

**COMMISSION ON STATE MANDATES**

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April 3, 2015

Mr. Keith 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: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-10*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213  
Fiscal Years 1999-2000 through 2001-2002  
Foothill-De Anza Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the draft proposed decision by **April 24, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Friday, May 29 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 15, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM \_\_**

**INCORRECT REDUCTION CLAIM**

**DRAFT PROPOSED DECISION**

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213

*Collective Bargaining and Collective Bargaining Agreement Disclosure*

Fiscal Years 1999-2000 through 2001-2002

05-4425-I-10

Foothill-De Anza Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses reductions made by the State Controller's Office (Controller) to Foothill-De Anza Community College District's (claimant's) reimbursement claims for costs incurred during fiscal years 1999-2000 through 2001-2002 under the *Collective Bargaining* program.

The following issues are in dispute:

- The statutory deadlines for initiation and completion of an audit;
- Reductions of a portion of salaries and benefits for part-time teachers, and a portion of salaries and benefits for management employees, based on asserted insufficient documentation or duplicate claiming; and
- Reduction of productive hourly rates based on documentation provided by the claimant that substantiates a lower rate than that claimed.

As explained herein, staff finds that the original final audit report was timely initiated and timely completed, but that the revised audit report was not timely completed. However, the revised audit report in this case makes no reductions and reinstates some of the costs reduced in original final audit. To the extent that the revised audit moots issues raised in the IRC filing by reinstating claimed costs, the Commission on State Mandates (Commission) may take judicial notice of the revised audit.

Staff also finds the Controller has not identified the portion of salaries and benefits, or the employees for whom costs were disallowed. Therefore, the Controller's determination that these costs were unsupported, insufficiently supported, or represent duplicate costs is entirely lacking in evidentiary support, and thus these reductions are incorrect. However, staff finds that the Controller's reductions with respect to productive hourly rates were consistent with the parameters and guidelines and supported by evidence in the record, and are therefore correct.

### Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and were amended on January 27, 2000.

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.<sup>1</sup>

### **Procedural History**

On January 5, 2001, claimant filed its fiscal year 1999-2000 reimbursement claim with the Controller. On December 21, 2001, claimant filed its fiscal year 2000-2001 reimbursement claim.<sup>2</sup> On January 13, 2003, claimant’s fiscal year 2001-2002 reimbursement claim was signed

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<sup>1</sup> Exhibit A, Incorrect Reduction Claim, pages 29-39 [Parameters and Guidelines].

<sup>2</sup> Exhibit A, IRC 05-4425-I-10, page 20; Exhibit B, Controller’s Comments, page 2 [The Controller states that the 2000-2001 claim was not actually received until January 8, 2002, but because the analysis herein concludes that the earlier filing date does not affect the statutory deadline for audits, it is not necessary to resolve this issue.].

and dated.<sup>3</sup> On March 12, 2003, an audit entrance conference was held.<sup>4</sup> On July 2, 2004, the Controller's audit report was issued.<sup>5</sup> On September 13, 2005, claimant filed this IRC.<sup>6</sup> On March 12, 2008, the Controller submitted comments on the IRC.<sup>7</sup> On August 24, 2009, the claimant filed rebuttal comments.<sup>8</sup> On October 9, 2012, the Controller issued a revised audit report.<sup>9</sup>

On April 3, 2015, Commission staff issued the draft proposed decision.<sup>10</sup>

### **Commission Responsibilities**

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 decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of 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.<sup>11</sup> 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."<sup>12</sup>

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

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<sup>3</sup> Exhibit A, IRC 05-4425-I-10, page 415.

<sup>4</sup> Exhibit B, Controller's Comments, page 2.

<sup>5</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>6</sup> Exhibit A, IRC 05-4425-I-10, page 1.

<sup>7</sup> Exhibit B, Controller's Comments.

<sup>8</sup> Exhibit C, Claimant Rebuttal Comments.

<sup>9</sup> Exhibit D, Controller's Revised Audit Report.

<sup>10</sup> Exhibit E, Draft Proposed Decision.

<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>12</sup> *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.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>13</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.<sup>14</sup> In addition, sections 1185.2(c) and 1185.2(f)(3) of the Commission’s regulations require 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.<sup>15</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

| Issue   | Description   | Staff Recommendation   |
|---|---|--|
| Statutory deadlines to initiate and to complete an audit of claimant’s 1999-2000 and 2000-2001 annual reimbursement claims. | <p>At the time the underlying reimbursement claims were filed, Government Code section 17558.5 provided that a 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.</p> <p>As amended by Statutes 2002, chapter 313 (AB 2224), section 17558.5 provided that a claim would be “subject to the initiation of an audit” for three years from the date the claim is filed or last amended.</p> <p>Claimant asserts that its fiscal year 1999-2000 and 2000-2001 claims were no longer <i>subject to audit</i> at the time the original final audit report was issued, July 2, 2004, based on the asserted filing dates of January 5, 2001, and December 21, 2001, respectively.</p> <p>As amended by Statutes 2004, chapter 890 (AB 2856), section 17558.5 requires an audit to be <i>completed</i> not later than two years after the date that the audit is commenced. This</p> | <p><i>The original final audit report was timely initiated and timely completed, but the revised audit report was not timely completed</i> – Staff finds that the plain language of section 17558.5, at the time the reimbursement claims were filed, did not require the Controller to <i>complete</i> an audit within any specified period of time, but only to begin an audit within two year of the end of the calendar year in which the claim(s) were filed. Additionally, a subsequent amendment to the statute demonstrates that “subject to audit” means “subject to the initiation of an audit”, and because the period subject to audit had not yet</p> |

<sup>13</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.

<sup>14</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>15</sup> 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.

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|---|--|--|
|   | <p>provision became effective January 1, 2005, and applies to all audits then pending or thereafter completed.</p>   | <p>closed at the time that amendment became effective, the Controller receives the benefit of the extra time. Therefore, staff finds that the final audit report is not barred.</p> <p>Additionally, staff finds that the two-year completion requirement for audits, effective January 1, 2005, was not applicable to the original final audit report, which was completed within sixteen and one-half months of initiation. However, the revised final audit report issued October 9, 2012, falls outside the two year completion requirement of section 17558.5, and is therefore not timely.</p> |
| <p>Reductions for disallowed salaries and benefits, and related indirect costs based on asserted insufficient supporting documentation or duplicate claiming.</p> | <p>The parameters and guidelines require a claimant to show the classification of the employees involved in the mandate, the amount of time spent, and their hourly rate. The claimant submitted worksheets detailing the names and classifications of employees involved in the mandated and evidence showing the length and attendees of meetings, and therefore facially complied.</p> <p>The Controller reduced salaries and benefits for negotiations, and for grievance proceedings, based on asserted insufficient or missing supporting documentation, and duplicate costs. However, neither the employees for whom salary costs were disallowed, nor the dates and activities for which costs were disallowed, were identified in the audit report or the revised audit report, and no particular duplicate cost was specified.</p> | <p><i>Incorrect</i>- The claimant facially complied with the parameters and guidelines, and the Controller does not point to any evidence in the record to support its reductions. Therefore, these reductions are entirely lacking in evidentiary support and are incorrect.</p>  |
| <p>Reductions for productive hourly rates</p>   | <p>The Controller reduced claimed productive hourly rates for part-time teachers based on documentation provided by the claimant that supported a rate lower than that claimed.</p>  | <p><i>Correct</i> – Staff finds that these reductions are supported by evidence in the record.</p>   |

## Staff Analysis

### A. The Controller Met the Statutory Deadline for the Initiation and Completion of the Audit, but the Revised Audit Report was not Completed Within the Two Year Statutory Deadline.

