STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

December 11, 2014

Mr. Keith B. Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

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-11
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, and 2002-2003
El Camino 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

IN RE INCORRECT REDUCTION CLAIM ON: Former Education Code Section 72246 (Renumbered as §76355)[1] Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336) Fiscal Years 2000-2001, 2001-2002 and 2002-2003 El Camino Community College District, Claimant.	Case No.: 05-4206-I-11 *Health Fee Elimination* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted December 5, 2014*) (*Served December 11, 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. Mr. Keith Petersen appeared on behalf of the claimant. Mr. Jim Spano and Mr. Jim Venneman appeared for the State Controller's Office (SCO).

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 6 to 0.

Summary of the Findings

This decision addresses the IRC filed by El Camino Community College District (claimant) regarding reductions totaling $399,891 made by the SCO to reimbursement claims for fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program.

The following issues are in dispute:

- The statutory deadline applicable to audits of reimbursement claims by the SCO for fiscal years 2000-2001 and 2001-2002;
- Reduction of costs claimed in fiscal years 2000-2001, 2001-2002, and 2002-2003 based on claimant's development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

[1] Statutes 1993, chapter 8.

The Commission finds that the audit was timely. The Commission further finds that:

- Claimant did not comply with the parameters and guidelines and the SCO's claiming instructions in preparing its indirect cost rate without federal approval and, thus, the SCO's recalculation of indirect costs using another authorized method, and the resultant reduction of $188,652, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The SCO's reduction of the claimant's reimbursement claims, on the basis of understated health fee revenues of $195,333, is correct as a matter of law pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

01/14/2002	Claimant filed a reimbursement claim for fiscal year 2000-2001.[2]
12/30/2002	Claimant filed a reimbursement claim for fiscal year 2001-2002.[3]
12/02/2004	SCO contacted claimant to schedule an entrance conference.[4]
01/05/2005	The entrance conference was held.[5]
10/05/2005	SCO issued the final audit report for fiscal years 2000-2001, 2001-2002, and 2002-2003.
03/27/2006	Claimant filed an IRC for fiscal years 2000-2001, 2001-2002, and 2002-2003.
04/03/2006	Commission staff deemed the IRC complete and issued a notice of complete filing and schedule for comments.
11/24/2008	SCO submitted comments on IRC.
08/11/2009	Claimant filed rebuttal comments.
08/01/2014	Commission staff issued the draft proposed decision.
08/05/2014	SCO filed comments on the draft proposed decision.[6]
09/26/2014	Claimant filed comments on the draft proposed decision.[7]

[2] Exhibit A, IRC, at p. 17; Exhibit B, SCO's Comments on IRC, Tab 2, "State Controller's Office (SCO) Analysis and Response," at p. 14.

[3] *Ibid*.

[4] Exhibit A, IRC, Exhibit G, Declaration of Pamela Fees, at p. 1; Exhibit B, SCO's Comments on IRC, Tab 2, State Controller's Office (SCO) Analysis and Response, at p. 15.

[5] Exhibit B, SCO's Comments on IRC, Tab 2, State Controller's Office (SCO) Analysis and Response, at p. 14.

[6] Exhibit E, SCO, Division of Audits Comments filed August 5, 2014.

[7] Exhibit F, Claimant Comments filed September 26, 2014.

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 health service fee not to exceed $7.50 for each semester or $5 for each quarter or summer session, to fund these services.[8] In 1984, the Legislature repealed the community colleges' fee authority for health services.[9] However, the Legislature also reenacted section 72246 in order to reauthorize the fee, at $7.50 for each semester (or $5 for quarter or summer semester), which was to become operative on January 1, 1988.[10]

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 the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.[11] As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose, until January 1, 1988.

In 1987,[12] 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.[13] 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.[14] 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 a 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.[15]

---

[8] Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

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

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

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

[12] Statutes 1987, chapter 1118.

[13] 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).

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

[15] 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).

