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June 12, 2015

RECEIVED
June 12, 2015
Commission on
State Mandates

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

Dear Ms. Halsey:

RE: CSM 05-4425-I-09
San Mateo County Community College District
Collective Bargaining
Fiscal Years: 1999-00, 2000-01, and 2001-02
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated May 27, 2015, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

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

The District asserted in its incorrect reduction claim filed September 6, 2005, that Fiscal Year 1999-00 was beyond the statute of limitations to complete the audit when the Controller issued the audit report on August 6, 2004. The Commission concludes that the original audit was both timely initiated and timely completed.

Chronology of Annual Claim Action Dates

January 10, 2001	FY 1999-00 annual claim filed by the District
April 15, 2003	District contacted for audit
April 28, 2003	Audit entrance conference conducted
December 31, 2003	2-year statute to audit expires
August 6, 2004	Final audit report issued
March 22, 2011	Clovis / Compliance Review Letter issued

Based on the annual claim filing date, FY 1999-00 is subject to the statute of limitations language established by Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996:

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

1. Audit Initiation

The District's FY 1999-00 annual claim was submitted to the Controller on January 10, 2001. According to the 1995 version of Government Code Section 17558.5 this annual claim is subject to audit no later than December 31, 2003. The Commission determined on March 27, 2015, (CSM 09-4425-I-17 and CSM 10-4425-I-18, Sierra Joint Community College District, Collective Bargaining) that for purposes of measuring the statute of limitations, the audit commences no later than the date the entrance conference letter was sent. The entrance conference letter is not on the record here, unless it is the April 15, 2003, first contact date stated in the Draft Proposed Decision. However, since the entrance conference occurred prior to January 1, 2004, the District concurs that the audit of the FY 1999-00 annual claim was *commenced* before the expiration of the statute of limitations to commence an audit.

2. Audit Completion

It is uncontested here that an audit is complete only when the final audit report is issued. The District asserts that the annual claim for Fiscal Year 1999-00 was beyond the statute of limitations to *complete* the audit when the Controller issued its audit report on August 6, 2004.

The Commission (DPD, 19) concludes that:

The plain language of Government Code section 17558.5, as added in 1995, does not require the Controller to "complete" the audit within any specified period of time. Rather, the statute provides that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" sets a time during which a claimant is on notice that an audit of a claim may occur.

The Commission (DPD, 21) instead relies upon common law remedies:

The Commission further finds that the audit was timely completed. Before

Government Code section 17558.5 was amended effective January 1, 2005, there was no statutory deadline for the completion of an audit. Under common law principles, however, the Controller had to complete an audit within a reasonable period of time after it was initiated.⁷⁵ There is nothing on the face of the 1995 or 2002 versions of section 17558.5 that requires completion of the audit by a deadline, and claimant has not argued that the audit was not completed within a reasonable period of time. Therefore, the Commission finds that the audit was completed in a timely manner because it was completed when the final audit report was issued on August 6, 2004, less than 16 months after the audit was initiated. Therefore, there is no evidence of an unreasonable delay in the completion of the audit.

Footnote 75 references the *Cedar-Sinai Medical Center* decision, for the proposal that claimants should or could rely upon the defense of laches. This is a misapplication of a decision in a civil matter with equity jurisdiction. The citation does not indicate whether the relevant state agency completed the audit within its three-year statute of limitations, or whether it was so required to do so. However, the Commission is a state agency with a specific statute of limitations to apply and need not rely on laches, therefore this is not an "appropriate circumstance," even if the Commission had such common law jurisdiction.

The Commission seems to be asserting that the Controller was required under common law to complete the audit within a reasonable period of time without regard to the positive law of the legislature's statute of limitations. Reliance on the reasonableness of the actual length of the audit period process would mean in practice that the determination of a reasonable audit completion date would become a question of fact for every audit, which is contrary to the concept of a *statute* of limitations. What objective standards are available for the determination of the reasonable period of time to complete an audit?

