exhibit A, IRC, page 127 (Parameters and Guidelines).

supported by contemporaneous source documents. The claimant contends, however, that the Parameters and Guidelines were adopted in 2006, seven years after the first fiscal year in the audit period and, thus, it was impossible for community college districts to recreate contemporaneous source documents to support the actual time it took to calculate and collect enrollment fees.¹⁵⁴ Therefore, the claimant estimated the staff time to perform the mandated activities for all fiscal years in question and submitted time surveys, the majority of which were completed in 2006 and a few in 2011, to support the average times reported.¹⁵⁵

The claimant is correct that the contemporaneous source document rule cannot apply to the reimbursement claims for costs incurred before the Parameters and Guidelines were adopted in January 2006 since the claimants were not on notice of the requirements. Parameters and guidelines are regulatory in nature and, thus, are binding.¹⁵⁶ However, if provisions in the parameters and guidelines affect substantive rights or liabilities of the parties that change the legal consequences of past events, then the application of those provisions may be considered unlawfully retroactive under due process principles.¹⁵⁷ Due process requires that a claimant have reasonable notice of any change in law that affects their substantive rights and liabilities.¹⁵⁸ For example, the court in *Clovis Unified School Dist. v. Chiang* found that the Controller's imposition of the contemporaneous source document rule in audits, before claimants had notice of the rule, was an underground regulation.¹⁵⁹ In the analysis, the court noted that the school districts "used employee declarations, certifications, and average time accountings to document time for reimbursement claims," and that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness that '[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.'"¹⁶⁰ In this case, community college districts were not on notice of the contemporaneous source document requirements when the mandated costs were incurred in fiscal years 1998-1999 through 2005-2006, and cannot re-create contemporaneous documentation to support actual costs for those years.

¹⁵⁴ Exhibit A, IRC, page 13.

¹⁵⁵ Exhibit A, IRC, page 23. See also, Exhibit A, IRC, pages 616-686 (survey forms dated in 2006 that identify estimated enrollment fee collection costs for fiscal years 1998-1999 through 2005-2006); Exhibit B, Controller's Late Comments on the IRC, pages 47-50 (survey forms dated in 2006 that identify estimated enrollment fee collection costs for fiscal years 1998-1999 through 2005-2006), and pages 51-54 (four survey forms dated in November 2011 that identify fiscal year 2010-2011 and 2011-2012 estimated costs).

¹⁵⁶ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

¹⁵⁷ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

¹⁵⁸ *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784.

¹⁵⁹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-807.

¹⁶⁰ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

However, the claimant had actual notice of the requirement to claim actual costs supported by contemporaneous source documents for the costs incurred in fiscal years 2006-2007 through 2011-2012. Nevertheless, the claimant continued to use time estimates based on surveys that were not contemporaneous.¹⁶¹ Thus, for fiscal years 2006-2007 through 2011-2012, the Controller could have reduced the costs claimed for salaries and benefits to \$0, and that reduction would have been correct as a matter of law.¹⁶²

The Controller, however, recognized that the claimant performed the mandated activities and, thus, did not reduce the costs claimed to \$0. Instead, the Controller exercised its audit authority and allowed costs for salaries and benefits during all fiscal years in the audit period based on time estimates the Controller found to be reasonable.¹⁶³ Thus, the issue is whether the Controller's audit findings are arbitrary, capricious, or without evidentiary support. Under this standard, the courts have held that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”¹⁶⁴

The Commission finds that the Controller's reduction of the time to perform the mandated activities 1 through 4 is not arbitrary, capricious, or without evidentiary support.

The claimant's average time estimates to perform activities 1 through 4, based on surveys of claimant's staff, ranged from 22.10 to 27.90 minutes (or between 3.40 to 5.90 minutes per activity) during the audit period, and the claimant asserts that the estimates are certified and constitute “good faith estimates.”¹⁶⁵ The claimant did not provide any source documents or evidence of actual cost data to support the time required to perform the activities.¹⁶⁶ In addition, the Controller found that the claimant's time estimates were not verified for reasonableness, and

¹⁶¹ Exhibit B, Controller's Late Comments on the IRC, page 25.

¹⁶² *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

¹⁶³ Exhibit B, Controller's Late Comments on the IRC, page 26.

¹⁶⁴ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁶⁵ Exhibit A, IRC, pages 15, and 72, 79 (Final Audit Report).

¹⁶⁶ Exhibit B, Controller's Late Comments on the IRC, page 29.

that the times reported varied significantly between staff and years.¹⁶⁷ The audit report states the following:

The times recorded by the employees surveyed to complete reimbursable activities 1-4 varied in length as follows:

- Activity 1 (Reference student accounts) – 1 to 60 minutes
- Activity 2 (Calculate/collect enrollment fee) – 1 to 30 minutes
- Activity 3 (Answer student questions) – 1 to 60 minutes
- Activity 4 (Updating student records) – 1 to 38 minutes

The consultant took the time recorded on the survey forms and divided it by the number of responses without verifying the time recorded on the survey forms. All responses were given equal weight even though all employees surveyed did not perform the mandated activities at the same level. In addition, some employees surveyed worked in the district's Financial Aid Office and did not perform the activities of calculating and collecting enrollment fees from students.¹⁶⁸

The claimant does not dispute the Controller's findings that the times varied, or that some employees surveyed did not perform the activities. And the record supports the assertion that the claimant's estimates varied widely.¹⁶⁹

Thus, in order to determine if the time estimates were reasonable, the Controller's Office held discussions with claimant's staff, observed claimant's staff performing activities 1 through 4 during the open enrollment period of January 23-26, 2012, and recorded the time taken to perform activities 1 through 4. The Controller's Office describes the process as follows:

- The auditors determined the time period to be studied by deciding to conduct observations of district staff performing the reimbursable activities during one of the district's open enrollment periods. They coordinated with district staff to determine the dates for the open enrollment periods during the school year.
- Based on discussions with district staff, the auditors determined to study reimbursable activities 1 through 4 for enrollment fee collection activities . . .
- Based on discussions with district staff, the auditors prepared brief narratives of procedures that district staff followed to perform the reimbursable activities.
- The auditors determined the employee universe to be all of the employees that worked in the Bursar's Office (for enrollment fee collection activities) . . . The auditors did not know nor could have known the actual classifications of employees that performed the reimbursable activities in these offices prior to performing their observations.

¹⁶⁷ Exhibit A, IRC, pages 81-82 (Final Audit Report).

¹⁶⁸ Exhibit A, IRC, page 82 (Final Audit Report).

¹⁶⁹ For example, for activity 1, referencing student accounts, time estimates submitted with the claimant's IRC ranged from 30 seconds to 30 minutes. (Exhibit A, IRC, pages 638, 673.)

