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December 10, 2014

Mr. Keith B. Petersen
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Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: **Decision**
*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

Dear Mr. Petersen and Ms. Kanemasu:

On December 5, 2014, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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| IN RE INCORRECT REDUCTION CLAIM ON:<br><br>Former Education Code Section 72246 (Renumbered as 76355)[1]<br><br>Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)<br><br>Fiscal Years 2001-2002 and 2002-2003<br><br>Long Beach Community College District, Claimant. | Case No.: 05-4206-I-03<br><br>*Health Fee Elimination*<br><br>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7<br><br>(*Adopted December 5, 2014*)<br><br>(*Served December 10, 2014*) |

## DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 5, 2014. Keith Petersen appeared on behalf of the claimant. Jim Spano and Jim Venneman appeared on behalf of the State Controller's Office (Controller).

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

The Commission adopted the proposed decision to deny the IRC at the hearing by a vote of six to zero.

### Summary of the Findings

This analysis addresses an IRC filed by Long Beach Community College District (claimant) regarding reductions made by the Controller to reimbursement claims for costs incurred during fiscal years 2001-2002 and 2002-2003 under the *Health Fee Elimination* program. Over the two fiscal years in question, reductions totaling $217,409 were made based on alleged understated offsetting health fees authorized to be collected, and additional reductions totaling $156,987 were made based on disallowed indirect cost rates and unallowable services and supplies.

The Commission denies this IRC, finding that the Controller's audit of the 2001-2002 reimbursement claim was timely pursuant to Government Code section 17558.5; and that the Controller's reduction of costs for services and supplies beyond the scope of the mandate, the reduction of indirect costs based on the claimant's failure to obtain federal approval for its indirect cost rate proposals, and the reduction in reimbursement based on the claimant's

[1] Statutes 1993, chapter 8.

underreporting of health service fee revenue authorized by statute, are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support.

## COMMISSION FINDINGS

### I. Chronology

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| 12/06/2002 | Claimant filed its fiscal year 2001-2002 reimbursement claim. [2] |
| 01/09/2004 | Claimant signed and dated its 2002-2003 claim form.[3] |
| 08/18/2004 | An entrance conference for the audit was held.[4] |
| 04/27/2005 | Controller issued its final audit report.[5] |
| 09/01/2005 | Claimant filed this IRC.[6] |
| 12/16/2008 | Controller submitted comments on the IRC.[7] |
| 08/10/2009 | Claimant submitted rebuttal comments.[8] |
| 08/01/2014 | Commission staff issued the draft proposed decision.[9] |
| 08/05/2014 | Controller filed comments on the draft proposed decision.[10] |
| 09/23/2014 | Claimant filed comments on the draft proposed decision.[11] |
| 10/03/2014 | Commission staff issued a request for additional information from the Controller.[12] |
| 10/13/2014 | Controller filed additional information as requested.[13] |

### II. Background

*Health Fee Elimination* Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a

[2] Exhibit A, Incorrect Reduction Claim, page 19.

[3] Exhibit A, Incorrect Reduction Claim, page 85.

[4] Exhibit A, Incorrect Reduction Claim, page 19.

[5] Exhibit A, Incorrect Reduction Claim, page 19; 42.

[6] Exhibit A, Incorrect Reduction Claim, page 1.

[7] Exhibit B, Controller's Comments.

[8] Exhibit C, Claimant's Rebuttal Comments.

[9] Exhibit D, Draft Proposed Decision.

[10] Exhibit E, Controller's Comments on Draft Proposed Decision.

[11] Exhibit F, Claimant's Comments on Draft Proposed Decision.

[12] Exhibit G, Commission Request for Additional Information.

[13] Exhibit H, Controller's Response to Commission Request for Additional Information.

health service fee not to exceed $7.50 for each semester or $5 for each quarter or summer session, to fund these services.[14] In 1984, the Legislature repealed the community colleges' fee authority for health services.[15] However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, to reauthorize the fee at $7.50 for each semester (or $5 for quarter or summer semester).[16]

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.[17] As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[18] In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than $7.50 for each semester, or $5 for each quarter or summer semester.[19] As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.[20]

On November 20, 1986, the Commission determined that Statutes 1984, chapter 1 imposed a reimbursable state-mandated new program upon community college districts. On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program. On May 25, 1989, the Commission adopted amendments to the parameters and guidelines program to reflect amendments made by Statutes1987, chapter 1118.

The parameters and guidelines generally provide that eligible community college districts shall be reimbursed for the costs of providing a health services program, and that only services

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[14] Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.].

