

Edmund G. Brown Jr.
GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: INCORRECT REDUCTION CLAIMS

January 1, 2015 – December 31, 2015

Michael Cohen
Chairperson
Director of the Department of
Finance

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John Chiang
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Sarah Olsen
Public Member

Donald Saylor
County Supervisor
County of Yolo

M. Carmen Ramirez
City Council Member
City of Oxnard

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562
www.csm.ca.gov

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INTRODUCTION

Government Code section 17602 requires the Commission on State Mandates (Commission) to report to the Legislature “the number of individual and consolidated incorrect reduction claims decided during the preceding calendar year and whether and why the reduction was upheld or overturned.” This report fulfills that requirement.

Government Code section 17561(b) authorizes the State Controller’s Office (Controller) to audit 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 (incorrect reduction claims or IRCs). 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.

This report includes a summary of the 22 IRCs decided by the Commission between January 1, 2015 and December 31, 2015. This report also includes a list of five IRCs that were settled and withdrawn as a result of the Commission’s strategic approach to prioritizing for hearing those claims with many cross cutting issues and facilitating the work of the Controller and claimants in reevaluating pending IRCs consistent with the Commission’s decisions and one IRC that was dismissed due to abandonment by the claimant. As a result of continued work by all of the parties, 28 IRCs were resolved in 2015.

SUMMARY OF COMPLETED CLAIMS

A. Decided Incorrect Reduction Claims

Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-09

Government Code Sections 3540-3549.1
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Years 1999-2000, 2000-2001, and 2001-2002

Claimant: San Mateo Community College District

Incorrect Reduction Claim Filed: September 6, 2005

Decision Adopted: September 25, 2015

In this IRC, San Mateo Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program. The Commission partially approved the IRC.

The Commission found that some of the reductions were correct and some were incorrect as a matter of law as follows:

- The audit of the fiscal year 1999-2000 claim is not barred by the deadline in Government Code section 17558.5.
- The claimant complied with the documentation requirements in the parameters and guidelines for salaries and benefits, so that the Controller's reduction in Finding 1 of the audit report of \$631,854 (and related indirect costs) is incorrect as a matter of law.
- The Controller's adjustment of \$6,168 (plus related indirect costs) in Finding 1 of the audit report for productive hourly rates is partially correct. The reductions based on claimed salaries that conflict with the claimant's employee earnings records are supported by evidence in the record for all employees and are correct *except* for the reduction for employee Rivera for 1999-2000 and 2001-2002. The adjustment based on an alleged deduction for break time from productive hours is arbitrary, capricious, and entirely lacking in evidentiary support. The incorrect reductions made based on unsupported conclusions of conflicting salaries and benefits for employee Rivera for 1999-2000 and 2001-2002, and any based on unsupported alleged defects in the calculation of productive hours, should be reinstated to the claimant.
- The claimant complied with the documentation requirements in the parameters and guidelines for materials and supplies, so the Controller's reduction in Finding 2 of the audit report of \$5,133 is incorrect as a matter of law.

Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-10

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213

Fiscal Years 1999-2000, 2000-2001, and 2001-2002

Claimant: Foothill-De Anza Community College District

Incorrect Reduction Claim Filed: September 19, 2005

Decision Adopted: May 29, 2015

In this IRC, Foothill-De Anza Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program, totaling \$256,612. However, only \$42,045 in direct salaries and benefits, and \$15,340 in related indirect costs remained in dispute. The Commission partially approved this IRC.

The Commission found that the original final audit report, issued July 2, 2004, was both timely initiated and timely completed pursuant to Government Code section 17558.5, but the revised audit was issued outside the two year completion requirement of section 17558.5, and is therefore not timely completed. Nevertheless, the Commission found that the revised audit may be considered to the extent that it narrows the issues or amounts in dispute, and therefore the findings of the revised audit were primarily relied upon in the analysis.

In addition, the Commission found that the Controller's adjustments for unallowable salaries and benefits, and the related indirect cost adjustments based on insufficient or lacking documentation, were not supported by evidence in the record. Neither the claimant, nor the Controller, had clearly identified the cost items in dispute, but the Controller had the burden of going forward with some evidence to support the reductions before the claimant could adequately respond. For that reason, the Commission found that the Controller's reductions for salaries and benefits during the audit period of \$34,879, and related indirect costs, are arbitrary, capricious, and entirely lacking in evidentiary support, and must be reinstated.