- The auditors did not select specific district employees to participate in a time study, as it depended solely on which district employees were performing the reimbursable activities on the days that the auditors scheduled their observations during the open enrollment period.
- The auditors determined that the time increments to be recorded would be in small increments (minutes and fractions of minutes) for the short-term tasks involved with this mandated program.¹⁷⁰

The Controller observed 178 payment transactions, 78 of which involved the payment of enrollment fees pursuant to activities 1 through 4.¹⁷¹ The observations of the Controller’s auditors were recorded contemporaneously on observation logs filed by the Controller as students were assisted by the claimant’s employees.¹⁷² “As each student appeared at the front of the counter for assistance, the auditors recorded what transaction took place, the amount of time required, which specific district employee performed the activity, as well as any relevant comments that seemed appropriate.”¹⁷³ As a result, the Controller found that the claimant’s time estimate of 22.10 to 27.90 minutes to perform activities 1 through 4 (or between 3.40 to 5.90 minutes per activity) was overstated and instead was shown to take only 2.76 minutes for all four activities, or 0.69 minutes per activity.¹⁷⁴

The Controller then discussed the results of the observations with the claimant, and advised the claimant that it could perform its own time analysis or provide additional information describing procedures and systems in place during the earlier years of the audit period that required time beyond what the Controller observed in 2012. The claimant, however, declined.¹⁷⁵

Based on this record, the Commission finds that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the” state-mandated program, and thus the Controller’s findings are not arbitrary, capricious, or without evidentiary support.¹⁷⁶ The claimant has the burden of proving actual costs mandated by the state included in a claim for reimbursement.¹⁷⁷ In this

¹⁷⁰ Exhibit B, Controller’s Late Comments on the IRC, page 29.

¹⁷¹ Exhibit A, IRC, page 73 (Final Audit Report).

¹⁷² Exhibit B, Controller’s Late Comments on the IRC, pages 29, 78-97 (Tab 9, observation logs for enrollment fee calculation and collection activities).

¹⁷³ Exhibit B, Controller’s Late Comments on the IRC, page 29.

¹⁷⁴ Exhibit A, IRC, page 73 (Final Audit Report).

¹⁷⁵ Exhibit A, IRC, page 83 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 30.

¹⁷⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁷⁷ Government Code section 17564(b); Exhibit A, IRC, pages 127, 130 (Parameters and Guidelines, Sections IV and V); Evidence Code section 500; and *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

case, the claimant provided estimates based on time surveys that were completed mostly in 2006, once claimant had notice of what activities were approved for reimbursement. Those estimates varied widely and were not supported by any other information provided by the claimant. The Controller questioned claimant's staff about the enrollment fee calculation and collection procedures and observed district staff performing the mandate,¹⁷⁸ which took less time than the claimant's estimates reported. The Controller's reported times are based on contemporaneous observations and, thus, are more reliable than a best or "good faith" guess. The Controller then invited the claimant to rebut its time study findings, but the claimant declined and has provided no evidence that the Controller's findings are incorrect.

Instead, the claimant alleges that the Controller's time-study sample size of 178 transactions is "statistically meaningless" and did not comply with the Controller's time study guidelines. The claimant states it made 1,043,307 transactions during the audit period and, thus, alleges the time study is not representative of an entire fiscal year or the 13-year audit period.¹⁷⁹ Also, the claimant asserts that the time study did not span one or more pay periods, and only a portion of the mandated activities were observed.¹⁸⁰ The claimant, however, provides no evidence that the Controller's time study sample size or time study calculations are incorrect or should not apply to all fiscal years in the audit period, despite opportunities to provide additional information to the Controller. Nor has the claimant shown that one of the district's open enrollment periods, during which the Controller made its time study, would be more representative than any other.¹⁸¹

The claimant also argues that the Controller's time study is an unenforceable underground regulation.¹⁸² According to the claimant, "The Controller's use of this method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable."¹⁸³ However, the claimant has not demonstrated that the Controller intended its time study, or any other audit method it used, to be rules that apply generally to a class of cases. Here, the time study was conducted because the claimant did not comply with the requirements in the Parameters and Guidelines to claim "actual costs" incurred to comply with the mandate, and did not verify the time estimates provided by the employees. The Supreme Court has held that interpretations that arise in the course of case-specific adjudications are not regulations.¹⁸⁴

Further, the claimant argues that the Controller "either used the wrong audit standard . . . or has misrepresented the actual nature and scope of the audit."¹⁸⁵ However, when the Controller is authorized to exercise discretion in its audit, as it has done here, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. Instead, the scope of

¹⁷⁸ Exhibit A, IRC, page 73 (Final Audit Report).

¹⁷⁹ Exhibit A, IRC, page 24.

¹⁸⁰ Exhibit A, IRC, pages 16-17.

¹⁸¹ Exhibit B, Controller's Late Comments on the IRC, pages 30, 78-97 (observation logs).

¹⁸² Exhibit A, IRC, pages 15-18.

¹⁸³ Exhibit A, IRC, page 19.

¹⁸⁴ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

¹⁸⁵ Exhibit A, IRC, pages 8-9.

review of the Controller's audit findings are limited, out of deference to the Controller's authority and expertise.¹⁸⁶

Accordingly, the Commission finds that the Controller's reduction of the claimant's estimated staff time to perform activities 1 through 4 to calculate and collect enrollment fees is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller's reduction to the number of students used in the calculation of costs for activities 1 through 4 (the student multiplier) is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller also noted variations in the number of students used in the claimant's calculations for activities 1 through 4, resulting in a decrease of 1,099,609 students over the audit period.¹⁸⁷

For activities 1 (referencing student accounts), 3 (answering student questions), and 4 (updating student records), the claimant used the total number of enrolled students as the multiplier, determined by the "Student Total Headcount" summary report obtained from the Chancellor's Office website for fiscal years 1998-1999 through 2008-2009. The Controller compared this data to the number of enrolled students reported by the claimant to the Chancellor's Office and maintained on the Chancellor's Office management information system (MIS), and determined that the claimant's number included duplicated students by term.¹⁸⁸ The MIS data collects and organizes information submitted by community college districts regarding the districts' students, faculty and staff, and courses. This information is collected and maintained by the Chancellor's Office and the Board of Governors to fulfill their role of providing general supervision over the community college districts.¹⁸⁹ Pursuant to these duties, the Chancellor's Office published the MIS user's manual for district data submission, which states that community college districts are required to certify that they will fully implement the data reporting requirements as follows:

As a condition of receiving grant funds, districts certified that they would fully implement the collection and reporting requirements of [MIS], pursuant to the standards adopted by the Chancellor's Office as specified in the MIS Data Element Dictionary. Participation is required of all 72 districts (108 colleges).¹⁹⁰

The data and information reported by the community college districts to the Chancellor's Office includes student headcount (MIS data element STD7)¹⁹¹, and the data eliminates any duplicate

¹⁸⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁸⁷ Exhibit A, IRC, page 77 (Final Audit Report).

¹⁸⁸ Exhibit A, IRC, page 73 (Final Audit Report).

¹⁸⁹ Education Code section 70901(b)(3).

¹⁹⁰ Exhibit X, Chancellor's Office Management Information System, User's Manual: Data Submission (2004), page 3.

¹⁹¹ Exhibit X, Chancellor's Office Management Information System, User's Manual: Data Submission (2004), page 65.

students by term based on the students' Social Security numbers.¹⁹² Thus, the MIS data provides a more accurate student enrollment count.

The claimant does not provide evidence that the MIS data on student enrollment is wrong, but only asserts that the use of the Chancellor's Office data constitutes an underground regulation.¹⁹³ The Commission disagrees. The Controller used data reported by the claimant to the Chancellor's Office to determine the "reasonable" costs incurred to comply with activities 1 through 4. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and to be correct, absent evidence to the contrary.¹⁹⁴ Under these circumstances, the Controller's use of this data arose in the course of a case-specific audit, which is not a regulation.¹⁹⁵ Moreover, when the Controller is authorized to exercise discretion in its audit, as it has done here, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. Instead, the scope of review of the Controller's audit findings are limited, out of deference to the Controller's authority and expertise.¹⁹⁶ Therefore, the Commission finds that the adjustment to student enrollment for activities 1, 3, and 4, is not arbitrary, capricious, or entirely lacking in evidentiary support.

