

ITEM _
INCORRECT REDUCTION CLAIM
DRAFT STAFF ANALYSIS

Education Code Section 76355
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.)
Statutes 1987, Chapter 1118

Health Fee Elimination

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009
09-4206-I-19, 09-4206-I-20, 09-4206-I-23, 09-4206-I-26, 09-4206-I-27, 09-4206-I-28, 09-4206-I-30

Citrus Community College District, Cerritos Community College District,
Los Rios Community College District, Redwoods Community College District,
Allan Hancock Joint Community College District,
Rancho Santiago Community College District, and
Pasadena Area Community College District, Claimants

EXECUTIVE SUMMARY

Overview

This analysis looks at seven consolidated incorrect reduction claims filed by seven community college districts (Districts) regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.

Health Fee Elimination Program

Prior to 1984, community college districts were authorized to charge almost all students a general fee (health service fee) for the purpose of providing health services. In 1984, the Legislature enacted legislation eliminating community college districts' fee authority for health services. The 1984 legislation also required any district which provided health services during the 1983-1984 fiscal year, for which it was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. The result was that community college districts, which previously had fee authority to provide health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

In 1987, the Legislature required the maintenance of effort requirement to continue after January 1, 1988. As a result, all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain those services every subsequent fiscal year. In addition, on January 1, 1988, the community college district fee authority for health services was reestablished.

Commission Decisions

At the November 20, 1986 Commission hearing, the Commission determined that the 1984 legislation, which required community college districts to maintain health services while repealing the districts' fee authority for those services, imposed a reimbursable state-mandated "new program" upon community college districts. On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program.

At the May 25, 1989 Commission hearing, the Commission adopted amendments to the parameters and guidelines for the *Health Fee Elimination* program to reflect amendments made by the 1987 legislation. The 1987 legislation reestablished community college districts' fee authority for the provision of health services and extended the maintenance of service provision such that all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain that level of service each fiscal year thereafter. As a result, the 1989 parameters and guidelines reflected a change in eligible claimants, and the reestablishment of community college districts' fee authority for the *Health Fee Elimination* program.

Procedural History

Between January 7, 2004 and February 10, 2010, the Districts filed reimbursement claims for various fiscal years with the State Controller's Office for actual costs incurred as a result of the *Health Fee Elimination* program. The Districts offset the costs incurred by health service fees that were actually charged and received.

Between July 1, 2009 and May 25, 2010, the State Controller's Office issued claims adjustment letters reducing reimbursement claims filed by the Districts for the *Health Fee Elimination* program based on the determination that the districts understated the health service fees which are required to be deducted from the costs claimed by failing to account for health service fees that districts were *authorized* to charge.

The Districts filed seven individual incorrect reduction claims as a result of the adjustments made to the reimbursement claims. The Districts argue that they were only required to offset costs by health service fees that were *actually* charged and received.

On September 21, 2010, after the filing of the incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. v. Chiang (Clovis)* (2010) 188 Cal.App.4th 794, which specifically addressed this disputed issue. The court found that community college districts were required to offset costs claimed for the *Health Fee Elimination* program by the health service fees that community college districts were *authorized* to charge.

On December 13, 2010, Commission staff consolidated the seven incorrect reduction claims filed by the Districts and requested comments from the Districts and the State Controller's Office on the effect of the *Clovis* decision on the incorrect reduction claims. The Districts and the State Controller's Office both filed comments in response.

Positions of the Parties

Claimant's Position

For fiscal years 2002-2003 through 2008-2009, the Districts claimed reimbursement for costs to provide health services to community college students under the *Health Fee Elimination* program. During these fiscal years the Districts accounted only for health service fees actually received as offsetting revenue and subtracted that amount from the costs incurred as a result of providing health services.

The Districts contend that the State Controller's Office incorrectly reduced the costs for providing health services to students. Prior to the court's decision in *Clovis* the Districts asserted in their incorrect reduction claims that:

- Community college districts are required to reduce costs only by offsetting revenue received.
- The State Controller's Office did not provide the required explanation of the adjustments. "The Controller's actions ... deny the District the opportunity to comprehensively contest the adjustments through this Incorrect Reduction Claim."
- No audit was conducted, "[t]herefore the Controller has no factual basis to make a conclusion that the costs claimed were excessive or unreasonable, as required by Government Code section 17561(d)(2)."
- The second sentence of Government Code section 17558.5(a) provides that if no payment has been made to a claimant for a fiscal year for which a claim is filed the time for the State Controller's Office to initiate an audit shall commence to run from the date of initial payment of the claim. The second sentence is impermissibly vague. As a result, the statute of limitations should commence to run upon filing of a claim by a claimant.

The Districts also filed a response to the consolidation of the incorrect reduction claims and request for further briefing and information by the Commission in January 2011. The Districts' comments generally provide that:

- Increasing the health service fees by the same percentage increase to the Implicit Price Deflator for State and Local Purchases of Goods and Services is within the authority of only community college districts. As a result, without action by a community college district the maximum amount of health service fees that can be charged by the district are the amounts specified in Education Code section 76355(a)(1). Additionally, the State Controller's Office cannot use information provided by the California Community College Districts Chancellor's Office (Chancellor's Office) to determine the maximum health service fee authority because only the districts have the authority to increase the health service fee.
- The State Controller's Office reduced the claims for reimbursement by too much.
 - Although the State Controller's Office excluded students exempt from paying the health service fees from the calculation of the amount of health service fees that a district is authorized to charge, the State Controller's Office did not account for the cost of providing services to these exempt students.

- The State Controller’s Office calculations of the total amount of health service fees that a district is authorized to charge include all students regardless of whether there is a student health service center at a student’s location of attendance.
- The scope of health services provided pursuant to the *Health Fee Elimination* program exceeds the scope of authorized uses of the health service fee.
- The State Controller’s Office improperly utilized enrollment data from the Chancellor’s Office for the calculation of collectible fees.

In addition, the Districts reassert that no audit was conducted. The Districts state that “the [State Controller’s Office] did not audit the districts’ enrollment or program costs. The [State Controller’s Office] does not assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard for review.”