In addition, the Commission found that the following reductions are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reductions of \$626 claimed for fiscal year 2001-2002 under Component G3 – Negotiations and \$250 claimed for fiscal year 2001-2002 under Component G6 – Administration/Grievances for part-time teachers' hours, which the Controller found represented duplicate costs.
- Reductions totaling \$1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002, on the basis of unsupported productive hourly rates, are consistent with the parameters and guidelines.

Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-16

Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Years 2001-2002, 2002-2003, and 2003-2004

Claimant: Los Rios Community College District

Incorrect Reduction Claim Filed: February 5, 2009

Decision Adopted: January 23, 2015

In this IRC, Los Rios Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2001-2002, 2002-2003, and 2003-2004 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program, totaling \$286,895. The Commission approved this IRC.

The Commission found that the audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed by the Controller according to the deadline in Government Code section 17558.5, as amended by Statutes 2004, chapter 890; the audit is therefore void. The Commission requested that that the Controller reinstate to the claimant all costs incorrectly reduced.

Collective Bargaining and Collective Bargaining Agreement Disclosure,
09-4425-I-17 and 10-4425-I-18

Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Claimant: Sierra Joint Community College District

Incorrect Reduction Claim Filed: August 4, 2009 and February 4, 2011
Decision Adopted: March 27, 2015

In this consolidated IRC, Sierra Joint Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program, totaling \$12,116. The Commission approved this IRC.

The Commission found that both the first final audit report, issued April 17, 2009, and the *revised* audit report issued August 25, 2010, fell outside the two year deadline to complete an audit with respect to *all* relevant claim years, based on the independently verifiable date that an entrance conference letter from the Controller dated April 3, 2007 was sent (no later than April 12, 2007), which is determined to be the date the audit commenced. Because the Commission found that the audit was not timely completed, it is void, and all reductions must be reinstated. All remaining findings of the audit were not analyzed in accordance with the Commission's determination.

Emergency Procedures, Earthquake, and Disasters, 05-4241-I-16
Education Code Sections 35295, 35296, 35297, 40041.5, and 40042
Statutes 1984, Chapter 1659
Fiscal Years 2000-2001, 2001-2002, and 2002-2003

Claimant: Poway Unified School District

Incorrect Reduction Claim Filed: November 10, 2005

Decision Adopted: January 23, 2015

In this IRC, Poway Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Emergency Procedures, Earthquake, and Disasters* program, totaling \$738,364. The Commission partially approved this IRC.

The Commission found that the audit of the 2000-2001 reimbursement claim was not barred by the deadlines in Government Code section 17558.5. In addition, the 1991 parameters and guidelines for this program were amended in 2003 and the parties disputed which version governed this audit. The Commission found that the 2003 parameters and guidelines apply retroactively on issues involving the scope of the reimbursable activities. However, for due process reasons, the documentation requirements in the 2003 parameters and guidelines cannot apply to the audit of the 2000-2001, 2001-2002, and 2002-2003 claims. Rather, on issues involving adequate source documentation, the parameters and guidelines adopted in 1991 must apply because they were in effect when the claimant incurred costs for the program and filed the reimbursement claims.

In addition, the Commission found that the following reductions are not consistent with the documentation requirements in the parameters and guidelines adopted in 1991, are *incorrect* as a matter of law, and should be reinstated to the claimant:

- The reduction of a total of \$11,423 in salaries and benefits claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, to update the earthquake emergency procedure system;
- The reduction of the portion of the \$645,757 claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, for training that is *not* attributable to “in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system.”

Finally, the Commission found that the following reductions are supported by the parameters and guidelines and the evidence in the record, and are therefore *correct* as matter of law:

- The reduction of \$32,405 for claimant’s consultant to update the emergency procedures system in fiscal years 2000-2001, 2001-2002, and 2002-2003, because claimant provided no supporting documentation to show that the costs were incurred to comply with the limited scope of the mandate.
- The reduction of \$19,452 for fiscal years 2000-2003 for employees to update the emergency earthquake system, because the claimant provided no supporting documentation to show that the costs were incurred to comply with the mandate.
- The reductions for fiscal years 2000-2001, 2001-2002, and 2002-2003 for “in-classroom” teachers to provide instruction to students on the earthquake emergency procedure system, because both the 1991 and 2003 parameters and guidelines plainly state that such costs are not reimbursable.

