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May 15, 2015

Mr. Adam M. O'Connor
Rancho Santiago Community College District
2323 N. Broadway
Santa Ana, CA 92706

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

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

Re: **Proposed Decision**
Health Fee Elimination, 07-4206-I-15
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, 2002-2003
Rancho Santiago Community College District, Claimant

Dear Mr. O'Connor and Ms. Kanemasu:

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

Hearing

This matter is set for hearing on **Friday, May 29, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey
Executive Director

ITEM 5
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Former Education Code Section 72246 (Renumbered as § 76355)[1]

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118

Health Fee Elimination

Fiscal Years 2000-2001, 2001-2002, 2002-2003

07-4206-I-15

Rancho Santiago Community College District

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (Controller) to reimbursement claims filed by the Rancho Santiago Community College District (claimant) for fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program. The following audit reductions are in dispute:

- Salaries, benefits, services and supplies that were already funded with state categorical funds, and one employee's time that was incorrectly allocated to the mandated program;
- Overstated indirect costs; and
- Health fees authorized to be charged and required to be deducted from the costs claimed.

Staff finds that the Controller correctly reduced the costs claimed based on the offsetting fees the claimant was authorized to charge and the overstated indirect costs. Because the total authorized offsetting fees for the audit period ($2,195,764) are higher than the remaining health services costs claimed ($2,148,725 after accounting for the overstated indirect costs), staff does not address the remaining issues relating to the alleged use of categorical funding and the salary and benefits the Controller found were incorrectly allotted to the program.

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.[2] In 1984, the Legislature repealed the community colleges' fee

[1] Statutes 1993, chapter 8.

[2] 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.

authority for health services.[3] However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at $7.50 for each semester (or $5 per quarter or summer semester).[4]

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.[5] 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, 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 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 signed and dated its reimbursement claims on February 11, 2002 for fiscal year 2000-2001, on December 18, 2002 for 2001-2002, and on December 18, 2003 for 2002-2003.[9] The Controller issued its draft audit report on August 21, 2004[10] and claimant submitted its comments on it on October 6, 2004.[11] The Controller issued its final audit report on October 29, 2004.[12] Claimant filed this IRC on October 2, 2007,[13] and the Controller filed late comments on

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

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

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

[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 A, IRC, pages 82, 106 and 89.

[10] Exhibit A, IRC, page 59. The draft audit report is not included in the record for this IRC.

[11] Exhibit A, IRC, pages 59, 70-77.

[12] Exhibit A, IRC, pages 53-68.

the IRC on October 15, 2014.[14] Commission staff issued the draft proposed decision on the IRC on March 25, 2015. The Controller filed comments concurring with the draft proposed decision on April 10, 2015.

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 incorrectly reduced costs 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.[15] 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."[16]

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.[17]

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[13] Exhibit A, IRC.

[14] Exhibit B, Controller's Late Comments on the IRC filed October 15, 2014. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and proposed decision.

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

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

[17] *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.

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.[18] In addition, sections 1185.1(f)(3) and 1185.2(c) 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.[19]

Claims

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

Issue	Description	Staff Recommendation
Overstated and recalculated indirect costs.	The Controller reduced the indirect costs claimed because claimant did not obtain federal approval for its indirect cost rates. Claimant argues that there is no requirement to claim an indirect cost rate in accordance with the claiming instructions, and no requirement for the indirect cost rate to be federally approved. Any requirement for federal approval should be adopted as a regulation.	*Correct* - Claimant used the OMB A-21 method to calculate indirect costs, but did not obtain federal approval of the cost rate, as required. Thus, the reduction is correct as a matter of law. Staff further finds that the Controller's recalculation of indirect costs using the Form FAM 29-C is reasonable in this case, since claimant did not get approval as required by the OMB A- 21 and is not arbitrary, capricious, or entirely lacking in evidentiary support.
Health fees authorized to be charged but not offset from costs claimed.	The Controller reduced the costs claimed based on health fees authorized to be charged, rather than health fees the claimant collected and reported as offsets. The Controller found that claimant used student counts from Report #1920 (selected students used for census purposes) instead of Report #1365 (actual billable student count), and underreported authorized student health fees by one dollar for	*Correct* - Under the case *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, to the extent a local agency or school district has authority to charge for the mandated program or increased level of service, the costs cannot be recovered as state-mandated costs. Staff also finds that the Controller's calculation of authorized health service fees based on the claimant's actual

