

SixTen and Associates Mandate Reimbursement Services

RECEIVED
September 23, 2014
Commission on
State Mandates

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September 23, 2014

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: CSM 05-4206-I-03
Long Beach Community College District
Fiscal Years: 2001-02 and 2002-03
Health Fee Elimination
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd. E.S.
Statutes of 1987, Chapter 1118
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated August 1, 2014, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OF ANNUAL REIMBURSEMENT CLAIMS

1. Audit Initiation

The District concurs that the audit of the FY 2001-02 annual claim was commenced before the expiration of the statute of limitations to commence an audit.

2. Audit Completion

It is uncontested here that an audit is complete only when the final audit report is issued. The District asserts that the FY 2001-02 annual claim (filed December 6, 2002) was beyond the statute of limitations for completion of the audit (December 31, 2004) when the Controller completed its audit on April 27, 2005. To the contrary, the

Commission asserts (DPD, 17) that Government Code section 17558.5, as added by Statutes 1995, Chapter 945, operative July 1, 1996¹, “does not require the completion of the audit” at a time certain:

The plain language of Government Code section 17558.5, as added in 1995, provides that reimbursement claims are “subject to audit” no later than two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, when no funds are appropriated for the program, “the time for the controller *to initiate an audit* shall commence to run from the date of initial payment of the claim.”

There is no objective basis or evidence in the record to conclude that the period of time allowed to complete an audit is contingent on the notice provision as to when the audit can commence. The numerous cases cited by the Commission speak to the issue of commencing an audit and the extension of that time by future changes to the statute of limitations. These are not relevant to the issue of the completion of the audit. The Commission cites no cases contradicting the practical requirement that completion is measured by the date of the audit report.

Section 17558.5 was amended two more times after the FY 2001-02 annual claim was filed. As a matter of law, these amendments are not relevant to the determination of the FY 2001-02 annual claim statute of limitations issue, so reliance upon the language of the subsequent amendments as a declaration of retroactively consistent legislative policy or intent is without foundation. The adjudication of the issue should end with the 1995 version of Section 17558.5. Regardless, the Commission concludes that its interpretation of the significance of the second sentence in the 1995 version is

¹ First Amendment

Statutes of 1995, Chapter 945, Section 18, operative July 1, 1996, repealed and replaced Section 17558.5, changing only the period of limitations:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

supported by the 2002 amendment to Section 17558.5² which extends the audit initiation period to three years. The 2002 amendment provides no new information about the audit completion date. The Commission findings then reference the 2004 amendment to Section 17558.5³ that establishes a two-year limit to complete a timely filed audit, but only for the purposes of excluding the new language from the 1995 analysis. Rather, the 2004 amendment to Section 17558.5 is definitive to the issue of when the audit completion period was first placed in statute.

If, as the Commission asserts, that the first amended version establishes no statutory time limit to complete a timely commenced audit, Section 17558.5 becomes absurd. Once timely commenced, audits could remain unfinished for years either by intent or

² Second Amendment

Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003, amended Section 17558.5 to state:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than two ~~three~~ years after the ~~end of the calendar year in which the~~ date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

³ Third Amendment

Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5 to state:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.”

neglect and the audit findings revised at any time. Thus, the claimant's document retention requirements would become open-ended and eventually punitive. Statutes of limitations are not intended to be open-ended; they are intended to be finite, that is, a period of time measured from an unalterable event, and in the case of the 1995 version of the code, it is the filing date of the annual claim.

As to the actual completion of the audit, the Commission (DPD, 21) ultimately incorrectly applies the 2004 two-year test. The statute of limitations to audit applicable to each annual claim is that limit which is the law when the annual claim is filed, not when the audit is completed, otherwise the concept of notice to claimants is invalidated.

PART B. DISALLOWANCE OF INSURANCE PREMIUMS

The audit disallowed \$17,894 of services and supplies direct cost and \$6,241 of related indirect costs. Of the total direct costs adjustment amount, \$11,869 is applicable to student health insurance premiums. The Commission concludes (DPD, 23) that, based on the evidence in the record, the District has not demonstrated that the reduction was based on student insurance costs rather than athletic insurance costs. As stated in the incorrect reduction claim, the audit report does not describe how the disallowance was calculated. Nor does the Controller's response of December 16, 2008, provide any explanation, probably due the misapprehension that these costs were no longer in dispute. To date, only the Controller has the documentary support as to how those premiums were reallocated by the adjustment. This allocation information is essential in order for the District to rebut the issue and for the Commission to make a fact-based finding.