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 for the *Health Fee Elimination* 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 specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

The SCO's Audit and Summary of the Issues

The SCO reduced claimant's reimbursement claims filed for fiscal years 2000-2001, 2001-2002, and 2002-2003 by $399,891 on the ground that the claimant did not properly calculate indirect costs and did not deduct the full amount of offsetting fee revenues authorized by statute. The following issues are in dispute:

- The statutory deadline applicable to audits of reimbursement claims by the SCO for fiscal years 2000-2001 and 2001-2002;
- Reduction of indirect costs calculated and claimed in fiscal years 2000-2001, 2001-2002, and 2002-2003 and the SCO's application of an alternative indirect cost rate calculation; and
- The amount of offsetting revenue to be applied from health service authority.

III. Positions of the Parties

El Camino Community College District

Claimant argued in its initial IRC filing that the SCO incorrectly reduced reported indirect costs claimed and adjusted for uncollected offsetting revenues,[16] and that the proper measure of offsetting revenues should be the health fees collected, not the amount of fees authorized.[17] Claimant argues that the SCO inappropriately reduced "indirect cost rates and costs in the amount of $188,652 for [fiscal years 2000-2001, 2001-2002, and 2002-2003] because "the district did not obtain federal approval for its [indirect cost rate proposals (IRCPs)]."[18] Claimant contends that "there is no requirement in law that the claimant's indirect cost rate must be 'federally' approved, and the Commission has never specified the federal agencies which have the authority to approve indirect cost rates."[19] Finally, claimant disputes the application of the statute of limitations to allow audits of its reimbursement claims for fiscal years 2000-2001 and 2001-2002.[20]

[16] Exhibit A, IRC, at pp. 9-25.

[17] *Id*. at pp. 11-16.

[18] *Id*. at 9.

[19] *Ibid*.

[20] *Id*. at pp. 17-25.

In its rebuttal comments, claimant maintains that the SCO has the burden of proof in showing that the district's claimed costs were not allowable, and that therefore costs that were disallowed were improperly reduced. Claimant renews its argument that the district did not need to obtain federal approval of its indirect cost rates, and restates its challenge to the statute of limitations for audits asserted by the SCO. Claimant also, in its rebuttal comments, renewed its contention regarding the health fee authority.[21]

In its comments on the draft proposed decision, claimant reasserts its statute of limitations challenge by arguing that the 2002 and 2004 amendments to Government Code section 17558.5 are not relevant to the audit of its claims for fiscal years 2000-2001 and 2001-2002 and that section 17558.5 must be applied as it read when the claims were filed.[22] Claimant further argues that the SCO's claiming instructions alone on indirect cost rates are not legally enforceable because they are not regulations and do not derive from the test claim or the parameters and guidelines for the *Health Fee Elimination* program.[23]

Finally, the claimant now agrees that the Health Fee Rule must be applied, pursuant to *Clovis Unified*, yet argues that the data used by the SCO to calculate offsetting revenues is not from a source approved by the Commission and so it arbitrary, capricious and entirely lacking in evidentiary support.

State Controller's Office

The SCO concluded that claimant overstated indirect costs by $188,652 for the audit period, because the "district claimed indirect costs based on an indirect cost rate proposals (ICRPs) prepared for each fiscal year by an outside consultant…[but] did not obtain federal approval for its ICRPs."[24] The SCO also concluded that claimant "understated authorized health fee revenue by $195,333" by claiming actual, rather than authorized, health fee revenues.[25] Finally, the SCO argues that the statute of limitations for audits under section 17558.5 permitted the SCO to audit fiscal years 2000-2001 and 2001-2002.[26]

On August 5, 2014, the SCO filed comments concurring with the draft proposed decision.[27]

IV. Discussion

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

---

[21] Exhibit C, Claimant Rebuttal Comments, at pp. 1-4.

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

[23] *Id*., at pp. 8-9.

[24] Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at p. 6.

[25] *Id*., at p. 8.

[26] Exhibit B, SCO's Comments on IRC, Tab 2, State Controller's Office (SCO) Analysis and Response, at pp. 13-17.

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the SCO 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 SCO 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.[28] 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."[29]

With regard to the SCO's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[30] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[31]

The Commission must also review the SCO's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [32] In addition, section 1185.2(c) of the Commission's regulations requires that any assertion of fact by the parties to an

---

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

[29] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[30] *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.

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

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

IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[33]

A. The Audit of the Fiscal Year 2000-2001 and 2001-2002 Reimbursement Claims Was Not Barred by the Statutory Deadline Found in Government Code Section 17558.5.