[15] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

[16] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

[17] Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

[18] Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

[19] Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

[20] Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

Controller's Audit and Summary of the Issues

The Controller reduced the reimbursement claims for costs allegedly incurred during fiscal years 2001-2002 and 2002-2003 under the *Health Fee Elimination* program, totaling $466,629. The following issues are in dispute:

- The statutory deadlines applicable to audits of reimbursement claims by the Controller;
- Reduction of costs for student health insurance based on the scope of reimbursement excluding student athletic costs.
- Reduction of indirect costs based on asserted faults in the development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

## III. Positions of the Parties

Long Beach Community College District

The claimant asserts that the Controller incorrectly reduced costs claimed for fiscal years 2001-2002 and 2002-2003, totaling $368,371. Specifically, claimant asserts that reduction of $11,869 in athletic insurance costs was inappropriate, because the amounts claimed represented the district's basic and catastrophic coverage for the general student population, some of whom are also student athletes, but student athletes are also a part of the general student population for purposes of the general student population premium.[21] In addition, claimant asserts that the reduction of $139,093 in overstated indirect costs on the basis that "the district did not obtain federal approval for its [indirect cost rates,]" was incorrect. The claimant argues that "[c]ontrary to the Controller's ministerial preferences, there is no requirement in law that the district's indirect cost rate must be 'federally' approved," and the Controller did not make findings that the claimant's rate was excessive or unreasonable.[22] And, claimant asserts that a reduction of its total claim in the amount of $217,409, based on understated authorized health service fees, was incorrect, because the parameters and guidelines require claimants to state offsetting savings "experienced," and claimant did not experience offsetting savings for fees that it did not charge to students.[23] In addition, claimant asserts that the statute of limitations applicable to the Controller's audits of reimbursement claims barred auditing its fiscal year 2001-2002 reimbursement claim.

In its comments on the draft proposed decision, the claimant argues that the Commission's findings on unallowable student health insurance costs are not supported; that the Controller's claiming instructions on indirect cost rates are not legally enforceable; that the data used by the Controller to calculate offsetting revenues is not from a source approved by the Commission; and

[21] Exhibit A, Incorrect Reduction Claim, page 11.

[22] Exhibit A, Incorrect Reduction Claim, page 12.

[23] Exhibit A, Incorrect Reduction Claim, page 14-18.

that the 2002 and 2004 amendments to Government Code section 17558.5 are not relevant, but only the code section as it read when the claims were filed.[24]

State Controller's Office

The Controller asserts that "athletic insurance is not an authorized expenditure" within the scope of the *Health Fee Elimination* mandate, and that "[t]he district did not provide any additional information supporting the allowability of insurance costs claimed."[25]

The Controller further asserts that the claimant overstated its indirect costs, because claimant did not obtain federal approval for its indirect cost rate proposals, as required by the Controller's claiming instructions.[26] The Controller asserts that "[s]ince the Claimant did not have a current approved ICRP (via the OMB Circular A-21 method), the auditors utilized the FAM-29C and determined that the allowable rate was much less than claimed."[27]

In addition, the Controller found that the claimant understated its authorized health service fees for the audit period in the amount of $217,409. Using enrollment and exemption data, the Controller recalculated the health fees that the claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues.[28] The Controller argues that "[t]he relevant amount [of offsetting savings] is not the amount charged, nor the amount collected, rather it is the amount authorized."[29]

Finally, the Controller argues that the claimant "incorrectly applies the 1996 version of [the statute of limitations.]" The Controller explains that the prior version of section 17558.5 provided that a reimbursement claim is "subject to audit" for two years after the end of the calendar year in which the claim is filed, meaning that the claimant's 2001-2002 claim, filed December 2, 2002, would be "subject to audit" through December 31, 2004. The Controller asserts that the audit in dispute in this IRC was initiated no later than August 18, 2004, "when the entrance conference was held," and therefore the audit was proper. In addition, the Controller argues that the amendments to section 17558.5, which took effect January 1, 2003, expanded the statute of limitations, and that "[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred." The amended statute provides that an audit must be initiated no later than *three* years after the claim is filed or last amended. The Controller argues that the expansion of the statute of limitations pursuant to section 17558.5, as amended by Statutes 2002, chapter 1128 (AB 2834) applies to the audit in dispute in this IRC, and therefore the audit was proper.[30]

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[24] Exhibit F, Claimant Comments on Draft Proposed Decision.

[25] Exhibit A, Incorrect Reduction Claim, page 50 [Controller's Audit Report, page 6].

[26] Exhibit A, Incorrect Reduction Claim, page 51 [Controller's Audit Report, page 7].

[27] Exhibit B, Controller's Comments on IRC, page 2.

[28] Exhibit A, Incorrect Reduction Claim, page 52 [Controller's Audit Report, page 8].

[29] Exhibit B, Controller's Comments on IRC, page 2.

[30] Exhibit B, Controller's Comments on IRC, pages 2-3.

On August 5, 2014, the Controller filed comments on the draft proposed decision, concurring with the conclusion and recommendation. [31] Then, in response to Commission staff's request for additional information, the Controller filed additional comments, on October 13, 2014, including evidence, as requested, to substantiate the reduction of insurance costs claimed, as discussed below.[32]

## IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[33] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[34]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[35] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.]