State Controller’s Office

The State Controller’s Office filed comments disagreeing with the incorrect reduction claims filed by the Districts, and responding to the request for information on the effect of the *Clovis* decision on the incorrect reduction. The State Controller’s Office specifically asserts:

- In regard to the Districts’ assertion that districts are required to reduce costs only by offsetting revenue received, “the issues surrounding offsetting revenue based on authorized fees have been fully resolved by the court in the [*Clovis*] case. In that case the court concluded that the “Health Fee Rule” implemented by the Controller’s Office, which reduced reimbursement by the amount of the health fee authorized, was valid.”
- In response to the Districts’ assertion that the State Controller’s Office did not provide the required explanation of the adjustments and in doing so has denied the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims, a detailed analysis of all claim reductions was provided (after the incorrect reductions were filed). In addition, “The [Districts] may file an amended Incorrect Reduction Claim pursuant to Title 2, California Code of Regulations (CCR), section 1185.”
- In response to the Districts’ assertion that no audit was conducted, and that the State Controller’s Office does not assert that the costs claimed were excessive or unreasonable, “We disagree. The [State Controller’s Office] reviewed the [Districts’] claims and concluded that the [Districts] did not properly report authorized health service fees.” Additionally, “The [State Controller’s Office] did in fact conclude that the [Districts’] claim was *excessive*.”
- In response to the Districts’ assertion that the statute of limitations applicable to audits conducted on reimbursement claims for which no payment has been made is impermissibly vague, “the language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the ‘date of initial payment,’ in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning vagueness is moot, as the [Commission] has no authority to determine that statute, or any portion thereof, is unconstitutional.”

Commission Responsibilities

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the State Controller's Office and request that the costs in the claim be reinstated.

Analysis

Staff makes the following findings:

1. Pursuant to the *Clovis* decision, the State Controller's Office appropriately used Education Code section 76355(a)(2) to determine the maximum health service fee authority of community college districts.

The court in *Clovis* upheld the State Controller's Office use of the "Health Fee Rule," which reduced reimbursement claims based on the fees districts are *authorized* to charge regardless of whether community college districts charged or collected those fees. Based on the language of Education Code section 76355(a)(2), the fee authority for health services automatically increases by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. The Commission is bound by the court's decision in *Clovis*.

The Districts argue that increasing the fee pursuant to Education Code section 76355(a)(2) requires legislative action by a community college district. As a result, the Districts assert that the State Controller's Office cannot use Education Code section 76355(a)(2) for purposes of determining the maximum fees that the Districts were authorized to charge for purposes of offsetting costs incurred from the *Health Fee Elimination* program. The Districts are incorrect.

The court fully resolved the issue of the State Controller's use of the Health Fee Rule, which includes the automatic increase in authority pursuant to Education Code section 76355(a)(2). The court held that the Health Fee Rule is valid because community college districts are not entitled to reimbursement for costs for which the districts have the *authority* to charge a fee. This rule is applicable regardless of the fee that community college districts decide to actually charge.

Pursuant to the decision in *Clovis*, staff finds that it was necessary for the State Controller's Office to use Education Code section 76355(a)(2) to identify the maximum health service fees that community college districts had the authority to charge and were required to use as offsetting revenue for claims of reimbursement for the *Health Fee Elimination* program.

2. The State Controller's Office correctly included students that cannot access student health services in a practical manner in the calculation of the maximum amount of health service fees that a community college district has the authority to charge.

The Districts argue that community college districts cannot reasonably charge students the health service fee if those students cannot access health services in a practical manner or that do not use the health services provided by the districts.

For purposes of mandate reimbursement the issue as identified by the court in *Clovis* is whether community college districts have the *authority* to charge the health service fee regardless of the decision made by the community college districts to actually impose the fee or not.

Education Code section 76355 authorizes community college districts to charge all students the health service fee, except for students that fall within three exceptions. The Districts acknowledge that the State Controller's Office has excluded the students exempted from the fee in calculating the maximum amount of health service fees that the Districts had the authority to charge. Unless the students referenced in the Districts' argument fall into any of the three categories of exempted students, the Districts have the authority to charge the students the health service fee.

Thus, staff finds that the State Controllers' Office properly included all students that do not fall within the three categories of students exempt from the health service fee as students which the Districts have the *authority* to charge.

3. The State Controller's Office has properly conducted an audit and met the statute of limitations to initiate and complete the audit.

The Districts make the following assertions: (a) the State Controller's Office has not conducted an audit of the Districts' enrollment data and therefore no audit was conducted; (b) the State Controller's Office has based its adjustments to the Districts' reimbursement claims on the wrong standard of review; and (c) the State Controller's Office did not initiate and complete an audit within the applicable statute of limitations.

- The State Controller's Office has properly utilized enrollment data provided by the Chancellor's Office to conduct an audit.

The Districts argue that the State Controller's Office cannot rely on enrollment data provided by the Chancellor's Office for purposes of conducting an audit of the Districts' reimbursement claims. Because the State Controller's Office has done this, the Districts' argue that no audit has been conducted.

Staff finds that the State Controller's Office maintains broad discretion in how to perform its duty to audit all claims against the state. Additionally, based on the evidence in the record, staff finds that the State Controller's Office has not acted in an arbitrary and capricious manner by using enrollment data provided by the Chancellor's Office. Rather, in light of the data provided by the Districts, the State Controller's Office reasonably utilized enrollment data from the Chancellor's Office MIS in order to audit the enrollment data provided by the Districts. As a result, the

State Controller's Office has properly utilized enrollment data provided by the Chancellor's Office and conducted an audit.

- The State Controller's Office has adjusted the Districts' claims based on the correct standard.

The Districts argue that the State Controller's Office does not "assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard of review."

In response the State Controller's Office argues:

The SCO did in fact conclude that the district's claim was excessive. Excessive is defined as "Exceeding what is usual, *proper, necessary*, [emphasis added] or normal." The [Districts'] mandated cost claims exceeded the proper amount based on the reimbursable costs allowed by statutory language and the program's parameters and guidelines.

Staff finds that the State Controller's Office adjusted the Districts' claims for reimbursement based on the correct standard.

- The State Controller's Office has met the statute of limitations to initiate and complete the audits.

The Districts assert that Government Code section 17558.5(a) is impermissibly vague, and thus unenforceable. The Districts propose a different statute of limitations and argue that the State Controller's Office has failed to meet the statute of limitations to conduct audits for some of the reimbursement claims filed by the Districts during certain fiscal years. As a result, the Districts contend that reductions made to reimbursement claims during these fiscal years are void and should be withdrawn.

The Commission does not have the authority to determine that a statute, or any portion thereof, is unconstitutional and therefore unenforceable. As a result, staff makes no findings on the constitutionality of Government Code section 17558.5(a), and must treat all of subdivision (a) as enforceable. Applying the plain language of Government Code section 17558.5(a) to the evidence presented to the Commission, staff finds that the State Controller's Office has initiated and completed the audits within the statute of limitations.

4. Although the State Controller's Office did not provide an explanation of the adjustments made to reimbursement claims within the 30-day time limit of Government Code section 17558.5(c), the State Controller's Office has not denied the Districts the opportunity to comprehensively contest the adjustments.