1. *The Final Audit Report Issued July 2, 2004 was Timely, Pursuant to Government Code Section 17558.5.*

Staff finds that the first final audit report is both timely initiated and timely completed, based on the plain language of section 17558.5, as added by Statutes 1995, chapter 945, and as amended by Statutes 2002, chapter 1128 and Statutes 2004, chapter 890. The 1995 version of section 17558.5 provided that a claim was “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.”<sup>16</sup>

Based only upon the plain language of this section, the reimbursement claims in issue, filed January 5, 2001, and December 21, 2001,<sup>17</sup> would be “subject to audit” until the end of the calendar year 2003. However, staff finds that “subject to audit” does not require the *completion* of an audit before the end of the calendar year, and that initiating an audit before the expiration of that period is sufficient. Accordingly, the clarifying amendment made by Statutes 2002, chapter 1128 provided that a reimbursement claim “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~~ date that the actual reimbursement claim is filed or last amended, whichever is later.”<sup>18</sup> This amendment supports the interpretation urged by the Controller that “subject to audit” requires only that an audit be initiated before a time certain. Moreover, because the amendment expanded the statutory period while it was still pending, the Controller receives the benefit of the additional time.<sup>19</sup> Therefore, based on the plain language as amended in 2002 (effective January 1, 2003), the reimbursement claims in issue would be “*subject to the initiation of an audit*” until three years after the claims were filed, or January 5, 2004, for the 1999-2000 reimbursement claim and December 21, 2004 for the 2000-2001 reimbursement claim. Because an entrance conference was held March 12, 2003, the audit was initiated prior to the running of the statutory period under either the prior version of section 17558.5, or under the amended section, and the audit was therefore timely initiated.<sup>20</sup>

At the time the costs were incurred in this case, section 17558.5 did not expressly fix the time during which an audit must be completed. Nevertheless, the Controller was still required under

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<sup>16</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

<sup>17</sup> The Controller asserts that it received the claimant’s 2000-2001 reimbursement claim on January 8, 2002, but it is not necessary to resolve that question to determine whether the audit was timely, and therefore the analysis allows for the date asserted by the claimant.

<sup>18</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

<sup>19</sup> *Douglas Aircraft v. Cranston* (1962) 58 Cal.2d 462, 465.

<sup>20</sup> Staff acknowledges that the audit was likely initiated earlier than the entrance conference (such as when it can be independently verified that the audit initiation letter was sent or received) but there is no evidence of an earlier initiation in this record and, in this case an earlier date would not change the conclusion that the audit was timely initiated.

common law to complete the audit within a reasonable period of time. 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.<sup>21</sup> Here, the audit report was issued July 2, 2004, approximately sixteen and one-half months after the initiation date of March 12, 2003. Therefore, there is no evidence of an unreasonable delay in the completion of the audit.

Based on the foregoing, staff finds that the original final audit of the subject reimbursement claims is timely and not barred by section 17558.5.

2. *The Revised Audit Issued October 9, 2012 was Issued Beyond the Deadlines Imposed by Section 17558.5, But May be Considered by the Commission to the Extent that it Narrows the Issues in Dispute or Makes Concessions to the Claimant.*

Statutes 2004, chapter 890 (SB 2856), effective January 1, 2005, added a requirement in section 17558.5 that “[i]n any case, an audit *shall be completed* not later than two years after the date that the audit is commenced.” Here, the Controller’s audit of the relevant claim years was “commenced,” within the meaning of section 17558.5, no later than March 12, 2003, when the entrance conference was held. The amendment to section 17558.5 that imposed the two year completion requirement became effective January 1, 2005. Therefore, a timely audit must be completed by March 12, 2005, and the Controller had over two months notice of the requirement to complete the audit within two years.

Based on relevant case law, two months notice to complete the audit before applying the statutory bar is sufficient, and the Legislature’s action cutting off the Controller’s power to audit must be upheld.<sup>22</sup> As explained above, the original “final” audit report was timely, because it was completed approximately sixteen and one-half months after the initiation date, and prior to the institution of the two-year completion requirement. However, the revised audit report, modifying the *original* “final” audit report, was issued on October 9, 2012, approximately seven years and seven months after the audit was initiated. It therefore falls outside the statutory two year completion requirement imposed by section 17558.5, as amended by Statutes 2004, chapter 890. Nevertheless, staff finds that the Commission may take official notice<sup>23</sup> of the revised audit report, to the extent that the revised audit report narrows the issues in dispute or mitigates the amounts of the reductions originally asserted by the Controller.

Based on the foregoing, staff finds that the revised audit report issued October 9, 2012 was not completed within the deadline required by section 17558.5, but may be considered by the Commission to the extent that it narrows the issues in dispute or makes concessions to the claimant with respect to its allegations in the IRC.

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<sup>21</sup> *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.

<sup>22</sup> See *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 123 [“The plaintiff, therefore, had practically an entire year to bring his case to trial...”]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

<sup>23</sup> Code of Regulations, title 2, section 1187.5(c) [“Official notice may be taken in the manner and of the information described in Government Code section 11515.”].

**B. Some of the Controller’s Reductions of Salaries and Benefits and Related Indirect Costs are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The parameters and guidelines require a claimant to show “the classification of the employees involved, amount of time spent, and their hourly rate.”<sup>24</sup> Accordingly, the claimant submitted worksheets stating the names and classifications of employees involved in the mandate, and the amount of time spent, along with what appear to be sign-in sheets from meetings, with hand-written signatures of the persons in attendance to substantiate that time.<sup>25</sup> The claimant’s filed documentation thus facially appears to comply with the parameters and guidelines, in that it provides the classification of employees involved, the amount of time spent, and the hourly rate.

The Controller’s reductions, however, fail to identify any particular employee for whom costs were disallowed, or any particular activities, including meetings or other staff time, which the Controller determines to be insufficiently supported or duplicative. Since these reductions are completely lacking in evidentiary support, they are incorrect.

1. *The claimant has facially satisfied the documentation requirements of the parameters and guidelines, while the Controller has not identified the origin of asserted duplicate costs; or the portion of part-time teachers,’ management team members, and confidential assistant hours claimed, for which the Controller asserts that no documentation or insufficient supporting documentation has been provided.*

The parameters and guidelines, as amended January 27, 2000,<sup>26</sup> under “Supporting Data for Claims”, state that a claimant must show “the classification of the employees involved, amount of time spent, and their hourly rate.”<sup>27</sup> Accordingly, the claimant submitted worksheets stating the names and classifications of employees involved in “Component G3-Negotiations”, and the amount of time spent, along with what appear to be sign-in sheets from meetings, with hand-written signatures of the persons in attendance to substantiate that time.<sup>28</sup> Similar documentation is provided for “Component G6-Administration/Grievances”.<sup>29</sup> The claimant’s filed documentation thus facially appears to comply with the parameters and guidelines, in that it provides the classification of employees involved, the amount of time spent, and the hourly rate. As the court pointed out in *Clovis Unified*, with respect to the parameters and guidelines for this program: “nothing is said about ‘source documents.’”<sup>30</sup>

However, the revised audit disallowed a total of \$42,015 for the audit period based on insufficient or lacking documentation. The Controller states that the disallowance for “Component G3-Negotiations” is based on a “portion of part-time teachers’ hours” that were

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<sup>24</sup> See Exhibit A IRC 05-4425-I-10, page 38.

<sup>25</sup> See, e.g. Exhibit A, IRC 05-4425-I-10, pages 84-86; 100-104; 110-125.

<sup>26</sup> See Exhibit A IRC 05-4425-I-10, page 29.

<sup>27</sup> See Exhibit A IRC 05-4425-I-10, page 38.

<sup>28</sup> See, e.g., Exhibit A, IRC 05-4425-I-10, pages 84-86; 100-104; 110-125.