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[31] Exhibit E, Controller's Comments on Draft Proposed Decision.

[32] Exhibit H, Controller's Response to Commission Request for Additional Information.

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

[34] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

> When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[36]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[37] In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[38]

### A. The Statutory Deadlines Found in Government Code Section 17558.5 do not Bar the Controller's Audit of the Claimant's 2001-2002 Reimbursement Claim.

The statutory deadlines applicable to the Controller's audit of mandate reimbursement claims are provided in Government Code 17558.5. Section 17558.5 was amended twice between the time the subject claims were filed and time the final audit report was issued, and the parties take opposing views on what version of the statute to apply and the meaning given to the statutory language.

At the time claimant incurred the mandated costs in fiscal year 2001-2002 and filed its reimbursement claim on December 6, 2002, Government Code section 17558.5, as added in 1995, stated the following:

> 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.[39]

Claimant asserts that "the first year of the two claims audited, FY 2001-02, is beyond the statute of limitations for audit when the Controller completed its audit on April 27, 2005."[40] The claimant reasons that its fiscal year 2001-2002 reimbursement claim, filed on December 6, 2002, was "subject to audit" until December 31, 2004. The claimant interprets "subject to audit" to require the *completion* of an audit within the two year period, and therefore concludes that

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[36] *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

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

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

[39] Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

[40] Exhibit A, Incorrect Reduction Claim, pages 18-19.

pursuant to "the unmistakable language of Section 17558.5," the Controller's issuance of a final audit report on April 27, 2005 was beyond the statute of limitations.[41]

The Controller argues that the claimant inappropriately relies on "the 1996 version of this statute," but that "[e]ven under this inappropriate version, [the claimant's] conclusion is based on an erroneous interpretation that attempts to rewrite that section, adding a deadline for completion of the audit where none exists." The Controller argues that "[a]lthough there may be a dispute as to what constitutes the initiation of an audit, it is clear that the audit was initiated no later than August 18, 2004, when the entrance conference was held," and that "[t]herefore, the audit of the fiscal year 2000-01 [reimbursement claim] was proper, even under the 1996 version of Section 17558.5."[42] Alternatively, the Controller argues that a 2002 amendment to section 17558.5, which became effective on January 1, 2003, enlarges the statute of limitations to initiate an audit to three years, and that the later enacted statute applies here to grant the Controller additional time to initiate the audit, because the audit period for the 2001-2002 claim was still open. In addition, a 2004 amendment to section 17558.5 also applies, requiring that an audit be completed within two years of the date commenced.[43]

The Commission finds that the audit of the 2001-2002 reimbursement claim was timely under Government Code section 17558.5, as added by Statutes 1995, chapter 945. In addition, when applying the 2002 and 2004 amendments to section 17558.5 the audit is also timely.

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.[44] This reading is consistent with the plain language of the second sentence, which provides that 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."[45]

The claimant criticizes the above reasoning, which was included in the draft proposed decision, that the 1995 statute specifies the time by which an audit must be initiated, but not when it must be completed.[46] A common law requirement may be implied that the audit must be completed within a reasonable time, once commenced, but here less than nine months elapsed between the entrance conference and the issuance of the final audit report, and therefore even under the 1995 version of the statute that the claimant urges, the audit was completed within a reasonable period of time.

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[41] Exhibit A, Incorrect Reduction Claim, pages 19-23.

[42] Exhibit B, Controller's Comments on IRC, page 2.

[43] Government Code section 17558.5, (Stats. 2004, ch. 890 (AB 2856)).

[44] *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, at p. 45 [The court held that PERS' duties to its members override the general procedural interest in limiting claims to three or four years: "[t]here is no requirement that a particular type of claim have a statute of limitation."].

[45] Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

[46] Exhibit F, Claimant's Comments on the Draft Proposed Decision, September 23, 2014.

This interpretation is also consistent with the Legislature's 2002 amendment to Government Code section 17558.5, clarifying that "subject to audit" means "subject to the initiation of an audit," as follows in underline and strikeout:

> 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.[47]

And finally, section 17558.5 was amended again in 2004 to establish, for the first time, the requirement to "complete" an audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, the section provides as follows in underline and strikeout:

> 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.[48]

Each of these amendments must be analyzed, with respect to both the earliest claim filed, and the completion of the audit, because an expansion or contraction of a statute of limitations generally applies to pending claims (here, a pending audit) unless a party's rights would be unconstitutionally impaired.

In *Douglas Aircraft,*[49] cited in the Controller's comments, the Court stated the general rule as follows:

> The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432.) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463; *Davis & McMillan v. Industrial Acc. Com.*, 198 Cal. 631; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472), against an individual for personal income taxes

[47] Statutes 2002, chapter 1128 (AB 2834).

[48] Statutes 2004, chapter 890.

[49] *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462.