Government Code section 17558.5(c) requires the State Controller's Office to notify why an adjustment of a claim for reimbursement was made to claimants in writing within 30 days of issuing a remittance advice for the adjustment made. The State Controller's Office failed to meet the 30 day timeline for notifying why adjustments were made to the reimbursement claims filed by the Districts for the *Health Fee Elimination* program.

Prior to receiving the State Controller's Office explanations, the Districts made the assertion that the State Controller's Office actions deny the Districts the opportunity to

comprehensively contest the adjustments through the incorrect reduction claims filed with the Commission.

Although the State Controller's Office did not provide an explanation of adjustments made to the reimbursement claims within the 30-day time limit, staff finds that the Districts are not denied the opportunity to comprehensively contest adjustments made. Claimants are authorized to file an incorrect reduction claim with the Commission upon receiving a remittance advice or other notice of adjustment notifying the claimant of a reduction. This is the beginning of a claimant's opportunity to contest adjustments made by the State Controller's Office. After a claimant has filed an incorrect reduction claim, the claimant has the ability to amend its incorrect reduction claim and is provided multiple opportunities to submit comments to respond to comments or issues raised during the Commission's incorrect reduction claims process. Additionally, if the State Controller's Office fails to provide a needed explanation of adjustments made to a reimbursement claim filed by a claimant, the Commission maintains subpoena power. Here, the State Controller's Office provided detailed analyses to all of the claim reductions on October 20, 2009 and October 21, 2009, to which the Districts have responded to on January 11, 2011. Thus, the actions of the State Controller's Office have not denied the Districts the opportunity to comprehensively contest adjustments made to the reimbursement claims.

5. The State Controller's Office properly accounted for students exempt from the Health Service Fee.

In conducting audits on the Districts' claims for reimbursement, the State Controller's Office calculated the offsetting revenue from health service fees for each term for each fiscal year claimed by multiplying the maximum fee authority for the term during the fiscal year claimed by the total enrollment minus exempted students for each term. The State Controller's Office then subtracted the offsetting revenue for each fiscal year from the total reimbursable claim amounts submitted by the Districts for each fiscal year.

The Districts argue that the State Controller's Office's collectible fee calculation excludes these exempted students from the calculation of the offsetting revenue, but does not determine the costs of the services to these exempt students.

It is a claimant's responsibility to claim total reimbursable costs in its reimbursement claims filed with the State Controller's Office. Here, the total reimbursable costs claimed by the Districts should have included the reimbursable costs of health services provided to all students, including students exempt from the health service fee. It is unclear if, or why, the Districts excluded the cost of health services provided to students exempt from the health service fee from the total reimbursable claim amounts submitted by the Districts to the State Controller's Office. To the extent that reimbursable costs under the *Health Fee Elimination* program have not been claimed, it is the responsibility of the claimants (the Districts) to claim these costs, not that of the State Controller's Office.

Ultimately, the cost of health services provided to students exempt from the health service fee is irrelevant for purposes of the consolidated incorrect reduction claims. The State Controller's Office did not make any reduction to the reimbursement claims on the basis of the costs claimed by the Districts for providing health services to students

exempt from the health service fee. Thus, staff finds that the State Controller's Office properly accounted for students exempt from the health service fee.

6. The scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of health service fees.

The Districts argue that the scope of reimbursable services described in the parameters and guidelines exceed the program regulations. Therefore, the Districts argue that they are eligible for reimbursement for some parameters and guidelines services that are outside the scope of the Title 5 constraints for use of the fees.

The parameters and guidelines for the *Health Fee Elimination* program list physicals for athletes and employees as a reimbursable cost. Based on the language of Education Code section 76355 and its implementing regulations, community college districts are prohibited from using the student health service fee for physicals for athletes and employees. Thus, staff agrees with the Districts' argument that the scope of reimbursable services described in the parameters and guidelines exceed the permissible uses of the health service fee paid by students to the extent that it pertains to: (a) physicals for athletes; and (b) physicals for employees.

In the audits of these Districts the State Controller's Office used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for athletes and employees. From the evidence in the record it is not possible for staff to determine the costs associated with providing physicals for athletes and employees for each district and each fiscal year claimed. As a result, staff finds that the State Controller's Office incorrectly reduced reimbursable costs associated with providing physicals for athletes and employees by applying health service fees as offsetting revenue to the costs claimed for physicals for athletes or employees.

Conclusion

For the foregoing reasons, staff concludes that the State Controller's Office incorrectly reduced costs incurred that are attributable to physicals for athletes by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Citrus Community College District claimed costs associated with providing physicals for athletes during fiscal year 2002-2003 (CSM 09-4206-I-19).
- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008 (CSM 09-4206-I-23).
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

- Rancho Santiago Community College District claimed costs associated with providing physicals for athletes during fiscal years 2007-2008 and 2008-2009 (CSM 09-4206-I-28).

Staff recommends that the above community college districts' reimbursement claims be remanded back to the State Controller's Office to determine the portion of the total costs claimed that are attributable to physicals for athletes. The costs for physicals for athletes should be reinstated.

Additionally, staff concludes that the State Controller's Office incorrectly reduced costs incurred that were attributable to physicals for employees by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

Staff recommends that the above community college districts' reimbursement claims be remanded back to the State Controller's Office to determine the portion of the total costs claimed that are attributable to physicals for employees. The costs for physicals for employees should be reinstated.

Staff also concludes that the State Controller's Office correctly reduced all other costs incurred during all other fiscal years claimed by Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District for the *Health Fee Elimination* program by the amount of health service fees that the districts were authorized to charge.

Staff Recommendation

Staff recommends that the Commission partially approve these consolidated incorrect reduction claims as outlined above and adopt this analysis.

STAFF ANALYSIS

Claimants

Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District

Chronology

01/22/87	Commission adopts statement of decision for <i>Health Fee Elimination</i> test claim (CSM 4206) ¹
08/27/87	Commission adopts parameters and guidelines for the <i>Health Fee Elimination</i> program ²
05/25/89	Commission adopts amendments to parameters and guidelines for the <i>Health Fee Elimination</i> program ³
01/07/04	Citrus Community College District files reimbursement claim for fiscal year 2002-2003 ⁴
01/12/04	Cerritos Community College District files reimbursement claim for fiscal year 2002-2003 ⁵
01/13/04	Redwoods Community College District files reimbursement claim for fiscal year 2002-2003 ⁶
01/13/04	Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2002-2003 ⁷
12/13/04	Citrus Community College District files reimbursement claim for fiscal year 2003-2004 ⁸

¹ Exhibit __, statement of decision, *Health Fee Elimination* (CSM 4206, adopted January 22, 1987).