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

[19] 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.

	the summer of 2000-01 and the entire 2001-02 school year. Claimant argues that no offsetting fees were required to be identified.	billable student account (Report #1365) is not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Analysis

A. The Controller's Reduction of Indirect Costs is Correct as a Matter of Law and the Recalculation Using the FAM-29C Methodology is Reasonable in this Case, Since Claimant did not get Approval as Required by OMB A-21, and is not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.

The Controller reduced indirect costs claimed by $570,878 ($172,093 for 2000-2001, $247,577 for 2001-2002, and $151,208 for 2002-2003) because claimant did not obtain federal approval of the indirect cost rate when using the OMB Circular A-21 methodology as required by claiming instructions and the OMB A-21.

The parameters and guidelines state "[i]ndirect costs may be claimed in the manner described by the State Controller in his claiming instructions."[20] The claim summary instructions on the 1997 reimbursement form,[21] as well as the claiming instructions applicable to all community college district reimbursement claims in effect at the time this reimbursement claim was filed (i.e., the general provisions of the School Mandated Cost Manual) specified that a district can use a "federally approved" rate, incorporating the accounting principles of the OMB Circular A-21, or the district can use the alternative state procedure, identified as Form FAM-29C.[22]

The annually-revised School Mandated Cost Manual contains claiming instructions applicable to all school and community college mandated programs. The cost manuals issued by the Controller in October 1998, September 2001, and September 2003, which govern the reimbursement claims filed for the audit period in this case, also provide for claiming indirect costs by using the OMB Circular A-21 methodology or the state's FAM-29C methodology.[23]

In this case, the claimant used the OMB A-21 methodology, but did not obtain federal approval for its indirect cost rate.[24] Thus, staff finds that the Controller's reduction of costs is correct as a

[20] Exhibit A, IRC, page 37.

[21] Exhibit A, IRC, page 48.

[22] This language is in the claiming instructions updated in September 2002 that the Controller submitted with its comments (Exhibit B, page 25). The same language is found in earlier claiming instructions that apply to fiscal years 2000-2001 and 2001-2002. See Exhibit E, State Controller's Office, Mandated Cost Manual for School Districts, Updated September 29, 2000, page 11. State Controller's Office, Mandated Cost Manual for School Districts, Updated September 28, 2001, page 11.

[23] Exhibit E, State Controller's Office, Mandated Cost Manual for School Districts, or excerpts from fiscal years 1999-2000, 2000-2001, pages 14 and 12; State Controller's Office, Mandated Cost Manual for Community College Districts, 2002-2003, pages 16-17.

[24] Exhibit A, IRC, page 64.

matter of law, since the claimant did not obtain federal approval of the indirect cost rate, as required by OMB Circular A-21.

Staff also finds that the Controller's recalculation of indirect costs using the Form FAM-29C is reasonable in this case, since claimant did not get approval as required by OMB A-21, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

B. The Controller's Reduction based on Offsetting Health Fee Authority is Correct as a Matter of Law, and the Recalculation of Offsetting Fees is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced $796,744 from the reimbursement claims during the audit period because the claimant was authorized to collect a total of $2,195,764 in offsetting health fees for the program, but only reported offsetting fees of $1,399,020. The claimant did not charge a health services fee to students attending its police and fire academy because the academy students receive full health benefits from their local agency employers and do not contribute to the cost of the mandated program.[25] In addition, the Controller found that the claimant underreported authorized health fees by $1 per student for the summer of 2000-2001 and for all of 2001-2002.[26]