The claimant asserts that the statute of limitations applicable to audits of mandate reimbursement claims bars the SCO's audit of the claim filed for fiscal years 2000-2001 and 2001-2002.

The time to audit a reimbursement claim is provided in Government Code section 17558.5. At the time the reimbursement claims in this case were filed in 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.[34]

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.[35] 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."

This interpretation is also consistent with the Legislature's 2002 amendment to Government Code section 17558.5, effective January 1, 2003, 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

---

[33] 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.

[34] Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). 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.

[35] 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."].

> 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.[36]

And finally, Government Code section 17558.5 was amended again in 2004 to establish the requirement to "complete" the audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, it reads 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.[37]

The parties disagree about which version of section 17558.5 applies in this case. The claimant argues that Government Code section 17558.5, as amended by Statutes 1995, chapter 945 (operative July 1, 1996) applies in this case, requiring that a reimbursement claim "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..."[38] The claimant asserts that "subject to audit" requires the SCO "to complete" the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. In this case, the claimant contends that the audit of the reimbursement claims for fiscal years 2000-2001 and 2001-2002, which were respectively filed on January 14, 2002, and December 30, 2002, were subject to audit and had to be completed by December 31, 2004. Claimant reasons that since the final audit report was issued on October 5, 2005, ten months after the deadline, the audit of these reimbursement claims is barred.

The SCO contends that the audit of the reimbursement claims is timely, but makes two different arguments to support its position. First, in the SCO's "Analysis and Response to the Incorrect Reduction Claim, the SCO relies on the 1995 version of Government Code section 17558.5, arguing "subject to audit" means subject to the initiation of an audit, and does not require that the audit be completed within "two-years after the end of the calendar year in which the reimbursement claim is filed." The SCO further asserts that the reimbursement claims in this case, both filed in 2002, were subject to audit through December 31, 2004, and that the audit was timely initiated on December 2, 2004, when the SCO contacted the claimant by phone to request an entrance conference. The entrance conference was conducted on January 5, 2005. These comments state the following:

---

[36] Statutes 2002, chapter 1128.

[37] Statutes 2004, chapter 313.

[38] Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)); Exhibit A, IRC, at p. 19; Exhibit F, Claimant Comments on Draft Proposed Decision, at pages 1-2.

> Government Code section 17558.5 subdivision (a), effective July 1, 1996, states that a district's reimbursement claim is subject to audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The district filed its FY 2000-01 claim on January 14, 2002, and filed its 2001-02 claim on December 30, 2002. Thus, both claims were subject to audit through December 31, 2004. The SCO initiated the audit on December 2, 2004, and conducted an audit entrance conference on January 5, 2005, at the district's request. Therefore, the SCO initiated an audit within the period in which both claims were subject to audit.[39]

However, in a letter prepared by the SCO's staff counsel, the SCO argues that Government Code section 17558.5, *as later amended by Statutes 2002, chapter 1128* (AB 2834), provides the proper statute of limitations, because "[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." [40] The SCO reasons, the expanded statute of limitations is applicable, providing that a reimbursement claim "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." Therefore, the audit of the 2000-2001 claim had to be initiated by January 14, 2005, and the audit of the 2001-2002 claim had to be initiated by December 30, 2005. The letter further states that the audit in this case was timely initiated "no later than January 5, 2005," the date of the entrance conference.

Although the claimant asserts that the date the audit was initiated is not relevant to the analysis of Government Code section 17558.5 since the statute requires the audit to be completed by the deadline, the claimant factually disputes the SCO's assertions about when the audit was "initiated." The claimant argues that an audit is initiated when the entrance conference is held, and that the SCO's position, that the audit was initiated *before* the entrance conference, is new and conflicts with prior positions of the SCO.[41] The claimant also disagrees with the SCO's factual assertion that the claimant requested that the entrance conference be delayed until January 5, 2005, due to the unavailability of district staff. In this respect, the claimant has filed a declaration from Pamela Fees, Business Manager for El Camino Community College District, describing the communication with the SCO that began with a phone call on December 2, 2004.[42] Ms. Fees declares that the district was available to meet on December 9, 2004, but was told that the SCO was not available on that date and that the SCO requested the conference be conducted on January 5, 2005. Ms. Fees also declares that she was asked by the SCO's Office to prepare a letter stating that the entrance conference was postponed until January 5, 2005. The letter was mailed on December 8, 2004. On December 9, 2004, Ms. Fees received a letter faxed by the SCO's audit manager stating that the delay of the entrance conference date was due to the

---

[39] Exhibit B, SCO's Comments on IRC, Tab 2, "State Controller's Office (SCO) Analysis and Response," at pp. 13-14.