² Exhibit __, parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted August 27, 1987).

³ Exhibit __, amendments to parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted May 25, 1989).

⁴ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) “Exhibit F,” dated September 24, 2009.

⁵ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) “Exhibit F,” dated September 24, 2009.

⁶ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) “Exhibit F,” dated October 19, 2009.

⁷ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) “Exhibit F,” dated June 7, 2010.

12/13/04	Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2003-2004 ⁹
01/07/05	Cerritos Community College District files reimbursement claim for fiscal year 2003-2004 ¹⁰
12/20/05	Citrus Community College District files reimbursement claim for fiscal year 2004-2005 ¹¹
12/30/05	Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2004-2005 ¹²
01/12/06	Redwoods Community College District files reimbursement claim for fiscal year 2003-2004 ¹³
01/12/06	Redwoods Community College District files reimbursement claim for fiscal year 2004-2005 ¹⁴
01/12/06	Pasadena Area Community College District files reimbursement claim for fiscal year 2004-2005 ¹⁵
01/17/06	Cerritos Community College District files reimbursement claim for fiscal year 2004-2005 ¹⁶
01/04/07	Los Rios Community College District files reimbursement claim for fiscal year 2005-2006 ¹⁷

⁸ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) “Exhibit F,” *supra*.

⁹ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) “Exhibit F,” *supra*.

¹⁰ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) “Exhibit F,” *supra*.

¹¹ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) “Exhibit F,” *supra*.

¹² Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) “Exhibit F,” *supra*.

¹³ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) “Exhibit F,” *supra*.

¹⁴ *Ibid*.

¹⁵ Exhibit F, incorrect reduction claim filed by Pasadena Area Community College District (09-4206-I-30) “Exhibit E,” dated June 15, 2010.

¹⁶ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) “Exhibit F,” *supra*.

¹⁷ Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) “Exhibit F,” dated October 1, 2009.

01/09/07	Citrus Community College District files reimbursement claim for fiscal year 2005-2006 ¹⁸
01/16/07	Redwoods Community College District files reimbursement claim for fiscal year 2005-2006 ¹⁹
01/16/07	Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2005-2006 ²⁰
01/16/07	Pasadena Area Community College District files reimbursement claim for fiscal year 2005-2006 ²¹
12/21/07	Rancho Santiago Community College District files reimbursement claim for fiscal year 2005-2006 ²²
01/11/08	Cerritos Community College District files reimbursement claim for fiscal year 2005-2006 ²³
01/11/08	Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2006-2007 ²⁴
01/18/08	Redwoods Community College District files reimbursement claim for fiscal year 2006-2007 ²⁵
02/05/08	Los Rios Community College District files reimbursement claim for fiscal year 2006-2007 ²⁶
02/08/08	Rancho Santiago Community College District files reimbursement claim for fiscal year 2006-2007 ²⁷

¹⁸ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) “Exhibit F,” *supra*.

¹⁹ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) “Exhibit F,” *supra*.

²⁰ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) “Exhibit F,” *supra*.

²¹ Exhibit F, incorrect reduction claim filed by Pasadena Area Community College District (09-4206-I-30) “Exhibit E,” *supra*.

²² Exhibit G, incorrect reduction claim filed by Rancho Santiago Community College District (09-4206-I-28) “Exhibit D,” dated June 16, 2010.

²³ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) “Exhibit F,” *supra*.

²⁴ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) “Exhibit F,” *supra*.

²⁵ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) “Exhibit F,” *supra*.

²⁶ Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) “Exhibit F,” *supra*.

01/29/09	Cerritos Community College District files reimbursement claim for fiscal year 2006-2007 ²⁸
01/30/09	Citrus Community College District files reimbursement claim for fiscal year 2006-2007 ²⁹
02/03/09	Los Rios Community College District files reimbursement claim for fiscal year 2007-2008 ³⁰
02/06/09	Rancho Santiago Community College District files reimbursement claim for fiscal year 2007-2008 ³¹
07/01/09	State Controller's Office issues claim adjustment letters to Cerritos Community College District for fiscal years 2003-2004 through 2006-2007 ³²
07/01/09	State Controller's Office issues claim adjustment letters to Pasadena Area Community College District for fiscal years 2004-2005 and 2005-2006 ³³
07/02/09	State Controller's Office issues claim adjustment letter to Cerritos Community College District for fiscal year 2002-2003 ³⁴
07/02/09	State Controller's Office issues claim adjustment letters to Redwoods Community College District for fiscal years 2002-2003 through 2005-2006 ³⁵
07/05/09	State Controller's Office issues claim adjustment letters to Citrus Community College District for fiscal years 2003-2004 through 2005-2006 ³⁶

²⁷ Exhibit G, incorrect reduction claim filed by Rancho Santiago Community College District (09-4206-I-28) "Exhibit D," *supra*.

²⁸ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) "Exhibit F," *supra*.

²⁹ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) "Exhibit F," *supra*.

³⁰ Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) "Exhibit F," *supra*.

³¹ Exhibit G, incorrect reduction claim filed by Rancho Santiago Community College District (09-4206-I-28) "Exhibit D," *supra*.

³² Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) "Exhibit A," *supra*.

³³ Exhibit F, incorrect reduction claim filed by Pasadena Area Community College District (09-4206-I-30) "Exhibit A," *supra*.

³⁴ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20) "Exhibit A," *supra*.

³⁵ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) "Exhibit A," *supra*.

³⁶ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) "Exhibit A," *supra*.

- 07/06/09 State Controller's Office issues claim adjustment letter to Citrus Community College District for fiscal years 2002-2003 and 2006-2007³⁷
- 07/09/09 State Controller's Office issues claim adjustment letter to Redwoods Community College District for fiscal year 2006-2007³⁸
- 07/10/09 State Controller's Office issues claim adjustment letters to Allan Hancock Joint Community College District for fiscal years 2002-2003 and 2006-2007³⁹
- 07/12/09 State Controller's Office issues claim adjustment letters to Allan Hancock Joint Community College District for fiscal years 2003-2004 through 2005-2006⁴⁰
- 07/19/09 State Controller's Office issues claim adjustment letter to Los Rios Community College District for fiscal years 2005-2006 and 2007-2008⁴¹
- 07/22/09 State Controller's Office issues claim adjustment letter to Los Rios Community College District for fiscal year 2006-2007⁴²
- 09/24/09 Cerritos Community College District files incorrect reduction claim (09-4206-I-20)⁴³
- 09/24/09 Citrus Community College District files incorrect reduction claim (09-4206-I-19)⁴⁴
- 10/01/09 Los Rios Community College District files incorrect reduction claim (09-4206-I-23)⁴⁵
- 10/19/09 Redwoods Community College District files incorrect reduction claim (09-4206-I-26)⁴⁶

³⁷ *Ibid.*

³⁸ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) "Exhibit A," *supra*.