(*Mudd v. McColgan*, *supra*, 30 Cal.2d 463), and against a judgment debtor (*Weldon v. Rogers*, *supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan*, *supra*, 30 Cal.2d 463.)[50]

In *Mudd v. McColgan*, relied upon in *Douglas Aircraft*, the Court explained:

> It is settled law of this state that an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted. Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect. Because the operation is prospective rather than retrospective, there is no impairment of vested rights. [Citations.] Moreover, a party has *no vested right in the running of a statute of limitation prior to its expiration*. He is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay. In *Campbell v. Holt*, 115 U.S. 620, at page 628, it was said that statutes shortening the period or making it longer have always been held to be within the legislative power until the bar was complete.[51]

And in *Liptak v. Diane Apartments, Inc.*,[52] the Second District Court of Appeal, relying in part on *Mudd*, *supra*, reasoned:

> A party does not have a vested right in the time for the commencement of an action. (*Mill and Lumber Co. v. Olmstead* (1890) 85 Cal. 80, 84-85.) Nor does he have a vested right in the running of the statute of limitations prior to its expiration. (*Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Weldon v. Rogers* (1907) 151 Cal. 432, 434.) *A change in the statute of limitations merely effects a change in procedure and the Legislature may shorten the period, however, a reasonable time must be permitted for a party affected to avail himself of the remedy before the statute takes effect.* (*Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122; *Davis & McMillan v. Industrial Acc. Com.* (1926) 198 Cal. 631, 637; *Mill and Lumber Co. v. Olmstead*, *supra*, 85 Cal. at p. 84.)[53]

Therefore, an expansion of a statute of limitations applies to matters pending but not already barred, based in part on the theory that a party has no vested right in the running of a statutory period prior to its expiration.[54] In addition, a contraction of a statute of limitations will generally apply to pending claims or matters as long as the party affected has a reasonable time to assert the claim.[55] However, the courts have also found that where an amended statute of limitations relinquishes a right previously held *by the state or one of its agencies*, a reasonable time to avail

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[50] *Id*, at page 465.

[51] *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468 [emphasis added].

[52] 109 Cal.App.3d 762.

[53] *Id*, at page 773.

[54] *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468

[55] *Liptak v. Diane Apartments, Inc.* 109 Cal.App.3d 762, 773 [citing *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122].

itself of the right is not required. In *California Employment Stabilization Commission v. Payne*, the Court stated the following:

> Accordingly, the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. (See *Davis & McMillan v. Ind. Acc. Comm.*, 198 Cal. 631, 637.) This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state.[56]

Therefore the amendments to section 17558.5 discussed above, first expanding the time to initiate an audit (and clarifying the meaning of "subject to audit"),[57] and then imposing a two year deadline for completion of an audit,[58] must be applied and analyzed as of their effective dates. As explained above, the claimant has no "vested right in the running of the statute of limitations prior to its expiration,"[59] and the Controller's authority to audit can be impaired by the Legislature, as it was by the 2004 amendment to section 17558.5, without consideration of whether the agency has a reasonable time in which to avail itself of the "right."[60]

Here, the reimbursement claim filed for fiscal year 2001-2002 was (at the time it was filed) subject to audit "no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended;"[61] in this case, before December 31, 2004, for a reimbursement claim filed in December of 2002. Based on the interpretation urged by the Controller, which is consistent with the clarifying change made in the 2002 amendment, effective January 1, 2003, an audit *initiated* before December 31, 2004 would be timely.

Moreover, the amendment to section 17558.5 became effective January 1, 2003 (i.e., effective before the time the audit would have been barred), and provided that the period during which the claim is "subject to the *initiation* of an audit" extends to December 6, 2005, based on the filing date of the claim.[62] Here, an audit entrance conference was held on August 18, 2004, and the audit was completed April 27, 2005, well within the two-year time period required by section

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[56] (1948) 31 Cal.2d 210, 215-216.

[57] Statutes 2002, chapter 1128 (AB 2834).

[58] Statutes 2004, ch. 890 (AB 2856).

[59] *Liptak*, *supra*, 109 Cal.App.3d 762, 773 [citing *Mudd*, *supra*, 30 Cal.2d 463, 468].

[60] *California Employment Stabilization Commission v. Payne*, (1948) 1931 Cal.2d 210, 215-216.

[61] Government Code section 17558.5 (as added, Stats. 1995, ch. 945 (SB 11)).

[62] See Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)) [Audit must be initiated no later than *three years after reimbursement claim filed or last amended*].

17558.5, as amended in 2004, and indeed even before the period "subject to the initiation of an audit" had expired.[63]

The claimant continues to argue, in its comments on the draft proposed decision, that section 17558.5 must be applied as it read at the time the claims were filed,[64] despite the expansion of the statutory deadline by the 2002 and 2004 amendments. The claimant continues to argue that "these amendments are not relevant…"[65] There is no support in law for the claimant's position. As explained above, a party has no vested right in the running of a statute of limitations, until it has expired.[66] The law clearly permits the expansion or contraction of a statute of limitations even as it applies to pending claims,[67] and therefore the above analysis is not altered.