Handicapped and Disabled Students, 05-4282-I-03

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882)

California Code of Regulations, Title 2, Sections 60000-60200

(Emergency regulations effective January 1, 1986 [Register 86, No. 1],
and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28])

Fiscal Years 1996-1997, 1997-1998, and 1998-1999

Claimant: County of San Mateo

Incorrect Reduction Claim Filed: April 27, 2006

Decision Adopted: September 25, 2015

In this IRC, the County of San Mateo challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1996-1997, 1997-1998, and 1998-1999 under the *Handicapped and Disabled Students* program. The Commission partially approved this IRC.

The Commission found that reductions for medication monitoring in all three fiscal years, and for crisis intervention in fiscal year 1998-1999 were correct as a matter of law, but that reductions for eligible day treatment services inadvertently miscoded as “skilled nursing” and “residential, other” are incorrect, and reductions for fiscal years 1996-1997 and 1997-1998 for crisis intervention are incorrect.

In addition, the Commission found that reduction of the entire amount of Early and Periodic Screening, Diagnosis, and Testing (EPSDT) program funds is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support. The Commission requested the Controller to reinstate costs incorrectly reduced for services and recalculate offsetting revenues as follows:

- \$91,132 originally claimed as “Skilled Nursing” or “Residential, Other,” costs which have been correctly stated in supplemental documentation, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.
- That portion of \$224,318 reduced for crisis intervention services which is attributable to fiscal years 1996-1997 and 1997-1998, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.
- Recalculate EPSDT offsetting revenues based on the amount of EPSDT state share funding actually received and attributable to the services provided to pupils under this mandated program during the audit period.

Health Fee Elimination, 05-4206-I-06

Former Education Code Section 72246 (Renumbered as Section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, and 2001-2002

Claimant: Los Rios Community College District

Incorrect Reduction Claim Filed: September 5, 2005

Decision Adopted: March 27, 2015

In this IRC, the Los Rios Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1997-1998, 1998-1999, 1999-2000, 2000-2001, and 2001-2002 under the *Health Fee Elimination* program. The Commission denied this IRC.

The Commission found that the Controller conducted the audit within the deadlines imposed by Government Code section 17558.5 and further found that the Controller's reduction of all costs claimed during the audit period on the ground that claimant had sufficient fee authority to pay for the program is consistent with the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812. That decision upheld the Controller's reduction of reimbursement claims based on the health service fees districts are authorized to charge, and not simply the fees actually collected, and thus, the reduction is correct as a matter of law. In addition, the Controller's calculation of authorized health service fees based on enrollment data provided by the claimant is not arbitrary, capricious, or entirely lacking in evidentiary support.

Since the amount authorized to be charged and required to be identified as offsetting revenue (\$6,101,947) exceeded the total amount claimed (\$3,205,600), the remaining substantive issues challenging the reduction of costs claimed for salaries and benefits, services and supplies, and indirect costs were not addressed.

Health Fee Elimination, 05-4206-I-10

Former Education Code Section 72246 (Renumbered as 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987 Chapter 1118 (AB 2336)
Fiscal Years 1999-2000, 2000-2001, and 2001-2002

Claimant: Foothill-De Anza Community College District

Incorrect Reduction Claim Filed: September 15, 2005

Decision Adopted: March 27, 2015

In this IRC, Foothill-De Anza Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Health Fee Elimination* program, totaling \$1,817,357. The Commission partially approved this IRC.

The Commission found that the Controller conducted the audit of the 1999-2000 and 2000-2001 reimbursement claims within the deadlines imposed by Government Code section 17558.5.

In addition, the Commission found that the Controller's reduction of costs by \$30,527 for student accident insurance in fiscal year 1999-2000 is *incorrect* since the costs are adequately supported by source documents for that fiscal year. Therefore, \$30,527 should be reinstated to claimant.