PART C. APPLICATION OF AN INDIRECT COST RATE

The audit report asserts that the District overstated its indirect cost rates and costs in the amount of \$139,093 for both fiscal years. This finding is based upon the Controller's statement that the district did not obtain federal approval for its ICRPs, a stated requirement of the Controller's claiming instructions.

The threshold Commission conclusion is that claimants must comply with the Controller's claiming instructions and that the Controller's use of its own instructions and forms to recalculate the indirect cost rates was not arbitrary. The District asserts that the Controller's claiming instructions are not alone enforceable as a matter of law as they are not regulations nor were they adopted pursuant to the administrative rulemaking process required to enforce agency manuals and instructions, as did the *Clovis Court*.⁴

⁴ From the Clovis Appellate Court Decision (4):

The Controller has never asserted that its claiming instructions are alone legally enforceable, rather the Controller's "manual is issued to assist claimants" and that "The information contained in the manual is based on the State of California's statutes, regulations, and the parameters and guidelines . . ." (DPD, 24). Therefore, any documentation standards or cost accounting formulas published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions.

The Commission (DPD, 23) instead relies upon the "plain language" of the 1989 parameters and guidelines:

The claimant's argument is unsound: the parameters and guidelines plainly state that "indirect costs *may be claimed in the manner described by the State Controller.*" The interpretation that is consistent with the plain language of the parameters and guidelines is that "indirect costs may be claimed," or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the Controller's claiming instructions.

Claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather than the subsequent discretionary choice to use

"Once the Commission determines that a state mandate exists, it adopts regulatory "[P]arameters and [G]uidelines" (P&G's) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory "[C]laiming [I]nstructions" for each Commission-determined mandate; these instructions must derive from the Commission's test claim decision and its adopted P&G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs." Emphasis added.

From the Clovis Appellate Court Decision (15):

"Given these substantive differences between the Commission's pre-May 27, 2004 SDC P&G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P&G's for the SDC Program (§ 17558 [the Commission submits regulatory P&G's to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561, subd. (d)(2))." Emphasis added.

claiming instructions method is gratuitous.

Even though we have the permissive “may” language in the parameters and guidelines, coupled with claiming instructions that both the Controller and Commission characterize only as guidance, the Commission makes a jump to the conclusion that compliance with the claiming instructions is required (DPD 25):

The parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or by using the state Form FAM-29C.

The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller’s claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller’s claiming instructions. The Controller’s use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an “underground regulation.” Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50).

Somehow the “assistance” provided by the claiming instructions has become a requirement even though the parameters and guidelines use the word “may.” The Commission now has concluded that the contents of the claiming instructions are as a matter of law derivative of the authority of the parameters and guidelines, without benefit of a legal citation for this leap of jurisprudence. Assuming for argument that the leap can be made, would that derivative authority continue for any changes made to the claiming instructions after the adoption of the 1989 parameters and guidelines, that is, an open-ended commitment of the Commission’s authority to the Controller who can make changes without reference to the Commission process? Is this derivative authority limited to Health Fee Elimination or applicable to all mandates?

Note that the Health Fee Elimination parameters and guidelines were amended on January 29, 2010. However, the indirect cost rate language remained the same:

3. Allowable Overhead Cost

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

The Commission has had numerous opportunities to clarify its intent and language regarding the indirect cost rate calculation methods and resolve or avoid the delegation and derivation issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their discretion and has utilized it in college parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code Section 17561. No particular indirect cost rate calculation method is required by law. Government Code

Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

The Commission (DPD, 26) concluded that "the Controller's selection of the alternative state method was effectively the only valid alternative available, given that claimant failed to obtain federal approval in accordance with the other (OMB) option." The Commission has it backwards. There is no rebuttable presumption for this mandate that the Controller's methods are per se the only reasonable method. The Controller made no determination as to whether the method used by the District was reasonable or not, but merely substituted the Controller's method for the method used by the Districts. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. In order to move forward with the adjustment, the burden of proof is on the Controller to prove that the District's calculation is unreasonable. Indeed, federally "approved" rates which the Controller will accept without further action, are "negotiated" rates calculated by the district and submitted for approval, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used. Neither the Commission nor the Controller can assume that the Controller's calculation methods are intrinsically more accurate and the Commission cannot shift that burden or create the presumption to the contrary where none is present in law.

