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RECEIVED
September 10, 2015
Commission on State Mandates

September 10, 2015

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

Dear Ms. Halsey:

RE: CSM 07-904133-I-05 and 10-904133-I-07
San Juan Unified School District
498/83 Notification of Truancy - **Audit #1**
Fiscal Years: 1999-00, 2000-01, and 2001-02
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated July 31, 2015, for the above-referenced incorrect reduction claims, to which I respond on behalf of the District.

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

The District asserted in its original incorrect reduction claim filed on December 17, 2007, and revised incorrect reduction claim filed July 16, 2010, that the FY 1999-00 annual reimbursement claim and perhaps the FY 2000-01 claim was beyond the statute of limitations for an audit when the Controller issued its audit report on December 30, 2004. The Controller's October 3, 2014, response to the incorrect reduction claims stated that the FY 2000-01 annual claim was signed November 11, 2002, thus removing it from dispute for this issue. The Commission concludes (DPD, 29) that the original audit was both timely initiated and timely completed as to all fiscal years.

The Controller issued the revised audit report on November 25, 2009. The District asserted in the revised incorrect reduction claim that all three fiscal years were beyond the statute of limitations for revised audit findings. The Commission concludes (DPD, 33) that the revised audit was not timely completed as to all fiscal years, but that the Commission can take official notice of the revised audit report "to the extent that the

revised audit report narrows the issues in dispute or mitigates the amount of reductions originally asserted by the Controller." The District agrees.

Chronology of Claim Action Dates

January 11, 2001	FY 1999-00 claim filed by the District
March 5, 2003	Entrance conference date
December 31, 2003	FY 1999-00 statute of limitations for audit expires
December 30, 2004	Controller's original final audit report issued
November 25, 2009	Controller's revised final audit report issued

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

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

1. Audit Initiation

The District's FY 1999-00 annual claim was submitted to the Controller on January 11, 2001. According to the 1995 version of Government Code Section 17558.5 this annual claim is subject to audit no later than December 31, 2003. The Commission determined on March 27, 2015, (CSM 09-4425-I-17 and CSM 10-4425-I-18, Sierra Joint Community College District, Collective Bargaining) that for purposes of measuring the statute of limitations, the audit commences no later than the date the entrance conference letter was sent. The entrance conference letter is not on the record here. However, since the entrance conference occurred prior to January 1, 2004, the District concurs that the audit of the FY 1999-00 annual claim started before the expiration of the statute of limitations to commence an audit.

2. Audit Completion

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

December 30, 2004. However, the Commission concludes (DPD, 31):

> The only reading of these facts and of section 17558.5 that could bar the subject audits would be to hold that section 17558.5 requires an audit to be *completed* within two years of filing, in which case the final audit report issued December 30, 2004 would be barred. This is the interpretation urged by the claimant, but this reading of the code is not supported by the plain language of the statute, as explained above. At the time the costs were *incurred* in this case, section 17558.5 did not expressly fix the time during which an audit must be completed. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant.114 However, here the audit report was issued December 30, 2004, approximately sixteen and one-half months after the initiation date. Thus, there is no evidence of an unreasonable delay in the completion of the audit.

The District does not agree. The Commission seems to be asserting that the Controller was required under common law to complete the audit within a reasonable period of time without regard to the positive law of the legislature's statute of limitations. Reliance on the reasonableness of the actual length of the audit period process would mean in practice that the determination of a reasonable audit completion date would become a question of fact for every audit, which is contrary to the concept of a statute of limitations.

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

Laches is a defense to a proceeding in which a plaintiff seeks equitable relief. Cases in equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the plaintiff. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the court against a party. An incorrect reduction claim is explicitly a matter of money due to the claimant. The District is not seeking an injunction, where the court orders a party to do or not to do something; declaratory relief, where the court declares the rights of the two parties to a controversy; or an accounting, where the court orders a detailed written statement of money owed, paid, and held.

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

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

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

PART B. THE EDUCATION CODE SECTION 48260 DEFINITION OF TRUANCY

The original audit report disallowed $108,307 of the claimed costs for the audit period because "pupils did not accumulate the required number of unexcused absences to be classified as truant under the mandate program." The revised audit report corrected this amount to $87,177, to which the Commission takes notice.

	Annual Reimbursement Claim Fiscal Year			
Amounts Adjusted	1999-00	2000-01	2001-02	Total
Audit Report Disallowed	$25,927	$29,711	$31,539	$87,177
Number of Notices	57	64	46	167
Commission Allowed	$23,030	$25,294	$30,881	$79,205
Number of Notices	51	55	45	151
Commission Disallowed	$2,897	$4,417	$658	$7,972
Number of Notices	6	9	1	16

The issue is the number of absences/tardies documented when the notification was issued. There are two Commission findings. The Commission reinstates the adjustments for those students who had three but did not have four absences/tardies in the extrapolated amount of $79,205. The Commission sustains the adjustment for those students who had less than three absences/tardies in the extrapolated amount of $7,972. The District agrees with both these Commission findings to the extent of the actual number of sampled notices involved, but not as to the extrapolation of these sampled notices.

1. Definition of Initial Truancy

The revised audit report disallowed 151 notices in the audit sample for those students who had three but did not have four absences/tardies. The original incorrect reduction claim noted that Education Code Section 48260, as recodified by Chapter 1010, Statutes of 1976, required at least four absences or tardies to trigger the notification. The original 1993 parameters and guidelines referenced this 1976 standard. However, Section 48260, as amended by Chapter 1023, Statutes of 1994, and Chapter 19, Statutes of 1995, set the trigger at three absences or tardies. This change was made to the parameters and guidelines by a 2008 amendment. The Controller appears to assert that the 1993 version controls the audit until the 2008 amendment. The Commission (DPD, 36) determined that neither a new test claim nor parameters and guidelines amendment was necessary to implement the 1994 change in the Section 48260 definition of truancy. The District agrees.

2. Documentation Issues

The revised audit report disallowed 16 notices in the audit sample for those students sampled who had less than three unexcused absences/tardies. The disallowed samples resulted because the District was either unable to provide documentation at the time of audit of the three incidences at the time the notification letters were sent, or some of the incidences were retroactively cleared after the notification was sent. There being no additional documentation available at the time of audit or now, the District no longer disputes this issue.

PART C. STATISTICAL SAMPLING AND EXTRAPOLATION OF FINDINGS

The incorrect reduction claim asserted that the Controller cited no statutory or regulatory authority to allow the Controller to reduce claimed reimbursement based on extrapolation of a statistical sample, that the entire findings are based upon the wrong standard for review and that there is no published audit manual for mandate reimbursement or the audit of mandate claims in general for this or any other mandate program which allows this method of audit or allows adjustment of amounts claimed in this manner. The Commission has concluded otherwise based on factually unrelated case law, broad legislative grants of authority, and unadopted audit standards intended

for other purposes.

1. Underground Regulation

The incorrect reduction claims assert that the sampling and extrapolation process is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9 (e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50 (c)). The Commission concludes (DPD, 42) that the Controller's sampling and extrapolation method is not an underground regulation within the meaning of the Administrative Procedure Act.

The Commission cites (DPD, 39-40) *Tidewater Marine Western v. Bradshaw* for two standards of review:

> First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a *certain class of cases* will be decided. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure."151

a. "Generality" of application (Government Code Section 11340.5)

Tidewater states that the rule need not be applied universally, but only to certain class of cases. Notwithstanding, the Commission (DPD, 40) erroneously asserts as a matter of law that the Controller would have to apply the sampling process to all audits of the Notification of Truancy mandate, relevant or not, because the auditor has discretion to select among audit methods. That is the wrong standard. It is not that every audit must be a *Tidewater* "case" to support the concept of generality as the Commission concludes, but more logically it is that if the factual circumstances are present that are amenable to the use of sampling and whether sampling was used, rather than another audit method (such as 100% review of the records).

The Commission (DPD, 42) notes that 42 audits of the Notification of Truancy mandate program have been posted to the Controller's website, but that some do not apply statistical sampling and extrapolation to calculate the audit reduction. The exceptions identified by the Commission are:

- Sweetwater Union High School District, where the auditor disallowed in Finding 2 (noted by the Commission at Footnote 167), a portion of the costs based on the content of the notification. One of the eight notification items was missing, so 12.5% of the claimed cost was disallowed for all notices. The content of the notice is a compliance issue and not a documentation issue, so statistical sampling is not relevant to this Finding. It appears that the documentation issue was addressed in Finding 1 (not cited by the Commission) where the auditor identified the unallowable notices without the need for sampling. In addition, this Finding increased the number of reimbursable notifications. Therefore, this audit does not qualify as a "case." Note that the Controller did use sampling techniques on the previous Sweetwater audit for FY 2000-01 and 2001-02, issued October 7, 2005, which does qualify as a "case."

- Colton Joint Unified School District (Footnote 168), where the auditor disallowed 100% of the claimed costs. The auditor did use the sampling technique, contrary to the Commission conclusion. The auditor commenced the sampling process, but then disallowed all of the claimed notices because documentation could not be found for most of the samples, site staff stated they did not actually distribute notices in most cases, and the form of notice did not include the five components. This audit qualifies as a "case" because sampling was used, it is just that extrapolation was not necessary.

- Bakersfield City School District (Footnote 169), where the auditor allowed all of the cost claimed based on the District's manual documentation process. That is, apparently sufficient and appropriate documentation was available for all claimed notifications. It appears that there was no need to sample for defective documentation and this appears to be a situation of a 100% review. Therefore, this audit is not a "case," and is not relevant as an exception.

Of the three exceptions cited by the Commission, two are not factually relevant exceptions and one did utilize statistical sampling. Therefore, all of the relevant "cases" used the statistical sampling process and the matter of generality no longer an issue.

The second *Tidewater* standard is that the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." That is not contested here by any of the parties or the Commission.

The Commission (DPD, 42) relies upon *Clovis* to establish another standard that an auditor must be without discretion in applying the sampling process. *Clovis* is inapplicable here because the contemporaneous source document rule (CSDR) was published in the Controller's claiming instructions, whereas the parameters and guidelines and claiming instructions for Notification of Truancy are silent on the subject of statistical sampling and extrapolation. The perceived lack of auditor discretion for using the CSDR derives from the claiming instructions and thus *Clovis* is not a standard

available for the sampling and extrapolation method since that process was not published. Regardless, as a factual matter, sampling and extrapolation was used in all relevant audit circumstances, so discretion is no longer an issue.

The Commission (DPD, 40-41) cites the Medi-Cal cases decided in 1990 for the assertion that a statistical sampling methodology could be applied to Medi-Cal cost audits. This is not entirely useful since the ultimate court finding applied only after the state had performed the missing rulemaking. But, the lesson is clear from the Medi-Cal cases. State agencies need to perform the necessary rulemaking rather than cobble together a post-facto defense to avoid this level of public scrutiny. The Controller, whose particular responsibility has been the payment and audit of the mandate annual claims for more than thirty years, has had ample time for rulemaking for this audit method.

b. Exempt audit guideline (Government Code Section 11340.9 (e))

This issue was not addressed by the Commission. The Controller has not asserted that the sampling and extrapolation is a confidential audit criterion or guideline. Indeed, the process is disclosed in the audit report.

c. Financial penalty (Government Code Section 11425.50 (c))

This issue was not addressed by the Commission. However, the statistical sampling and extrapolation generate audit findings that result in a loss of reimbursement for the districts and is therefore a financial penalty.

2. Authority to Utilize Sampling and Extrapolation Methods

The incorrect reduction claim assets that the Controller cited no relevant statutory or regulatory authority to allow the Controller to reduce claimed reimbursement based on extrapolation of a statistical sample for audits of state mandate programs. The Commission (DPD, 43-45) proposes several theories to support the Controller's claim to such authority.

a. No express prohibition

There is no cited express prohibition in law or regulation for statistical sampling and extrapolation methods being used in an audit. However, governmental authority is not unlimited and must always be properly exercised. One example pertinent to this incorrect reduction claim is that the Administrative Procedure Act prohibits underground rulemaking.

b. Broad Constitutional authority

The Commission cites Article XVI, section 7, which states that "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." The Commission has not cited a case that applies this to mandate reimbursement, nor has anyone asserted that a claim has been paid without a legal appropriation or without a legal warrant.

c. Government Code section 12410

The Commission cites Government Code Section 12410 which states: "The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." However, Section 12410 is found in the part of the Government Code that provides a general description of the duties of the Controller and dates back to 1945. It is not specific to the audit of mandate reimbursement claims. The only applicable audit standard for mandate reimbursement claims is found in Government Code Section 17561(d). It is the case of more specific language circumscribing the general language.

Further, it has not been demonstrated that, if Section 12410 was somehow the applicable standard, the audit adjustments were made in accordance with this standard. There is no allegation in the audit report that the claim was in any way illegal. The Section 12410 phrase "sufficient provisions of law for payment" refers to the requirement that there be adequate appropriations prior to the disbursement of any funds. There is no indication that any funds were disbursed for these claims without sufficient appropriations. Thus, even if the standards of Section 12410 were applicable to mandate reimbursement audits, there is no evidence that these standards are not met or even relevant. There is no indication that the Controller is actually relying on the audit standards set forth in Section 12410 for the adjustments to the District's reimbursement claims.

d. Government Code Section 17561

Government Code Section 17561 (d), authorizes the Controller to audit annual reimbursement claims and to "verify the actual amount of the mandated costs" and "reduce any claim that the Controller determines is excessive or unreasonable." This is a distinct statement of audit scope. Adjustments based on lack of documentation are not adjustments based on excessive or unreasonable costs. There is no assertion that the unit cost rate for the notifications is excessive or unreasonable. Nor could a unit cost rate be audited to "verify" the actual cost of the mandate since a unit cost is a statewide average not applicable to the actual cost at any one district.

e. Generally Accepted Government Auditing Standards

In support of the Controller's authority, the Commission cites to the federal Generally Accepted Government Auditing Standards (GAGAS), commonly referred to as the "Yellow Book,"[1] while at the same time acknowledging that dollar amount extrapolation of sampled findings method is not specifically included in that publication. The Yellow Book is for use by auditors of government entities, entities that receive government awards, and other audit organizations performing Yellow Book audits. These standards apply when required by law, regulation, agreement, contract, or policy. Neither the audit report nor Commission cite any law or agreement or policy that makes the Yellow Book applicable to audits of state mandated costs.

Regardless, the audit report states that the audit was a "performance audit." The Yellow Book standards for performance audits are:

> 2.6 A performance audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action.
>
> 2.7 Performance audits include economy and efficiency and program audits.
>
> a. Economy and efficiency audits include determining (1) whether the entity is acquiring, protecting, and using its resources (such as personnel, property, and space) economically and efficiently, (2) the causes of inefficiencies or uneconomical practices, and (3) whether the entity has complied with laws and regulations on matters of economy and efficiency.
>
> b. Program audits include determining (1) the extent to which the desired results or benefits established by the legislature or other authorizing body are being achieved, (2) the effectiveness of organizations, programs, activities, or functions, and (3) whether the entity has complied with significant laws and regulations applicable to the program.

The audit report and Commission made no findings based on the above qualitative

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[1] Generally Accepted Government Auditing Standards

The Generally Accepted Government Auditing Standards (GAGAS), commonly referred to as the "Yellow Book," are published by the United States Government Accountability Office (GAO): http://www.gao.gov/govaud/ybook.pdf.

performance criteria. A performance audit was not conducted. The audit was a documentation audit.

f. Government Code Section 17558.5

In the audit report the Controller cites, but the Commission does not consider Government Code Section 17558.5 in the DPD which describes the time to commence and finish an audit. This is not an audit content or process standard and is not relevant.

3. Application of the Methodology

The District has already agreed that statistical sampling is a recognized audit tool for some purposes, regardless of whether any of the Commission cited sources support that conclusion as a matter of law for a state audit of mandated cost annual claims. The question becomes whether the method, if it is not an underground rule, was properly applied. The Commission (DPD, 49) concludes that the District's assertion that the sample is not representative of the universe is "unfounded," and that "the Controller's showing that the method is statistically significant and mathematically valid is sufficient."

The Commission (DPD, 40-41) cites the Medi-Cal cases for the assertion that a statistical sampling methodology could be applied to Medi-Cal cost audits. The District does not agree that the sampling method as used in the Medi-Cal audits is the same as the method as used in the Controller's audit. In the Medi-Cal audits, different fee amounts for numerous types of services were audited for documentation and necessity of service. For Notification of Truancy, where the dollar amount is fixed, the purpose of the sampling is to determine whether a sufficient number of absences/tardies were incurred and if the student is subject to the notification process. What the Controller is testing is whether the notices are reimbursable based on the number of prerequisite absences, which is testing for procedural compliance, not the dollar amount of dissimilar services. Testing to detect the rate of error within tolerances is the purpose of sampling, but it is not a tool to assign an exact dollar amount to the amount of the error, which the Controller has inappropriately done so here. This is a failure of auditor judgment both in the purpose of the sampling and the use of the findings. The cited *Bell* case, as well as the Commission decision, does not conclusively address this issue.

The Commission (DPD, 47) asserts:

> Here, the claimant has presented no evidence that schools within the claimant's district complied with the mandate in different ways, which may provide evidence that the results from the sample are not representative of all notices claimed. The Commission, and the Controller, must presume that the claimant uniformly complied with the mandate, absent evidence to the contrary. Moreover, the claimant's assertion regarding the incidence of truancy in secondary schools has

> been obviated by the "stratified" samples and separate error rate extrapolation performed by the Controller in the revised audit. 200 Furthermore, the claimant's concerns about the proportional size of the sample are unfounded, and the claimant's conclusions about the "expected error rate" are entirely mistaken.

The Commission establishment of a rebuttable presumption that it must be presumed that the district uniformly complied with the mandate is contradicted by its finding in Notification of Truancy, 05-904133-I-02, Los Angeles Unified School District (September 9, 2015, Proposed Decision, 27):

> However, the Controller's extrapolation of its findings from the 67 sampled school sites to the remaining 53 school sites that were not included in the Controller's audit sample is not supported by any evidence in the record. There is no showing in the record that the audit results from the sampled schools accurately reflects and is representative of the schools not sampled. There is evidence that school sites in the claimant's district complied with the mandate in different ways. As indicated above, some school sites sampled provided truancy notification letters to support the costs claimed and some did not. The audit report further states the attendance counselors at some school sites were not aware of the mandate or the proper guidelines for reporting initial truancy notifications, some records could not be located, some records were destroyed, and some counselors at school sites were not on duty daily requiring other administrative staff to provide the truancy notifications.87 Because the record indicates variation in school compliance, the Controller's use of data from the sampled schools in the district to calculate the percentage of compliance for all schools does not provide any evidence of the validity of the costs claimed by the schools that were not sampled. Thus, the Controller's finding that the costs claimed by the 53 school sites that were not sampled were not supported by documentation, is not supported by any evidence in the record.

It can be seen here that the Commission has come down on both sides of this issue. For San Juan, the Commission states that there is no evidence that the schools complied with the mandate in different ways. At the same time, there is no evidence of uniform compliance and it should not be assumed otherwise. To assert that sampling is per se uniform as long as evidence specific to this District is not presented to the contrary ignores the reality of Los Angeles and the findings of other audits (e.g., Colton) of this mandate program. In fact, the audit report (Finding 3) determined that the attendance accounting procedures for the middle and high schools were different from the elementary schools. The Commission's rebuttable presumption is rebutted. The Los Angeles issue also raises a factual issue not addressed by the San Juan audit report, that is, whether the sample included students from all school sites. If not, this would reduce the universe for extrapolation.

The Commission accepts the Controller's 50% error rate as reasonable. The Commission cites (DPD, 47) the Controller's precision assumptions:

> The Controller explains that an "expected error rate" in this context is an assumption used to determine the appropriate sample size, rather than a measure of the ultimate accuracy of the result. In other words, when "the auditor has no idea whatsoever of what to expect as the maximum rate of occurrence or does not care to make an estimate..." an expected error rate of 50 percent as the beginning assumption will provide "the most conservative possible sample size estimate" in order to achieve the precision desired. 201

The error rate of 50% should not to be championed by anyone when it results in a fiscal penalty. The Commission findings note that the sample size (146 to 148) is essentially the same for populations which range from 5,049 to 9,531 notifications. The stated precision rate was plus or minus 8% even though the audited number of notices claimed in FY 2000-01 (14,413) is 14% smaller than the size of FY 2001-02 (16,792). The matter of precision is not proved. The Controller was not compelled to restrict the sample size or precision. Increasing the sample size would increase the potential representativeness of the sample.

The Commission's (DPD, 49) ultimate *factual* basis for accepting the sample and extrapolation is stated as:

> Finally, due to the volume of notifications that the school district issues in each year (45,785 notices were issued by the claimant during the audit period), and the objectively small transaction cost (i.e., the unit cost value of reimbursement for each of those notifications, ranging from $12.23-$12.91 during the audit period), the Controller's use of sampling and extrapolation to audit whether the notifications were issued properly and supported by the claimant's attendance records is not unreasonable. Therefore, the claimant's assertion that "the conclusions obtained from the sample may not be representative of the universe" is unfounded, and the Controller's showing that its method is statistically significant and mathematically valid is sufficient.

These conclusions are unsupported and not logical. The large volume of the notifications compels greater precision. The "small" unit cost of the notifications is irrelevant since it is fixed by the parameters and guidelines and thus not a variable.

As an evidentiary matter, because the expected error rate is an assumption and acknowledged by the state as not being a measure of the ultimate accuracy of the result, it would be arbitrary to just use the midrange of the predicted results. Because it is equally likely that the extrapolation results will be either the highest or lowest amount, or any amount in between, the only evidentiary certainty that does not penalize the District is the lowest adjustment amount. The uncertainty should be mitigated against

the method and the agency using the method. If the Commission insists on allowing the extrapolation, it must accept the finding with the least penalty to the District.

CERTIFICATION

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

Executed on September 10, 2015, at Sacramento, California, by

Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 11, 2015, I served the:

Claimant Comments
Notification of Truancy, 07-904133-I-05 and 10-904133-I-07
Education Code Section 48260.5
Statutes 1983, Chapter 498
Fiscal Years: 1999-2000, 2000-2001, and 2001-2002
San Juan Unified School 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 September 11, 2015 at Sacramento, California.

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/10/15

Claim Number: 07-904133-I-05 Consolidated with 10-904133-I-07

Matter: Notification of Truancy

Claimant: San Juan Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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