The Commission further found that it does not have jurisdiction to make findings on the way the Controller calculated offsetting fee revenue since the recalculation of offsetting fee revenue resulted in a \$1,109,627 increase in allowable costs; not reduction of costs claimed.

However, the Commission found that the reductions listed below are consistent with the parameters and guidelines and the evidence in the record. The following reductions are therefore *correct* as matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of costs claimed for salaries and benefits, on the ground that there is no evidence in the record that the costs claimed relate to the mandate. In addition, claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the "estimated" costs claimed for counseling.
- The reduction of the costs claimed for bad debt and health fee reserve funds, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, lunch, attendance at a speech, IPCJ-STD-001 instructor training, expenses for a contraceptive technology conference, costs to evaluate the program, and student accident insurance in fiscal years 2000-2001 and 2001-2002 either go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.
- The reduction of costs resulting from the Controller's recalculation of indirect costs, on the ground that claimant did not comply with the parameters and guidelines and claiming instructions when preparing its indirect cost rate under the OMB Circular A-21, and the Controller's recalculation of the indirect cost rate using the FAM 29-C is expressly authorized by claiming instructions.

Health Fee Elimination, 06-4206-I-13

Former Education Code Section 72246 (Renumbered as 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB 1)
and Statutes 1987 Chapter 1118 (AB 2336)
Fiscal Years 1999-2000, 2000-2001, and 2001-2002

Claimant: Pasadena Area Community College District

Incorrect Reduction Claim Filed: July 3, 2006

Decision Adopted: March 27, 2015

In this IRC, Pasadena Area Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Health Fee Elimination* program, totaling \$375,941. The Commission denied this IRC.

The Commission found that the Controller conducted the audit of the 1999-2000 and 2000-2001 reimbursement claims within the deadlines imposed by Government Code section 17558.5 and concluded that the audit is not void with respect to these reimbursement claims, and that the recalculation of offsetting revenue collected, using revenue data provided by claimant during the audit, was not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission further found that the reduction of the following costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of indirect costs claimed for 2000-2001 and 2001-2002 of \$157,273. Claimant did not comply with the parameters and guidelines and Controller's claiming instructions in preparing its indirect cost rate for 2000-2001 and 2001-2002.
- The reduction of costs due to understated offsetting revenue of \$287,865. Claimant did not provide the enrollment data used to calculate the offsetting revenue collected by the claimant as required by the parameters and guidelines and, thus, the Controller's reduction is correct as a matter of law.

Health Fee Elimination, 07-4206-I-15

Former Education Code Section 72246 (Renumbered as Section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2000-2001, 2001-2002, and 2002-2003

Claimant: Rancho Santiago Community College District

Incorrect Reduction Claim Filed: October 2, 2007

Decision Adopted: May 29, 2015

In this IRC, the Rancho Santiago Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program. The Commission denied this IRC.

The Controller reduced all costs claimed during the audit period for the following reasons: (1) salaries, benefits, and services and supplies of \$195,045 were already funded by state categorical funds; (2) salaries and benefits of \$25,289 for a school psychologist was incorrectly allocated to the mandated program; (3) indirect costs were overstated by \$570,878; and (4) claimant failed to deduct authorized offsetting fees totaling \$796,744 from the claims.

Pursuant to Government Code section 17551(d), the Commission concluded that the following adjustments in the Controller's audit of the 2000-2001, 2001-2002, and 2002-2003 reimbursement claims are correct as a matter of law, and the Controller's recalculations are not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of claimed indirect costs by \$570,878, based on claimant's failure to comply with the claiming instructions and the OMB Circular in the development of its indirect cost rate, and the Controller's recalculation of indirect costs by an alternative method authorized by the claiming instructions.
- The reduction of \$796,744, on the basis that claimant was *authorized* to collect a total of \$2,195,764 in offsetting fees for the program pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812. Claimant only reported offsetting fees *collected* in the amount of \$1,399,020.

Because claimant's total offsetting fee authority (\$2,195,764) for the audit period was higher than the total direct costs claimed combined with the allowable indirect costs claimed (\$2,148,725), the Commission did not address the remaining reductions challenged by the claimant.