Staff finds that the application of offsetting student health fees has been resolved by the decision in *Clovis Unified School Dist. v. Chiang*,[27] and that the reduction is correct as a matter of law. The *Clovis* decision specifically addressed the Controller's practice of reducing community college district claims under the *Health Fee Elimination* program by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge those fees. Calling this practice "The Controller's Health Fee Rule," the court expressed it as:

> Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.[28]

Education Code section 76355(a) authorizes community college district governing boards to charge a specific health service fee, which may be increased by the same percentage as the implicit price deflator for State and Local Government Purchase of Goods and Services. Whenever the calculation produced an increase of one dollar above the existing fee, the health service fee may be increased by one dollar.

The court in *Clovis Unified* upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fee 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:

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[25] Exhibit A, IRC, page 71.

[26] Exhibit A, IRC, page 65.

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

[28] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811.

> 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.[29]

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.'"[30] 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.[31]

Education Code section 76355(c) expressly exempts some students from the health fee: those who depend exclusively on prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization, or those who attend the college under an approved apprenticeship program, or (before it was amended out in 2005) low income students who demonstrate specified financial need and eligibility.[32]

Nothing in the plain language of section 76355(c) exempts police and fire academy students from the health fee. The Commission, like a court, does not read into a statute "language it does not contain or elements that do not appear on its face."[33] Therefore, staff finds that claimant had the authority to charge police and fire academy students the health fee, and that the Controller's reduction of claimed costs by the fees authorized to be charged but not reported is proper.

Thus, staff finds that the Controller's reduction of costs claimed based on offsetting fee authority is correct as a matter of law.

Staff also finds that the Controller's recalculation of authorized offsetting fees using the claimant's actual billable student account (Report #1365) is not arbitrary, capricious, or entirely lacking in evidentiary support. The data in Report #1365 is consistent with the fee authority of Education Code section 76355, and claimant does not argue that using the report is incorrect or that the Controller's calculation is wrong.

Conclusion

Pursuant to Government Code section 17551(d), staff concludes that the following adjustments in the Controller's audit of the 2000-2001, 2001-2002 and 2002-2003 reimbursement claims are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of $570,878 in indirect costs claimed based on claimant's failure to comply with the claiming instructions and the OMB Circular in the development of its indirect cost

[29] *Id.* at page 812.

[30] *Ibid.*

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

[32] Education Code section 76355(c)(1) – (c)(3), as amended by Statutes 1995, chapter 758. The provision in subdivision (c)(3) regarding low-income students was removed by Statutes 2005, chapter 320.

[33] *Martinez v. The Regents of the University of California* (2010) 50 Cal.4th 1277, 1295.

rate, and the Controller's use of an alternative method authorized by the claiming instructions to calculate indirect costs.

- The reduction of $796,744 based on the reported health fees collected, rather than the fees claimant was authorized to collect, pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

Because the total authorized offsetting fees ($2,195,764) for the audit period are higher than the remaining health services costs claimed ($2,148,725 after accounting for the overstated indirect costs claims), the proposed decision does not address the remaining reductions challenged by the claimant.

Consequently, staff finds that the IRC should be denied.

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: Former Education Code Section 72246 (Renumbered as § 76355)[34] Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336) Fiscal Years 2000-2001, 2001-2002, 2002-2003 Rancho Santiago Community College District, Claimant	Case No.: 07-4206-I-15 *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 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] the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This analysis addresses reductions by the State Controller's Office (Controller) to reimbursement claims of the Rancho Santiago Community College District (claimant) for fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program. The Controller reduced all costs claimed during the audit period for the following reasons: (1) salaries, benefits, and services and supplies of $195,045 were already funded by state categorical funds; (2) salaries and benefits of $25,289 for a school psychologist was incorrectly allocated to the mandated program; (3) indirect costs were overstated by $570,878; and (4) claimant failed to deduct authorized offsetting fees totaling $796,744 from the claims.