<sup>29</sup> Exhibit A, IRC 05-4425-I-10, pages 81-82; 89; 291-294; 307-308; 315-321; 332-338; 424-429; 444-447; 450-455.

<sup>30</sup> 188 Cal.App.4th 794, 807.

insufficiently supported, “duplicate costs for part-time teachers,” and no supporting documentation for “a portion of management team members and confidential assistant hours claimed.”<sup>31</sup> In addition, the Controller states the disallowance for “Component G6-Administration/Grievances” is based on insufficient documentation to support “a portion of part-time teachers’ hours”, and “duplicate costs for part-time teachers”. None of these disallowances, however, are specifically identified or linked to documentation in the record, and the amounts of the disallowances are not adequately explained to support a Commission finding upholding the reductions.

For example, the claimant’s fiscal year 1999-2000 claim forms indicate \$42,058 in salaries and benefits attributed to “Cost of Negotiations.”<sup>32</sup> Meanwhile the Controller has determined that \$8,978 of that amount is unallowable, due to “a portion of” part-time teachers’ hours that are insufficiently supported (\$1,478) and “a portion of” management team and confidential assistant hours that are not supported (\$7,500 for 126.5 hours). Staff has been unable to discern, from the evidence in the record, the origin of these figures, or identify any employees or activities that were disallowed. Indeed, staff is unable to identify any pattern in this record that would result in, for example, 126.5 hours disallowed for management team members.<sup>33</sup> The Controller identifies a dollar amount associated with those adjustments, but the Controller fails to identify what documentation is insufficient, which employees’ salaries are not supported, or why.

2. *The Controller’s reductions for salaries of part-time teachers, management team members, and confidential assistants, based on insufficient or lacking documentation and asserted duplicate costs, are entirely lacking in evidentiary support and, thus incorrect.*

The Controller, as explained above, disallowed several cost items during the audit period due to its determination that the claimant did not provide adequate supporting documentation, or claimed duplicate costs.<sup>34</sup> However, in making its determinations, the Controller did not specify which costs were duplicative, or identify the portion of salaries and benefits disallowed, or the employees for whom salaries were disallowed, or explain why, other than the assertion that either no documentation or insufficient documentation was provided. The claimant argues that the Controller bears the burden of going forward with the evidence, in part because the claimant is unable to respond to the Controller’s findings without more specific information.

Staff agrees. The Commission’s regulations require representations of fact to be supported by documentary evidence, and relevant case law discussed in the proposed decision demonstrates that an agency must prove the facts necessary to support its action.<sup>35</sup>

Here, the revised audit states that the claimant failed to provide sufficient documentation to support a portion of part-time teachers’ hours claimed; claimed duplicate costs for part-time teachers; and did not provide supporting documentation for a portion of management team members and confidential assistant hours. The Controller’s findings, however, are not

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<sup>31</sup> Exhibit D, Revised Audit Report, page 10.

<sup>32</sup> Exhibit A, IRC 05-4425-I-10, page 77.

<sup>33</sup> See Exhibit D, Controller’s Revised Audit Report, page 10.

<sup>34</sup> Exhibit D, Controller’s Revised Audit Report, page 10.

<sup>35</sup> *Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532.

themselves supported by documentary evidence, and are not sufficiently specific to enable the Commission to evaluate the propriety of the adjustments on the basis of the evidence in the record. In other words, the Controller has the burden of going forward with the evidence, and that burden has not yet been met.

Based on the foregoing, staff finds that the Controller's reductions for salaries of part-time teachers and salaries of management team members and confidential assistants, based on insufficient or lacking documentation and based on asserted duplicate costs, are entirely lacking in evidentiary support, and must be reinstated, as described below.

3. *The Controller's reduction of costs for claimed productive hourly rates is consistent with the parameters and guidelines, and is supported by evidence in the record, and is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.*

The parameters and guidelines state, with respect to benefits:

Benefits are reimbursable. Actual benefit percent must itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs.

Accordingly, the claimant submitted summary cost worksheets that rely upon the 21 percent benefit rate to compute total productive hourly rates.<sup>36</sup> The Controller provided documentation in its comments that supported a rate significantly lower than the 21 percent default rate; specifically a document that states the costs of health insurance and retirement benefits, and states that it was provided "by Auditee".<sup>37</sup> On that basis, the Controller reduced the productive hourly rates, and found reductions of "\$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02" under "Component G3-Negotiations", and \$298 for fiscal year 2000-2001 and \$233 for fiscal year 2001-2002 for "Component G6-Administration/Grievances".

Article XIII B, section 6 only requires reimbursement of actual mandated costs incurred; it does not generally allow for reimbursement in excess of the increased costs experienced by a claimant. Therefore, to the extent that the evidence in the record supports a benefit rate lower than the default 21 percent rate, that lower rate must be applied to the claim.

Based on the foregoing, staff finds that the Controller's reductions of salaries and benefits during the audit period on the basis of unsupported productive hourly rates were consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support. The reductions totaling \$ 1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002 are, therefore, correct.

### **Conclusion**

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, staff concludes that the reductions to the following direct costs are incorrect as a matter of law, and are arbitrary, capricious, or entirely lacking in evidentiary support:

- \$1,478 claimed in fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.

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<sup>36</sup> See, e.g., Exhibit A, IRC 05-4425-I-10, pages 84-86; 89.

<sup>37</sup> Exhibit B, Controller's Comments, page 34.

- \$424 claimed in fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$301 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$626 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held represented duplicate costs.
- \$7,500 claimed in fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed in fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$13,921 claimed in fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$335 claimed in fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$250 claimed in fiscal year 2001-2002 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held represented duplicate costs.

Staff further finds that the reductions totaling \$1,516 for fiscal year 1999-2000, \$2,215 for fiscal year 2000-2001, and \$2,559 for fiscal year 2001-2002, on the basis of unsupported productive hourly rates, are consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support, and are therefore correct.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision to partially approve the IRC, and, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, to request that the Controller reinstate \$35,755 in direct costs, plus related indirect costs, to the claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961 ; Statutes 1991,  
Chapter 1213

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

Foothill-De Anza Community College District,  
Claimant.

Case No.: 05-4425-I-10

*Collective Bargaining and Collective  
Bargaining Agreement Disclosure*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500 ET  
SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5. ARTICLE 7

(Adopted: May 29, 2015)

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 29, 2015. [Witness list will be included in the adopted decision.]

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/modified] the proposed decision to [approve/partially approve/deny] this IRC at the hearing by a vote of [vote count will be included in the adopted decision].

**Summary of the Findings**

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims filed by Foothill-De Anza Community College District (Claimant) for costs incurred during fiscal years 1999-2000 through 2001-2002 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program. Over the three fiscal years in question, the Controller reduced the claims by a total of \$256,612 based on unsupported and ineligible costs.<sup>38</sup> However, only \$42,045 in direct salaries and benefits, and \$15,340 in related indirect costs remain in dispute.<sup>39</sup>

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<sup>38</sup> The revised audit report figures reflect the court's determination in *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794 that the contemporaneous source document rule was invalid and unenforceable, and the Controller's audit must allow costs supported by electronic calendars, email messages, and internal memoranda. (See Exhibit D, Controller's Revised Audit, page 2.)

<sup>39</sup> Exhibit D, Controller's Revised Audit, page 10; Exhibit A, IRC 05-4425-I-03, page 19.