In addition, the Controller found that the claimant did not deduct from the student multiplier for activities 1 and 3, ineligible non-resident and special admit students as required by the Parameters and Guidelines.¹⁹⁷ Section IV.A.2.a. of the Parameters and Guidelines states that "Calculating and collecting the student enrollment fee for each student enrolled, *except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f)*" is reimbursable.¹⁹⁸ Therefore, the Controller's subtraction of non-resident students and special admit students who attend a community college while in high school when calculating student headcount for activities 1 and 3 is correct as a matter of law.

The Controller also adjusted the claimant's calculations of eligible students for activities 2 and 4 (calculating the fee and updating the records). First the Controller deducted from the student count, the number of BOG waiver recipients by term based on the Chancellor's Office MIS data on student financial aid awards received.¹⁹⁹ The Controller then added the number of students

¹⁹² Exhibit A, IRC, page 73 (Final Audit Report).

¹⁹³ Exhibit A, IRC, page 19.

¹⁹⁴ Evidence Code section 664 establishes a presumption that official duty has been regularly performed

¹⁹⁵ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

¹⁹⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁹⁷ Exhibit A, IRC, page 73 (Final Audit Report).

¹⁹⁸ Exhibit A, IRC, page 128 (Parameter and Guidelines).

¹⁹⁹ Exhibit A, IRC, page 74 (Final Audit Report, page 19, which states the following: "We also updated the district's calculations of eligible students for Activities 2 and 4 by deducting the number of BOGG recipients from reimbursable student enrollment confirmed by the Chancellor's Office. The Chancellor's Office identifies the unduplicated number of BOGG

who received refunds because they were subsequently granted a BOG waiver, and subtracted the number of students who paid their enrollment fee through the claimant's online system (based on documentation provided by the claimant for fiscal years 2002-2003 through 2010-2011, and based on an agreement with the claimant that 75 percent of students paid their enrollment fees in person in the earlier fiscal years of 1998-1999 through 2000-2001).²⁰⁰ The Commission finds that these adjustments are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Activity 2 requires:

Calculating the total enrollment fee to be collected. Identifying method of payment. Collecting cash and making change as necessary. Processing credit card and other non-cash payment transactions (however, any fees that may be charged to a community college district by a credit card company or bank are not reimbursable). Preparing a receipt for payment received.²⁰¹

Activity 4 requires:

Updating written and computer records for the enrollment fee information and providing a copy to the student. Copying and filing enrollment fee documentation.²⁰²

By law, calculating an enrollment fee is not required for students who receive a BOG fee waiver.²⁰³ In addition, the Parameters and Guidelines separately require updating student records (activity 4) for BOG fee waiver recipients in section IV.B.2.:

In the case of an approved application, copy all documentation and file the information for further review or audit. *Entering the approved application information into district records and /or notifying other personnel performing other parts of the process* (e.g., cashier's office). Providing the student with proof of eligibility or an award letter, and file paper documents in the annual file.²⁰⁴

Thus, the Controller's reduction of the number of BOG waiver recipients from activities 2 and 4 is correct as a matter of law. Moreover, there is no evidence in the record that the Controller's use of the Chancellor's Office MIS data to determine the number of students who received a BOG fee waiver is arbitrary, capricious, or entirely lacking in evidentiary support.

recipients by term based on MIS data element SF21 and all codes with the first letter of B or F."); see also, Exhibit X, Chancellor's Management Information System Data Dictionary, defining the "SF21" data as identifying the student financial aid awards received.

²⁰⁰ Exhibit A, IRC, page 74 (Final Audit Report).

²⁰¹ Exhibit A, IRC, page 128 (Parameters and Guidelines).

²⁰² Exhibit A, IRC, page 128 (Parameters and Guidelines).

²⁰³ Education Code section 76300(g),(h); Exhibit A, IRC, page 129 (Parameters and Guidelines).

²⁰⁴ Exhibit A, IRC, page 129. Emphasis added.

The Controller also adjusted the multiplier for activities 2 and 4 by adding the number of refunds claimed for students who paid their fees and were subsequently granted a fee waiver.²⁰⁵ Recalculating the enrollment fee (to zero) and updating records would have to be performed for students who were subsequently granted a fee waiver, so this adjustment to the multiplier for activities 2 and 4 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, the Controller included in the multiplier for activities 2 and 4 only in-person transactions and subtracted the number of students who paid their enrollment fees using the claimant's online system in fiscal years 2002-2003 through 2010-2011.²⁰⁶ The claimant did not have online transaction fee data for 1998-1999 to 2000-2001, so the Controller and the claimant agreed that 75 percent was a reasonable percentage of fees that may have been paid in person during those years because that was the percentage that the claimant was able to support in 2001-2002.²⁰⁷

The claimant does not dispute a reduction of the multiplier for online transactions, but argues that "[t]he audit findings do not replace the previously claimed staff time lost from these eliminated in-person transactions with the costs to operate the online payment collections. Thus, no costs are recognized by the audit for the online transactions."²⁰⁸ However, the evidence in the record indicates that the claimant "gave no significance to fees paid online or through a telephone payment system when preparing its claims."²⁰⁹ The record also indicates that calculating the fee and updating student records "are performed automatically by the district's computerized systems and require little, if any, involvement by district staff."²¹⁰ Moreover, the claimant did not provide any information or documentation supporting "replacement costs."²¹¹ Thus, the Controller's audit decision to exclude online and telephone payment transactions from the student multiplier for activities 2 and 4 is not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the Controller's reduction to the number of students used in the calculation of costs for activities 1 through 4 (the student multiplier) is correct as a matter of law, and not arbitrary, capricious, or without evidentiary support.

3. The Controller's reduction to the average productive hourly rates of the employees performing activities 1 through 6 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller found that the claimant overstated its average productive hourly rate when calculating the reimbursable salary and benefit costs of employees calculating and collecting

²⁰⁵ Exhibit A, IRC, page 74 (Final Audit Report).

²⁰⁶ Exhibit A, IRC, page 74 (Final Audit Report).

²⁰⁷ Exhibit A, IRC, page 74 (Final Audit Report).

²⁰⁸ Exhibit A, IRC, page 27.

²⁰⁹ Exhibit A, IRC, page 83 (Final Audit Report).

²¹⁰ Exhibit A, IRC, page 82 (Final Audit Report).