Pursuant to Government Code section 17551(d), the Commission concludes that the following adjustments in the Controller's audit of the 2000-2001, 2001-2002, and 2002-2003 reimbursement claims are correct as a matter of law, and the Controller's recalculations are not arbitrary, capricious, or entirely lacking in evidentiary support:

[34] Statutes 1993, chapter 8.

- The reduction of claimed indirect costs by $570,878, based on claimant's failure to comply with the claiming instructions and the OMB Circular in the development of its indirect cost rate, and the Controller's recalculation of indirect costs by an alternative method authorized by the claiming instructions.
- The reduction of $796,744, on the basis that claimant was *authorized* to collect a total of $2,195,764 in offsetting fees for the program pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812. Claimant only reported offsetting fees *collected* in the amount of $1,399,020.

The reduction of indirect costs reduces claimants total remaining costs claimed to $2,148,725 ($2,719,603 less $570,878 reduction for overstated indirect costs equals $2,148,725). Because the total authorized offsetting fees ($2,195,764) are higher than direct costs claimed and the allowable indirect costs combined ($2,148,725), the Commission does not address the remaining issues relating to the use of categorical funding and the salary and benefit amounts that the Controller found were incorrectly allotted to the program.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

02/11/02 Claimant signed the reimbursement claim for fiscal year 2000-2001.[35]

12/18/02 Claimant signed the reimbursement claim for fiscal year 2001-2002.[36]

12/18/03 Claimant signed the reimbursement claim for fiscal year 2002-2003.[37]

08/31/04 Controller issued the draft audit report.[38]

10/6/04 Claimant submitted comments on the draft audit report.[39]

10/29/04 Controller issued the final audit report.[40]

10/02/07 Claimant filed this IRC.[41]

10/15/14 Controller filed late comments on the IRC.[42]

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[35] Exhibit A, IRC, page 82.

[36] Exhibit A, IRC, page 106.

[37] Exhibit A, IRC, page 89.

[38] Exhibit A, IRC, page 59. The draft audit report is not included in the record for this IRC.

[39] Exhibit A, IRC, pages 59, 70-77.

[40] Exhibit A, IRC, pages 53-68.

[41] Exhibit A, IRC, page 1.

[42] Exhibit B, Controller's Late Comments on the IRC filed October 15, 2014, page 1. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The

03/25/15 Commission staff issued the draft proposed decision.

04/10/15 Controller filed comments on the draft proposed decision.[43]

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.[44] In 1984, the Legislature repealed the community colleges' fee authority for health services.[45] However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee at $7.50 for each semester (or $5 per quarter or summer semester).[46]

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

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[48] 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.[49] As a result,

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failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and proposed decision.

[43] Exhibit D.

[44] 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.

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

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

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

[48] 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).

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

beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services.[50] 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.[51]

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

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

Controller's Audit and Summary of the Issues

The Controller reduced the reimbursement claims for the claimant's alleged costs incurred during fiscal years 2000-2001, 2001-2002, and 2002-2003 under the *Health Fee Elimination* program. The following reductions are in dispute:

- Salaries and benefits and services and supplies of $195,045 that Controller found were already funded with state categorical funds;
- Salary and benefits of $25,989 for a school psychologist that Controller found were incorrectly allocated to the mandated program;
- Indirect costs of $570,878; and
- Health fee authority of $796,744 that was not reported as offsetting fees.

As more fully discussed in this decision, the Commission finds that the Controller correctly reduced the costs claimed based on claimant's offsetting fee authority and overstated indirect costs. Since the total authorized offsetting fee authority for the audit period ($2,195,764) is higher than the direct costs claimed and the indirect costs allowed by the Controller combined ($2,148,725), the Commission does not address the remaining issues relating to the alleged use of categorical funding and the salary and benefits the Controller found were incorrectly allotted to the program.[52]

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[50] 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. (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).

[51] 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).

[52] See Exhibit A, IRC, page 61 (Final Audit Report dated October 29, 2004).