PART D. UNDERSTATED OFFSETTING REVENUES

This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of \$217,409 for the two fiscal years. The Controller computed the total student health fees collectible based on state rates while the District reported actual fees collected.

The Commission (DPD, 27) finds that the correct calculation and application of offsetting revenue from student health fees have been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law:

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that

districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355. (Underline in original.)

The District agrees that claimants and state agencies are bound to apply the Health Fee Rule as decided law and that this extends to retroactive fiscal years still within the Commission's or Controller's jurisdiction.

On October 27, 2011, the Commission adopted a consolidated statement of decision for seven Health Fee Elimination incorrect reduction claims. The statement of decision for these seven districts included issues presented in this current incorrect reduction claim. The application of the Health Fee Rule, as determined by the Commission's October 27, 2011, statement of decision, however, involves two factual elements: the number of exempt students and the specific enrollment statistics for each semester. That decision approved the Controller's use of specific Community College Chancellor's MIS data to obtain these enrollment amounts. That approved method is stated in the more recent HFE audits as:

FINDING— Understated authorized health service fees

We obtained student enrollment data from the CCCCCO. The CCCCCO identified enrollment data from its management information system (MIS) based on student data that the district reported. CCCCCO identified the district's enrollment based on its MIS data element STD7, codes A through G. CCCCCO eliminated any duplicate students based on their Social Security numbers. *Cited from the October 19, 2012 HFE Audit Report for State Center CCD. Available at the Controller's web site.*

For the audit of this District, completed before the October 27, 2011, Commission decision, the statistics used by the auditor were different:

FINDING 3— Understated authorized health fee revenues claimed

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the California Community Colleges Chancellor's Office Web site, as well as

district-prepared reports indicating the number of students who received fee waivers. *April 27, 2005 HFE Audit Report. P. 8*

Therefore, to properly implement the Health Fee Rule, it will be necessary for the Controller to utilize the statistics approved by the October 27, 2011, decision. Until then, the Commission's ultimate conclusion that the adjustments here are not arbitrary or lacking in evidentiary support is unfounded.

E. REVISED AUDIT REPORT

The Controller issued a revised audit report for Fiscal Years 2001-02 and 2002-03, dated October 11, 2012, which is now submitted for the record of this incorrect reduction claim as an attachment to this letter. (The revised audit report is not posted on the Controller's web site).

The purpose of the revised audit report is stated in Mr. Brownfield's transmittal letter:

This revised final report supersedes our previous report dated April 27, 2005. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, this revised report corrects a mathematical error in calculating unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period.

The exclusion of the athlete physicals costs from the offset of student health service revenues increases reimbursement by \$3,459 for FY 2002-03. The District concurs with this correction that is required as a matter of law by prior commission action. The Commission can take notice of this correction without a revised incorrect reduction claim.

The mathematical correction to the indirect cost rate calculation reduced reimbursement by \$1,166. This correction is de minimus and subsumed within the scope of findings for the indirect cost rate calculation issue.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the

best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on September 23, 2014, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

Attachment:

Revised Controller's Audit Report dated October 11, 2012

LONG BEACH COMMUNITY COLLEGE DISTRICT

Revised Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2001, through June 30, 2003



JOHN CHIANG
California State Controller

October 2012



JOHN CHIANG
California State Controller

October 11, 2012

Roberto Uranga, President
Board of Trustees
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Dear Mr. Uranga:

The State Controller's Office audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

This revised final report supersedes our previous report dated April 27, 2005. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, this revised report corrects a mathematical error in calculating unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health service fees, and claimed unallowable costs. The State paid the district \$24,892. The State will pay allowable costs claimed that exceed the amount paid, totaling \$28,064, contingent upon available appropriations.