²¹¹ Exhibit A, IRC, page 84 (Final Audit Report).

enrollment fees (activities 1 through 6). The claimant included staff in its calculations who did not perform the reimbursable activities, such as employees who worked in the Financial Aid Office.²¹² In addition, the claimant excluded staff who did not receive a time survey form.²¹³ The claimant also calculated the average productive hourly rate using a straight average methodology that did not weigh the involvement of the various employee classifications that performed the reimbursable activities. Instead, the claimant weighted all employee classifications at the same level, as if they all performed the reimbursable activities to the same extent. In this respect, the claimant weighted the involvement of supervisors at the same level as the staff and student employees who performed the bulk of the reimbursable activities.²¹⁴

The Controller provided the claimant with an opportunity to revisit the average productive hourly rates to appropriately reflect the weight of involvement for the various employee classifications the performed the reimbursable activities, but the claimant declined. “The district did not provide any additional support (e.g. staffing requirements) or guidance (e.g., weight of involvement of various employee classifications) regarding the conduct of the reimbursable activities at the different colleges throughout the audit period.”²¹⁵

Therefore, the Controller recalculated the productive hourly rates based on the supporting documentation for the productive hourly rates used in the reimbursement claims.²¹⁶ The Controller determined the level of involvement of the claimant’s staff after discussions with the claimant’s staff, and by observing claimant’s staff performing the reimbursable activities.²¹⁷ The Controller recognized that student employees performed the bulk of front-counter interactions with students, but could not work unsupervised.²¹⁸ The Controller also found that student workers and classified staff performed the reimbursable activities at approximately the same level, with supervisory staff replacing classified staff on occasion for breaks.²¹⁹ The Controller’s weighted recalculation resulted in the following levels of employee involvement: student hourly staff – 45 percent; classified salaried staff – 50 percent; supervisory staff – 5 percent.²²⁰ The Controller’s calculation of productive hourly rates reduced the rates used by the claimant during each fiscal year in the audit period by \$4.19 to \$11.50.²²¹

The claimant argues that there is no requirement in the Parameters and Guidelines to use weighted productive hourly rates and no factual basis to do so was provided by the auditor. The

²¹² Exhibit A, IRC, page 108 (Final Audit Report).

²¹³ Exhibit A, IRC, page 108 (Final Audit Report).

²¹⁴ Exhibit A, IRC, page 108 (Final Audit Report).

²¹⁵ Exhibit A, IRC, page 108 (Final Audit Report).

²¹⁶ Exhibit A, IRC, page 108 (Final Audit Report).

²¹⁷ Exhibit A, IRC, page 108 (Final Audit Report).

²¹⁸ Exhibit B, Controller’s Late Comments on the IRC, page 44.

²¹⁹ Exhibit B, Controller’s Late Comments on the IRC, page 44.

²²⁰ Exhibit A, IRC, pages 108-109 (Final Audit Report).

²²¹ Exhibit A, IRC, page 109 (Final Audit Report).

claimant also states that the weighted percentages for staff involvement are based on anecdotal information and do not meet the Parameters and Guidelines standards or the Controller's audit standards because they are unsupported by documentation.²²²

The Controller contends that the weighted percentages are based on its observations of varying levels of involvement by the claimant's staff during the time study and on discussions with the claimant's staff. In addition, the Controller relies on the Parameters and Guidelines, which recognize that not all employees perform the reimbursable activities to the same extent, so weighting staff involvement is appropriate and consistent with the Parameters and Guidelines.²²³

The Commission finds that the Controller's adjustments to the productive hourly rates are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support.

Section V.A.1. of the Parameters and Guidelines governs how salaries and benefits are claimed, and requires the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed. Thus, the Parameters and Guidelines do require the claimant to specifically identify staff involvement in the mandate. Section V.A.1. of the Parameters and Guidelines states the following:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the reimbursable activities performed and the hours devoted to each reimbursable activity performed.²²⁴

In this case, the claimant did not comply with the Parameters and Guidelines. The claimant did not "[d]escribe the reimbursable activities performed and the hours devoted to each reimbursable activity performed" as required by the Parameters and Guidelines, but instead weighted all employee classifications at the same level, as if they all performed the reimbursable activities to the same extent, and included staff that did not perform the mandate.²²⁵ The Parameters and Guidelines are regulatory in nature and are binding on the parties.²²⁶ Thus, the Controller's recalculation is correct as a matter of law.

Additionally, there is no evidence that Controller's recalculation was arbitrary, capricious, or entirely lacking in evidentiary support. The recalculations were based on information in the reimbursement claims, and observations of and discussions with the claimant's staff. The claimant has provided no evidence that the weighted percentages are incorrect, or are arbitrary or capricious.

²²² Exhibit A, IRC, page 35.

²²³ Exhibit B, Controller's Late Comments on the IRC, page 43.

²²⁴ Exhibit A, IRC, page 130 (Parameters and Guidelines).

²²⁵ Exhibit A, IRC, page 130 (Parameters and Guidelines).

²²⁶ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

Accordingly, the Commission finds that the Controller's reduction to the average productive hourly rates of the employees performing activities 1 through 6 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction to the Salaries and Benefits Claimed for the Enrollment Fee Waiver Activities Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines, adopted January 26, 2006, authorize reimbursement, beginning July 1, 1999, for the following activities to waive student enrollment fees for those students identified in Education Code section 76300(g) and (h), and for those students eligible for a BOG fee waiver:

1. **[activity 7]** Answering student's questions regarding enrollment fee waivers or referring them to the appropriate person for an answer. . .
2. **[activity 8]** Receiving of waiver applications from students by mail, fax, computer online access, or in person, or in the form of eligibility information processed by the financial aid office.
3. **[activity 9]** Evaluating each application and verification documents (dependency status: household size and income, SSI and TANF/CalWorks, etc.) for compliance with eligibility standards utilizing information provided by the student, from the student financial aid records (e.g., Free Application for Federal Student Aid) . . . , and other records.
4. **[activity 10]** In the case of an incomplete application or incomplete documentation, notify the student of the additional required information and how to obtain that information. Hold student application and documentation in suspense file until all information is received.
5. **[activity 11]** In the case of an approved application, copy all documentation and file the information for further review or audit. Entering the approved application information into district records and/or notifying other personnel performing other parts of the process (e.g., cashier's office). Providing the student with proof of eligibility or an award letter, and file paper documents in the annual file.
6. **[activity 12]** In the case of a denied application, reviewing and evaluating additional information and documentation provided by the student if the denial is appealed by the student. Provide written notification to the student of the results of the appeal or any change in eligibility status.
7. **[activity 13]** Reporting to the Chancellor's Office the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.)²²⁷

Section IV of the Parameters and Guidelines requires claims to be based on actual costs that are traceable and supported by contemporaneous source documents.²²⁸

²²⁷ Exhibit A, IRC, pages 128-130 (Parameters and Guidelines).

²²⁸ Exhibit A, IRC, page 127 (Parameters and Guidelines).

The claimant calculated these costs by multiplying the staff time to perform the mandated activities, by the number of students who paid enrollment fees and were affected by these activities, by the productive hourly rates of the employees. The Controller made adjustments to each of these factors, resulting in a reduction of costs for the calculation and collection activities. As analyzed below, the Commission finds that the Controller's reductions are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller's reduction of the claimant's estimated staff time to perform activities 7 through 12 to waive student enrollment fees is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller reduced the average time estimates provided by the claimant for activities 7 through 12 to waive student enrollment fees. As stated in the Background, the Parameters and Guidelines require that reimbursement claims for these activities be based on actual costs incurred that are traceable and supported by contemporaneous source documents. The claimant contends, however, that the Parameters and Guidelines were adopted in 2006, several years after the first fiscal year in the audit period and, thus, it was impossible for community college districts to recreate contemporaneous source documents to support the actual time it took to calculate and collect enrollment fees.²²⁹ Therefore, the claimant estimated the staff time to perform the mandated activities for all fiscal years in question, including fiscal years after the Parameters and Guidelines were adopted in 2006, and submitted time surveys to support the average times reported.²³⁰

The claimant is correct that the contemporaneous source document rule cannot apply to the 1999-2000 through 2005-2006 reimbursement claims without violating due process principles since the claimants were not on notice of the documentation requirements before the Parameters and Guidelines were adopted in January 2006.²³¹ However, the claimant had actual notice of the requirement to claim actual costs supported by contemporaneous source documents for the costs incurred in fiscal years 2006-2007 through 2011-2012. Nevertheless, the claimant continued to use time estimates based on the surveys.²³² Thus, for fiscal years 2006-2007 through 2011-2012, the Controller could have reduced the costs claimed for salaries and benefits to \$0, and that

²²⁹ Exhibit A, IRC, page 13.

²³⁰ Exhibit A, IRC, page 28. See also, Exhibit A, IRC, pages 689-728 (survey forms dated in 2006 that identify estimated enrollment fee waiver costs for fiscal years 1999-2000 through 2005-2006); Exhibit B, Controller's Late Comments on the IRC, pages 58-61 (survey forms dated in 2006 that identify estimated enrollment fee waiver costs for fiscal years 1999-2000 through 2005-2006), and pages 62-65 (four survey forms dated in 2010, 2011, and 2014, that identify fiscal year 2008-2009, 2010-2011, and 2011-2012 estimated costs).

²³¹ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-807.

²³² Exhibit B, Controller's Late Comments on the IRC, page 25.

reduction would have been correct as a matter of law.²³³ The Controller, however, used the same audit method it used to evaluate the costs claimed for activities 1 through 4, and allowed costs for salaries and benefits during all fiscal years in the audit period for activities 7 through 12 based on time estimates the Controller found to be reasonable.²³⁴

As described below, the Commission finds that the Controller's reduction of the time to perform the mandated activities 7 through 12 is not arbitrary, capricious, or without evidentiary support.

The claimant used the employee surveys to estimate the average minutes to perform activities 7 through 12, which ranged from 16.70 to 67.50 minutes during the audit period.²³⁵ The claimant did not provide any source documents or evidence of actual cost data to support the estimated times to perform the activities.²³⁶ In addition, the Controller found that some employees surveyed did not perform the mandated activities, that the times reported were not verified, and that times reported varied significantly between staff and years.²³⁷ The audit report states the following:

The district's mandated cost consultant developed the employee survey forms. Annual survey forms were completed by an average of 49 employees for enrollment fee waivers [sic] activities for the audit period. Staff members who completed the survey forms estimated the amount of time required to complete various activities. The times recorded by the employees surveyed to complete reimbursable activities 7-11 varied in length as follows:

- Activity 7 (Answer student questions) – 1 to 30 minutes
- Activity 8 (Receive applications) – 1 to 30 minutes
- Activity 9 (Evaluate applications) – 1 to 25 minutes
- Activity 10 (Incomplete applications) – 1 to 30 minutes
- Activity 11 (Approved applications) – 1 to 30 minutes

The consultant took the time recorded on the survey forms and divided it by the number of responses without verifying the time recorded on the survey forms. All responses were given equal weight even though all employees surveyed did not perform the mandated activities at the same level. In addition, some employees surveyed worked in the district's Admissions and Records Office and did not

²³³ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

²³⁴ Exhibit A, IRC, page 89 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 37.

²³⁵ Exhibit A, IRC, page 89 (Final Audit Report).

²³⁶ Exhibit A, IRC, page 89 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 39.

²³⁷ Exhibit A, IRC, page 97 (Final Audit Report).

perform the activities of processing BOGG fee waiver applications for students.²³⁸

Thus, to determine if the claimant's estimates were reasonable, the Controller's Office held discussions with claimant's staff to determine the procedures followed for each of the fee waiver activities.²³⁹

In addition, the Controller's Office observed 225 fee waiver transactions handled by the claimant's employees on October 12, 2011, and December 5-9, 2011.²⁴⁰ The Final Audit Report summarizes what the Controller observed for activities 7 through 11:

Activity 7 – Answering student questions

We observed Student Hourly staff, Clerical Assistants, Financial Aid Technicians, and a Financial Aid Specialist helping students who applied in person for a BOGG fee waiver. At the front counters, staff answer BOGG fee waiver questions and direct students to fill out the BOGG fee waiver application online at a computer located adjacent to the counter. Financial Aid staff at the back counters of the Financial Aid Office evaluate BOGG fee waiver supporting documents, notify students by email of approved, incomplete, and denied applications, and call students to obtain additional information.

Activity 8 – Receiving enrollment fee waiver applications

The district received paper BOGG Fee waiver applications up to FY 2004-05. Currently, the district may receive BOGG fee waiver applications through the district's BOGW online system or through the FAFSA website. All of the BOGG fee waivers currently processed by the district are through the district's BOGW online system and through the FAFSA website.

Activity 9 – Evaluating waiver applications and verifying documentation

The Financial Aid Technicians and Financial Aid Specialist evaluated and processed the paper BOGG fee waiver applications prior to FY 2004-05. Beginning in FY 2005-06, the BOGG fee waivers were automated.

The automated BOGG fee waiver applications approved online with no documentation requirements are not evaluated by district staff. However, the Financial Aid Technicians and Financial Aid Specialists evaluate BOGG fee waiver supporting documents on an ongoing basis. In addition, the Financial Aid Technicians and Financial Aid Specialists evaluate FAFSA applications throughout the year. Therefore, while evaluating the financial Aid requirements, district staff also verifies BOGG fee waiver eligibility.

Furthermore, if a student makes an error while completing the online BOGG fee waiver application, the district requires the student to provide proof

²³⁸ Exhibit A, IRC, page 97 (Final Audit Report).

²³⁹ Exhibit A, IRC, pages 89-93 (Final Audit Report).

²⁴⁰ Exhibit A, IRC, page 93 (Final Audit Report).

(documentation) in order to correct the error. Once the proper documentation is provided, staff is able to “reset” a new BOGG fee waiver online application for the student to complete again.

Activity 10 – Notifying students of additional required information, in the case of an incomplete application

Financial Aid Office staff indicated that students can’t finish the application if they don’t answer all the questions. The district uses “myGateway,” which is the district’s student portal system. At the end of the BOGG fee application process, students receive either a congratulations notification or an “I’m sorry, you don’t qualify” notification. Most students initiate communication with district staff if the BOGG fee waiver has not been granted or posted. Staff may access a student’s computer file and view prior comments or notes and inform students of any additional required information.

As noted above, if a student makes an error on the online BOGG fee waiver application, the district requires the student to provide proof (documentation) in order to correct the error. Once the proper documentation is provided, staff is able to “reset” a new BOGG fee waiver online application for the student to complete again.

Activity 11 – Copying all documentation and file the information for further review, in the case of an approved application

We observed staff accepting BOGG fee waiver supporting documents (Activity 8), evaluating applications and supporting documents for eligibility (Activity 9), copying all supporting documents, and filing the information for further review (Activity 11). If the district determined that the student is eligible for a BOGG fee waiver, staff post the fee waiver and create a “budget” for the student.

In addition, during the FAFSA application process, the student’s information is loaded into the district’s student database from the FAFSA website. During the FAFSA application process, staff briefly reviews student information to determine if the student is eligible for a BOGG fee waiver. If the student is eligible for a BOGG fee waiver, staff posts the BOGG waiver to the student’s account.²⁴¹

The observations of the Controller’s auditors were recorded contemporaneously on observation logs filed by the Controller as students were assisted by the claimant’s employees.²⁴² “As each student appeared at the front of the counter for assistance, the auditors recorded what transaction took place, the amount of time required, which specific district employee performed the activity, as well as any relevant comments that seemed appropriate.”²⁴³ Based on these observations, the Controller determined that the claimant’s time estimates were overstated, and that the average

²⁴¹ Exhibit A, IRC, pages 91-93 (Final Audit Report).

²⁴² Exhibit B, Controller’s Late Comments on the IRC, pages 29, 98-115 (Tab 10, observation logs for enrollment fee waiver activities).

²⁴³ Exhibit B, Controller’s Late Comments on the IRC, page 29.

time to perform the fee waiver activities 7 through 11 was 2.60 minutes, or 0.52 minutes per activity.²⁴⁴

The Controller did not apply any time increments to activity 12 (appeals of denied BOG fee waiver applications) because the Controller determined that the claimant has no formal appeal process and, thus, incurred no costs to comply with activity 12. In addition, when a BOG fee waiver is denied, the student is instructed to apply for financial aid using the FAFSA website (a process that is not part of the mandate).²⁴⁵

Based on this record, the Commission finds that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the” state-mandated program, and thus the Controller’s findings are not arbitrary, capricious, or without evidentiary support.²⁴⁶ The claimant has the burden of proving the actual costs mandated by the state included in a claim for reimbursement.²⁴⁷ In this case, the claimant provided estimates based on time surveys completed by employees, some of which did not perform the mandate. The estimates for activities 7 through 11 varied widely and were not supported by any actual cost data or other information provided by the claimant. The Controller questioned claimant’s staff about the enrollment fee waiver procedures and observed district staff performing the mandate, which took less time than the claimant’s estimates reported. The Controller’s reported times are based on contemporaneous observations of claimant’s staff and, thus, are more reliable than a best or “good faith” guess. The claimant has provided no evidence that these findings are incorrect.

With respect to activity 12, the claimant asserts that it reported more than 10,000 appeals for the audit period, and argues that it did not receive any appeals during the Controller’s fieldwork on October 12, 2011, and December 5-9, 2011, and, thus, the “audit report defaults to total disallowance of this activity based on lack of documentation.”²⁴⁸ However, the Controller’s finding, based on discussions with the claimant’s staff, is that the claimant *does not have* an appeal process for denied BOG fee waiver applications. As the Controller noted in its comments on the IRC, for the few denied BOG fee waiver applications that the claimant may have, the claimant’s staff told students to apply for financial aid using the FAFSA website. Although the claimant has procedures in place to process appeals of denied financial aid applications, these appeals are not reimbursable.²⁴⁹ In addition, the claimant has provided no evidence to support the assertion that it incurred costs for the appeals process for a denied BOG fee waiver. As the

²⁴⁴ Exhibit A, IRC, pages 93, 95 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, pages 30, 98-115 (Tab 10, observation logs for enrollment fee waiver activities).

²⁴⁵ Exhibit A, IRC, page 93 (Final Audit Report).

²⁴⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁴⁷ Government Code section 17564(b); Exhibit A, IRC, pages 127, 130 (Parameters and Guidelines, Sections IV and V); Evidence Code section 500; and *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁴⁸ Exhibit A, IRC, page 30.

²⁴⁹ Exhibit B, Controller’s Late Comments on the IRC, page 39.

Controller notes, part of the reimbursable activity for the denial of a BOG fee waiver appealed by a student is to “provide written notification to the student of the results of the appeal or any change in eligibility status.”²⁵⁰ The claimant has not provided these notices, or any other evidence to support its allegations.

In addition, the claimant argues that the Controller’s time-study sample size of 225 fee waiver transactions is “statistically meaningless” and did not comply with the Controller’s time study guidelines. The claimant states it made 267,412 fee waiver transactions during the audit period and, thus, alleges the time study is not representative of an entire audit period.²⁵¹ Also, the claimant asserts that the time study did not span one or more pay periods, and only a portion of the mandated activities were observed.²⁵² The claimant, however, provides no evidence that the Controller’s time study sample size or time study calculations are incorrect or should not apply to all fiscal years in the audit period. Nor has the claimant shown that one of the district’s open enrollment periods, during which the Controller made its time study, would be more representative than any other.²⁵³

The claimant also asserts that the Controller’s fee waiver time study is an unenforceable underground regulation.²⁵⁴ However, the time study was conducted because the claimant did not comply with the requirements in the Parameters and Guidelines to claim “actual costs” incurred to comply with the mandate, and did not verify the time estimates provided by the employees. The Supreme Court has held that interpretations that arise in the course of case-specific adjudications are not regulations.²⁵⁵

When the Controller exercises discretion in its audit, as it has done here, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. Instead, the scope of review of the Controller’s audit findings are limited, out of deference to the Controller’s authority and expertise.²⁵⁶

Accordingly, the Commission finds that Controller’s reduction of the claimant’s estimated staff time to perform activities 7 through 12 to waive student enrollment fees is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller’s reduction to the number of students used in the calculation of costs for activities 7 through 9, and 11 through 12 (the student multiplier) is not arbitrary, capricious, or entirely lacking in evidentiary support.

²⁵⁰ Exhibit A, IRC, page 129 (Parameters and Guidelines); Exhibit B, Controller’s Late Comments on the IRC, page 39.

²⁵¹ Exhibit A, IRC, page 29.

²⁵² Exhibit A, IRC, page 29.

²⁵³ Exhibit B, Controller Late Comments on the IRC, pages 30, 78-97 (observation logs).

²⁵⁴ Exhibit A, IRC, page 29.

²⁵⁵ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

²⁵⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

The Controller also adjusted the number of students used in the calculations for activities 7 through 12. The Controller's adjustments resulted in an increase of students for activity 10, which increased costs, and a decrease of students for activities 7 through 9 and 11 by 7,479 students for each activity, which decreased costs.²⁵⁷ The Controller did not allow any student multiplier for activity 12 because, as stated above, the claimant does not have an appeals process in place to review denied BOG fee waiver applications.²⁵⁸

The Commission further finds that the Controller's adjustments to the student multiplier for activities 7 (answering student questions), 8 (receiving waiver applications), 9 (evaluating each application and verifying documents) and 11 (copy and file all documentation for approved applications), are not arbitrary, capricious, or entirely lacking in evidentiary support. For activities 7 through 9, the claimant used the number of students who received a BOG fee waiver based on district records, plus the number of denied and incomplete BOG fee waiver applications. For activity 11, the claimant used the number of students who received a BOG fee waiver based on district records.²⁵⁹

The Controller also used the number of BOG fee waiver recipients as the multiplier for activities 7 through 9 and 11, but determined the unduplicated number of students that received BOG fee waivers based on the Chancellor's MIS data, which is based on annual records provided by the claimant.²⁶⁰

The claimant does not provide evidence that the Chancellor's Office MIS data on students that received BOG fee waivers is wrong, but only asserts that the use of the Chancellor's Office data constitutes an underground regulation.²⁶¹ The Commission disagrees. As indicated above, the data and information reported by the community college districts to the Chancellor's Office includes student headcount (MIS data element STD7),²⁶² and one record per student for every award received during the prior fiscal year.²⁶³ The Controller used this data to determine the "reasonable" costs incurred to comply with activities 7 through 9 and 11. The Chancellor's official duty to maintain the MIS data is presumed to have been regularly performed and accurate, absent evidence to the contrary.²⁶⁴ Under these circumstances, the Controller's use of

²⁵⁷ Exhibit A, IRC, page 95 (Final Audit Report).

²⁵⁸ Exhibit A, IRC, page 94 (Final Audit Report).

²⁵⁹ Exhibit A, IRC, page 94 (Final Audit Report).

²⁶⁰ Exhibit A, IRC, pages 94-95 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 40.

²⁶¹ Exhibit A, IRC, page 31.

²⁶² Exhibit X, Chancellor's Office Management Information System, User's Manual: Data Submission (2004), pages 5, 65.

²⁶³ Exhibit X, Chancellor's Office Management Information System, User's Manual: Data Submission (2004), pages 5-6.

²⁶⁴ Evidence Code section 664 establishes a presumption that official duty has been regularly performed.

this data arose in the course of a case-specific audit, which is not a regulation.²⁶⁵ Moreover, when the Controller is authorized to exercise discretion in its audit, as it has done here, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. Instead, the scope of review of the Controller's audit findings are limited, out of deference to the Controller's authority and expertise.²⁶⁶

Finally, the Commission finds that the disallowance of a student multiplier for activity 12 (BOG fee waiver appeals) is not arbitrary, capricious, or entirely lacking in evidentiary support since, as stated above, the Controller found that the claimant does not have an appeals process for denied BOG fee waivers; instead the claimant instructs the students to apply for financial aid using the FAFSA website.²⁶⁷ The claimant has provided no evidence or documentation of actual costs to support the assertion that it incurred costs for the appeals process for a denied BOG fee waiver and, thus, the Controller's conclusion with respect to activity 12 is not arbitrary, capricious, or entirely lacking in evidentiary support.²⁶⁸

Therefore, the Commission finds that the adjustment to student enrollment in activities 7 through 9, and 11 through 12, is not arbitrary, capricious, or entirely lacking in evidentiary support.

3. The Controller's reduction to the average productive hourly rates of the employees performing activities 7 through 11 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller found that the claimant overstated its average productive hourly rates when calculating the reimbursable salary and benefit costs of employees waiving student enrollment fees (activities 7 through 11). The claimant included some staff in its calculations who did not perform the reimbursable activities, and excluded staff who did perform the mandate.²⁶⁹ The claimant also calculated the average productive hourly rates using a straight average methodology that did not weigh the involvement of the various employee classifications that performed the reimbursable activities. Instead, the claimant weighted all employee classifications at the same level, as if they all performed the reimbursable activities to the same extent. In this respect, the claimant weighted the involvement of supervisors at the same level as the district staff who performed the bulk of the reimbursable activities.²⁷⁰

The Controller provided the claimant with an opportunity to revisit the average productive hourly rates to appropriately reflect the weight of involvement for the various employee classifications that performed the reimbursable activities, but the claimant declined. "The district did not provide any additional support (e.g. staffing requirements) or guidance (e.g., weight of

²⁶⁵ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

²⁶⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁶⁷ Exhibit A, IRC, page 92 (Final Audit Report).

²⁶⁸ Exhibit A, IRC, page 129 (Parameters and Guidelines); Exhibit B, Controller's Late Comments on the IRC, page 39.

²⁶⁹ Exhibit A, IRC, page 108 (Final Audit Report).

²⁷⁰ Exhibit A, IRC, page 108 (Final Audit Report).

involvement of various employee classifications) regarding the conduct of the reimbursable activities at the different colleges throughout the audit period.”²⁷¹

Therefore, the Controller calculated weighted average rates based on the supporting documentation for the productive hourly rates used in the reimbursement claims, and increased the rate used for the claimant’s current Director of Financial Aid, which was understated by the claimant.²⁷²

The Controller determined the level of involvement of the claimant’s staff after discussions with the claimant’s staff, and by observing claimant’s staff performing the reimbursable activities.²⁷³

The Controller recognized that student employees performed the bulk of front-counter interactions with students, but could not work unsupervised.²⁷⁴ The Controller also found that student workers and classified staff performed the reimbursable activities at approximately the same level, with supervisory staff replacing classified staff on occasion for breaks.²⁷⁵ The Controller’s weighted recalculation resulted in the following levels of employee involvement: student hourly staff – 45 percent; classified salaried staff – 50 percent; supervisory staff – 5 percent.²⁷⁶

The Controller then states that:

We provided the district our analysis and attempted to engage in a dialogue with them in an effort to advise us of any issues involving the weight of involvement percentages that we calculated, in addition to any variances in the level of effort for the different colleges in the district and/or the different years during the audit period. However, the district declined to comment on our analysis or provide any additional information.²⁷⁷

As a result, the Controller’s calculation of productive hourly rates for activities 7 through 11 reduced the rates used by the claimant during each fiscal year in the audit period by \$7.17 to \$13.77.²⁷⁸

The claimant argues that there is no requirement in the Parameters and Guidelines to use weighted productive hourly rates and no factual basis to do so was provided by the auditor. The claimant also states that the weighted percentages for staff involvement are based on anecdotal

²⁷¹ Exhibit A, IRC, page 108 (Final Audit Report).

²⁷² Exhibit A, IRC, pages 108, 110 (Final Audit Report).

²⁷³ Exhibit A, IRC, page 108 (Final Audit Report).

²⁷⁴ Exhibit A, IRC, page 110 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 44.

²⁷⁵ Exhibit B, Controller’s Late Comments on the IRC, page 44.

²⁷⁶ Exhibit A, IRC, page 110 (Final Audit Report).

²⁷⁷ Exhibit A, IRC, page 110 (Final Audit Report).

²⁷⁸ Exhibit A, IRC, page 111 (Final Audit Report).

information and do not meet the Parameters and Guidelines standards or the Controller's audit standards because they are unsupported by documentation.²⁷⁹

The Controller contends that the weighted percentages are based on its observations of varying levels of involvement by the claimant's staff during the time study and on discussions with the claimant's staff. In addition, the Controller relies on the Parameters and Guidelines, which recognize that not all employees perform the reimbursable activities to the same extent, so weighting staff involvement is appropriate and consistent with the Parameters and Guidelines.²⁸⁰

The Commission finds that the Controller's adjustments to the productive hourly rates are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support.

Section V.A.1. of the Parameters and Guidelines governs how salaries and benefits are claimed, and requires the claimant to identify the employee performing the mandate, their job classification, and the hours devoted to each reimbursable activity performed. Thus, the Parameters and Guidelines do require the claimant to specifically identify staff involvement in the mandate. Section V.A.1. of the Parameters and Guidelines states the following:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the reimbursable activities performed and the hours devoted to each reimbursable activity performed.²⁸¹

In this case, the claimant did not comply with the Parameters and Guidelines. The claimant did not "[d]escribe the reimbursable activities performed and the hours devoted to each reimbursable activity performed" as required by the Parameters and Guidelines, but instead weighted all employee classifications at the same level, as if they all performed the reimbursable activities to the same extent, and included staff that did not perform the mandate.²⁸² The Parameters and Guidelines are regulatory in nature and are binding on the parties.²⁸³ Thus, the Controller's recalculation is correct as a matter of law.

Additionally there is no evidence that Controller's recalculation was arbitrary, capricious, or entirely lacking in evidentiary support. The recalculations were based on information in the reimbursement claims, and observations of and discussions with the claimant's staff. The claimant was given opportunities to provide additional information to the Controller, but declined. The claimant has provided no evidence that the weighted percentages are incorrect, or are arbitrary or capricious.

²⁷⁹ Exhibit A, IRC, page 35.

²⁸⁰ Exhibit B, Controller's Late Comments on the IRC, page 43.

²⁸¹ Exhibit A, IRC, page 130 (Parameters and Guidelines).

²⁸² Exhibit A, IRC, page 130 (Parameters and Guidelines).

²⁸³ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201. *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

Accordingly, the Commission finds that the Controller's reduction to the average productive hourly rates of the employees performing activities 7 through 11 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Adjustments to Offsetting Revenues Are Correct as a Matter of Law.

Section VII. of the Parameters and Guidelines governs offsetting savings and reimbursements, and requires claimants to offset their claims for enrollment fee collection and waiver activities by the following revenues received and allocated from the Chancellor's Office in accordance with Education Code section 76300:

- For the *Enrollment Fee Collection* program, an offset of two percent of the revenue received from enrollment fees pursuant to former Education Code section 76300(c), which stated the following: "For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section."
- For the *Enrollment Fee Waiver* program, from July 1, 1999, to July 4, 2000:
 - An offset of two percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for low income students, recipients of public assistance, or dependents or surviving spouses of National Guard soldiers killed or permanently disabled in the line of duty.
 - An offset of seven percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for the determination of financial need and delivery of student financial aid services.²⁸⁴
- For the *Enrollment Fee Waiver* program, beginning July 5, 2000:
 - An offset of two percent of the fees waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for low income students, recipients of public assistance, or dependents or surviving spouses of National Guard soldiers killed or permanently disabled in the line of duty.
 - An offset of \$0.91 per credit unit waived and allocated to community college districts from the Board of Governors from funds in the State Budget Act, for the determination of financial need and delivery of student financial aid services.²⁸⁵

²⁸⁴ Education Code section 76300 (g) and (h), which identified the students eligible for a fee waiver. Education Code section 76300(m) directed the Board of Governors, from funds provided in the annual Budget Act, to allocate the funds to community college districts.

²⁸⁵ Education Code section 76300 (g) and (h), which identified the students eligible for a fee waiver. Education Code section 76300(m) directed the Board of Governors, from funds provided in the annual Budget Act, to allocate the funds to community college districts.

The Controller found that offsetting revenues identified by the claimant were misstated because the claimant did not accurately report the amounts received in offsetting revenues from the Chancellor's Office.²⁸⁶ The Controller found that the claimant received more offsetting revenues than what was identified in the reimbursement claims for both the enrollment fee collection and enrollment fee waiver activities.

For enrollment fee collection activities, the claimant identified \$1,152,929 in offsetting revenues based on two percent of the revenues from the enrollment fee. The Controller obtained a report from the Chancellor's Office confirming offsetting revenues allocated to the claimant during the audit period for enrollment fee collection, totaling \$2,030,411.²⁸⁷ The Controller limited offsetting revenues to allowable direct and indirect costs totaling \$1,202,950.²⁸⁸

For enrollment fee waivers, the claimant identified \$3,266,094 in offsetting revenues based on the seven or two percent offset from the enrollment fees waived, and the \$0.91 per credit unit waived. The Controller obtained a report from the Chancellor's Office confirming offsetting revenues allocated to the claimant during the audit period totaling \$3,272,412.²⁸⁹ The Controller limited offsetting revenues to allowable direct and indirect costs totaling \$374,793.²⁹⁰

The Commission finds that Controller's adjustments for offsetting revenues is correct as a matter of law. The plain language of the Parameters and Guidelines and Education Code section 76300(m) require that funds allocated from the Board of Governors for fee collection and fee waivers be identified as offsetting revenues. Moreover, in 2008, the Legislature amended Education Code section 76300(m) to clarify the Legislature's intent that the offsetting revenues identified above shall "directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers)."²⁹¹

The claimant does not dispute the law, or provide any evidence to indicate that the amounts identified by the Chancellor's Office are wrong. The claimant, however, states that if the offset amounts are misstated, it is because the Chancellor's data was not available at the time of claim preparation.²⁹² The claimant also asserts that the audit does not include source documentation, so there is no way to evaluate the source documentation and no factual basis for the

²⁸⁶ Exhibit A, IRC, pages 102-107 (Final Audit Report).

²⁸⁷ Exhibit B, Controller's Late Comments on the IRC, pages 69-72 (Tab 7, Chancellor's Office confirmation of enrollment fee collection offsets dated January 7, 2008 and February 7, 2011).

²⁸⁸ Exhibit A, IRC, page 103 (Final Audit Report).

²⁸⁹ Exhibit B, Controller's Late Comments on the IRC, pages 73-76 (Tab 8, Chancellor's Office confirmation of enrollment fee waiver offsets dated January 4, 2012).

²⁹⁰ Exhibit A, IRC, page 104 (Final Audit Report).

²⁹¹ Statutes 2008, chapter 757, section 31 (AB 757).

²⁹² Exhibit A, IRC, pages 31-32.

adjustments.²⁹³ However, the Controller included in its comments on the IRC the documentation from the Chancellor’s Office identifying the amounts received.²⁹⁴

In addition, the claimant argues that the offsetting revenue should not be applied to the preparation of policies and procedures and staff training because the audit report does not indicate that these costs are within the scope of costs for which the program funds are applicable.²⁹⁵ The claimant’s argument is not legally correct. Offsetting revenues apply to the whole program. Section VII. of the Parameters and Guidelines expressly states that “reimbursement for this mandate from any source, . . . shall be identified and deducted from this claim.” And offsetting revenues specifically include the following:

The costs of the Enrollment Fee Collection **program** are subject to an offset of two percent (2%) of the revenue from enrollment fees. . . . The cost of the Enrollment Fee Waiver **program** are subject to the following offsets [as detailed above].”²⁹⁶

The one-time costs for preparing policies and procedures and training district staff were found to be reasonably necessary to carry out the mandated programs and are identified as reimbursable costs in sections IV.A.1. and IV.B.1. of the Parameters and Guidelines.²⁹⁷ Thus, the one-time costs are within the scope of costs for which the program funds are applicable.

Finally, the claimant states that the offsetting revenues received for the enrollment fee collection program includes revenues collected from both in-person and online enrollment fee payments. Since the claimant did not claim any costs for online enrollment fees, the claimant asserts that the offsetting revenues should be reduced and be based only on in-person transactions.²⁹⁸ However, the plain language of Section VII. of the Parameters and Guidelines requires that all costs claimed for the enrollment fee collection program are subject to an offset of two percent of the revenue from enrollment fees. There is no provision allowing the claimant to use only a portion of the offsetting revenue.

Accordingly, the Commission finds that the Controller’s adjustments to offsetting revenues is correct as a matter of law.

V. Conclusion

Based on the foregoing analysis, the Commission denies this IRC.

²⁹³ Exhibit A, IRC, pages 33-34.

²⁹⁴ Exhibit B, Controller’s Late Comments on the IRC, pages 69-72 (Tab 7, Chancellor’s Office confirmation of enrollment fee collection offsets dated January 7, 2008 and February 7, 2011).

²⁹⁵ Exhibit A, IRC, pages 33-34.

²⁹⁶ Exhibit A, IRC, page 132 (Parameters and Guidelines). Emphasis added.

²⁹⁷ Exhibit A, IRC, pages 128-129 (Parameters and Guidelines).

²⁹⁸ Exhibit A, IRC, pages 33-34.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 September 21, 2018, I served the:

- **Draft Proposed Decision, Schedule for Comments and Notice of Hearing issued September 21, 2018**

Enrollment Fee Collection and Waivers, 15-9913-I-02
Education Code Section 76300; California Code of Regulations, Title 5,
Sections 58501-58503, 58611-58613, 58620, and 58630
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011
North Orange County 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 September 21, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/16/18

Claim Number: 15-9913-I-02

Matter: Enrollment Fee Collection and Waivers

Claimant: North Orange County 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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