³⁹ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) "Exhibit A," *supra*.

⁴⁰ *Ibid.*

⁴¹ Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) "Exhibit A," *supra*.

⁴² Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) "Exhibit A," *supra*.

⁴³ Exhibit A, incorrect reduction claim filed by Cerritos Community College District (09-4206-I-20), *supra*.

⁴⁴ Exhibit B, incorrect reduction claim filed by Citrus Community College District (09-4206-I-19) *supra*.

⁴⁵ Exhibit C, incorrect reduction claim filed by Los Rios Community College District (09-4206-I-23) *supra*.

- 10/20/09 State Controller's Office issues claim adjustment letter with audit report to Citrus Community College District for fiscal years 2002-2003 through 2006-2007⁴⁷
- 10/20/09 State Controller's Office issues claim adjustment letter with audit report to Cerritos Community College District for fiscal years 2002-2003 through 2006-2007⁴⁸
- 10/20/09 State Controller's Office issues claim adjustment letter with audit report to Redwoods Community College District for fiscal years 2002-2003 through 2006-2007⁴⁹
- 10/20/09 State Controller's Office issues claim adjustment letter with audit report to Pasadena Area Community College District for fiscal years 2004-2005 through 2005-2006⁵⁰
- 10/21/09 State Controller's Office issues claim adjustment letter with audit report to Allan Hancock Joint Community College District for fiscal years 2002-2003 through 2006-2007⁵¹
- 10/21/09 State Controller's Office issues claim adjustment letter with audit report to Los Rios Community College District for fiscal years 2005-2006 through 2007-2008⁵²
- 01/29/10 Commission adopts amendments to parameters and guidelines for the *Health Fee Elimination* program⁵³

⁴⁶ Exhibit D, incorrect reduction claim filed by Redwoods Community College District (09-4206-I-26) *supra*.

⁴⁷ Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Citrus Community College District," "Tab 5."

⁴⁸ Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Cerritos Community College District," "Tab 5."

⁴⁹ Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Redwoods Community College District," "Tab 5."

⁵⁰ Exhibit F, incorrect reduction claim filed by Pasadena Area Community College District (09-4206-I-30) "Exhibit B," *supra*..

⁵¹ Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Allan Hancock Joint Community College District," "Exhibit B."

⁵² Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Los Rios Community College District," "Tab 5."

02/10/10	Rancho Santiago Community College District files reimbursement claim for fiscal year 2008-2009 ⁵⁴
04/22/10	State Controller's Office issues claim adjustment letter with audit report to Rancho Santiago Community College District for fiscal years 2005-2006 through 2008-2009 ⁵⁵
05/29/10	State Controller's Office issues claim adjustment letters to Rancho Santiago Community College District for fiscal years 2005-2006 through 2008-2009 ⁵⁶
06/07/10	Allan Hancock Joint Community College District files incorrect reduction claim (09-4206-I-27) ⁵⁷
06/15/10	Pasadena Area Community College District files incorrect reduction claim (09-4206-I-30) ⁵⁸
06/16/10	Rancho Santiago Community College District files incorrect reduction claim (09-4206-I-28) ⁵⁹
09/21/10	Third District Court of Appeal issues decision in <i>Clovis Unified School Dist. v. Chiang</i> ⁶⁰
12/13/10	Commission staff issues notice of proposed consolidation of incorrect reduction claims (09-4206-I-19, 20, 23, 26, 27, 28, and 30) filed by Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, Rancho Santiago, and Pasadena Community College Districts and request for further briefing and information ⁶¹

⁵³ Exhibit __, amendments to parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted January 29, 2010).

⁵⁴ Exhibit G, incorrect reduction claim filed by Rancho Santiago Community College District (09-4206-I-28) "Exhibit D," *supra*.

⁵⁵ Exhibit J, comments filed by the State Controller's Office, *supra*, "Response by State Controller's Office to Incorrect reduction Claim by Rancho Santiago Community College District," "Exhibit A."

⁵⁶ *Ibid*.

⁵⁷ Exhibit E, incorrect reduction claim filed by Allan Hancock Joint Community College District (09-4206-I-27) *supra*.

⁵⁸ Exhibit F, incorrect reduction claim filed by Pasadena Area Community College District (09-4206-I-30) *supra*.

⁵⁹ Exhibit G, incorrect reduction claim filed by Rancho Santiago Community College District (09-4206-I-28), dated June 16, 2010.

⁶⁰ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

⁶¹ Exhibit H, notice of proposed consolidation of incorrect reduction claims (09-4206-I-19, 20, 23, 26, 27, 28, and 30) filed by Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, Rancho Santiago, and Pasadena Community College Districts and request for further briefing and information, dated December 12, 2010.

- 01/11/11 Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts file response to the consolidation of the incorrect reduction claims and request for further briefing and information⁶²
- 04/14/11 State Controller's Office files response to the consolidation of the incorrect reduction claims and request for further briefing and information⁶³

I. Background

This analysis looks at seven consolidated incorrect reduction claims filed by the Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, Rancho Santiago, and Pasadena Area Community College Districts (the Districts) regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred by the seven districts during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.⁶⁴ The reductions made by the State Controller's Office reduced all or part of each district's reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 based on the State Controller's Office calculation of total health service fees that each district was authorized by law to charge to offset the costs incurred by the Districts.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization

⁶² Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011. The claimant representative for Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts notes that it is only responding on behalf of the six community college districts. Allan Hancock Joint Community College District has not responded to the Commission staff's notice of proposed consolidation and request for further briefing and information.

⁶³ Exhibit J, comments filed by the State Controller's Office, dated April 14, 2011.

⁶⁴ Citrus Community College District claimed costs in the amount of \$513,010 incurred in fiscal years 2002-2003 through 2006-2007. Cerritos Community College District claimed costs in the amount of \$487,933 incurred in fiscal years 2002-2003 through 2006-2007. Los Rios Community College District claimed costs in the amount of approximately \$2.8 million incurred in fiscal years 2005-2006 through 2007-2008. Redwoods Community College District claimed costs in the amount of \$439,666 incurred in fiscal years 2002-2003 through 2006-2007. Allan Hancock Joint Community College District claimed costs in the amount of \$341,318 incurred in fiscal years 2002-2003 through 2006-2007. Rancho Santiago Community College District claimed costs in the amount of approximately \$2.5 million incurred in fiscal years 2005-2006 through 2008-2009. Pasadena Area Community College District claimed costs in the amount of \$398,015 incurred in fiscal years 2004-2005 and 2005-2006.

services, and operation of student health centers.⁶⁵ In 1984, the Legislature enacted legislation to repeal former Education Code section 72246, and thus left community college districts without fee authority for health services.⁶⁶ However, the legislation included a provision that reenacted the code section, which was to become operative on January 1, 1988.⁶⁷

In addition to repealing community college districts' fee authority, the 1984 legislation required any district which provided health services during the 1983-1984 fiscal year, for which it was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. The result was that community college districts, which previously had fee authority for the provision of health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

In 1987, the Legislature amended former Education Code section 72246, which was to become operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5.⁶⁸ As a result, in 1988 all community college districts that provided health services in the 1986-1987 fiscal year were required to maintain health services in the 1987-1988 fiscal year and each year thereafter. In addition, the community college districts regained fee authority for the provision of the health services.