[40] Exhibit B, SCO's Comments on IRC, letter by Shawn D. Silva, Staff Counsel, State Controller's Office, at p. 2. (Citing, *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465; 43 Cal.Jur.3d, Limitation of Actions § 8.)

[41] Exhibit A, IRC, at pp. 22-23; Exhibit C, claimant's rebuttal comments, at p. 10.

[42] Exhibit A, IRC, at claimant's exhibit G.

unavailability of District staff. Ms. Fees declares that this statement is in "direct contradiction of all previous district communication and correspondence."

For the reasons below, the Commission finds that the audit of the 2000-2001 and 2001-2002 reimbursement claims was timely.

At the time the reimbursement claims were filed in 2002, the reimbursement claims in issue were "subject to audit," pursuant to the 1995 version of section 17558.5, two years after the end of the calendar year that the reimbursement claims were filed, or by December 31, 2004. Although the parties dispute whether "subject to audit" in the 1995 version of section 17558.5 requires the SCO to initiate the audit or complete the audit by December 31, 2004, that issue does not need to be decided in this case. Under either interpretation, the audit of the 2000-2001 and 2001-2002 reimbursement claims remained pending until at least December 31, 2004.

Effective January 1, 2003 (a full year before the December 31, 2004 deadline), section 17558.5 was amended to enlarge the time period in which the SCO is required to initiate the audit to three years after the date the actual reimbursement claim is filed or last amended. Pursuant to the *Douglas Aircraft* case, "[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."[43] The Court in *Douglas Aircraft* 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 (*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.)[44]

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

[43] *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

[44] *Id*, at page 465.

> 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.[45]

And in *Liptak v. Diane Apartments, Inc.*, 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.)[46]

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.[47]

In this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the time to initiate the audit to three years after the date the actual reimbursement claim is filed or last amended, would control, and gives the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. Since the audit was initiated "no later than January 5, 2005," when the entrance conference was held, the audit was timely initiated.

The Commission further finds that the audit was timely completed. Before Government Code section 17558.5 was amended effective January 1, 2005, the SCO had to complete an audit within a reasonable period of time,[48] but did not have a statutory deadline for the completion of an audit. Effective January 1, 2005, when the audit period was still pending in this case, the rule changed to require that "an audit shall be completed not later than two years after the date that the audit is commenced;" which in this case would be no later than January 5, 2007. The courts have held that where the state gives up a right previously possessed by it or one of its agencies (like the SCO's unspecified time to complete an audit before January 1, 2005), the restriction in

---

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

[46] (1980) 109 Cal.App.3d 762, 773.

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

[48] Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant. (*Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.)

the new law becomes effective immediately upon the operative date of the change in law for all pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, 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, 246 P. 1046, 46 A.L.R. 1095.) 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. The case of Superior Oil Co. v. Superior Court, 6 Cal.2d 113, 56 P.2d 950, is distinguishable since the court was there concerned with the operation of a statute which applied to private persons as well as the state. This distinction was not noted in *Calif. Emp. Stab. Comm. v. Chichester etc. Co.*, 75 Cal.App.2d 899, 172 P.2d 100, which relied on the Superior Oil case and assumed without discussion that the same rule would apply where the state alone would be adversely affected. It was held in the *Chichester* case that the amendment of section 45.2 in 1943 could not operate to deprive the commission of the right to sue on existing causes of action until a reasonable time had passed after the statute became effective. The commission was created by, and derives its powers from, the Legislature, and it does not have rights which are superior to the legislative will. By the enactment in 1939 of section 45.2, the three-year limitation contained in section 338 was rendered inapplicable, and the commission was given the right without limit as to time to enforce contributions where no return had been filed. Thereafter in 1943 the Legislature determined that it was unwise and perhaps unfair to allow the commission an unlimited time within which to enforce contributions where there was no intent to evade the act, and as to those cases, the three-year limitation was restored and the right of action was cut off if the period had run. This the Legislature had the power to do insofar as the constitutional requirement of due process is concerned, and the holding to the contrary in the *Chichester* case, 75 Cal.App.2d 899, 172 P.2d 100, is disapproved.