Health Fee Elimination, 08-4206-I-17

Former Education Code Section 72246 (Renumbered as Section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987 Chapter 1118 (AB 2336)

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Claimant: Santa Monica Community College District

Incorrect Reduction Claim Filed: February 3, 2009

Decision Adopted: December 3, 2015

In this IRC, Santa Monica Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004, 2004-2005, and 2005-2006 under the *Health Fee Elimination* program, totaling \$795,942. The Commission denied this IRC.

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

- The reduction in indirect costs claimed for all three fiscal years is correct because claimant used the OMB Circular A-21 methodology, but did not obtain federal approval for its cost rate proposals in accordance with the OMB Circular. The Controller recalculated indirect costs by using the FAM-29C methodology.
- The reduction in costs claimed due to claimant's reporting of offsetting revenue collected, rather than the amount authorized to be charged, in accordance with *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Health Fee Elimination, 08-4206-I-18

Former Education Code Section 72246 (Renumbered as Section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987 Chapter 1118 (AB 2336)
Fiscal Years 2002-2003, 2003-2004, and 2004-2005

Claimant: Los Rios Community College District

Incorrect Reduction Claim Filed: February 5, 2009

Decision Adopted: March 27, 2015

In this IRC, Los Rios Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2002-2003, 2003-2004, and 2004-2005 under the *Health Fee Elimination* program. The Commission denied this IRC.

The Commission found that the reduction of costs based on offsetting health fee authority of \$3,554,470, which exceeds claimant's costs for the mandated program, is correct as a matter of law. The reduction is consistent with the court's decision in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, which upheld the Controller's reduction of reimbursement claims based on the health service fees districts are authorized to charge. In addition, the Commission found that the Controller's calculation of authorized health service fees, based on enrollment data provided by the claimant, is not arbitrary, capricious, or entirely lacking in evidentiary support.

Health Fee Elimination, 09-4206-I-22

Education Code Section 76355
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Claimant: Long Beach Community College District

Incorrect Reduction Claim Filed: September 24, 2009

Decision Adopted: July 24, 2015

In this IRC, Long Beach Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004, 2004-2005, and 2005-2006 under the *Health Fee Elimination* program, totaling \$672,695. The Commission denied this IRC.

The Commission found that the audit of the 2003-2004 reimbursement claim was timely, and that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$74,504 for fiscal year 2003-2004 because claimant developed the indirect cost rate proposal based on the OMB Circular A-21 methodology, but did not obtain federal approval.
- \$639,989 for fiscal years 2003-2004, 2004-2005, and 2005-2006 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant.

Health Fee Elimination, 09-4206-I-29

Former Education Code Section 72246 (Renumbered as Section 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1)
and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2003-2004, 2004-2005, 2005-2006, and 2006-2007

Claimant: San Diego Community College District

Incorrect Reduction Claim Filed: July 17, 2010

Decision Adopted: September 25, 2015

In this IRC, San Diego Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007 under the *Health Fee Elimination* program, totaling \$379,946. The Commission denied this IRC.

Claimant has health centers at three locations (San Diego City College, Miramar College, and Mesa College), but filed reimbursement claims based only on the costs and revenues of the health center at San Diego City College applicable to the mandated program. After reviewing the costs incurred and revenues received by all of the health centers in claimant's district during fiscal years 2003-2004 through 2006-2007, the Controller reduced the reimbursement claims by a net of \$379,946 as follows:

- Health fees authorized to be charged and required to be deducted from the costs claimed for Miramar and Mesa Colleges.
- Other unreported offsetting revenues and reimbursements received by the health centers at Miramar and Mesa Colleges.

The Commission found that the Controller's audit of the costs and revenues of the claimant's district as a whole is correct as matter of law, and is required by article XIII B, section 6, the test claim statute, and the parameters and guidelines for this program. The Commission further found that the Controller's reduction of costs claimed based on fees authorized to be charged to all students enrolled in the district (except for those that are exempt under the test claim statute) is correct as a matter of law, and that the calculation of the fees based on enrollment reports provided to the Chancellor's Office is not arbitrary, capricious, or entirely lacking in evidentiary support. Finally, the Commission found that the Controllers' reduction based on offsetting revenues received by the health centers at Miramar and Mesa Colleges is required by the parameters and guidelines and is, therefore, correct as a matter of law.