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

The Commission further finds that the Controller's adjustments for unallowable salaries and benefits, and the related indirect cost adjustments, are not supported by evidence in the record. Neither the claimant, nor the Controller, has clearly identified the cost items in dispute, but the Controller has the burden of going forward with some evidence to support the reductions before the claimant can adequately respond. For that reason, the Commission finds that the Controller's reductions for salaries and benefits during the audit period in the amount of \$35,755, and related indirect costs, are arbitrary, capricious, and entirely lacking in evidentiary support, and must be reinstated. The Commission further finds, however, that reductions of salaries and benefits on the basis productive hourly rates that were lower than those claimed are supported by evidence in the record, and are thus correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

## COMMISSION FINDINGS

### I. Chronology

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|------------|--|
| 01/05/2001 | Claimant filed its fiscal year 1999-2000 reimbursement claim. <sup>40</sup>            |
| 12/21/2001 | Claimant filed its fiscal year 2000-2001 reimbursement claim. <sup>41</sup>            |
| 01/13/2003 | Claimant signed and dated its fiscal year 2001-2002 reimbursement claim. <sup>42</sup> |
| 03/12/2003 | An entrance conference for the audit of all three fiscal years was held. <sup>43</sup> |
| 07/02/2004 | The Controller issued a final audit report. <sup>44</sup>                              |
| 09/19/2005 | Claimant filed this IRC. <sup>45</sup>   |
| 03/10/2008 | The Controller filed comments on the IRC. <sup>46</sup>                                |
| 08/24/2009 | Claimant filed rebuttal comments. <sup>47</sup>  |

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<sup>40</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>41</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>42</sup> Exhibit A, IRC 05-4425-I-10, page 415.

<sup>43</sup> Exhibit B, Controller's Comments, page 2.

<sup>44</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>45</sup> Exhibit A, IRC 05-4425-I-10, page 1.

<sup>46</sup> Exhibit B, Controller's Comments.

<sup>47</sup> Exhibit C, Claimant Rebuttal Comments.

10/09/2012            Controller issued a revised audit report.<sup>48</sup>

4/3/2015            Commission staff issued the draft proposed decision.<sup>49</sup>

## **II. Background**

### *Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates*

On July 17, 1978, the Board of Control, predecessor to the Commission on State Mandates (Commission), found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and were amended on January 27, 2000.

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable.<sup>50</sup> These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and

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<sup>48</sup> Exhibit D, Controller’s Revised Audit Report.

<sup>49</sup> Exhibit E, Draft Proposed Decision.

<sup>50</sup> Although the Parameters and Guidelines Amendment was not adopted until January 27, 2000, the request for amendment was filed in 1999 and the reimbursement period affected included the 1999-2000 fiscal year.

- Unfair labor practice adjudication process and public notice complaints.<sup>51</sup>

### The Controller's Audit and Summary of the Issues

Reductions totaling \$256,612 were made to the reimbursement claims for the three fiscal years in question based on asserted “unsupported and ineligible costs” and related indirect costs. The Controller’s audit reduced costs for salaries and benefits totaling \$42,045 in direct costs and \$15,340 in related indirect costs, as well as \$192,680 in ineligible or unsupported contract services, and a net \$6,547 in indirect costs, based on a recalculated rate applied to a broader base of direct costs than originally claimed. However, only the reductions for salaries and benefits totaling \$42,045 in direct costs and \$15,340 in related indirect costs are in issue in this IRC.

This IRC addresses the following issues:

- The statute of limitations applicable to audits of reimbursement claims by the Controller;
- Documentation requirements to support salaries and benefits claimed; and,
- Documentation supporting productive hourly rates lower than the default rate provided for in the parameters and guidelines.

### **III. Positions of the Parties**

#### Foothill-De Anza Community College District

Claimant does not dispute the Controller’s reductions for unallowable contract services, or indirect cost rates claimed.<sup>52</sup> The revised audit report indicates that the claimant revised its indirect cost rate proposals during audit fieldwork, using the state FAM-29C method, and that there was initially a dispute regarding a federal indirect cost rate that the claimant believed to be applicable to the program, but that matter appears to have been resolved.<sup>53</sup>

However, the claimant continues to dispute the Controller’s reductions of salaries and benefits during the audit period. Specifically, the claimant asserts that the Controller incorrectly reduced costs claimed for fiscal years 1999-2000 through 2001-2002, for salaries and benefits of district employees participating in the mandate, totaling \$207,533.<sup>54</sup> In the revised audit the Controller reinstated costs “to allow costs supported by electronic calendars, e-mail messages, and internal memoranda.”<sup>55</sup> The remaining reductions for salaries and benefits after the revised audit are \$42,045 in direct costs and \$15,340 in related indirect costs.<sup>56</sup> The claimant asserts that “[i]t appears that all of the disallowances were made either due to lack of documentation or were the result of an adjustment to the employee salaries.”<sup>57</sup> However, as noted above, the Controller revised its audit findings in light of the court’s decision in *Clovis Unified*, and some of the

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<sup>51</sup> Exhibit A, IRC 05-4425-I-10, pages 29-39 [Parameters and Guidelines].

<sup>52</sup> Exhibit A, IRC 05-4425-I-10, page 19.

<sup>53</sup> Exhibit D, Controller’s Revised Audit Report, page 13.

<sup>54</sup> Exhibit A, IRC 05-4425-I-10, page 10.

<sup>55</sup> Exhibit D, Controller’s Revised Audit, page 2.

<sup>56</sup> Exhibit D, Controller’s Revised Audit, page 10.

<sup>57</sup> Exhibit A, IRC 05-4425-I-10, page 10.

disputed costs for which documentation was deemed insufficient have now been determined to be allowable pursuant to the revised audit report.<sup>58,59</sup>

With respect to adjustments made to claimed productive hourly rates, the claimant asserts that the Controller made adjustments to the salary component for several employees without providing a reason for the adjustment, which resulted in a reduction, “the propriety of [which] cannot be determined until the Controller states the reason for each change to the employee payroll information.”<sup>60</sup> The claimant further argues, “[s]ince none of the reasons for the adjustments stated in the audit report relate to the mandated activities performed by the employees [,] [i]t appears that the entire basis of the adjustments is the quantity and quality of District documentation.”<sup>61</sup> The claimant asserts that it has complied with the parameters and guidelines and provided source documents that show the validity of costs claimed and their relationship to the mandated program, and the Controller’s “insistence on documentation not required by the parameters and guidelines, contemporaneous record keeping, and corroborating evidence are ministerial preferences, are an unpublished standard which exceeds the parameters and guidelines, and is [*sic*] not enforceable absent rulemaking which would put the claimants on notice to the contrary.”<sup>62</sup> As noted above, the Controller revised some of these objectionable findings after the court’s decision in *Clovis Unified*, which found that the documentation requirements were indeed unenforceable.

The claimant also asserts that the Controller’s payment amounts per the audit report are not explained,<sup>63</sup> and challenges the timeliness of the audit itself, based on the provisions of section 17558.5 in effect when the claims were filed.<sup>64</sup> The issue of payments received from the state is addressed by the Controller’s comments, as stated below, and is not further discussed in the claimant’s rebuttal comments.<sup>65</sup>

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<sup>58</sup> Exhibit D, Controller’s Revised Audit, page 2.

<sup>59</sup> In its IRC, claimant argued that the Controller disallowed costs that were insufficiently supported based on the claimant’s use of “Meeting Maker” software to track hours spent by district employees at certain meetings associated with the mandate; and the Controller also disallowed costs supported only by staff memoranda or emails. The claimant argued that these reductions were inconsistent with the parameters and guidelines, which did not require any specific type of documentation. The revised audit report has mitigated or conceded a number of the disputed reductions, so the analysis below will address the claimant’s concerns as applied to the remaining disputed costs only.

<sup>60</sup> Exhibit A, IRC 05-4425-I-10, page 17.

<sup>61</sup> Exhibit A, IRC 05-4425-I-10, page 18.