Here, the audit was completed when the final audit report was issued on October 5, 2005, well before the two year deadline of January 5, 2007, to complete the audit.

Based on the foregoing, the Commission finds that the audit of the District's reimbursement claim for fiscal years 2000-2001 and 2001-2002 is not barred by the statutory deadline in section 17588.5.

B. The SCO'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 parameters and guidelines state that "indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."[49] The SCO's claiming instructions provide two options for claiming indirect costs, the OMB Circular A-21 or the state's methodology in FAM-29C. In its audit of claims for fiscal years 2000-2001, 2001-2002, and 2002-2003 the SCO found that the claimant used the OMB Circular A-21 methodology, but did not obtain federal approval of its indirect cost rate for these years, as required by the parameters and guidelines and claiming instructions.[50] Thus, the SCO applied the alternative Form FAM-29C methodology to calculate indirect costs.[51] Applying these rates to total direct costs for the three fiscal years subject to audit resulted in a reduction in indirect costs of $188,652.[52]

As discussed below, the Commission finds that the claimant did not comply with the parameters and guidelines and SCO's claiming instructions in preparing its indirect cost rate, so the SCO's reduction and recalculation of these costs is correct as a matter of law and 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 SCO's claiming instructions, which in turn provide for an indirect cost rate to be developed in accordance with federal OMB Circular A-21 guidelines or by using the state Form FAM-29C.*

Parameters and guidelines adopted by the Commission are required to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program.[53] The reimbursement claims filed by the claimants are, likewise, required as a matter of law to be filed in accordance with the parameters and guidelines.[54] The parameters and guidelines for the *Health Fee Elimination* program provide that "*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions*."[55]

Claimant argues that it is not required to adhere to the claiming instructions.[56] Claimant also 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 SCO.[57] In addition,

---

[49] Exhibit A, Incorrect Reduction Claim, at p. 38.

[50] Exhibit B, SCO's Comments on IRC, Tab 2, SCO's Analysis and Response to the IRC, at pp. 5-8.

[51] Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at p. 6.

[52] *Ibid*.

[53] Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

[54] Government Code sections 17561(d)(1); 17564(b); and 17571.

[55] Exhibit A, IRC, p. 10.

[56] Exhibit A, IRC, p. 10.

[57] *Ibid.*

claimant argues that "[n]either state law nor the parameters and guidelines made compliance with the Controller's claiming instructions a condition of reimbursement."[58]

Claimant is incorrect. 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 SCO's claiming instructions.

The claiming instructions specific to the *Health Fee Elimination* mandate, revised September of 1997,[59] 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,[60] provides as follows:

> 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.[61]

The reference in the parameters and guidelines to the SCO'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 as to how they may properly claim indirect costs. Claimant's assertion that "[n]either State law or the parameters and guidelines made compliance with the SCO's claiming instructions a condition of reimbursement"[62] is therefore not correct.[63]

In this case, claimant used the OMB Circular A-21 to calculate indirect costs. The OMB Circular A-21 establishes principles for determining costs applicable to grants, contracts, and other agreements between the federal government and educational institutions. Section G(11) of the OMB Circular A-21 governs the determination and federal approval of indirect cost rates by

---

[58] *Id.*at p. 11.

[59] Exhibit B, Controller's Comments, at pp. 40.

[60] Exhibit G, School Mandated Cost Manual Excerpt, revised 09/01, at page 7; School Mandated Cost Manual Excerpt, revised 09/02, at page 7; School Mandated Cost Manual Excerpt, revised 09/03, at page 10.

[61] Exhibit G, School Mandated Cost Manual Excerpt, revised 09/01, at page 7 [as revised 09/02 and 09/03, the manuals continue to provide similarly].

[62] Exhibit A, IRC, at p. 11.

[63] Government Code section 17564(b) was amended by Statutes 2004, chapter 890, to require: "Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions."

the "cognizant federal agency," which is normally either the Federal Department of Health and Human Services or the Department of Defense's Office of Naval Research.[64]

Claimant also argues that because the claiming instructions "were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are merely a statement of the ministerial interests of the SCO and not law."[65] In the *Clovis* case, [66] the SCO'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.[67] Here, claimant implies 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.