Notification of Truancy, 05-904133-I-02

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 1998-1999, 1999-2000, and 2000-2001

Claimant: Los Angeles Unified School District

Incorrect Reduction Claim Filed: December 12, 2005

Decision Adopted: September 25, 2015

In this IRC, Los Angeles Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Notification of Truancy* program. The Commission partially approved this IRC.

The Commission found that the following reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support:

- All costs claimed for fiscal year 1998-1999 totaling \$712,167. Claimant's argument that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian is not correct as a matter of law. Reimbursement is only required for written notifications of truancy. In addition, claimant has provided no evidence that it incurred costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of pupils identified as truants in accordance with the test claim decision and parameters and guidelines.
- Costs claimed for fiscal years 1999-2000 and 2000-2001, totaling \$1,173,865, for notifications at the 67 school sites sampled because the claimant did not provide source documentation to support all of the costs claimed.

The Commission further found that the following reduction of costs claimed is incorrect because the reduction is entirely lacking in evidentiary support:

- A total of \$721,623 for fiscal years 1999-2000 and 2000-2001 for truancy notifications at the school sites not included in the audit sample.

Notification of Truancy, 07-904133-I-05 and 10-904133-I-07

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 1999-2000, 2000-2001, and 2001-2002

Claimant: San Juan Unified School District

Incorrect Reduction Claim Filed: December 18, 2007 and July 16, 2010

Decision Adopted: December 3, 2015

In this consolidated IRC, San Juan Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Notification of Truancy* program. The Commission partially approved this IRC.

The Controller reduced costs claimed for each of the three audit years based on its interpretation that the parameters and guidelines require an initial truancy notification to be issued upon a pupil's *fourth* unexcused absence or instance of tardiness. However, the definition of "truant" was never found to impose a reimbursable activity, and an intervening amendment to the Education Code section 48260 altered the underlying definition of truancy and thus the timing of the requirement to issue an initial truancy notification. During the audit period, a school district was required to issue an initial notification of truancy upon a pupil's *third* unexcused absence or instance of tardiness.

The Commission found that this intervening amendment was not made to a previously-approved code section, and does not impose a new program or higher level of service since it does not require any activity but only changes the trigger for the performance of the mandated activity. This interpretation is also consistent with the fact that Education Code section 48260 was found not to impose any mandated activities and was therefore not listed as a reimbursable activity in the "Reimbursable Costs" section, and that when the parameters and guidelines were amended at the direction of the Legislature, the reimbursable unit cost did not increase. For these reasons, the Commission found that the Controller's reduction of costs claimed for pupils who accumulated *three* unexcused absences but not *four* is incorrect as a matter of law.

Therefore, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requested that the Controller reinstate \$23,030 for fiscal year 1999-2000, \$25,294 for fiscal year 2000-2001, and \$30,881 for fiscal year 2001-2002.

In addition, the Controller, in each of the audit years, examined a small sample of the total initial truancy notifications issued, and determined an error rate within that sample of notifications that were unallowable, which was then extrapolated to the whole. The Commission found that this sampling and extrapolation method is not a regulation within the meaning of the Administrative Procedure Act (APA); and as applied in this case, to estimate a reduction for the audit period based on notifications correctly disallowed, is not arbitrary, capricious or entirely lacking in evidentiary support.

Notification of Truancy, 10-904133-I-09

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Claimant: San Juan Unified School District

Incorrect Reduction Claim Filed: October 6, 2010

Decision Adopted: December 3, 2015

In this IRC, San Juan Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, under the *Notification of Truancy* program, totaling \$132,847. The Commission approved this IRC.

The Commission found that the final audit report, issued September 4, 2009, is the date that the Controller completed the audit, which falls outside the two year deadline to complete an audit with respect to all claim years, based on the entrance conference letter confirming a conversation on or before the date of the letter, August 27, 2007, which is determined to be the date the audit commenced.

Because the Commission found that the audit was not timely completed, it is void, and all reductions must be reinstated. As a result, the Controller's reasons for the reductions were not analyzed. Accordingly, the Commission directed the Controller to reinstate all costs reduced.