The district previously filed an Incorrect Reduction Claim (IRC) on August 30, 2005. The district may file an amended IRC with the CSM based on this revised final audit report. The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's website at www.csm.ca.gov/docs/IRCForm.pdf.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: Eloy Oakley, Superintendent – President
 Long Beach Community College District
Ann-Marie Gabel, Vice President, Administrative Services
 Long Beach Community College District
John Thompson, Director, Fiscal Services
 Long Beach Community College District
Christine Atalig, Specialist
 College Finance and Facilities Planning
 California Community Colleges Chancellor's Office
Ed Hanson, Principal Program Budget Analyst
 Education Systems Unit
 Department of Finance

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Revised Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2001, through June 30, 2003.

The district claimed \$516,978 for the mandated program. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable. The unallowable costs occurred primarily because the district overstated its indirect cost rates, understated authorized health services fees, and claimed unallowable costs. The State paid the district \$24,892. The State will pay allowable costs claimed that exceed the amount paid, totaling \$28,064, contingent upon available appropriations.

Background

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

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

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

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

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

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2001, through June 30, 2003.

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

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

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

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

Conclusion

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

For the audit period, Long Beach Community College District claimed \$516,978 for Health Fee Elimination Program costs. Our audit disclosed that \$52,956 is allowable and \$464,022 is unallowable.

For the FY 2001-02 claim, the State paid the district \$24,892. Our audit disclosed that \$49,497 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$24,605, contingent upon available appropriations.

For the FY 2002-03 claim, the State made no payment to the district. Our audit disclosed that \$3,459 is allowable. The State will pay that amount, contingent upon available appropriations.

**Views of
Responsible
Officials**

We issued a draft audit report on February 4, 2005. Irma Ramos, former Administrative Dean, Human Resources, responded by letter dated February 23, 2005 (Attachment), disagreeing with the audit results.

Based on the district's response, we eliminated Finding 1, totaling \$9,222, from the draft audit report. Consequently, draft report Findings 1 through 5 were renumbered to Findings 1 through 4. We issued our original final audit report on April 27, 2005.

On October 27, 2011, the CSM issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. Therefore, we revised our final report to offset authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. In addition, we revised our final report to correct a mathematical error in our calculation of unallowable costs attributable to overstated indirect cost rates. As a result, allowable costs increased by \$2,607 for the audit period. On September 21, 2012, we notified Ann-Marie Gabel, Vice President, Administrative Services; John Thompson, Director, Fiscal Services; and other district staff of the final audit report revisions.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

October 11, 2012

**Revised Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2003**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 1,927	\$ 1,927	\$ —	
Services and supplies	1,145	1,145	—	
Total direct costs	3,072	3,072	—	
Indirect costs	1,099	560	(539)	Finding 2
Total program costs, athlete physicals	4,171	3,632	(539)	
All other health services:				
Direct costs:				
Salaries and benefits	316,641	316,641	—	
Services and supplies	97,768	89,348	(8,420)	Findings 1, 4
Total direct costs	414,409	405,989	(8,420)	
Indirect costs	148,192	74,012	(74,180)	Findings 1, 2, 4
Total direct and indirect costs	562,601	480,001	(82,600)	
Less authorized health service fees	(321,995)	(432,828)	(110,833)	Finding 3
Less offsetting savings/reimbursements	—	(837)	(837)	Finding 4
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Total program costs, all other health services	240,135	45,865	(194,270)	
Total program costs	\$ 244,306	49,497	\$ (194,809)	
Less amount paid by the State		(24,892)		
Allowable costs claimed in excess of (less than) amount paid		\$ 24,605		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 1,888	\$ 1,888	\$ —	
Services and supplies	1,045	1,045	—	
Total direct costs	2,933	2,933	—	
Indirect costs	995	526	(469)	Finding 2
Total program costs, athlete physicals	3,928	3,459	(469)	
All other health services:				
Direct costs:				
Salaries and benefits	340,221	340,221	—	
Services and supplies	95,372	86,735	(8,637)	Finding 1
Total direct costs	435,593	426,956	(8,637)	
Indirect costs	147,841	76,682	(71,159)	Findings 1, 2
Total direct and indirect costs	583,434	503,638	(79,796)	
Less authorized health service fees	(313,843)	(531,252)	(217,409)	Finding 3
Less offsetting savings/reimbursements	(847)	(847)	—	
Audit adjustments exceeding claimed costs	—	28,461	28,461	
Total program costs, all other health services	268,744	—	(268,744)	
Total program costs	\$ 272,672	3,459	\$ (269,213)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 3,459		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2001, through June 30, 2003</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 3,815	\$ 3,815	\$ —	
Services and supplies	2,190	2,190	—	
Total direct costs	6,005	6,005	—	
Indirect costs	2,094	1,086	(1,008)	
Total program costs, athlete physicals	8,099	7,091	(1,008)	
All other health services:				
Direct costs:				
Salaries and benefits	656,862	656,862	—	
Services and supplies	193,140	176,083	(17,057)	
Total direct costs	850,002	832,945	(17,057)	
Indirect costs	296,033	150,694	(145,339)	
Total direct and indirect costs	1,146,035	983,639	(162,396)	
Less authorized health service fees	(635,838)	(964,080)	(328,242)	
Less offsetting savings/reimbursements	(847)	(1,684)	(837)	
Less cost of services in excess of FY 1986-87 services	(471)	(471)	—	
Audit adjustments exceeding claimed costs	—	28,461	28,461	
Total program costs, all other health services	508,879	45,865	(463,014)	
Total program costs	\$ 516,978	52,956	\$ (464,022)	
Less amount paid by the State		(24,892)		
Allowable costs claimed in excess of (less than) amount paid		\$ 28,064		