In 1993, former Education Code section 72246 was renumbered to Education Code section 76355.⁶⁹

Commission Decisions

At the November 20, 1986 Commission hearing, the Commission determined that the 1984 legislation, which required community college districts to maintain health services while repealing community college districts' fee authority for those services, imposed a reimbursable state-mandated new program upon community college districts.⁷⁰ On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program.

At the May 25, 1989 Commission hearing, the Commission adopted amendments to the parameters and guidelines for the *Health Fee Elimination* program to reflect amendments made by the 1987 legislation.⁷¹ The 1987 legislation reestablished community college districts' fee authority for the provision of health services and extended the maintenance of service provision

⁶⁵ Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

⁶⁶ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1.

⁶⁷ *Ibid.*

⁶⁸ Statutes 1987, chapter 1118.

⁶⁹ Statutes 1993, chapter 8, section 34.

⁷⁰ Statement of decision, *Health Fee Elimination* (CSM 4206, adopted January 22, 1987). Reference to 1984 legislation refers to Statutes 1984, 2nd Extraordinary Session 1984, chapter 1.

⁷¹ Amendments to parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted May 25, 1989). Reference to 1987 legislation refers to Statutes 1987, chapter 1118.

such that all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain that level of service each fiscal year thereafter. As a result, the 1989 parameters and guidelines reflected a change in eligible claimants for the *Health Fee Elimination* program, and the reestablishment of community college districts' fee authority for the *Health Fee Elimination* program.

Reductions Made by the State Controller's Office

The State Controller's Office reduced reimbursement claims filed by the Districts for the *Health Fee Elimination* program based on the determination that the Districts understated the health service fees which are required to be deducted from the costs claimed by failing to account for health service fees that districts were *authorized* to charge. The Districts filed seven individual incorrect reduction claims as a result of the adjustments made to the reimbursement claims. The Districts argue that they were only required to offset costs by health service fees that were *actually* charged and received.

On September 21, 2010, after the filing of the incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. v. Chiang (Clovis)*, which specifically addressed this disputed issue. The court found that community college districts were required to offset costs claimed for the *Health Fee Elimination* program by the health service fees that community college districts were *authorized* to charge.⁷²

On December 13, 2010, Commission staff consolidated the seven incorrect reduction claims filed by the Districts.

II. Position of the Parties

Claimant's Position

For fiscal years 2002-2003 through 2008-2009, the Districts claimed reimbursement for costs to provide health services to community college students under the *Health Fee Elimination* program. During these fiscal years the Districts accounted only for health service fees actually received as offsetting revenue and subtracted that amount from the costs incurred as a result of providing health services.

The Districts contend that the State Controller's Office incorrectly reduced the costs for providing health services to students. Prior to the court's decision in *Clovis* the Districts asserted in their incorrect reduction claims that:

- Community college districts are required to reduce costs only by offsetting revenue received.⁷³
- The State Controller's Office did not provide the required explanation of the adjustments. "The [State Controller's Office] actions ... deny the District the opportunity to comprehensively contest the adjustments through this Incorrect Reduction Claim."⁷⁴

⁷² *Clovis Community College Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 810-812.

⁷³ Exhibit A-G, incorrect reduction claims filed by the Districts.

⁷⁴ *Ibid.* At the time of the Districts' filing of the incorrect reduction claims, the State Controller's Office had yet to provide an explanation for the adjustments made to reimbursement claims made by the Districts.

- No audit was conducted, “Therefore the [State Controller’s Office] has no factual basis to make a conclusion that the costs claimed were excessive or unreasonable, as required by Government Code section 17561(d)(2).”⁷⁵
- The second sentence of Government Code section 17558.5(a) provides that if no payment has been made to a claimant for a fiscal year for which a claim is filed the time for the State Controller’s Office to initiate an audit shall commence to run from the date of initial payment of the claim. The second sentence is impermissibly vague. As a result, the statute of limitations should commence to run upon filing of a claim by a claimant.⁷⁶

In January 2011, Districts also filed a response to the consolidation of the incorrect reduction claims and request for further briefing and information by the Commission.⁷⁷ The Districts’ comments generally provide that:

- Increasing the health service fees by the same percentage increase to the Implicit Price Deflator for State and Local Purchases of Goods and Services is within the authority of only community college districts. As a result, without action by a community college district the maximum amount of health service fees that can be charged by the district are the amounts specified in Education Code section 76355 (a)(1). Additionally, the State Controller’s Office cannot use information provided by the California Community College Districts Chancellor’s Office (Chancellor’s Office) to determine the maximum health service fee authority because only the districts have the authority to increase the health service fee.
- The State Controller’s Office reduced the claims for reimbursement by too much.
 - Although the State Controller’s Office excluded students exempt from paying the health service fees from the calculation of the amount of health service fees that a district is authorized to charge, the State Controller’s Office did not account for the cost of providing services to these exempt students.
 - The State Controller’s Office calculations of the total amount of health service fees that a district is authorized to charge includes all students regardless of whether there is a student health service center at a student’s location of attendance.
 - The scope of health services provided pursuant to the *Health Fee Elimination* program exceeds the scope of authorized uses of the health service fee.
- The State Controller’s Office improperly utilized enrollment data from the Chancellor’s Office for the calculation of collectible fees.

In addition, the Districts reassert that no audit was conducted. The Districts state that “the [State Controller’s Office] did not audit the districts’ enrollment or program costs. The [State

⁷⁵ Exhibit A-G, incorrect reduction claims filed by the Districts.

⁷⁶ *Ibid.*

⁷⁷ Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011.