<sup>62</sup> Exhibit A, IRC 05-4425-I-10, page 18. This argument has been largely mooted by the revised audit report issued in response to the court’s findings in *Clovis Unified*, 188 Cal.App.4th 794.

<sup>63</sup> Exhibit A, IRC 05-4425-I-10, page 19.

<sup>64</sup> Exhibit A, IRC 05-4425-I-10, pages 19-23.

<sup>65</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 1-8.

## State Controller's Office

The Controller stated in its comments on the IRC that “the claimant has not come forward with source documentation or other reliable information to support all of the costs claimed.”<sup>66</sup> The Controller stated that “[t]he unallowable costs occurred because the district (1) did not adequately support employee hours charged to the mandated program; (2) overstated the productive hourly rate claimed for part-time teachers; and (3) claimed duplicate costs.”<sup>67</sup> In its revised audit, the Controller notes the decision of the court in *Clovis Unified School District v. Chiang*, which held the contemporaneous source document rule void and unenforceable prior to July 1, 2005, when the CSDR was adopted in the Commission’s parameters and guidelines: “In compliance with the court decision, we revised our audit to allow costs supported by electronic calendars, e-mail messages, and internal memoranda.” This resulted in an increase in allowable costs by \$192,084.<sup>68</sup> The remaining reductions, then, as detailed in the revised audit, include \$42,045 in disallowed salaries and benefits and \$15,340 in related indirect costs, based on insufficient documentation, duplicate costs claimed, unsupported productive hourly rates, and a lack of supporting documentation.<sup>69</sup> The revised audit also finds unallowable contract services and overstated indirect costs, which the claimant does not dispute.<sup>70</sup>

With respect to the claimant’s argument that section 17558.5 bars the audit of the 1999-2000 and 2000-2001 claims, the Controller argues that claimant “incorrectly applies the 1996 version” of section 17558.5 to argue that the audit is not timely. 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, but that “[t]here is no statutory language that requires the SCO to publish a final audit before the two-year period expires.”<sup>71</sup> Moreover, the Controller argues that “the 1999-00 and 2000-01 audits were subject to the provisions of Section 17558.5 that were effective on January 1, 2003, not the 1996 version.” The Controller argues that the 1999-2000 and 2000-2001 fiscal year claims, filed on January 5, 2001 and December 21, 2001, were, even under the prior version of section 17558.5, subject to audit until December 31, 2003. And, under “the 2003 provisions of Section 17558.5”, the audit of the 1999-2000 claim was required to be initiated by January 5, 2004, and an audit of the 2000-2001 claim was required to be initiated by December 21, 2004. Therefore, the Controller reasons that “[s]ince the audit for both claims was initiated no later than March 12, 2003 [the date of the entrance conference], the audit of those years is valid and enforceable.”<sup>72</sup>

With respect to the claimant’s assertion that the amount paid by the state is misstated or otherwise unclear in the audit report, the Controller explains that for fiscal year 1999-2000, “the district’s claimed amount does not recognize a \$36,282 accounts receivable offset applied March

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<sup>66</sup> Exhibit B, Controller’s Comments, page 2.

<sup>67</sup> Exhibit B, Controller’s Comments, page 12.

<sup>68</sup> Exhibit D, Controller’s Revised Audit, page 2.

<sup>69</sup> Exhibit D, Controller’s Revised Audit, page 10.

<sup>70</sup> Exhibit D, Controller’s Revised Audit, pages 11-12; Exhibit A, IRC 05-4425-I-10, page 19.

<sup>71</sup> Exhibit B, Controller’s Comments, page 21.

<sup>72</sup> Exhibit B, Controller’s Comments, page 2.

6, 2002.” The Controller states that its “remittance advice (Tab 9) documents this offset.” For fiscal year 2000-2001, the Controller explains that the district’s claimed amount does not recognize an offset of \$112,998 “to collect an overpayment applicable to the district’s FY 1998-99 Health Fee Elimination Program claim.” Additionally, “the district’s claimed amount does not recognize a \$7,994 payment issued May 16, 2002.” The Controller states that Tabs 10 and 11 of its comments document these offsets and payments.<sup>73</sup>

#### **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 SCO has incorrectly reduced payments to a 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 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.<sup>74</sup> 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.”<sup>75</sup>

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.<sup>76</sup> 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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<sup>73</sup> Exhibit B, Controller’s Comments, pages 19-20.

<sup>74</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>75</sup> *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.

<sup>76</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.]’ ”<sup>77</sup>

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 claimant.<sup>78</sup> In addition, section 1185.1(f) and 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.<sup>79</sup>

**A. The Controller Met the Statutory Deadline for the Initiation and Completion of the Original Audit, but the Revised Audit Report was not Completed Within the Two Year Statutory Deadline.**

*1. The Final Audit Report Issued July 2, 2004 was Timely, Pursuant to Government Code Section 17558.5.*

The Commission finds that the audit is both timely initiated and timely completed, based on the plain language of section 17558.5, as added by Statutes 1995, chapter 945, and as amended by Statutes 2002, chapter 1128 and Statutes 2004, chapter 890. The 1995 version of section 17558.5 provides as follows:

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.<sup>80</sup> (Emphasis added.)

Based only upon the plain language of this section, the reimbursement claims in issue, filed January 5, 2001, and December 21, 2001,<sup>81</sup> would be “subject to audit” until the end of the calendar year 2003. The Commission finds that “subject to audit” does not require the completion of an audit before the end of the calendar year; initiating an audit before the expiration of that period is sufficient. This interpretation is supported by reading the two sentences above together, and interpreting them in a manner that seeks to harmonize the

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<sup>77</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>78</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>79</sup> 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.

<sup>80</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

<sup>81</sup> The Controller asserts that it received the claimant’s 2000-2001 reimbursement claim on January 8, 2002, but it is not necessary to resolve that question to determine whether the audit was timely, and therefore the analysis allows for the date asserted by the claimant.

provisions. The second sentence provides that if no funds are appropriated for a program, the time to audit will be tolled until the initial payment; however, the second sentence does not state what that time frame should be, but relies on the “two years after the end of the calendar year” of the first sentence. Moreover, in relying on the time period defined in the first sentence, the second sentence clearly states that the tolling shall affect “the time for the Controller to initiate an audit”. There is no reason in law or in the record of this IRC to interpret “subject to audit” in the first sentence to mean something other than “the time for the Controller to initiate an audit”.

Additionally, the interpretation that “subject to audit” means the time to initiate an audit is further supported by the clarifying amendment made by Statutes 2002, chapter 1128, which provides:

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 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.<sup>82</sup>

Moreover, the period provided under the prior statute was open until December 31, 2003, and this amendment was effective January 1, 2003. Because the amendment expanded the statutory period while the audit at issue in this matter was still pending, the Controller receives the benefit of the additional time.<sup>83</sup> Therefore, based on the plain language as amended in 2002 (effective January 1, 2003), the reimbursement claims in issue would be “*subject to the initiation of an audit*” until three years after the claims were filed, or January 5, 2004, for the 1999-2000 reimbursement claim and December 21, 2004 for the 2000-2001 reimbursement claim. Because an entrance conference was held March 12, 2003, the audit was initiated prior to the running of

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<sup>82</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

<sup>83</sup> In *Douglas Aircraft v. Cranston* (1962) 58 Cal.2d 462, 465, 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 (*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.)

the statutory period, under either the prior version of section 17558.5, or under the amended section, and the audit was therefore timely initiated.