III. Positions of the Parties

Rancho Santiago Community College District

The claimant argues that the Controller incorrectly reduced indirect costs, categorical program salaries and benefits claimed for fiscal years 2000-2003, as well as some offsetting fees, and requests reinstatement of the costs incorrectly reduced.

Claimant disagrees that the state categorical funds should be identified as an offset, asserting that the Partnership for Excellence (PFE) program funds were not appropriated as "a direct result" of the statute that created the student health services program, nor were the funds "reimbursement for this mandate received from any source" as provided in Government Code section 17556. Claimant further states that the Academic Senate and Matriculation program funding was not received as a direct result of the health service program statutes or as a state or federal reimbursement specifically for the student health program.[53]

Claimant disagrees with the reduction of costs claimed for the salary and benefits of the staff psychologist. Claimant argues that counseling is an appropriate expenditure of program funds and claimant's documentation supports the type of service provided as well as the allocation to the health services program.[54]

Claimant also disputes the Controller's finding that indirect costs were overstated because the indirect cost rate proposal was not federally approved. Claimant asserts that there is no requirement in law for federal approval of these rates. Since the claiming instructions were never adopted as regulations they do not have the force of law. According to the claimant, the burden of proof is on the Controller to show that the district's calculation is excessive or unreasonable.[55]

Claimant maintains that it is inappropriate to reduce any uncollected fees from the claims. According to the claimant, neither Education Code section 76355 nor the *Health Fee Elimination* parameters and guidelines require a community college district to charge the student a health fee. And Government Code sections 17514 and 17556 do not require collecting a fee. Claimant argues that the amount collectible will never equal actual revenue collected due to changes in student BOGG (Board of Governors Grants) eligibility, bad debt accounts, and refunds.[56]

State Controller's Office

It is the Controller's position that the audit adjustments are correct and that this IRC should be denied.

The Controller reduced the reimbursement claims for employees and services and supplies already funded with state categorical funds. The parameters and guidelines state that "reimbursement for this mandate received from any source . . . shall be identified and deducted from this claim." To not deduct the categorical fund revenues from reimbursement claims would

[53] Exhibit A, IRC, pages 12-13.

[54] Exhibit A, IRC, page 14.

[55] Exhibit A, IRC page 19.

[56] Exhibit A, IRC pages 20-24.

result in the claimant being reimbursed from restricted state revenues and again from the mandate. The Controller also found that one employee's time was incorrectly allocated 60 percent to the mandated activities rather than 45 percent.

The Controller maintains that the claimant did not claim indirect costs in accordance with the parameters and guidelines and claiming instructions, which require federal approval when using the OMB Circular A-21. Since federal approval was not obtained, the Controller recalculated indirect costs using the FAM-29C, which is authorized by the claiming instructions.

The Controller also found that the claimant underreported offsetting fees authorized to be charged pursuant to Education Code section 76355(a) during fiscal years 2000-2001 and 2001-2002, and undercounted students in calculating the fee. Instead, the claimant identified only the amount of fees collected as an offset. The Controller found that to the extent that districts have authority to charge a fee, they are not required to incur a cost.

In addition, the Controller asserts that it calculated authorized health service fees based on enrollment and BOGG recipient data that the district reported to the Community College Chancellor's Office after each school term. In comments on the IRC filed on October 15, 2014, the Controller states further that "[t]he district is responsible for providing accurate enrollment and BOGG recipient data, including any changes that result from BOGG grant eligibility or students who disenroll."[57]

The Controller filed comments concurring with the draft proposed decision.[58]

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.[59] 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

[57] Exhibit B, Controller Comments on the IRC, page 26.

[58] Exhibit D.

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

remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[60]

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.[61] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[62]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[63] In addition, sections 1185.1(f)(3) and 1185.2(c) 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.[64]

A. The Controller's Reduction of Indirect Costs is Correct as a Matter of Law and the Recalculation of Indirect Costs Using the FAM-29C Methodology is Reasonable in this Case, Since Claimant did not get Approval as Required by OMB A-21, and is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

In its audit, the Controller reduced indirect costs claimed by $570,878 ($172,093 for 2000-2001, $247,577 for 2001-2002, and $151,208 for 2002-2003). Claimant prepared its indirect cost rate proposals in accordance with the methodology in OMB Circular A-21, but did not obtain federal approval of the indirect cost rate, as required by the parameters and guidelines and claiming instructions. Indirect costs of $231,338 (48.7 percent) were claimed for 2000-2001, $325,459

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

[61] *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.

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

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

[64] 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.

(48.83 percent) for 2001-2002, and $232,594 (33.62 percent) for 2002-2003. The Controller recalculated the indirect cost rate using the FAM-29C methodology authorized by the claiming instructions, finding that $59,245 (13.03 percent) was allowed for 2000-2001, $77,882 (12.83 percent) was allowed for 2001-2002 and $81,386 (12.57 percent) was allowed for 2002-2003.[65]

Section VI of the parameters and guidelines provides that "*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions*."[66] Claimant argues that the word "may" in the indirect cost language of the parameters and guidelines is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.[67]

Claimant's argument is unsound: the parameters and guidelines plainly state that "indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The interpretation that is consistent with the plain language of the parameters and guidelines is that "indirect costs may be claimed," or may not, but if they are claimed, the claimant must adhere to the parameters and guidelines and claim indirect costs in the manner described in the Controller's claiming instructions. Claimants are required as a matter of law to file reimbursement claims in accordance with the parameters and guidelines.[68]

Claimant also argues that because the claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions do not have the force of law.[69] In the *Clovis Unified School District* case, the Controller's contemporaneous source document rule was held to be an unenforceable underground regulation because it was applied generally against school districts and had never been adopted as a regulation under the APA.[70] Here, claimant implies that the claiming instructions are also an underground regulation with respect to indirect cost rates. But the distinction is that here the parameters and guidelines, which were duly adopted at a Commission hearing and are regulatory in nature, require compliance with the claiming instructions.

The claiming instructions specific to the *Health Fee Elimination* mandate, revised September 1997, provide two options for claiming indirect costs:

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[65] Exhibit A, IRC pages 63-64.

[66] Exhibit A, IRC, page 37.

[67] Exhibit A, IRC, page 18.

[68] Government Code sections 17561(d)(1); 17564(b); and 17571. See also, *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which determined the following: "[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." [Citation omitted.]; and *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, finding that the parameters and guidelines are regulatory in nature.

[69] Exhibit A, IRC, page 19.

[70] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th at page 807.

> For claiming indirect costs college districts have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21), or the State Controller's methodology outlined in "Filing a Claim" of the Mandated Cost Manual for Schools [i.e., FAM-29C]. [71]

The School Mandated Cost Manual is revised each year and contains claiming instructions applicable to all school and community college mandated programs. The cost manuals issued by the Controller in October 1998, September 2001, and September 2003, which govern the reimbursement claims filed for the audit period in this case, allow indirect costs to be claimed by using the OMB Circular A-21 or the FAM-29C.[72]

The claimant here used the OMB Circular A-21 methodology, which establishes principles for determining costs applicable to grants, contracts, and other agreements between the federal government and educational institutions. Section G(11) of the OMB Circular A-21 governs the determination of indirect cost rates and requires the federal approval of a proposed rate by the "cognizant federal agency," which is normally either the Federal Department of Health and Human Services or the Department of Defense's Office of Naval Research.[73] Claimants who choose the OMB Circular A-21 methodology must obtain federal approval of their calculation of their rates through formal negotiation, an informal correspondence process or a simplified method which sets the indirect cost rate using a salaries and wage base.[74] The end result of the negotiation process is a sponsored agreement in which final approval lies with the federal government negotiating the rate and must be supported by "adequate documentation to support costs charged to sponsored agreements."[75] Thus, a claimant that has received federal approval for their indirect cost rate has negotiated specific direct costs with the relevant federal approving agency.

Here, claimant did not negotiate a particular rate but applied the general principles of the OMB Circular A-21 to direct costs it determined to be applicable. [76] Since claimant did not negotiate with a federal agency to determine appropriate direct costs to calculate the indirect costs rate, there has been no federal analysis of whether the direct costs used would have received federal approval. Thus, the Controller, in auditing the claimant's indirect cost rate could not determine whether claimant's direct costs used to calculate their rate would have received federal approval or been rejected as including impermissible direct costs.

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[71] Exhibit A, IRC, page 48.

[72] Exhibit E, State Controller's Office, School Mandated Cost Manual, excerpts from fiscal years 1999-2000, 2000-2001 at pages 14, 12. State Controller's Office, Mandated Cost Manual for Community College Districts, Updated September 30, 2003, pages 16-17.

[73] Exhibit E, OMB Circular A-21.

[74] Exhibit E, OMB Circular A-21, pages 37-39.

[75] Exhibit E, OMB Circular A-21, page 6.

[76] Exhibit A, IRC, page 64.

Therefore, the Commission finds that the Controller's reduction of costs is correct as a matter of law.

Instead of reducing indirect costs to $0, the Controller recalculated the indirect cost rate using the FAM-29C methodology. The Commission finds that the Controller's recalculation of indirect costs using the FAM-29C methodology is reasonable in this case, since claimant did not get approval as required by OMB A-21, and is not arbitrary, capricious or entirely lacking in evidentiary support.

B. The Controller's Reduction based on Offsetting Health Fee Authority is Correct as a Matter of Law, and the Recalculation of Offsetting Fees is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced $796,744 from the reimbursement claims because the claimant was authorized to collect a total of $2,195,764 in fees for the program, but only reported offsetting fees of $1,399,020. The claimant did not charge a health services fee to students attending its police and fire academy because those students receive full health benefits from their local agency employers and do not contribute to the cost of the mandated program.[77] In addition, the Controller found that the claimant underreported authorized health fees by $1 per student for the summer of 2000-2001 and for all of 2001-2002.[78]

Claimant argues that neither Education Code section 76355(a), nor the parameters and guidelines, requires the claimant's to charge their students a health services fee, and that the parameters and guidelines require that for the health fee to be used as an offset, it must be "experienced" (or collected) by the claimant.[79] Claimant further argues that the relevant offset is the amount of fees collected and not the amount authorized by statute:

> This issue is one of student health fees revenue actually received, rather than student health fees which might be collected. Student fees not collected are student fees not "experienced" and as such should not reduce reimbursement. Further, the amount "collectible" will never equal actual revenues collected due to changes in student's BOGG eligibility, bad debt accounts, and refunds.
>
> Because districts are not required to collect a fee from students for student health services, and if such a fee is collected, the amount is to be determined by the District and not the Controller, the Controller's adjustment is without legal basis.[80]

The Commission finds that the application of offsetting student health fees has been resolved by the court's decision in *Clovis Unified School Dist. v. Chiang*,[81] and that the reduction is correct as a matter of law. The *Clovis* decision specifically addressed the Controller's practice of

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[77] Exhibit A, IRC, page 71.

[78] Exhibit A, IRC, page 65.

[79] Exhibit A, IRC, pages 20-21.

[80] Exhibit A, IRC, pages 23-24.

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

reducing community college district claims under the *Health Fee Elimination* program by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge those fees, calling this practice "The Controller's Health Fee Rule," which the court expressed as:

> Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.[82]

Education Code section 76355(a) provides in relevant part the following:

> (a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars ($10) for each semester, seven dollars ($7) for summer school, seven dollars ($7) for each intersession of at least four weeks, or seven dollars ($7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.
>
> (a)(2) The governing board of each community college district may increase this [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).[83]

During the audit period, Education Code section 76355(c) further authorized the health fee to be charged to all students, including police and fire academy students, except the following:

> (1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.
>
> (2) Students who are attending a community college under an approved apprenticeship training program.
>
> (3) Low-income students, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulation.[84]

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[82] *Id*. at page 811. Emphasis in original.

[83] Education Code section 76355, as amended by Statutes 1995, chapter 758.

[84] Education Code section 76355(c)(1) – (c)(3), as amended by Statutes 1995, chapter 758. The provision in subdivision (c)(3) regarding low-income students was removed by Statutes 2005, chapter 320.

Nothing in the plain language of section 76355(c) exempts police and fire academy students from the health fee. The Commission, like a court, does not read into a statute "language it does not contain or elements that do not appear on its face."[85] Therefore, the Commission finds that the district had the authority to charge police and fire academy students the health fee, and the Controller's reduction of claimed costs by the amounts not charged to those students is correct as a matter of law.

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

Claimant argues that neither Education Code section 76355, nor the parameters and guidelines require a community college district to charge the student a health fee. Claimant also asserts that Government Code sections 17514 and 17556 do not require collection of a fee.[87]

But the court in the *Clovis* decision 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. The court noted that its conclusion is consistent with the state mandates process embodied in Government Code sections 17514 and 17556(d), and that: "To the extent a local agency or school district 'has the authority' to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost."[88] 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.'"[89]

Although the claimant here was not a party to the *Clovis* case, it is binding on the claimant under principles of collateral estoppel, which applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.[90] 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* case. "A party is adequately

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[85] *Martinez v. The Regents of the University of California* (2010) 50 Cal.4th 1277, 1295.

[86] 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.

[87] Exhibit A, IRC, pages 20-23.

[88] *Clovis, supra,*188 Cal.App.4th 794, 812.

[89] *Ibid.*

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

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."[91] Also, 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. 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.[92]

Thus, the Commission finds that the Controller's reduction of costs claimed based on fee authority is correct as a matter of law.

The Commission also finds that the Controller's recalculation of authorized offsetting fee authority using the claimant's actual billable student account (Report #1365) is not arbitrary, capricious, or entirely lacking in evidentiary support. As the Controller explained:

> The district used the student counts from Report No. 1920 rather than Report No. 1365. Report No. 1920 includes selected students used for census purposes. Report No. 1365 includes students taking credit courses, exclusive of students in non-credit courses. Report No. 1365 also includes the number of health fee exemptions.[93]

The data in claimant's Report #1365 is consistent with the fee authority provisions of Education Code section 76355. Moreover, the claimant does not argue that the use of the report is incorrect or that the Controller's recalculation is wrong.

Accordingly, the Commission finds that the Controller's recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission concludes that the following adjustments in the Controller's audit of the 2000-2001, 2001-2002 and 2002-2003 fiscal year reimbursement claims are correct as a matter of law, and the Controller's recalculations are not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of $570,878 in indirect costs based on claimant's failure to comply with the claiming instructions and the OMB Circular in the development of its indirect cost rate, and the Controller's indirect cost calculation by an alternative method authorized by the claiming instructions.
- The reduction of $796,744 based on the reported health fees collected, rather than the full amount claimant was authorized to collect, pursuant to the court's ruling in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

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

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

[93] Exhibit B, Controller's Comments on the IRC, page 18, on which page the Controller also stated: "Subsequent to this audit, we determined that students taking non-credit courses should also be counted. Consequently, the district should include these students in future claims."

Because claimant's total offsetting fee authority ($2,195,764) for the audit period is higher than the total direct costs claimed combined with the allowable indirect costs claimed ($2,148,725), the Commission does not address the remaining reductions challenged by the claimant.

Therefore, the Commission denies 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 May 15, 2015, I served the:

Proposed Decision
Health Fee Elimination, 07-4206-I-15
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, 2002-2003
Rancho Santiago 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 May 15, 2015 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/24/15

Claim Number: 07-4206-I-15

Matter: Health Fee Elimination

Claimant: Rancho Santiago 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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