¹ See the Revised Findings and Recommendations section.

Revised Findings and Recommendations

**FINDING 1—
Unallowable services
and supplies costs**

The district overclaimed services and supplies costs totaling \$17,894 during the audit period. The related unallowable indirect costs totaled \$6,241, based on claimed indirect cost rates.

The district overclaimed insurance premiums paid for student basic and catastrophic coverage by \$11,869, because it included unallowable premiums paid for athletic insurance. In addition, the district inadvertently claimed \$6,025 twice for services and supplies.

The following table summarizes the audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Student insurance premiums	\$ (5,857)	\$ (6,012)	\$ (11,869)
Costs claimed twice	(3,400)	(2,625)	(6,025)
Total direct costs	(9,257)	(8,637)	\$ (17,894)
Indirect cost rate claimed	× 35.76%	× 33.94%	
Related indirect costs	(3,310)	(2,931)	\$ (6,241)
Total direct costs (from above)	(9,257)	(8,637)	(17,894)
Audit adjustment	\$ (12,567)	\$ (11,568)	\$ (24,135)

The program’s parameters and guidelines state that the cost of insurance is reimbursable for the following activities: (1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration.

Education Code section 76355, subdivision (d)(2) (formerly section 72246, subdivision (2)) states that athletic insurance is not an authorized expenditure for health services.

The parameters and guidelines also state that all costs claimed must be traceable to source documentation that shows evidence of the validity of such costs.

Recommendation

We recommend the district ensure that it claims only costs for health services that are reimbursable under the mandate program. In addition, the district should ensure that all costs claimed are supported by source documentation.

District’s Response

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

SCO’s Comment

The finding and recommendation remain unchanged. The district did not provide any additional information supporting the allowability of insurance costs claimed.

**FINDING 2—
Overstated indirect
cost rates claimed**

The district overstated its indirect cost rates, thus overstating its indirect costs by \$140,259 for the audit period.

The district claimed indirect costs based on indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant. However, the district did not obtain federal approval for its ICRPs. We calculated indirect cost rates using the methodology allowed by the SCO claiming instructions. The calculated indirect costs rates did not support the indirect cost rates claimed. The following table summarizes the allowable and claimed indirect cost rates:

	Fiscal Year	
	2001-02	2002-03
Allowable indirect cost rate	18.23%	17.96%
Less claimed indirect cost rate	(35.76)%	(33.94)%
Unsupported indirect cost rate	(17.53)%	(15.98)%

Based on these unsupported indirect cost rates, we made the following audit adjustments:

	Fiscal Year		Total
	2001-02	2002-03	
Athlete physicals:			
Direct costs claimed	\$ 3,072	\$ 2,933	
Unsupported indirect cost rate	× (17.53)%	× (15.98)%	
Audit adjustment, athlete physicals	(539)	(469)	
All other health services:			
Direct costs claimed	414,409	435,593	
Less unallowable costs, Finding 1	(9,257)	(8,637)	
Allowable direct costs claimed	405,152	426,956	
Unsupported indirect cost rate	× (17.53)%	× (15.98)%	
Audit adjustment, all other health services	(71,023)	(68,228)	
Total audit adjustment	\$ (71,562)	\$ (68,697)	\$ (140,259)

The parameters and guidelines state that indirect costs may be claimed in the manner described in the SCO claiming instructions. Those instructions require that districts obtain federal approval of ICRPs prepared according to Office of Management and Budget (OMB) Circular A-21. As an alternative, districts may use form FAM-29C to compute indirect cost rates. Form FAM-29C uses total expenditures that the district reports to the California Community College Chancellor’s Office (CCCCO) in its Annual Financial and Budget Report (CCFS-311).

Recommendation

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

District's Response

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d) (2)). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

SCO's Comment

In our revised final audit report, we corrected a mathematical error in the audit adjustment calculation. The original final audit report incorrectly identified the allowable direct costs originally claimed. The corrected calculation increased the audit adjustment by \$1,166. We also revised the recommendation to eliminate reference to ICRPs calculated in accordance with OMB Circular A-21. The current claiming instructions applicable to the Health Fee Elimination Program do not allow districts to claim indirect costs based on indirect cost rates prepared in accordance with OMB Circular A-21.

The parameters and guidelines state that indirect costs may be claimed in the manner described in the SCO's claiming instructions. Therefore, the specific directions for the indirect cost rate calculation in the claiming instructions are an extension of the parameters and guidelines. The SCO's claiming instructions, effective for the audit period, state that community college districts have the option of using a federally-approved rate prepared in accordance with OMB Circular A-21 or the SCO's alternate methodology using Form FAM-29C. In this case, the district chose to use indirect cost rates that were not approved by a federal agency, which is not an option provided by the SCO's claiming instructions.

FINDING 3— Understated authorized health fee revenues claimed

For the audit period, the district understated authorized health service fees by \$217,409. The district reported actual revenue received rather than health fees the district was authorized to collect.

The district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the CCCCCO's website, as well as district-prepared reports indicating the number of students who received fee waivers.

Using the student enrollment and exemption data, we calculated the health fees the district was authorized to collect, as shown in the following table.

	Fall Semester	Spring Semester	Summer Session	Total
<u>Fiscal Year 2001-02</u>				
Student enrollment	23,157	27,910	14,823	
Less allowable health fee exemptions	(11,295)	(11,206)	(4,819)	
Subtotal	11,862	16,704	10,004	
Authorized health fee rate	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (142,344)</u>	<u>\$ (200,448)</u>	<u>\$ (90,036)</u>	<u>\$ (432,828)</u>
<u>Fiscal Year 2002-03</u>				
Student enrollment	29,273	28,939	16,941	
Less allowable health fee exemptions	(11,499)	(11,991)	(4,209)	
Subtotal	17,774	16,948	12,732	
Authorized health fee rate	× \$ (12)	× \$ (12)	× \$ (9)	
Authorized health service fees	<u>\$ (213,288)</u>	<u>\$ (203,376)</u>	<u>\$ (114,588)</u>	<u>\$ (531,252)</u>

The following table summarizes the resulting audit adjustment.

	Fiscal Year		Total
	2001-02	2002-03	
Authorized health service fees	\$ (432,828)	\$ (531,252)	\$ (964,080)
Less authorized health service fees claimed	321,995	313,843	635,838
Audit adjustment	<u>\$ (110,833)</u>	<u>\$ (217,409)</u>	<u>\$ (328,242)</u>

The parameters and guidelines require that the district deduct authorized health fees from claimed costs. Education Code section 76355, subdivision (c), effective for the audit period, authorizes health fees for all students except those students who: (1) depend exclusively on prayer for healing; (2) attend a community college under an approved apprenticeship training program; or (3) demonstrate financial need.

Also, Government Code section 17514 states that “costs mandated by the State” means any increased costs that a school district is required to incur. To the extent that community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the district has the authority to levy fees to pay for the mandated program or increased level of service.

Recommendation

We recommend that the district:

- Deduct authorized health service fees from mandate-related costs claimed. The district routinely reports student enrollment data to the CCCCCO. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G.