The only reading of these facts and of section 17558.5 that could bar the subject audits would be to hold that section 17558.5 requires an audit to be *completed* within two years of filing, in which case the final audit report issued September 17, 2004 would be barred. This is the interpretation urged by the claimant, but this reading of the code is not supported by the plain language of the statute, as explained above. At the time the costs were incurred in this case, section 17558.5 did not expressly fix the time during which an audit must be completed. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. 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.<sup>84</sup> However, here the audit report was issued July 2, 2004, approximately sixteen and one-half months after the initiation date. Thus, there is no evidence of an unreasonable delay in the completion of the audit.

Based on the foregoing, the Commission finds that the first final audit of the subject reimbursement claims was both timely initiated and timely completed, and is not barred by section 17558.5.

2. *The Revised Audit Issued October 9, 2012 was Issued Beyond the Deadlines Imposed by Section 17558.5, But May be Considered by the Commission to the Extent that it Narrows the Issues in Dispute or Makes Concessions to the Claimant.*

Statutes 2004, chapter 890 (AB 2856) amended Government Code section 17558.5, to provide that “[i]n any case, an audit *shall be completed* not later than two years after the date that the audit is commenced.” Applying the amended section to the date of initiation, no later than the March 12, 2003 entrance conference, means a timely audit would be required to be completed by March 12, 2005 at the latest.

The courts of this state have held that “[i]t is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable.’”<sup>85</sup> The courts have held that “[a] party does not have a vested right in the time for the commencement of an action.”<sup>86</sup> And neither “does he have a vested right in the running of the statute of limitations prior to its expiration.”<sup>87</sup> A statute of limitation is “within the jurisdictional power of the legislature of a state,” and therefore may be altered or amended at the Legislature’s prerogative.<sup>88</sup> However, “[t]here is, of course, one

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<sup>84</sup> *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.

<sup>85</sup> *Scheas v. Robertson* (1951) 38 Cal.2d 119, 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, at p. 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, 414].

<sup>86</sup> *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

<sup>87</sup> *Liptak, supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468].

<sup>88</sup> *Scheas, supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, at p. 324].

important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect.”<sup>89</sup> If a statute “operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party.”<sup>90</sup> In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one year is more than sufficient, but has cited to decisions in other jurisdictions providing as little as thirty days.<sup>91</sup> Moreover, with respect to state agencies’ rights and powers, *California Employment Stabilization Commission v. Payne*<sup>92</sup> held:

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.<sup>93</sup>

Thus, the Controller’s authority to audit is subject to limitation by the Legislature, even to the extent that the authority may be unexpectedly cut off.

Here, the Controller’s audit of the relevant claim years was “commenced,” within the meaning of section 17558.5, no later than March 12, 2003, when the entrance conference was held. The amendment to section 17558.5 that imposed the two year completion requirement became effective January 1, 2005.<sup>94</sup> Therefore, a timely audit must be completed by March 12, 2005 at the latest, and the Controller had over two months notice of the requirement to complete the audit within two years. Based on the case law described above, two months notice to complete the audit is sufficient, and the Legislature’s action cutting off the Controller’s power to effectively audit must be upheld. As explained above, the original “final” audit report was

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<sup>89</sup> *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 122.

<sup>90</sup> *Rosefield Packing Co., supra*, at pp. 122-123.

<sup>91</sup> See *Rosefield Packing Co., supra*, at p. 123 [“The plaintiff, therefore, had practically an entire year to bring his case to trial...”]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

<sup>92</sup> (1947) 31 Cal.2d 210.

<sup>93</sup> *Id.*, at p. 215.

<sup>94</sup> The precise date of initiation is not determined in this analysis since it is unnecessary to the determination that the first audit was timely initiated and completed and the second audit was not.

therefore timely. However, the revised audit report, *modifying the original* “final” audit report, was issued on October 9, 2012, approximately seven years and seven months after the audit was initiated. It therefore falls outside the statutory two year completion requirement imposed by section 17558.5, as amended by Statutes 2004, chapter 890.

The Commission notes that the revised audit report states that it “reconsidered the audit adjustments in light of the September 21, 2010 appellate court decision in *Clovis Unified School District...*”<sup>95</sup> The report continues: “Based on the court decision, we allowed all costs supported by electronic calendars, e-mail messages, and internal memoranda. As a result, allowable costs increased by \$192,084 for the audit period.”<sup>96</sup> The court in *Clovis Unified* ruled the Controller’s contemporaneous source document rule to be an invalid and unenforceable audit standard. It therefore appears that the Controller took action in this matter, in the form of a “revised audit” to comply with the decision in *Clovis Unified*. Although the revised audit is beyond the deadlines imposed by 17558.5, the Commission finds that it may take official notice<sup>97</sup> of the revised audit report, to the extent that the revised audit report narrows the issues in dispute or mitigates the amount of reductions originally asserted by the Controller.

Based on the foregoing, the Commission finds that the revised audit report issued October 9, 2012 was not completed within the deadline required by section 17558.5, but may be considered by the Commission to the extent that it narrows the issues in dispute or makes concessions to the claimant with respect to its allegations in the IRC.

**B. Some of the Controller’s Reductions of Salaries and Benefits and Related Indirect Costs are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Commission finds that the claimant has facially met the documentation requirements of the parameters and guidelines, and that the Controller has not specified any particular documentation issues to support its reductions. Based on the analysis herein, the Commission finds that the Controller must meet its burden of going forward with evidence to support its reductions before the claimant has any duty to respond or rebut the findings in the audit. Therefore, the Commission finds that the Controller’s reductions of salaries and benefits are entirely lacking in evidentiary support, and thus incorrect.

1. *The claimant has facially satisfied the documentation requirements of the parameters and guidelines, while the Controller has not identified the origin of asserted duplicate costs; or the portion of part-time teachers, management team members, and confidential assistant hours claimed, for which the Controller asserts that no documentation or insufficient supporting documentation has been provided.*

The parameters and guidelines, as amended January 27, 2000,<sup>98</sup> under “Supporting Data for Claims”, state that a claimant must show “the classification of the employees involved, amount

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<sup>95</sup> Exhibit D, Controller’s Revised Audit, page 7 [citing 188 Cal.App.4th 794].

<sup>96</sup> Exhibit D, Controller’s Revised Audit, page 7.

<sup>97</sup> Code of Regulations, title 2, section 1187.5(c) [“Official notice may be taken in the manner and of the information described in Government Code section 11515.”].

<sup>98</sup> See Exhibit A IRC 05-4425-I-10, page 29.

of time spent, and their hourly rate.”<sup>99</sup> Accordingly, the claimant submitted worksheets stating the names and classifications of employees involved in the mandate, and the amount of time spent, along with what appear to be sign-in sheets from meetings, with hand-written signatures of the persons in attendance to substantiate that time. For example, pages 84-86 of the IRC purport to show a summary of costs for “Negotiations”, and include the names, classifications, and hours spent on the mandate for fiscal year 1999-2000. Those totals are followed by a “MANDATED COSTS REPORT” providing meeting dates, names, and times, at pages 100-104, and sign-in sheets with names and hours handwritten, at pages 110-125.<sup>100</sup> Similar documentation is provided for fiscal year 2000-2001: the claim forms state a total cost of salaries and benefits for “Negotiations” of \$43,411, which is broken down into faculty negotiations (\$37,909), CSEA (\$1,686), and SEIU (\$3,815); those amounts are supported by worksheets listing the names and classifications of employees involved in the mandate, and stating the hours attributed to the mandate, and then further supported by lists of meeting times and dates, and names of attendees of those meetings.<sup>101</sup> And, for fiscal year 2001-2002, the claim forms indicate costs of \$64,758 for “Negotiations”, which costs are supported by worksheets stating the names and classifications and hourly wages of persons involved in mandated negotiations activities, and stating the hours attributed to the mandate, followed by a list of dates, attendees, and hours for mandate-related meetings and activities.<sup>102</sup> Finally, similar documentation is provided for “Component G6-Administration/Grievances”.<sup>103</sup> The claimant’s filed documentation thus facially appears to comply with the parameters and guidelines, in that it provides the classification of employees involved, the amount of time spent, and the hourly rate. And as the court pointed out in *Clovis Unified* with respect to the parameters and guidelines: “nothing is said about ‘source documents.’”<sup>104</sup>

Nevertheless, the revised audit finds as follows:

#### Component G3–Negotiations

- The district did not provide sufficient documentation to support a *portion of part-time teachers’ hours claimed*. Unallowable costs totaled \$1,478 (18.5 hours) in FY 1999-2000, \$424 (4.75 hours) in FY 2000-01, and \$301 (3 hours) in FY 2001-02.
- The district claimed *duplicate costs for part-time teachers* totaling \$626 (6.25 hours) in FY 2001-02.
- The district did not support the productive hourly rate claimed for part-time teachers. The district claimed part-time teacher costs using productive hourly

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<sup>99</sup> See Exhibit A IRC 05-4425-I-10, page 38.