Based on the foregoing, the Commission finds that the audit of the claimant's reimbursement claims is not barred by the statute of limitations in Government Code section 17558.5.

### B. The Controller's Reduction for Insurance Premiums is Consistent with the Parameters and Guidelines and Correct as a Matter of Law.

The Controller reduced amounts claimed for "services and supplies" by $9,257 for fiscal year 2001-2002, and $8,637 for fiscal year 2002-2003, on the grounds that athletic insurance costs are beyond the scope of the mandate, and certain costs were "claimed twice."[68] The total reduction for services and supplies for both fiscal years is $17,894.[69] The claimant does not dispute the "duplicated charges of $6,025 for services and supplies for both fiscal years."[70]

However, in its IRC filing, claimant asserts that the total amount includes "$11,869 in "overclaimed athletic insurance costs," for both fiscal years,[71] which claimant disputes, arguing:

> The District pays two types of student insurance premiums. The basic and catastrophic coverage for the general student population, and a separate premium amount for intercollegiate athletics. The Controller's adjustment improperly disallows a portion of the general population premium as somehow being related to intercollegiate athletics. The audit report does not describe how the disallowance was calculated. Regardless the reduction is inappropriate since

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[63] See, *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, where the court found that when state gives up a right previously possessed by it or one of its agencies, the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims.

[64] Exhibit F, Claimant Comments on Draft Proposed Decision, pages 1-2.

[65] Exhibit F, Claimant Comments on Draft Proposed Decision, pages 1-2.

[66] *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468.

[67] *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Liptak v. Diane Apartments, Inc.* 109 Cal.App.3d 762, 773

[68] Exhibit A, Incorrect Reduction Claim, page 50.

[69] *Ibid*.

[70] Exhibit A, Incorrect Reduction Claim, pages 11-12.

[71] Exhibit A, Incorrect Reduction Claim, pages 11-12.

> student athletes are part of the student population for purpose of the general student population insurance premium. The insurance premiums for athletes pertains to coverage while participating in intercollegiate sports, not while they are attending class or on campus in their capacity [sic] as a member of the general student population.[72]

The Controller asserts that claimant "overclaimed insurance premiums for student basic and catastrophic coverage by $11,869, because it included unallowable premiums paid for athletic insurance." The Controller explains that the parameters and guidelines provide for reimbursement for the cost of insurance for "(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration." However, the Controller notes that "Education Code Section 76355(d) (formerly Section 72246(2)) states that athletic insurance is not an authorized expenditure for health services."[73]

What was initially unclear from the record was whether the parties were talking about health insurance premiums for "(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration" which premiums include coverage of student athletes as members of the student body, or whether the costs claimed were in fact for "athletic insurance." If the former, then the costs are reimbursable because Education Code section 76355 provides that "no student shall be denied a service supported by student health fees on account of participation in athletic programs"[74] and student athletes are not exempt from the requirement to pay the student health fee. Student athletes are entitled to the same services as other students. However, if the latter, the cost is not a reimbursable type of insurance based on the plain language of the parameters and guidelines, and the disputed adjustment would therefore be a proper reduction.[75]

Adding to the confusion is claimant's statement in a letter to the Controller's Audit Bureau that it "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."[76] And later, in rebuttal comments, claimant asserted that the reductions were based on "the erroneous conclusion...that premiums for athletic insurance are not reimbursable." Claimant states: "the athletic insurance premiums claimed are part of the excess costs that make up the District's claims, and as such, were not paid for with the student [health] fees from the fund."[77] It appears from these comments that claimant is arguing a mandate issue that was already decided in the test claim and parameters and guidelines; that athletic insurance should be reimbursable.

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[72] Exhibit A, Incorrect Reduction Claim, pages 11-12.

[73] Exhibit B, Controller's Comments, pages13.

[74] Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

[75] Exhibit A, Incorrect Reduction Claim [Parameters and Guidelines, pages 30-33].

[76] Exhibit A, Incorrect Reduction Claim [Controller's audit report, page 50].

[77] Exhibit C, Claimant's Rebuttal Comments, page 5.

However, that is not what the adopted parameters and guidelines provide. The only insurance costs authorized for reimbursement under this program are "(1) on campus accident, (2) voluntary, and (3) insurance inquiry/claim administration."[78] The test claim decision and parameters and guidelines are final decisions of the Commission and they bind the parties. The Controller is required to follow the parameters and guidelines.[79]

As the analysis above indicates, athletic insurance is not reimbursable, as a matter of law. However, the evidentiary basis of the Controller's audit adjustment is not reflected in the reimbursement claims or the audit report, and therefore on October 3, 2014, a request for additional information was issued, asking the Controller to provide evidence that the adjustment is based on amounts claimed that can be isolated and identified as athletic insurance premiums, which are not reimbursable.[80] On October 13, 2014, the Controller responded, and provided evidence that Controller's audit staff contacted the claimant's insurance company to determine the amounts of premiums claimed that were attributed to "Basic Student Coverage," and those amounts claimed in excess, which the Controller attributed to unallowable athletic insurance:

> Based on this information, we prepared a worksheet titled "Audit Review of Student Insurance Costs" showing the difference between the claimed and audited amounts for "Basic Student Coverage." The audit finding is the difference between the claimed amounts of $56,276 and $57,964, and the audited amounts of $50,419 and $51,952 for FY 2001-02 and FY 2002-03 respectively.[81]

The worksheet, which is included in the record, explains the Controller's audit adjustment, and the declaration attached states that "[a]ny attached copies of records are true copies of records, as provided by Long Beach Community College District or retained at our place of business."[82] Based on this additional evidence, the Commission finds that the Controller has demonstrated the basis of the audit adjustment.

Based on the foregoing, the Commission finds that the reductions for insurance premiums are consistent with the parameters and guidelines and correct as a matter of law.

### C. The Controller's Recalculation and Reduction of Claimed Indirect Costs is Correct as a Matter of Law and is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced indirect costs claimed by $70,710 for fiscal year 2001-2002, and $68,383 for fiscal year 2002-2003, on the ground that claimant did not utilize a federally approved indirect cost rate.[83] Claimant argues that "[c]ontrary to the Controller's ministerial preferences, there is no requirement in law that the district's indirect cost rate must be 'federally' approved,

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[78] Exhibit A, Incorrect Reduction Claim [Parameters and Guidelines, page 32].

[79] Government Code 17558.

[80] Exhibit G, Commission Request for Additional Information.

[81] Exhibit H, Controller's Response to Commission Request for Additional Information, page 7.

[82] Exhibit H, Controller's Response, pages 14; 4.

[83] Exhibit A, Incorrect Reduction Claim, page 51.

and further the Controller has never specified the federal agencies which have the authority to approve indirect cost rates."

The parameters and guidelines specify as follows: "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."[84] Thus, Commission finds that the claimants are required to adhere to the Controller's claiming instructions. The Commission further finds that the claimant had notice of the claiming instructions; and that the claimant here did not follow the claiming instructions. Therefore, the Controller recalculated indirect costs in accordance with the only other option available, the state FAM-29C method, and reduced the claim accordingly. The reduction was correct as a matter of law, and the Controller's use of the alternative state method to calculate indirect costs was not arbitrary, capricious, or entirely lacking in evidentiary support.

1. *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 Circular A-21 guidelines or by using the state Form FAM-29C.*

The claimant argues that "[n]o particular indirect cost rate calculation is required by law," and that the parameters and guidelines "do not require that indirect costs be claimed in the manner described by the Controller."[85] The claimant argues that the word "may" is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.[86]

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.*"[87] 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.

The claiming instructions specific to the *Health Fee Elimination* mandate, revised in September 1997[88] state that "college districts have the option of using a *federally approved rate* (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21), or the State Controller's methodology outlined in "Filing a Claim" of the Mandated Cost Manual for Schools." In addition, the School Mandated Cost Manual, revised each year, and containing instructions applicable to all school and community college mandated programs,[89] provides as follows:

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[84] Exhibit A, Incorrect Reduction Claim, page 34 (page 6 of the parameters and guidelines as amended May 25, 1989).

[85] Exhibit A, Incorrect Reduction Claim, pages 12-13.

[86] Exhibit A, Incorrect Reduction Claim, page 13.

[87] Exhibit A, Incorrect Reduction Claim, page 34.

[88] Exhibit B, Controller's Comments, pages 29-40 [emphasis added].

[89] Exhibit I, School Mandated Cost Manual Excerpt, 2001-2002, page 11; Community College Mandated Cost Manual Excerpt, 2002-2003, page 7.

> A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.[90]

The reference in the parameters and guidelines to the Controller's claiming instructions necessarily includes the general provisions of the School Mandated Cost Manual (and later the Mandated Cost Manual for Community Colleges), and the manual provides ample notice to claimants of how they may claim indirect costs. Claimant's assertion that "[n]either applicable law nor the Parameters and Guidelines made compliance with the Controller's claiming instructions a condition of reimbursement"[91] is therefore in error. The parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions.

Claimant also argues that "the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act," and therefore, claimant argues, "the claiming instructions are merely a statement of the ministerial interests of the Controller and not law."[92] In *Clovis Unified*, the Controller's contemporaneous source document rule, or CSDR, was held to be an unenforceable underground regulation because it was applied generally against school districts and had never been adopted as a regulation under the APA.[93] Here, claimant alleges the same fault in the claiming instructions with respect to indirect cost rates. But the distinction is that here the parameters and guidelines, which *were* duly adopted at a Commission hearing, require compliance with the claiming instructions on indirect cost rates.