- Identify the number of apprenticeship program enrollees, if any, based on data elements SB23, code 1, and STD7, codes A through G.
- Maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1).
- Charge students the authorized fee amount for each school term.
- Waive the health service fee only for those students specified in Education Code section 76355, subdivision (c).

District's Response

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "*Any* offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. This Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to maintain that level of service" will exceed the statutory limit for the student health fees.

SCO's Comment

The finding and recommendation remain unchanged.

As mentioned above, the district was unable to retrieve student attendance data from its computer system that was used to calculate the net health fee revenues reported in its reimbursement claims for the audit period. At the district's recommendation, we recalculated authorized health fee revenues using the Student Headcount by Enrollment Status for Long Beach Community College District report available from the CCCCO's website, as well as district-prepared reports indicating the number of students who received fee waivers.

We agree that community college districts may choose not to levy a health services fee. This is true even if Education Code section 76355 provides the districts with the authority to levy such fees. However, the effect of not imposing the health services fee is that the related health services costs do not meet the requirement for mandated costs as defined by Government Code section 17514. Health services costs recoverable through an authorized fee are not costs that the district is required to incur. Government Code section 17556 states that the CSM shall not find costs mandated by the State as defined in Government Code section 17514 if the district has authority to levy fees to pay for the mandated program or increased level of service.

**FINDING 4—
Understated
expenditures and
offsetting
reimbursements**

The district underclaimed services and supplies by \$837 in FY 2001-02. The related indirect costs totaled \$153, based on the allowable indirect cost rate claimed for that fiscal year. The district also underclaimed offsetting revenues received in reimbursement of the \$837 expenditure noted above.

The health center expended \$837 to provide TB (tuberculosis) tests for the health center staff, and this amount was reimbursed by the district. The reimbursement was improperly recorded as an offset to expenditures (cost applied) rather than recorded as revenue for services rendered.

The following table summarizes the resulting audit adjustment.

	Fiscal Year 2001-02
Underclaimed services and supplies	\$ 837
Allowable indirect cost rate	× 18.23%
Related indirect costs	153
Total underclaimed services and supplies (from above)	<u>837</u>
Audit adjustment, total health expenditures	\$ 990
Audit adjustment, offsetting reimbursements	<u>\$ (837)</u>

The parameters and guidelines state that eligible community college districts shall be reimbursed for the costs of providing a health services program. The parameters and guidelines also require the district to list the cost of materials that have been consumed or expended specifically for the purpose of this mandate.

The parameters and guidelines state that reimbursement for this mandate received from any source (e.g., federal, state, etc.) shall be identified and deducted from this claim.

Recommendation

We recommend the district include the expenditure of \$837 for providing TB tests for the health center staff in the direct costs of providing a health services program during FY 2001-02. In addition, the \$837 reimbursement received from the district should be shown as offsetting revenue.

District's Response

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

SCO's Comment

The finding and recommendation remain unchanged. The district agrees with the net audit adjustment.

OTHER ISSUE— Statute of limitations

The district's response included comments regarding our authority to audit costs claimed for FY 2001-02. The district's response and the SCO's comment follow.

District's Response

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

SCO's Comment

Government Code section 17558.5, subdivision (a), in effect during the audit period, states that a district's reimbursement claim is subject to an audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The claim was filed in December 2002. The audit was initiated on August 18, 2004, which is prior to the statutory deadline of December 2004.

**Attachment—
District's Response to
Draft Audit Report**



Board of Trustees
Dr. Thomas J. Clark
Jeffrey A. Kelllogg
Dianne Thiel McNamee
Douglas W. Otto
Roberto Chang

Superintendent/President
E. Jim Schuss, Ph.D.

Long Beach City College • Long Beach Community College District
4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL # 7000 0520 0020 5926 1881

February 23, 2005

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

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
State Controller's Audit
Fiscal Years: 2001-02 and 2002-03

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the letter to President Kehoe from Vincent P. Brown, Chief Operating Officer, State Controller's Office, dated February 4, 2005, and received by the District on February 14, 2005, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2001 through June 30, 2003.