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.[68]

Therefore, the Commission finds that the parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the SCO's the claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines, requiring federal approval, 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 rate. Therefore, the SCO's reduction and 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.*

The claiming instructions specify that, to use the OMB Circular A-21 option, a claimant must obtain federal approval, which the claimant here did not do. Thus, because claimant did not obtain federal approval, the claimant did not comply with the requirements of the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate. Therefore, the SCO's adjustment for overstated indirect costs is correct as a matter of law.

In its audit of claimant's reimbursement claims, the SCO, concluding that the rate was not approved and therefore not supported by the parameters and guidelines and the claiming

---

[64] Exhibit G, OMB Circular A-21.

[65] Exhibit A, IRC, p. 10.

[66] *Clovis Unified School Dist. v. Chiang* (*Clovis*)(2010) 188 Cal.App.4th 794.

[67] *Id.* at page 807.

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

instructions, recalculated the indirect cost rate using the alternative state procedure, the "FAM-29C method," outlined in the School Mandated Cost Manual.[69]

Claimant asserts that "the difference in the claimed and audited methods is in the determination of which of those cost elements are direct costs and which are indirect costs." Claimant continues:

> Indeed, federally 'approved' rates which the Controller will accept without further action, are 'negotiated' rates calculated by the district and submitted for approval to federal agencies which are the source of federal programs to which the indirect cost rate is to be applied, 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.[70]

Claimant argues that the SCO "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." Claimant also argues that the SCO's decision to recalculate indirect costs by its own method "is an arbitrary choice of the SCO, not a 'finding' enforceable by fact or law."[71]

The Commission finds that the SCO's use of the FAM-29C method for calculating indirect costs is not arbitrary or capricious. The FAM-29C method is expressly authorized by the claiming instructions. Although claimant argues that this substitution of methods was arbitrary, based on the above analysis, claimant failed to comply with the requirements of the parameters and guidelines and claiming instructions with respect to the OMB method of calculating indirect cost rates that it used. Claimant does not assert that the rate calculated was arbitrary; only that it was arbitrary to substitute the state method outlined in the claiming instructions for the claimant's preferred but incorrectly executed method.

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

C. The SCO's Audit Reduction for Understated Offsetting Revenues Pursuant to the Health Fee Rule is Correct as a Matter of Law.

The SCO reduced the reimbursement claims by $8,807 for fiscal year 2000-2001, $111,710 for fiscal year 2001-2002, and $74,816 for fiscal year 2002-2003 on the ground that the authorized, but uncollected, health service fees should have been deducted as offsetting revenue.[72] The claimant reported and deducted only the amounts collected rather than the fee revenue authorized by statute.

Though claimant now agrees that the Health Fee Rule applies, claimant argued, in its original IRC filing and rebuttal comments that the parameters and guidelines only require a claimant to

---

[69] Exhibit B, Controller's Comments on the IRC, tab 2, pp. 6-7.

[70] Exhibit A, IRC, page 9.

[71] Exhibit A, IRC, page 11.

[72] Exhibit B, SCO's Comments on IRC, Exhibit D, SCO Final Audit Report dated October 5, 2005, at pp. 8-11.

declare offsetting revenues that the claimant "experiences," and that while the fee amount that claimant was authorized to impose may have increased for the applicable period, nothing in the Education Code made the increase of those fees mandatory.[73] Claimants argue that the issue is the difference between fees collected and fees collectible.[74]

After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the issue of whether the SCO properly reduced reimbursement claims for state-mandated health services required by the *Health Fee Elimination* program 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 (i.e., the "Health Fee Rule). 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.[75] (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 calculation produces an increase of one dollar ($1) above the existing fee, the fee may be increased by one dollar ($1).[76]

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.[77] The Chancellor of the California Community Colleges issues a notice to the governing boards of all community colleges when a fee increase is triggered.

---

[73] Exhibit A, IRC, at p. 15.

[74] *Id*. at pp. 15-16.

[75] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th at page 811.

[76] 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)].