More importantly, the claimant had notice of the requirement in the parameters and guidelines to comply with the claiming instructions and notice of the claiming instructions' requirements for claiming indirect costs, both prior to and during the claim years in issue and did not challenge the parameters and guidelines or the claiming instructions when they were adopted.[94]

Based on the foregoing, the Commission finds that 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; and that the claimant had notice of the parameters and guidelines and the claiming instructions, and did not challenge them when they were adopted.

*2. Claimant did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rates. Therefore, the Controller's reduction and*

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[90] Exhibit I, School Mandated Cost Manual Excerpt, page 17. See also, Community College Mandated Cost Manual Excerpt, 2002-2003, page 16.

[91] Exhibit C, Claimant Rebuttal Comments, page 7.

[92] Exhibit A, Incorrect Reduction Claim, page 13.

[93] *Clovis Unified School District v. State Controller* (2010) 188 Cal.App.4th 794, 807.

[94] Exhibit I, School Mandated Cost Manual Excerpt, 2001-2002, page 11; Community College Mandated Cost Manual Excerpt, 2002-2003, page 7.

*recalculation of costs, applying the Form FAM-29C calculation to provide an indirect cost rate, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.*

In the audit of the 2001-2002 and 2002-2003 reimbursement claims, the Controller concluded that the claimed indirect costs were based on a rate not federally approved, and that the Controller's calculated rates did not support the indirect cost rates claimed.[95] Indirect costs of $149,291 were claimed for fiscal year 2001-2002, against direct costs of $417,010; and $148,836 for fiscal year 2002-2003, against direct costs of $437,679. Those indirect costs amount to rates of approximately 35.8 percent and 34 percent, respectively.

The claiming instructions provide two options for claiming indirect costs, one of which is using the OMB Circular A-21. However, to use this option, a claimant must obtain federal approval, which the claimant here did not do. Thus, the claimant did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rate to the direct costs claimed, and the Commission finds that the reduction is correct as a matter of law.

The Controller, concluding that the rate was not approved, and therefore not supported consistently with the parameters and guidelines and the claiming instructions, recalculated the indirect cost rate using the alternative state procedure, the "FAM-29C method," outlined in the School Mandated Cost Manual.[96] Applying the FAM-29C methodology, the Controller reduced the claimed indirect costs to $75,424 (an 18.23% rate) for fiscal year 2001-2002 and $77,522 (a 17.96% rate) for fiscal year 2002-2003.[97]

Claimant argues that the Controller "made no determination as to whether the method used by the District was reasonable, but, merely substituted its FAM-29C method for the method reported by the District [*sic*]."[98]

However, the Commission finds that because claimant failed to obtain federal approval of its OMB Circular A-21 indirect cost rate, the Controller acted reasonably in recalculating the rate using one of the options provided for in the claiming instructions. Moreover, as claimant points out, "both the District's method and the Controller's method utilized the same source document, the CCFS-311 annual financial and budget report required by the state."[99] Therefore, 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.

Accordingly, the Commission finds that the Controller's reduction and recalculation of costs, applying the Form FAM-29C to provide an indirect cost rate, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

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[95] Exhibit A, Incorrect Reduction Claim, page 51.

[96] See Exhibit B, Controller's Comments, page 16.

[97] Exhibit A, Incorrect Reduction Claim, pages 48; 51.

[98] Exhibit A, Incorrect Reduction Claim, page 14.

[99] Exhibit A, Incorrect Reduction Claim, page 12.

### D. The Controller's Reduction for Understated Offsetting Revenues Pursuant to the Health Fee Rule is Correct as a Matter of Law.

The Controller reduced the reimbursement claims by $217,409 for the two years at issue.[100] These reductions were made on the basis of the fee authority available to claimant, multiplied by the number of students subject to the fee, less the amount of offsetting revenue claimed.

Claimant disputed the reduction in its IRC filing, arguing that the relevant Education Code provisions permit, but do not require, a community college district to levy a health services fee, and that the parameters and guidelines require a community college district to deduct from its reimbursement claims "[a]ny offsetting savings that the claimant experiences as a direct result of this statute…" Claimant argued that "[i]n order for the district to 'experience' these 'offsetting savings' the district must actually have collected these fees." Claimant concluded that "[s]tudent fees actually collected must be used to offset costs, but not student fees that could have been collected and were not."[101]

The Commission finds that the correct calculation and application of offsetting revenue from student health fees has 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.[102] (Underline in original.)

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

> (a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars ($10) for each semester, seven dollars ($7) for summer school, seven dollars ($7) for each intersession of at least four weeks, or seven dollars ($7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.
>
> (a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that

[100] Exhibit A, Incorrect Reduction Claim, page 14.

[101] Exhibit A, Incorrect Reduction Claim, pages 14-15.

[102] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 811.

> calculation produces an increase of one dollar ($1) above the existing fee, the fee may be increased by one dollar ($1).[103]

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.[104] The Chancellor of the California Community Colleges issues a notice to the governing boards of all community colleges when a fee increase is triggered.[105] Here, the Controller asserts that claimant had the authority to increase its health fee in accordance with the notices periodically issued by the Chancellor, stating that the Implicit Price Deflator Index had increased enough to support a one dollar increase in student health fees. The Controller argues that the claimant was required to claim offsetting fees in the amount authorized.[106] Claimant argues that "the Controller cannot rely on the Chancellor's notice as a basis to adjust the claim for 'collectible' student health services fees,"[107] because the fees levied on students are raised by action of the governing board of the community college district. But the *authority* to impose the health service fees increases automatically with the Implicit Price Deflator, as noticed by the Chancellor. Accordingly, the court in *Clovis Unified* upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

> To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[108]

The court also notes that, "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"[109] Additionally, in responding to claimant's argument that, "since the Health

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[103] Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

[104] See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

[105] See, e.g., Exhibit A, Incorrect Reduction Claim [Letter from Chancellor, pages 69-70].

[106] See Exhibit B, Controller's Comments, pages 16-18; Exhibit A, Incorrect Reduction Claim, pages 69-70.

[107] Exhibit A, Incorrect Reduction Claim, pages 17-18.

[108] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 812.

[109] *Ibid.*

Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission's P&G's",[110] the court held:

> To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.[111] (Italics added.)

Thus, pursuant to the court's decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimant for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.[112] In addition, the *Clovis* decision is binding on the claimant under principles of collateral estoppel.[113] Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.[114] Although the claimant to this IRC was not a party to the *Clovis* action, the claimant is in privity with the petitioners in *Clovis*. "A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action."[115]

The claimant, in its comments filed on the draft proposed decision, now "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." However, relying on the Commission's October 27, 2011 decision on seven consolidated Health Fee IRCs, the claimant argues that the only approved source of enrollment data is "specific Community College Chancellor's MIS data."[116] For this audit, however, the claimant argues that a different methodology was used. From the Controller's final audit report: "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

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[110] *Ibid.* (Original italics.)

[111] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 812.

[112] *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

[113] The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

[114] *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

[115] *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

[116] Exhibit F, Claimant's Comments on Draft Proposed Decision, page 9.

California Community Colleges Chancellor's Office (CCCCO) Web site, as well as district-prepared reports indicating the number of students who received fee waivers."[117]

The claimant is correct in that in the earlier decision on seven consolidated *Health Fee Elimination* IRCs, the Commission found that the "Community College Chancellor's MIS data" was a "reasonable and reliable source" for enrollment data, and use of such data was not arbitrary or capricious.[118] The claimant here points out that more recent audits have used "enrollment data from the CCCCO,"[119] but that for this audit, the enrollment data was derived from another report available from the CCCCO. However, the Commission did not determine that the MIS data was the *only* reasonable and reliable source for the data. The claimant has not raised a specific objection to the data being used, other than that it is not the "MIS" data. Indeed the audit report indicated that "[t]he district was unable to retrieve student attendance data from its computer system," and the audit staff therefore used the "Student Headcount by Enrollment Status" report and "district-prepared reports" for the number of students exempt from the fee "[a]t the district's recommendation."[120] The Commission finds that the Controller's recalculation of fee authority based on the Health Fee Rule, and utilizing the enrollment and exemption information available was not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant's concerns do not alter the above analysis.

Based on the foregoing the Commission finds that the Controller's reduction of reimbursement to the extent of the district's fee authority is correct as a matter of law.

## V. Conclusion

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

- Reduction for fiscal years 2001-2002 and 2002-2003 totaling $11,869 for athletic insurance costs that are beyond the scope of the mandate.
- Reductions of indirect costs claimed of $70,710 for fiscal year 2001-2002, and $68,383 for fiscal year 2002-2003, based on the claimant's failure to comply with the claiming instructions in the development of its indirect cost rate, and the Controller's use of an alternative method to calculate indirect costs authorized by the parameters and guidelines and claiming instructions.
- Reduction for fiscal years 2001-2002 and 2002-2003 totaling $217,409 based on understated offsetting health fee authority.

Based on the foregoing, the Commission denies this IRC.

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[117] Exhibit F, Claimant's Comments on Draft Proposed Decision, pages 9-10 [quoting from Controller's Final Audit Report, page 8].

[118] Statement of Decision, Health Fee Elimination, 09-4206-I-19, page 35.

[119] Exhibit F, Claimant's Comments on Draft Proposed Decision, page 9.

[120] Exhibit A, Incorrect Reduction Claim, page 52.

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RE: **Decision**

*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

On December 5, 2014, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: December 10, 2014

Heather Halsey, Executive Director

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

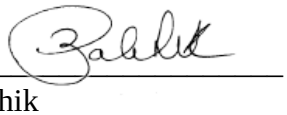
I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 10, 2014, I served the:

**Decision**
*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 December 10, 2014 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 11/19/14

**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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