Statute of Limitations

The District's Fiscal Year 2001-02 claim was mailed to the State Controller on December 6, 2002. The draft audit report is dated February 4, 2005. According to Government Code Section 17558.5, this claim was subject to audit no later than December 31, 2004. The audit was not completed by this date. Therefore, the proposed audit adjustments for Fiscal Year 2001-02 are barred by the statute of limitations set forth in Government Code Section 17558.5.

Finding 1 - Ineligible Health Services-Pregnancy Tests

The State Controller's draft audit report states that pregnancy tests were not available at the college health center in FY 1986-87. The District's Form HFE 2.1 accurately reflects that pregnancy services were available in FY1986-87.

The parameters and guidelines state at Part III Eligible Claimants:

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

Education Code section 76355, subdivision (e), states:

"Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter."

Pregnancy tests are just a part of the whole scope of services which may comprise pregnancy services. The State Controller, as the audit agency proposing the adjustment, has the burden of proving the factual and legal basis for its adjustments. The State Controller provides no legal basis to conclude that the absence or inclusion of one type of laboratory test constitutes a different level of service from year to year. It would therefore appear that this finding is based upon the wrong standard for review.

Finding 2 - Unallowable Services and Supplies Costs

The District is still investigating the athletic insurance costs to determine if the amounts reported in the claim related to basic insurance costs for students who also were covered by athletic insurance. However, the final audit report need not be delayed for this work.

Finding 3 - Overstated Indirect Costs Claimed

The State Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, which is one of the several choices allowed by the parameters and guidelines. The parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the State Controller.

The State Controller's claiming instructions were never adopted as rules or regulations, and therefore have no force of law. The burden is on the State Controller to show, either factually or as a matter of law, that the indirect cost rate method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in

statute (Government Code Section 17651(d) (2). If the State Controller wishes to enforce audit standards for mandated cost reimbursement, the State Controller should comply with the Administrative Procedures Act.

Finding 4 - Understated Authorized Health Fee Revenues Claimed

The District reported the actual student health services received, rather than utilize an estimate generated by the artificial calculation suggested by the parameters and guidelines. The State Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The State Controller does not provide the factual basis for the calculation of the "authorized" rate, nor provide any reference to the "authorizing" source, nor the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedures Act by the "authorizing" state agency.

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

The State Controller asserts that the parameters and guidelines require that health fees authorized by the Education Code must be deducted from the costs claimed. This is a misstatement of the Parameters and Guidelines. The Parameters and Guidelines, as last amended on May 25, 1989, state that "Any offsetting savings . . . must be deducted from the costs claimed . . . This shall include the amount of (student fees) as authorized by Education Code Section 72246(a)¹." Therefore, while student fees actually collected are properly used to offset costs, student fees that could have been collected, but were not, are not an offset.

The State Controller also misconstrues the legal meaning of Government Code Section 17556, which prohibits the Commission on State Mandates from approving test claims when the local government agency has authority to charge a fee sufficient to fund the cost of the mandate. The Commission determined that the mandate was a new program or increased level of service. Even the source of the mandate, Education Code Section 76355, at subdivision (e), allows for the possibility that the "cost to

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

maintain that level of service" will exceed the statutory limit for the student health fees.

As a final defect, the State Controller does not demonstrate how reporting actual revenues received fails to comply with the law, and indeed, why it is not more accurate for cost accounting purposes than an estimate determined by the fee calculation.

Finding 5 - Understated Expenditures and Offsetting Reimbursements

The State Controller correctly notes that the District reimbursed the student health services department for TB tests, and that these amounts were offset to expense accounts. The State Controller incorrectly concludes that this is improper. Point in fact, it complies with generally accepted accounting principles and the financial reporting requirements of the California Community College Chancellor's Office. The District is complying with financial reporting requirements. However, for purposes of *mandate cost accounting*, which differs from *financial accounting* in many aspects, the State Controller properly reverses the offset.

○ ○ ○

The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Irma Ramos, Administrative Dean
Long Beach Community College District

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

<http://www.sco.ca.gov>

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 23, 2014, I served the:

Claimant Comments

Health Fee Elimination, 05-4206-I-03

Education Code Section 76355

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

Fiscal Years 2001-2002 and 2002-2003

Long Beach 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 23, 2014 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/14

Claim Number: 05-4206-I-03

Matter: Health Fee Elimination

Claimant: Long Beach 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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