<sup>100</sup> Exhibit A, IRC 05-4425-I-10, pages 84-86; 100-104; 110-125.

<sup>101</sup> Exhibit A, IRC 05-4425-I-10, pages 283; 291; 295-314; 324-331; 339-361.

<sup>102</sup> Exhibit A, IRC 05-4425-I-10, pages 418; 430-442 .

<sup>103</sup> Exhibit A, IRC 05-4425-I-10, pages 81-82; 89; 291-294; 307-308; 315-321; 332-338; 424-429; 444-447; 450-455.

<sup>104</sup> 188 Cal.App.4th 794, 807.

rates of \$79.87, \$89.41, and \$100.08 for FY 1999-2000, FY 2000-01, and FY 2001-02, respectively. The *district provided documentation that supported* rates of \$70.51, \$77.87, and \$87.66 for the three fiscal years. As a result, unallowable costs totaled \$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02.

- The district did not provide supporting documentation for a *portion of management team members and confidential assistant hours claimed*. Unallowable costs totaled \$7,500 (126.5 hours) in FY 1999-2000, \$10,920 (144.75 hours) in FY 2000-01, and \$13,921 (169 hours) in FY 2001-02.

#### Component G6–Administration/Grievances

- The district did not provide *sufficient documentation to support a portion of part-time teachers’ hours claimed*. Unallowable costs totaled \$335 (3.75 hours) in FY 2000-01.
- The district claimed *duplicate costs for part-time teachers* totaling \$250 (2.5 hours) in FY 2001-02.
- The district’s records *did not support productive hourly rates* claimed for part-time teachers. Unallowable costs totaled \$298 in FY 2000-01, and \$233 in FY 2001-02.<sup>105</sup>

The Controller states that the disallowance for “Component G3-Negotiations” is based on a “portion of part-time teachers’ hours” that were insufficiently supported, “duplicate costs for part-time teachers,” and no supporting documentation for “a portion of management team members and confidential assistant hours claimed.”<sup>106</sup> In addition, the Controller states a disallowance for “Component G6-Administration/Grievances” based on insufficient documentation to support “a portion of part-time teachers’ hours”, and “duplicate costs for part-time teachers”. None of these disallowances, as explained herein, are specifically identified or linked to documentation in the record, and the amounts of the disallowances are not adequately explained to support a Commission finding upholding the reductions.

The claimant’s fiscal year 1999-2000 claim forms indicate \$42,058 in salaries and benefits attributed to “Cost of Negotiations.”<sup>107</sup> Meanwhile the Controller has determined that \$8,978 of that amount is unallowable, due to “a portion of” part-time teachers’ hours that are insufficiently supported (\$1,478) and “a portion of” management team and confidential assistant hours that are not supported (\$7,500 for 126.5 hours). The Commission is unable to discern the origin of these figures, or identify any employees or activities that were disallowed, on the basis of the evidence in the record. Indeed, the Commission is unable to identify any pattern in this record that would result in, for example, 126.5 hours disallowed for management team members.<sup>108</sup> The Controller identifies a dollar amount associated with those adjustments, but the Controller fails to identify

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<sup>105</sup> Exhibit D, Controller’s Revised Audit, page 10 [emphasis added].

<sup>106</sup> Exhibit D, Revised Audit Report, page 10.

<sup>107</sup> Exhibit A, IRC 05-4425-I-10, page 77.

<sup>108</sup> See Exhibit D, Controller’s Revised Audit Report, page 10.

what documentation is insufficient, which employees' salaries are not supported, or why. It is not the Commission's role to pore over the claim forms and to attempt to discover, whether by process of elimination, or by discerning the handwriting on sign-in sheets, which employees' time the Controller believes is insufficiently supported, or which meetings or other activities were not attributable to the mandate.

The difficulty in discerning what disallowances are still in dispute and what cost items have been conceded by both parties is only further exacerbated by the *Clovis Unified* decision and the Controller's revised audit. The original final audit report disallowed costs that were not supported by contemporaneous source documents, in accordance with the Controller's claiming instructions, and resulted in substantially larger adjustments in each audit year. The revised audit states: "Based on the court decision, we allowed all costs supported by electronic calendars, e-mail messages, and internal memoranda. As a result, allowable costs increased by \$192,084 for the audit period."<sup>109</sup> But the Controller asserts, notwithstanding the adjustments made pursuant to *Clovis Unified*, that the claimant has still failed to support "a portion of" several cost items.<sup>110</sup> Responding to the disputed reductions, the Controller stated generally: "We recommend that the district claim only those costs that are supported by source documentation." However, because the Controller has not identified the "portion" that in its view remains insufficiently supported, the Commission is unable to determine the "propriety of these adjustments..."<sup>111</sup>

2. *The Controller's reductions for salaries of part-time teachers, management team members, and confidential assistants, based on insufficient or lacking documentation and asserted duplicate costs, are entirely lacking in evidentiary support and, thus incorrect.*

The Controller, as explained above, disallowed several cost items during the audit period due to its determination that the claimant did not provide adequate supporting documentation, or claimed duplicate costs.<sup>112</sup> However, in making its determinations, the Controller did not specify any particular costs that it found to be duplicate, or identify the portion of salaries and benefits disallowed, or the employees for whom salaries were disallowed, or explain why, other than the assertion that either no documentation or insufficient documentation was provided. The claimant argues that "[t]he Controller is the party with the power to create, maintain, and provide evidence regarding the auditing methods and procedures used, as well as the specific facts relied upon for the audit findings." The claimant concludes that the controller "bears the burden of going forward..."

The Commission agrees. Section 1185.2(c) of the Commission's regulations, addressing the review of IRCs, provides as follows:

Written comments and supporting documentation may be filed in accordance with section 1181.3. If the written comments make representations of fact, the representations shall be supported by documentary evidence and shall be

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<sup>109</sup> Exhibit D, Controller's Revised Audit Report, page 2.

<sup>110</sup> See, e.g., Exhibit D, Controller's Revised Audit Report, page 10.

<sup>111</sup> Exhibit A, IRC 05-4425-I-10, page 17.

<sup>112</sup> Exhibit D, Controller's Revised Audit Report, page 10.

submitted with the comments in accordance with section 1187.5 of these regulations... Written rebuttals and supporting documentation shall be filed and served pursuant to section 1181.3. If the written rebuttal involves representations of fact, the representations shall be supported by documentary evidence and shall be submitted with the rebuttal in accordance with section 1187.5 of these regulations.

Furthermore, *Daniels v. Department of Motor Vehicles*<sup>113</sup> supports requiring the Controller to support its reductions with “evidence necessary to sustain a finding.”<sup>114</sup> In that case, the Department of Motor Vehicles (DMV) suspended Daniels’ license solely on the basis of a report filed by another person describing an alleged accident for which Daniels failed to file a report and proof of financial responsibility. At the hearing Daniels did not deny being involved in the alleged accident, and the DMV ordered his license suspended on the recommendation of the referee. On appeal, the California Supreme Court held that the agency had “the burden of proving the facts necessary to support the action...” and “[u]ntil the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond.”<sup>115</sup> Because the accident report was hearsay, and not subject to any of the statutory exceptions to the hearsay rule, it could not form the sole basis of the DMV’s findings.<sup>116</sup>

Here, the revised audit states that the claimant failed to provide sufficient documentation to support a portion of part-time teachers’ hours claimed; claimed duplicate costs for part-time teachers; and did not provide supporting documentation for a portion of management team members and confidential assistant hours. The Controller’s findings, however, are not themselves supported by documentary evidence, and are not sufficiently specific that the Commission is able to evaluate the propriety of the adjustments on the basis of the evidence in the record. In other words, the Controller has the burden of going forward with the evidence, and that burden has not yet been met, as analyzed herein.

Based on the foregoing, the Commission finds that the Controller’s reductions for salaries of part-time teachers, and salaries of management team members and confidential assistants, based on insufficient or lacking documentation, and based on asserted duplicate costs, are entirely lacking in evidentiary support. Therefore, the Controller must reinstate in full the following reductions in direct costs, plus related indirect costs:

- \$1,478 claimed in fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held was not sufficiently supported.
- \$424 claimed in fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held was not sufficiently supported.

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<sup>113</sup> (1983) 33 Cal.3d 532.

<sup>114</sup> Exhibit C, Claimant Rebuttal Comments, page 3 [citing *Daniels, supra*, 33 Cal.3d at p. 536.].

<sup>115</sup> 33 Cal.3d at p. 536.

<sup>116</sup> *Id.*, at p. 541.

- \$301 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
  - \$626 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held represented duplicate costs.
  - \$7,500 claimed in fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
  - \$10,920 claimed in fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
  - \$13,921 claimed in fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
  - \$335 claimed in fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.
  - \$250 claimed in fiscal year 2001-2002 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held represented duplicate costs.
3. *The Controller's reduction of costs for claimed productive hourly rates is consistent with the parameters and guidelines, and is supported by evidence in the record, and is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.*

The parameters and guidelines state, with respect to benefits:

Benefits are reimbursable. Actual benefit percent must be itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs.

Accordingly, the claimant submitted summary cost worksheets that rely upon the 21 percent benefit rate to compute total productive hourly rates.<sup>117</sup> The claimant argues that the parameters and guidelines provide for a 21 percent default rate unless "actual benefit percent" is itemized; the claimant asserts that it did not submit such itemization, and therefore the 21 percent rate is required.<sup>118</sup> The Controller provided documentation in its comments that supported a rate significantly lower than the 21 percent default rate; specifically a document that states the costs of health insurance and retirement benefits, and states that it was provided "by Auditee".<sup>119</sup> The documents provided average hourly salaries of \$65.82 for fiscal year 1999-2000, \$71.39 for fiscal year 2000-2001, and \$79.99 for fiscal year 2001-2002, and benefit rates of 7.13 percent for

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<sup>117</sup> See, e.g., Exhibit A, IRC 05-4425-I-10, pages 84-86; 89.

<sup>118</sup> Exhibit C, Claimant Rebuttal Comments, page 5.

<sup>119</sup> Exhibit B, Controller's Comments, page 34.

fiscal year 1999-2000, 9.08 percent for fiscal year 2000-2001, and 9.59 percent for fiscal year 2001-2002.<sup>120</sup> On that basis, the Controller reduced the productive hourly rates from “\$79.87, \$89.41, and \$100.08 for FY 1999-2000, FY 2000-01, and FY 2001-02, respectively” to “\$70.51, \$77.87, and \$87.66 for the three fiscal years.” As a result, the Controller found reductions of “\$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02” under “Component G3-Negotiations”, and \$298 for fiscal year 2000-2001 and \$233 for fiscal year 2001-2002 for “Component G6-Administration/Grievances”.

The claimant’s reading of the parameters and guidelines suggests that the 21 percent benefit rate must be applied unless the claimant submits an itemization that supports a different rate. However, as the Controller points out, article XIII B, section 6 only requires reimbursement of actual mandated costs incurred; it does not generally allow for reimbursement in excess of the increased costs experienced by a claimant. Therefore, to the extent that the evidence in the record supports a benefit rate lower than the default 21 percent rate, that lower rate must be applied to the claim.

The language in question has existed in the parameters and guidelines since at least 1981, and at that time no mention was made of its addition to the text, or its meaning.<sup>121</sup> The plain language in the second and third sentences above is susceptible of more than one interpretation. The second sentence, providing that “[a]ctual benefit percent *must be itemized*” seems to place the burden on the claimant to support its benefit rate with documentation. The third sentence is consistent with the burden being placed on the claimant, to the extent that it provides “[i]f no itemization is *submitted*, 21 percent must be used...” The two provisions together suggest that the 21 percent rate should generally provide an incentive for the claimant to provide an itemization of costs that supports a higher rate, and that the 21 percent rate is intended to be punitive.

However, the language does not suggest that a claimant has discretion whether to claim the 21 percent rate: it requires the claimant to itemize, and states that “21 percent *must be used*” if an itemization is not “submitted”. Therefore it would be reasonable to interpret the provision to hold that if the claimant does not submit the itemization, the 21 percent rate is required, even if another rate can be independently developed or verified. The difficulty with that interpretation is that, as the Controller has pointed out, it might permit a claimant to receive reimbursement in excess of its actual costs, to the extent actual benefit percent can be verified through evidence in the record. And, it appears to conflict with the earlier sentence, which is strongly worded to require a benefit percent to be itemized.

Here, as explained above, the Controller has submitted evidence in the record that it states was provided “by Auditee”, and which allows the Controller to itemize a benefit percentage, where the claimant failed to do so. Moreover, there is nothing in the parameters and guidelines that suggests that 21 percent *must* be a minimum rate; though it seems likely that it was intended that way. The Controller’s itemization and reduction of benefit percentage is consistent with the intent and purpose of article XIII B, section 6 to reimburse only increased costs mandated by the state and therefore is correct.

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<sup>120</sup> Exhibit B, Controller’s Comments, pages 32-34.

<sup>121</sup> Exhibit X, Admin Record Excerpt.

Based on the foregoing, the Commission finds that the Controller's reductions of salaries and benefits during the audit period on the basis of unsupported productive hourly rates were consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support. The reductions totaling \$ 1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002 are, therefore, correct.

## **V. Conclusion**

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission concludes that the reductions to the following direct costs are incorrect as a matter of law, and are arbitrary, capricious, or entirely lacking in evidentiary support:

- \$1,478 claimed in fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$424 claimed in fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$301 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$626 claimed in fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held represented duplicate costs.
- \$7,500 claimed in fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed in fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$13,921 claimed in fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$335 claimed in fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$250 claimed in fiscal year 2001-2002 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held represented duplicate costs.

The Commission further finds that the reductions totaling \$1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002, on the basis of unsupported productive hourly rates, are consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support, and are therefore correct.

As a result, the above costs must be reinstated, as well as related indirect costs. Based on the foregoing, the Commission partially approves this IRC.

**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 April 3, 2015, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-10*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213  
Fiscal Years 1999-2000 through 2001-2002  
Foothill-De Anza 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 April 3, 2015 at Sacramento, California.



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Heidi J. Palchik  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/2/15

**Claim Number:** 05-4425-I-10

**Matter:** Collective Bargaining

**Claimant:** Foothill-De Anza 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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