The Commission's reliance on the equitable concept of laches is troublesome. Cases in law are governed by statutes of limitations, which are laws that determine how long a person has to file a lawsuit before the right to sue expires. Laches is the equitable equivalent of statutes of limitations. However, unlike statutes of limitations, laches leaves it up to the adjudicator to determine, based on the unique facts of the case, whether a plaintiff has waited too long to seek relief. Here there is no issue as to whether the District has been tardy in seeking relief. The incorrect reduction claim, the statutory form of relief from an audit, was timely-filed according to the statute.

Laches is a defense to a proceeding in which a plaintiff seeks equitable relief. Cases in equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the plaintiff. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the court against a party. An incorrect reduction claim is explicitly a matter of money due to

the claimant. The District is not seeking an injunction, where the court orders a party to do or not to do something; declaratory relief, where the court declares the rights of the two parties to a controversy; or an accounting, where the court orders a detailed written statement of money owed, paid, and held.

The Commission has not indicated that it has jurisdiction for equitable remedies. Therefore a Commission finding that there is no evidence of an unreasonable delay in the completion of the audit is without jurisdiction or consequence and simply irrelevant. Or, if the Commission is suggesting that claimant resort to the courts for an equitable remedy on the issue of statute of limitations, that is contrary to fact that the Government Code establishes primary jurisdiction to the Commission for audit disputes, that is, the incorrect reduction claim process.

If, as the Commission asserts, the 1995 version establishes no statutory time limit to complete a timely commenced audit, Section 17558.5 becomes absurd. Once timely commenced, audits could remain unfinished for years either by intent or neglect and the audit findings revised at any time. Thus, the claimant's document retention requirements would become open-ended and eventually punitive. Statutes of limitations are not intended to be open-ended; they are intended to be finite, that is, a period of time measured from an unalterable event, and in the case of the 1995 version of the code, it is the filing date of the annual claim.

3. No Revised Audit

No revised audit was issued. Instead, on March 22, 2011, the Controller issued a letter (attached) to the District stating that the audit was reviewed for compliance with the September 21, 2010 *Clovis I* court decision regarding the contemporaneous source document rule (CSDR). The letter states that the audit was not affected by the court's CSDR decision. The DPD findings on the documentation issues indicate otherwise.

4. Clovis II Decision

Notwithstanding, the District is on notice of the March 24, 2015, judgment denying the petition for writ in the *Clovis II* case. The Sacramento Superior Court appears to agree with the Commission that the 1995 version of section 17558.5 does not require the audit to be completed within two years from the date the annual claim was filed. The Superior Court concluded that time was not unlimited to complete the audit, but that common law requires the Controller to "diligently prosecute" the audit and that the revised audit reports indicate that diligence. This court decision makes timely completion of these audits (generally involving fiscal years before FY 2001-02) always a question of fact. The time for appeal of *Clovis II* has not concluded and the District continues its dispute of this issue as a matter of future standing.

PART B. DISALLOWANCE OF STAFF TIME

The audit report concluded that the District did not provide adequate "source documents to validate employees' hours" claimed in the amount of \$638,022 for the three fiscal years audited, of which \$6,168 pertains to reduced productive hourly rates. The Commission (DPD, 21) determined that all costs claimed should be reinstated because the adjustments were "incorrect as a matter of law." Specifically, (DPD, 24):

Thus, pursuant to the amendment to Government Code section 17564 and the decision in *Clovis*, the Controller may not reduce reimbursement claims for the *Collective Bargaining* program in fiscal years 1999-2000, 2000-2001, and 2001-2002, on the ground that the claimant failed to provide source documents, such as time sheets or time logs, to support claims for salary and benefits. Claimants need only comply with the parameters and guidelines and "[s]upply workload data requested ... to support the level of costs claimed" and "[s]how the classification of the employees involved, amount of time spent, and their hourly rate"; nothing is said about "source documents."93

The District concurs with the Commission findings.