[77] 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

Claimant argued in the IRC that the actual increase of the fee imposed upon students requires action of the community college district,[78] and that "[t]his issue is one of student health fees revenue actually received, rather than student health fees which might be collected."[79] But the court in *Clovis Unified* upheld, as a matter of law, the SCO'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 noted that its conclusion is consistent with the state mandates process embodied in Government Code sections 17514 and 17556(d), and that:

> 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.[80]

The court also noted that, "this basic principle flows from common sense as well. As the SCO succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"[81] Additionally, in responding to the community college districts' argument that, "since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission's P&G's."[82] 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*.[83] (Italics added.)

The claimant here was a party to the *Clovis* case and is bound by the decision therein under principles of collateral estoppel.[84] 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.[85] The issue decided by the court is identical to the issue in this IRC.

---

measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

[78] Exhibit A, IRC, at p. 15.

[79] *Ibid*.

[80] *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

[81] *Ibid.*

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

[83] *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

[84] 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.

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

Thus, pursuant to the court's decision in *Clovis*, the Health Fee Rule used by the SCO to adjust reimbursement claims filed by claimants for the *Health Fee Elimination* program is correct. 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.[86]

In its comments filed on the draft proposed decision, claimant "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."[87] However, claimant argues that the draft proposed decision is inconsistent with the Commission's October 27, 2011 decision on seven consolidated Health Fee IRCs. Claimant argues that, based upon the Commission's prior decision, the only approved source of enrollment data is "specific Community College Chancellor's MIS data to obtain enrollment amounts."[88] For this audit, however, the claimant argues that the SCO was incorrect to use a different methodology. The SCO's final audit report states: "[The SCO] recalculated the authorized health fees the district was authorized to collect using the district's Student Enrollment Reports and the [Board of Governors Grants] Detail Reports dated January 2005 through March 2005."[89]

Claimant is correct that an in 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.[90] Claimant argues that this earlier finding requires that the SCO's audit of the claims at issue here must also use MIS enrollment data from the CCCCO, not any other source.[91] However, claimant does not assert that the data used by the SCO was incorrect and the Commission did not determine that the MIS data was the *only* reasonable and reliable source for the data. Additionally, claimant has not raised a specific objection to the data being used, other than that it is not the "MIS" data. Therefore, the Commission finds that the SCO's recalculation of fee authority based on the Health Fee Rule, and utilizing enrollment and exemption information available was not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the SCO's adjustment based on the fee revenue authorized to be charged is correct as a matter of law.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission concludes that the SCO's reduction of claimed costs for indirect costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

---

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

[87] Exhibit F, Claimant's Comments on Draft Proposed Decision, at p. 12.

[88] *Ibid*.

[89] Exhibit F, Claimant's Comments on Draft Proposed Decision, at p. 13 [quoting from Controller's Final Audit Report, page 11].

[90] Statement of Decision, Health Fee Elimination, 09-4206-I-19, at p. 35.

[91] Exhibit F, Claimant's Comments on Draft Proposed Decision, at p. 13.

The Commission finds that the audit was timely. The Commission further finds that:

- Claimant did not comply with the parameters and guidelines and the SCO's claiming instructions in preparing its indirect cost rate without federal approval and, thus, the SCO's recalculation of indirect costs using another authorized method, and the resultant reduction of $188,652, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The SCO's reduction of the claimant's reimbursement claims, on the basis of understated health fee revenues, of $195,333, is correct as a matter of law pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Accordingly, the Commission denies this IRC.

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

RE: **Decision**

Health Fee Elimination, 05-4206-I-11
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, and 2002-2003
El Camino Community College District, Claimant

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

Heather Halsey, Executive Director

Dated: December 11, 2014

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 11, 2014, I served the:

Decision
Health Fee Elimination, 05-4206-I-11
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, and 2002-2003
El Camino 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 11, 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: 11/19/14

Claim Number: 05-4206-I-11

Matter: Health Fee Elimination

Claimant: El Camino 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.)

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Tyler Asmundson, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Tyler.Asmundson@csm.ca.gov

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Janice Ely, Business Manager, *El Camino Community College District*
16007 Crenshaw Blvd., Torrance, CA 90506
Phone: (310) 660-3593
jely@elcamino.edu

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Ed Hanson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analystâ€™s Office*
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
Claimant Representative
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group,Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Nicolas Schweizer, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
nicolas.schweizer@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov