

COMMISSION ON STATE MANDATES

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



November 12, 2014

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

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

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Health Fee Elimination, 07-4206-I-14
Education Code Section 76355;
Statutes 1984, 2nd E.S., Chapter 1; Statutes 1987, Chapter 1118
Fiscal Years 2002-2003 and 2003-2004
Pasadena Area 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

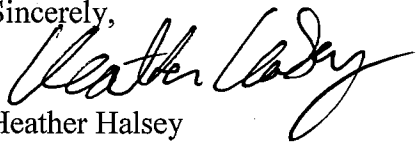
Written comments may be filed on the draft proposed decision by **December 3, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement 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, January 23, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 9, 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,


Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Education Code Section 76355

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

Health Fee Elimination

Fiscal Years 2002-2003 and 2003-2004

07-4206-I-14

Pasadena Area Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) addresses reductions totaling \$159,341 made by the State Controller's Office (Controller) to reimbursement claims filed Pasadena Area Community College District (claimant) for fiscal years 2002-2003 and 2003-2004 under the *Health Fee Elimination* program.

The following issue is in dispute in this IRC:

- Alleged underreporting of offsetting revenues authorized to be charged to students pursuant to Education Code section 76355. The claimant identified fee revenues actually collected, rather than fee revenue authorized to be charged.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.¹ In 1984, the Legislature repealed the community colleges' fee authority for health services.² However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester).³

¹ Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.]

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

³ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁴ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987,⁵ the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁶ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.⁷ As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁸

Procedural History

Claimant filed its fiscal year 2002-2003 reimbursement claim with the Controller on January 15, 2004. Claimant filed its fiscal year 2003-2004 reimbursement claim with the Controller on January 14, 2005. The Controller began its field audit of the 2002-2003 and 2003-2004 claims on September 9, 2005.⁹ On June 30, 2006, the Controller issued its final audit report, concluding that claimant underreported offsetting revenues for the program.¹⁰ Claimant filed this IRC August 14, 2007.¹¹ On March 15, 2010, the Controller submitted comments on the IRC.¹²

⁴ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

⁵ Statutes 1987, chapter 1118.

⁶ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

⁷ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

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

⁹ Exhibit B, Controller's Comments, Tab 1, at p. 2.

¹⁰ Exhibit A, Tab The Audit contained four findings but only the offsetting revenue is contested in this IRC.

¹¹ Exhibit A,

¹² Exhibit B.

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 6.¹³ 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."¹⁴

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.¹⁵

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 the claimant.¹⁶ In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹⁷

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁴ *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.

¹⁵ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁷ 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.

Claims

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

Issue	Description	Staff Recommendation
Reductions based on understated offsetting revenues from student health fees.	For each fiscal year, claimant reported as offsetting revenue only fees actually collected and not all fees authorized to be charged by Education Code section 76355. The Controller recalculated the offsetting revenue authorized by statute by using enrollment data provided to the California Community Colleges Chancellor's Office by claimant, which resulted in a reduction of costs claimed in the amount of \$159,341.	<i>Correct as a matter of law</i> –This issue has been conclusively decided by <i>Clovis Unified School District v. Chiang</i> (2010) 188 Cal.App.4th 794, in which the court held that to the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. Staff further finds that the Controller’s recalculation of claimant’s fee authority based on student enrollment and student waiver data provided by the claimant to the California Community Colleges Chancellor’s Office was not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Analysis

The Controller’s Reductions for Understated Offsetting Revenues Pursuant to *Clovis Unified* and the Health Fee Rule were Correct as a Matter of Law.

The Controller determined that claimant underreported offsetting fee revenues in fiscal years 2002-2003 and 2003-2004. Claimant identified fee revenue actually collected, rather than fee revenue authorized by statute to be charged to students. The Controller recalculated the offsetting revenue by using student enrollment and student waiver data provided by the claimant to the California Community Colleges Chancellor’s Office and then multiplied the number of students subject to the fee by the authorized fee.¹⁸ Based upon this recalculation, the Controller reduced claimant’s reimbursement claims by \$159,341.

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require a community college district to levy a health services fee. Claimant further asserts that the language of the parameters and guidelines stating that a community college district must deduct from its reimbursement claims “[a]ny offsetting savings that the claimant experiences as a direct result of this statute...” means offsetting savings, here health service fees, actually

¹⁸ Exhibit B, Controller Comments, Tab 2, at, pp. 5-6.

collected, not fees authorized but not collected.¹⁹ Claimant also argues that it should not have to account for unpaid fees or fee authority not used as offsetting revenue.²⁰

Staff finds that the reductions are correct as a matter of law. After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court declared:

However, after the claimant filed this IRC, the court in *Clovis Unified*, which upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.²¹

The court also noted that, "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"²²

Thus, pursuant to the court's decision in *Clovis Unified*, the Controller's reduction of costs based on the fees authorized to be charged by statute is correct as a matter of law. The Commission is bound by the court's decision in *Clovis Unified*, and bound to apply the fee authority statute, Education Code section 76355, as set forth by the court.

The Commission further finds that the Controller's recalculation of offsetting revenues is not arbitrary, capricious, or entirely lacking in evidentiary support. During the audit, claimant was unable to produce supporting documentation of how it calculated its student enrollment data or student waiver data.²³ The Controller recalculated student enrollment and student waiver data using data provided by the claimant to the Chancellor's Office.²⁴ The Controller then multiplied the student enrollment and waiver data by the amount of fees authorized in Education Code section 76355.²⁵ The resulting calculation increased the amount of offsetting revenues that claimant should have identified and deducted from the claims.

¹⁹ Exhibit A, IRC, pp. 12-14.

²⁰ Exhibit A, IRC , p. 14.

²¹ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

²² *Ibid.*

²³ Exhibit B, Controller Comments, Tab 2, at p. 5 (The Controller notes that during the audit claimant admitted that the previously submitted data was not accurate and that the CCCCCO data used by the Controller was the most accurate. Tab 2 at pp. 10-11.)

²⁴ Exhibit B, Controller Comments, Tab 2, at p. 5.

²⁵ Exhibit B, Controller Comments, Tab 2, at pp. 5-6. This amounted to \$12 per student for fall and spring semesters and \$9 per student for summer, quarter and intersessions.

Conclusion

Pursuant to Government Code section 17551(d), staff finds that the Controller's reduction of costs and recalculation of fees authorized to be charged and deducted from the claims as offsetting revenue is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRC, and 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:
Education Code Section 76355
Statutes 1984, Chapter 1 (1983-1984 2nd Ex.
Sess.) (AB 1) and Statutes 1987, Chapter 1118
(AB 2336)
Fiscal Years 2002-2003 and 2003-2004
Pasadena Area Community College District,
Claimant.

Case Nos.: 05-4206-I-07

Health Fee Elimination

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

(Adopted January 23, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on January 23, 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

The Commission denies this IRC, filed by Pasadena Area Community College District (claimant), finding that claimant did not properly identify authorized health fee revenues in reimbursement claims filed for fiscal years 2002-2003 and 2003-2004, resulting in a reduction of costs claim of \$159,341. The Controller's reduction of costs claimed and recalculation of fees authorized to be charged and deducted from the claims as offsetting revenue is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

COMMISSION FINDINGS

I. Chronology

- 01/15/04 Claimant submitted a reimbursement claim for fiscal year 2002-2003.²⁶
- 01/14/05 Claimant submitted a reimbursement claim for fiscal year 2003-2004.²⁷
- 09/09/05 The Controller began its field audit for the audits of both 2002-2003 and 2003-2004 reimbursement claims.²⁸
- 05/05/06 The Controller issued a draft audit report.
- 06/30/06 The Controller issued a final audit report.²⁹
- 08/14/07 Claimant filed this IRC.³⁰
- 03/15/10 The Controller filed comments on the IRC.³¹
- 11/XX/14 Commission staff issued the draft proposed decision.

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.³² Statutes 1984, chapter 1 repealed the community colleges' fee authority for health services.³³ However, the Legislature also reenacted section 72246 in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester), which was to become operative on January 1, 1988.³⁴

In addition to temporarily repealing community college districts' fee authority, Statutes 1984, chapter 1 required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain the health services at the

²⁶ Exhibit A, IRC, (Exhibit F, Reimbursement Claim for FY 2002-2003).

²⁷ Exhibit A, IRC, (Exhibit F, Reimbursement claim for FY 2003-2004).

²⁸ Exhibit B, Controller Comments, Tab 1, at p. 2.

²⁹ Exhibit A, IRC, Exhibit E.

³⁰ Exhibit A, IRC.

³¹ Exhibit B, Controller Comments.

³² Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

³³ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4 [repealing Education Code section 72246].

³⁴ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.³⁵ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose, until January 1, 1988.

Statutes 1987, chapter 1118 amended former Education Code section 72246,³⁶ operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5³⁷, which became inoperative by its own terms as of January 1, 1988.³⁸ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer semester.³⁹ As a result, in 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁴⁰

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

The parameters and guidelines generally provide that eligible community college districts shall be reimbursed for the costs of providing a health services program, and that only services specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

The Controller's Audit and Summary of the Issues

For each fiscal year, claimant reported as offsetting revenue only fees actually collected and not all fees authorized to be charged by Education Code section 76355. The Controller recalculated the offsetting revenue authorized by statute by using enrollment data provided to the California Community Colleges Chancellor's Office by claimant, which resulted in a reduction of costs claimed in the amount of \$159,341.

This IRC addresses the following issue:

³⁵ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

³⁶ In 1993, former Education Code section 72246 was renumbered to Education Code section 76355. (Stats. 1993, ch. 8.)

³⁷ Statutes 1987, chapter 1118.

³⁸ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

³⁹ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

⁴⁰ Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8)

- Alleged underreporting of offsetting revenues authorized to be charged to students pursuant to Education Code section 76355.

III. Positions of the Parties

Pasadena Area Community College District, Claimant

Claimant argues that the Controller incorrectly reduced costs by recalculating the offsetting revenues authorized by statute, but not actually collected by claimant.⁴¹ Claimant does not dispute the three other findings in the final audit report.⁴² Claimant requests that the Commission direct the Controller to reinstate the \$159,341 reduced from the claims.

State Controller's Office

The audit report concluded that claimant underreported offsetting revenues because claimant provided inaccurate student enrollment and student waiver data and claimed only those offsetting revenues actually collected, rather than the fees authorized to be charged by statute.⁴³ The Controller recalculated the offsetting revenues authorized to be charged and reduced the claims in the amount of \$159,341.

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴⁴ 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."⁴⁵

⁴¹ Exhibit A, IRC, at p. 12-14.

⁴² Exhibit A, IRC, at p. 10.

⁴³ Exhibit A, IRC, Exhibit E, at p.7; Exhibit B, Controller Comments, at pp. 13-18.

⁴⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁴⁵ *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.

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.⁴⁶ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”⁴⁷

The Commission must review also the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁴⁸ In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.⁴⁹

The Controller's Reduction and Recalculation of Costs Claimed Because of Understated Offsetting Fee Revenue is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller determined that claimant underreported offsetting fee revenues in fiscal years 2002-2003 and 2003-2004. Claimant identified fee revenue actually collected, rather than fee revenue authorized by statute to be charged to students. The Controller recalculated the offsetting revenue by using student enrollment and student waiver data provided by the claimant to the California Community Colleges Chancellor's Office and then multiplied the number of students subject to the fee by the authorized fee.⁵⁰ Based upon this recalculation, the Controller reduced claimant's reimbursement in the amount of \$159,341, as the recalculation resulted in higher offsetting revenues than claimant reported.

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require a community college district to levy a health services fee. Claimant further asserts

⁴⁶ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁴⁷ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

⁴⁸ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁴⁹ 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.

⁵⁰ Exhibit B, Controller Comments, Tab 2, at, pp.5-6.

that the language of the parameters and guidelines stating that a community college district must deduct from its reimbursement claims “[a]ny offsetting savings that the claimant experiences as a direct result of this statute...” means offsetting savings, here health service fees, *actually collected*, not fees authorized but not collected.⁵¹ Claimant also argues that it should not have to account for unpaid fees as offsetting revenue.⁵²

After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller’s reduction of claims filed by community college districts by the maximum fee amounts that districts are statutorily authorized to charge students, whether or not a district chooses to charge those fees. As the court states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/1987 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.⁵³ (Underline in original.)

The offsetting revenues are provided by Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and service, including direct or indirect medical and hospitalization service, or the operation of a student health center or centers, or both.

(a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.⁵⁴ Here, the Controller asserts that claimant had the authority to increase its fee in accordance with the notices periodically issued by the Chancellor of the California Community

⁵¹ Exhibit A, IRC, pp. 12-14.

⁵² Exhibit A, IRC , p. 14.

⁵³ *Clovis Unified School District v. Chiang, supra*, 188Cal.App.4th at page 811.

⁵⁴ See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

Colleges, stating that the Implicit Price Deflator Index had increased enough to support a one dollar increase in student health fees.⁵⁵ The Controller argues that the claimant was required to claim offsetting fees in the amount authorized. Claimant argues that the actual increase of the fee imposed upon students requires action of the community college district governing board, and that “the Controller cannot rely on the Chancellor’s notice as a basis to adjust the claim for ‘collectible’ student health services fees,”⁵⁶ because the fees levied on students are raised by action of the governing board of the community college district. But the *authority* to impose the health service fees increases with the Implicit Price Deflator, as noticed by the Chancellor, and without any legislative action by a community college district, or any other entity (state or local). Moreover, the court in *Clovis Unified* upheld, as a matter of law, the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

To the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.⁵⁷

The court also notes that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”⁵⁸ Additionally, in responding to the community college districts’ argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s,”⁵⁹ the court held:

To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.⁶⁰ (Italics added.)

Although the claimant here was not a party to the *Clovis* case, it is binding on the claimant under principles of collateral estoppel.⁶¹ Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to

⁵⁵ See Exhibit B, Controller’s Comments, at p. 13.

⁵⁶ Exhibit A, Incorrect Reduction Claim, at pp. 18-19.

⁵⁷ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* (Original italics.)

⁶⁰ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

⁶¹ The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

litigate the issue.⁶² The issue decided by the court is identical to the issue in this IRC. In addition, the claimant here has privity with the petitioners in the *Clovis* action. “A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party’s interest that the latter was the former’s virtual representative in the earlier action.”⁶³ In addition, the Controller was a party to the *Clovis* action and is bound to comply with the court’s decision for all matters addressing the *Health Fee Elimination* program.

Thus, pursuant to the court’s decision in *Clovis*, the reduction of costs based on fees authorize to be charged is correct as a matter of law. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.⁶⁴

The Commission further finds that the Controller’s recalculation of offsetting revenues is not arbitrary, capricious, or entirely lacking in evidentiary support. During the audit, claimant was unable to produce supporting documentation of how it calculated its student enrollment data or student waiver data.⁶⁵ The Controller recalculated student enrollment and student waiver data using data provided by the claimant to the Chancellor’s Office.⁶⁶ The Controller then multiplied the student enrollment and waiver data by the amount of fees authorized in Education Code section 76355.⁶⁷ The resulting calculation increased the amount of offsetting revenues that claimant should have identified and deducted from the claims.

The Commission finds that the Controller’s recalculation of fees authorized by Education Code section 76355 and utilization of the enrollment and exemption information available and provided by the district to the Chancellor’s Office was not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission concludes that the Controller’s reduction of costs and recalculation of fees authorized to be charged and deducted from the claims as offsetting revenue is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this IRC.

⁶² *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

⁶³ *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

⁶⁴ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

⁶⁵ Controller Comments, Tab 2, at p.5 (The Controller notes that during the audit claimant admitted that the previously submitted data was not accurate and that the CCCCO data used by the Controller was the most accurate. Tab 2 at pp. 10-11.)

⁶⁶ Controller Comments, Tab 2, at p. 5.

⁶⁷ Controller Comments, Tab 2, at pp. 5-6. This amounted to \$12 per student for fall and spring semesters and \$9 per student for summer, quarter and intersessions.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Yolo 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 November 12, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Health Fee Elimination, 07-4206-I-14

Education Code Section 76355;

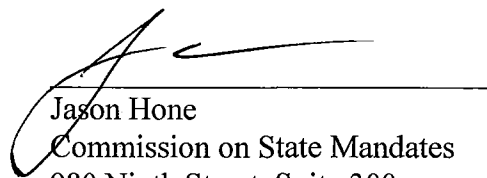
Statutes 1984, 2nd E.S., Chapter 1; Statutes 1987, Chapter 1118

Fiscal Years 2002-2003 and 2003-2004

Pasadena Area 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 November 12, 2014 at Sacramento, California.


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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/12/14

Claim Number: 07-4206-I-14

Matter: Health Fee Elimination

Claimant: Pasadena Area Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Ed Hanson, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*

Education Systems Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*

915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Yazmin Meza, *Department of Finance*

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

Robert Miyashiro, *Education Mandated Cost Network*

1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Jameel Naqvi, *Analyst, Legislative Analysts' Office*

Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*

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

Christian Osmena, *Department of Finance*

915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Keith Petersen, *SixTen & Associates*

Claimant Representative

P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Kathy Rios, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

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

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

Joe Simoneschi, Acting Assistant Superintendent/Senior Vice President, *Pasadena Area
Community College District*
Administrative Services, 1570 East Colorado Blvd., Pasadena, CA 91106
Phone: (626) 585-7529
jwsimoneschi@pasadena.edu

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

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