PART C. DISALLOWANCE OF MATERIALS AND SUPPLIES COSTS

The audit report concluded that the District did not provide adequate "documentation to support claimed materials and supplies totaling \$5,133." The Commission determined that the Controller incorrectly reduced these costs, specifically (DPD, 30):

In this case, the claimant complied with the parameters and guidelines. For its 1999-2000 claim, claimant listed supplies and materials, postage, and printing, for a total of \$1,430.76.129 For its 2000-2001 claim, claimant listed supplies and materials, postage, and printing, for a total of \$3,701.88.130 Claimant identified these costs as a direct cost as a result of the mandate, and the parameters and guidelines do not require any documentation beyond the summary schedules that were submitted with the reimbursement claims.

The District concurs with the Commission findings.

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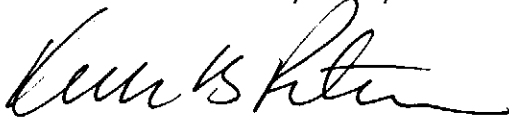
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CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on June 12, 2015, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Attachment:

Controller's March 22, 2011, *Clovis* / Compliance Review Letter

Service by Commission Electronic Drop Box



JOHN CHIANG
California State Controller

March 22, 2011

3/28/11

Kathy —

Ray —

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Ron Galatolo, Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402-3699

Dear Mr. Galatolo:

The State Controller's Office (SCO) audited the costs claimed by San Mateo County Community College District for the legislatively mandated Collective Bargaining Program (Chapter 961, Statutes of 1975, and Chapter 1213, Statutes of 1991) for the period of July 1, 1999, through June 30, 2002. We issued the final audit report on August 6, 2004. The district claimed \$1,090,686 for the mandated program. Our audit disclosed that \$355,236 is allowable and \$735,450 is unallowable.

In compliance with the September 21, 2010, court decision in *Clovis Unified School District et al. v. John Chiang, State Controller*, we reconsidered the audit findings. The court ruled that the SCO contemporaneous source document rule (CSDR) was invalid prior to the Commission on State Mandates' adoption of the rule in the Collective Bargaining Program. The CSM adopted the CSDR for this mandate effective July 1, 2005.

This audit is not affected by the court's decision because none of the audit adjustments resulted from application of the SCO CSDR. We allowed all eligible costs the district was able to support with documentary evidence (e.g., sign-in sheets, agenda, time logs, and certifications). This is consistent with the district's response to audit Finding 1 for which the district questioned the SCO taking exception for any time not backed up by a piece of paper. The remaining findings also were not affected by the SCO CSDR.

The district's response to Finding 1 also addressed two additional issues.

- First, the district questioned why we were not allowing 100% of the Chief Labor Negotiator's time. We concur that a significant portion of that person's time would be reimbursable under the mandated program. However, this employee did not provide time records of any kind. In addition, the job description that the district provided for the position of Chief Labor Negotiator documents that this employee performed non-mandate related activities. In our audit, we allowed all mandate-related costs supported with documentary evidence.

Ron Galatolo, Chancellor
March 22, 2011
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- Second, the district questioned why we did not allow AFT release time. We did allow all AFT release time supported by documentary evidence. The mandated program requires dates that substitute teachers worked so that exclusive bargaining unit representatives could attend negotiation sessions. Costs that were documented with this information were allowable in our audit.

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

Sincerely,



JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

9341

cc: Gregory A. Wedner, Attorney
Lozano Smith
Kathy Lynch, Deputy Attorney General
Attorney General's Office
Drew Bohan, Executive Director
Commission on State Mandates

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

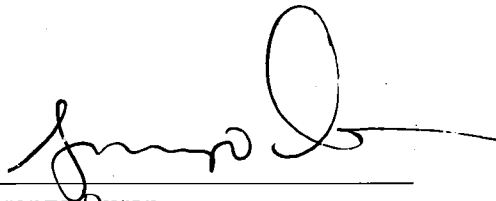
On June 15, 2015, I served the:

Claimant Comments

Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-09
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Years 1999-2000, 2000-2001, 2001-2002
San Mateo County 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 June 15, 2015 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/4/15

Claim Number: 05-4425-I-09

Matter: Collective Bargaining

Claimant: San Mateo County Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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