Notification of Truancy, 10-904133-I-10 and 13-904133-I-12
Education Code Section 48260.5
Statutes 1983, Chapter 498
Fiscal Years 2003-2004, 2004-2005, 2005-2006, and 2006-2007

Claimant: Riverside Unified School District

Incorrect Reduction Claim Filed: November 1, 2010 and November 15, 2013

Decision Adopted: December 3, 2015

In this consolidated IRC, Riverside Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007 under the *Notification of Truancy* program. The Commission partially approved this IRC.

The Commission found that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reductions in Finding 1 based on the ground that the claimant provided no documentation to support the number of notifications distributed.
- Reductions in Finding 2 based on notifications issued for pupils under age six or age 18 or over because they are not subject to compulsory education requirements.
- Reductions in Finding 2 for notifications issued for pupils who accumulated *fewer than three* unexcused absences or instances of tardiness.
- Reduction in Finding 2 of one pupil's notification for which the Controller found insufficient documentation.
- The Controller's sampling and extrapolation methodology to calculate the reductions is not arbitrary, capricious, or entirely lacking in evidentiary support, to the extent that the underlying reasons for reduction are valid.

The Commission found that the following reductions, including any extrapolation of these reductions to costs claimed by the district, are incorrect as a matter of law, or are arbitrary, capricious, and entirely lacking in evidentiary support:

- Reductions in Finding 2 based on notifications issued for pupils who accumulated *three but not four* unexcused absences or instances of tardiness.
- The extrapolation of additional reductions based on one pupil's notification for which the Controller found insufficient documentation.

The Commission requested that costs incorrectly reduced be reinstated by the Controller in accordance with this decision.

Notification of Truancy, 13-904133-I-11

Education Code Section 48260.5

Statutes 1983, Chapter 498; Statutes 1994, Chapter 1023; Statutes 1995, Chapter 19
Fiscal Years 2006-2007, 2007-2008, 2008-2009, and 2009-2010

Claimant: San Juan Unified School District

Incorrect Reduction Claim Filed: October 1, 2013

Decision Adopted: December 3, 2015

In this IRC, San Juan Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2006-2007, 2007-2008, 2008-2009, and 2009-2010, under the *Notification of Truancy* program, totaling \$105,533. The Commission denied this IRC.

The Commission found that the Controller's audit of the 2006-2007 reimbursement claim was timely initiated by the Controller within the meaning of Government Code section 17558.5, based on the Controller's entrance conference letter dated February 4, 2011.

The Commission further found that the reduction of costs totaling \$105,533 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant's request for reimbursement to provide initial truancy notices for pupils with fewer than *three* unexcused absences or tardiness occurrences, or for students who were under the age of six or over the age of 18 and so were not subject to compulsory education requirements when they accrued one or more of the *three* requisite unexcused absences or tardiness occurrences, goes beyond the scope of the mandate and is not eligible for reimbursement. Moreover, the evidence in the record does not support the claimant's assertion that the Controller's use of sampling and extrapolation of its findings from the sampled notices to all notices claimed constitutes an illegal underground regulation. The Commission further found that there is no evidence in the record that the Controller's audit conclusions and reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

B. Withdrawn Incorrect Reduction Claims

The filing of an IRC is an appeal of a decision of the Controller. The Controller is authorized, by desk review or field audit, to reduce reimbursement claims that it deems excessive or unreasonable. The claimant is then authorized to appeal any reduction by filing an IRC with the Commission. Unlike test claims, where one claimant represents all potential claimants statewide in a manner analogous to a class action lawsuit, individual claimants file IRCs with the Commission and seek redress for reductions that apply directly only to that one claimant.¹ The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC is settled and the claimant withdraws the IRC. The claimant and the Controller can also negotiate a resolution independent of Commission staff. For other claims, an IRC is withdrawn after Commission staff has issued a draft proposed decision but before the proposed decision is heard by the Commission. Even though the IRC is withdrawn, there is still a significant amount of staff resources committed to the preparation of the draft proposed decision.

A total of five IRCs were resolved by the parties and withdrawn by the claimant between January 1, 2015 and December 31, 2015. Below is a breakdown of those withdrawn IRCs by mandated program.

Absentee Ballots (CSM 3713) – One IRC

- 07-3713-I-02

Health Fee Elimination (CSM 4206) – One IRC

- 07-4206-I-06

Investment Reports (CSM 96-358-02) – Two IRCs

- 02-9635802-I-27
- 02-9635802-I-30

Sexually Violent Predators (CSM 4509) – One IRC

- 07-4509-I-02

C. Dismissed Incorrect Reduction Claims

An IRC may also be dismissed if it is abandoned by the claimant. (2 C.C.R. §1187.13 and §1187.14.) Such a dismissal requires a 60-day notice of pending dismissal and then a notice of dismissal. One IRC was dismissed over the past year for this reason and in this manner.

Investment Reports (CSM 96-358-02) – One IRC

- 02-9635802-I-67

¹ California has 58 counties, so county claims are limited to 58 potential IRCs per test claim. Mandates involving cities or school districts, however, create the potential for over 1,500 IRCs per test claim.

STRATEGIC APPROACH TO IRC BACKLOG REDUCTION

The remaining 41 IRCs are tentatively scheduled for hearing into 2016-2017. However, because IRCs have the lowest priority for hearing, their scheduling may be pushed to a later date if other items with higher priority, such as test claims, are filed. Hearing IRCs with cross-cutting issues first is one way that the Commission is helping to spur informal resolution of these claims between the claimants and the Controller. Based on current caseload and staffing levels, Commission staff expects that the IRC backlog should be eliminated by the end of the 2016 calendar year. Whether elimination of the IRC backlog takes more time than the staff expectation will depend on a variety of factors, including the outcome and timing of currently pending litigation in the California Supreme Court regarding storm water permit (NPDES) test claims. Depending on the outcome, they may be remanded back to the Commission, and the additional 13 pending test claims addressing storm water, currently on inactive status, would also need to be taken up and would be prioritized over pending IRCs. This could delay completion of the IRC backlog by at least one year to approximately the end of the 2017-2018 fiscal year.

A successful outcome of the strategy to first hear IRCs with cross-cutting issues is evident in the resolution of claims filed under the *Investment Reports* program. The *Investment Reports* program resulted in 70 IRCs. Several of those claims had cross cutting issues. To efficiently reduce the backlog for this program, staff prioritized hearing those claims with many cross cutting issues. Commission staff also conducted several informal conferences with the parties to encourage the informal resolution of the remaining claims. Commission staff prepared stipulations, which were signed by many of the parties, in which the Controller agreed to reevaluate the IRCs on the *Investment Reports* program consistent with the Commission's prior decisions on the IRCs with cross cutting issues. The claimants also agreed to make available to the Controller, as may be requested, all documentation in support of claimed costs. As a result of continued work by all of the parties, there are no remaining IRCs for this program as of August 6, 2015.

The Commission remains committed to continuing to eliminate the entire IRC backlog by adhering to the first-in-time policy, unless circumstances justify an exception. The following are strategies the Commission is employing to more efficiently decide matters, with a goal of eliminating the backlog as soon as possible: (1) claim consolidation; and (2) cross cutting issues.

1. Claim Consolidation – It may be appropriate in some cases to consolidate IRCs so that one analysis and decision adopted by the Commission support multiple claims. Government Code section 17558.8 and section 1185.6 of the Commission's regulations allow the executive director to consolidate IRCs. However, consolidation has been used sparingly for IRCs because it only works if the issues of law and fact are the same, and the Controller's auditors were consistent in making claim reductions based on similar documentation. Commission staff is working with Controller staff and the claimant community to identify situations where claims can be consolidated.
2. Cross Cutting Issues – Commission staff is working with the Controller and members of the claimant community to identify issues that are common to multiple IRCs. If the Commission decides an issue in one matter that is contested in other matters, the time required to complete those other matters will be reduced. For example, in 2010, the Commission adopted decisions on the County of Los Angeles and the City of Tustin *Investment Reports* IRCs. In doing so, the Commission resolved certain issues that were common to nearly all of the *Investment Reports* IRCs and which helped to spur the resolution of the remaining IRCs on that program.