Controller's Office] does not assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard for review."⁷⁸

Position of the State Controller's Office

The State Controller's Office filed comments disagreeing with the incorrect reduction claims filed by the Districts, and responding to the Commission's request for further briefing and information, focusing on the effect of the *Clovis* decision on the incorrect reduction claims.⁷⁹ The State Controller's Office specifically asserts:

- In regard to the Districts' assertion that districts are required to reduce costs only by offsetting revenue received, "the issues surrounding offsetting revenue based on authorized fees have been fully resolved by the court in the [*Clovis*] case. In that case the court concluded that the "Health Fee Rule" implemented by the [State] Controller's Office, which reduced reimbursement by the amount of the health fee authorized, was valid."
- In response to the Districts' assertion that the State Controller's Office did not provide the required explanation of the adjustments and in doing so has denied the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims, a detailed analysis of all claim reductions was provided (after the incorrect reductions were filed). In addition, "The [Districts] may file an amended Incorrect Reduction Claim pursuant to Title 2, California Code of Regulations (CCR), section 1185."
- In response to the Districts' assertion that no audit was conducted, and that the State Controller's Office does not assert that the costs claimed were excessive or unreasonable, "We disagree. The [State Controller's Office] reviewed the [Districts'] claims and concluded that the [Districts] did not properly report authorized health service fees." Additionally, "The [State Controller's Office] did in fact conclude that the [Districts'] claim was *excessive*."
- In response to the Districts' assertion that the statute of limitations applicable to audits conducted on reimbursement claims for which no payment has been made is impermissibly vague, "the language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the 'date of initial payment,' in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning vagueness is moot, as the [Commission] has no authority to determine that statute, or any portion thereof, is unconstitutional."

⁷⁸ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 9.

⁷⁹ Exhibit J, comments filed by the State Controller's Office, "Response by the State Controller's Office to the Incorrect Reduction Claim by [the Districts]," dated April 14, 2011. The same arguments were made by the State Controller's Office to all incorrect reduction claims filed by the Districts.

III. Discussion

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the State Controller's Office and request that the costs in the claim be reinstated.

For the reasons provided in the following analysis, staff finds that the State Controller's Office incorrectly reduced the Districts' reimbursement claims to the extent that the State Controller's Office applied health service fees to offset the claimed costs that are attributable to physicals for athletes and employees. Staff finds that all other costs were correctly reduced by the State Controller's Office application of authorized health service fees as offsetting revenue.

The following analysis will address: (1) The effect of the *Clovis* decision on the Districts' incorrect reduction claims; (2) whether the State Controller's Office conducted an audit, and whether the State Controller's Office met the applicable statute of limitations or procedural notification requirements to conduct an audit; and (3) whether the scope of reimbursable services under the *Health Fee Elimination Program* as described in the parameters and guidelines exceeds the permitted uses of health service fees.

A. What is the effect of the *Clovis* decision on the Districts' incorrect reduction claims?

This section will address the following issues: (1) the court's ruling on the State Controller's Office use of the "Health Fee Rule" which offsets reimbursement claims for the *Health Fee Elimination* program by the maximum amount of health service fees that community college districts are authorized to charge; and (2) the propriety of imposing the health service fee on students that cannot access student health services in a practical manner.

- 1) Pursuant to the *Clovis* decision, the State Controller's Office appropriately used Education Code section 76355(a)(2) to determine the maximum health service fee authority of community college districts.

After the Districts filed their incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis*, which specifically addressed the issue of whether the State Controller's Office properly reduced reimbursement claims for state-mandated health services provided by community college districts pursuant to the *Health Fee Elimination* program using the "Health Fee Rule." The "Health Fee Rule" is the State Controller's practice of reducing district claims by the maximum fee amount that districts are statutorily authorized to charge students, even when a district chooses not to charge its students those fees. As quoted by the court, the Health Fee Rule states in pertinent part:

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] 76355.⁸⁰ (Underline in original.)

The Health Fee Rule upheld by the court includes all of Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and 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 [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services.⁸¹ This increase occurs without the need of any legislative action by a community college district or any other entity (state or local).

The court upheld the State Controller's Office use of the "Health Fee Rule" to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the basic principle underlying the state mandates process that Government Code section 17514 and 17556(d) embody is:

To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.⁸²

The court also notes that, "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"⁸³ Additionally, in responding to the community college districts' argument

⁸⁰ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 811.

⁸¹ 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.

⁸² *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

⁸³ *Ibid.*

that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s.”⁸⁴ The court held:

To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.⁸⁵ (Italics added.)

Thus, pursuant to the court’s decision the Health Fee Rule used by the State Controller’s Office to adjust reimbursement claims filed by the Districts for the *Health Fee Elimination* program is valid. The Commission is bound by the court’s decision in *Clovis*.⁸⁶

In the Districts’ response to the consolidation of the incorrect reduction claims, the Districts attempt to separate the automatic increase in the health fee authority pursuant to Education Code section 76355(a)(2) from the “Health Fee Rule,” which the court in *Clovis* found to be valid.⁸⁷ In doing so, the Districts assert that the Commission must make an independent finding regarding the use of Education Code section 76355(a)(2) to determine the maximum fee authority granted by Education Code section 76355 for auditing purposes.

To support the Districts’ argument, the Districts make variations of the argument that Education Code section 76355(a)(2) is not self-implementing and requires action by the community college districts, not a state agency, in order to take effect.⁸⁸ The Districts assert that the State Controller’s Office cannot use Education Code section 76355(a)(2) to calculate the maximum fee authority that community college districts are required to use as offsets for purposes of claiming reimbursement for the *Health Fee Elimination* program (or information from the Chancellor’s Office calculated according to Education Code section 76355(a)(2)).⁸⁹ The Districts are incorrect.

As discussed above, the court fully resolved the issue of the State Controller’s use of the Health Fee Rule, which includes all of section 76355(a). The court held that the Health Fee Rule is valid because community college districts are not entitled to reimbursement for costs for which the districts have the *authority* to charge a fee.⁹⁰ This rule is applicable regardless of the fee that community college districts decide to actually charge. The Health Fee Rule also includes any automatic increases in fee *authority* resulting from the calculation set forth by the plain language in Education Code section 76355(a)(2). To find that the State Controller’s Office cannot use Education Code section 76355(a)(2) to determine the maximum health service fee authority for

⁸⁴ *Ibid.* (Original italics.)

⁸⁵ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

⁸⁶ Exhibit __, *Darsie v. Darsie* (1942) 49 Cal.App.2d 491, 495, in which the court held, “[a] question once deliberately examined and decided should be considered as settled and closed to further arguments.”

⁸⁷ Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011, pages 4-6.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

purposes of adjusting reimbursement claims for the *Health Fee Elimination* program would require the Commission to disregard or overrule the court's decision in *Clovis* and disregard the plain language of the statute. The Commission does not have the authority to do either.⁹¹

Thus, the Districts' "self-implementation" argument is incorrect in light of the court's decision in *Clovis*. Pursuant to the decision in *Clovis*, staff finds that for purposes of auditing reimbursement claims for the *Health Fee Elimination* program it is necessary for the State Controller's Office to use Education Code section 76355(a)(2) to identify the maximum health service fees that community college districts had the authority to charge and were required to use as offsetting revenue for claims of reimbursement for the *Health Fee Elimination* program.

- 2) The State Controller's Office correctly included students that cannot access student health services in a practical manner in the calculation of the maximum amount of health service fees that a community college district has the authority to charge.

The Districts argue:

Many community colleges have academic "learning centers" located significant distances away from the main campus location of the student health service center and other student services or programs. . . . It would be unreasonable for the district to charge a student at these remote locations for services that will not be provided because they are not practically accessible.

The Controller's calculation of collectible fees includes all students regardless of whether there is a student health service center at their location of attendance. The result is that the Controller is offsetting the cost of services provided to other students for students from whom the district does not collect a revenue or incur a program cost. The *Clovis* decision has concluded that if a charge can be made, then a cost is not incurred. No charge can reasonably be made for students that cannot access the services, so total program costs should not be reduced by health service fees never collected, perhaps, at the very least as a matter of "common sense."

This issue is also applicable to other students that either by district governing board determination, or otherwise, cannot access the student health services: non-credit students enrolled in off-campus classes or events, adult education students who are not enrolled in the college, and concurrently enrolled high school students without legal capacity to consent to health care services. Each district may have other factual variations of students without access to health care services.⁹²

As discussed above, for purposes of mandate reimbursement the issue as identified by the court in *Clovis* is whether community college districts have the *authority* to charge the health service fee regardless of the decision made by the community college districts to actually impose the fee or not.

⁹¹ Exhibit __, *Darsie v. Darsie*, *supra*, 49 Cal.App.2d at 495.

⁹² Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 5.

Under the plain language of Education Code section 76355 community college districts are authorized to charge all students the health service fee, except: (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; and until January 1, 2006; and (3) low-income students.⁹³ The Districts acknowledge that the State Controller's Office has excluded the students exempted from the fee in calculating the maximum amount of health service fees that the Districts had the authority to charge.⁹⁴ Unless the students referenced in the Districts' argument above fall into any of the three categories of exempt students, the Districts have the authority to charge the students the health service fee.

Staff recognizes that charging the health service fee to all non-exempt students, including those that do not use community college health services, may be a difficult policy decision for a community college district's governing board to make. However, non-use of a community college district's health services, whether due to the distance of a student from the services or simply by choice of a student not to use the services, is not an exemption from the fee that community college districts are *authorized by law* to charge. Thus, staff finds that the State Controller's Office properly included all students that do not fall within the three categories of students exempt from the health service fee as students which the Districts have the *authority* to charge the health service fee.

B. Has the State Controller's Office failed to properly conduct an audit or to meet the applicable statute of limitations or procedural notification requirements in conducting its audit? If so, what are the effects on the State Controller's Office audit and subsequent reduction of the Districts' reimbursement claims?

The following discussion will first address whether the State Controller's Office has properly conducted an audit and whether the State Controller's Office has met the statute of limitations to initiate and complete the audit. Second, the discussion will address the effect of the State Controller's Office failure to provide an explanation within 30 days of adjustments made to reimbursement claims as required by Government Code section 17558.5(c).

1) The State Controller's Office has properly conducted an audit and met the statute of limitations to initiate and complete the audit.

The Districts make the following assertions: (a) the State Controller's Office has not conducted an audit of the Districts' enrollment data and therefore no audit was conducted; (b) the State Controller's Office has based its adjustments to the Districts' reimbursement claims on the wrong standard of review; and (c) the State Controller's Office did not initiate and complete an audit within the applicable statute of limitations.⁹⁵

⁹³ Statutes 2005, chapter 320, repealed the exemption for low-income students from Education Code section 76355.

⁹⁴ Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 6.

⁹⁵ Exhibits A-G, incorrect reduction claims filed by the Districts.

- a. The State Controller's Office has properly utilized enrollment data provided by the Chancellor's Office to conduct an audit.

Government Code section 17561(d)(2) sets forth the duty of the State Controller to pay reimbursement claims, the authority to audit claims, and the authority to reduce claims determined to be excessive or unreasonable. Specifically, Government Code section 17561(d)(2) provides in relevant part:

The Controller shall pay these claims [for reimbursement] from funds appropriated therefor except as follows:

- (A) The Controller may audit any of the following:
 - (i) Records of any local agency or school district to verify the actual amount of mandated costs.
 - (ii) The application of a reasonable reimbursement methodology.
 - (iii) The application of a legislatively enacted reimbursement methodology under Section 17573.
- (B) The Controller may reduce any claim that the Controller determines is excessive or unreasonable.

The State Controller's Office reduced the amounts claimed by the Districts based on the maximum amount of health service fees that the Districts were authorized to collect during the relevant fiscal years multiplied by all students enrolled in each district that are not exempt from the fee. For purposes of auditing the Districts' reimbursement claims the State Controller's Office used enrollment data provided by the Chancellor's Office from its management information system (MIS).

The MIS collects and organizes information submitted by community college districts regarding the districts' students, faculty and staff, and courses. This information is collected by the Chancellor's Office and the Board of Governors for purposes of fulfilling their role of providing general supervision over the community college districts.⁹⁶ This supervision includes conducting necessary system-wide research on community colleges and providing appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.⁹⁷ Pursuant to these duties, the Chancellor's Office published the MIS user's manual for district data submission and the MIS Data Element Dictionary. As described by the MIS user's manual for district data submission:

As a condition of receiving the grant funds, districts certified that they would fully implement the collection and reporting requirements of [MIS], pursuant to the

⁹⁶ Exhibit __, Chancellor's Office Management Information System, Data Element Dictionary, page 1.01. Education Code section 70901(b).

⁹⁷ Education Code section 70901(b) (3).

standards adopted by the Chancellor's Office as specified in the MIS Data Element Dictionary. Participation is required of all 72 districts (108 colleges).⁹⁸

The data and information *reported by the community college districts* includes student headcount (MIS data element STD7), enrollment in apprenticeship programs (MIS data element SB 23, Code 1), and BOGG recipients (MIS data element SF21, all codes beginning with B or F).⁹⁹

Citing to Government Code section 17561(d)(2), the Districts argue that the State Controller's Office cannot rely on enrollment data provided by the Chancellor's Office for purposes of conducting an audit of the Districts' reimbursement claims. Because the State Controller's Office has done this, the Districts argue that no audit has been conducted.¹⁰⁰ Specifically, the Districts argue:

The Controller did not audit the [Districts'] enrollment data. Instead, the Controller utilized enrollment data from the Chancellor's Office for the calculation of collectible fees. The Controller has utilized this Chancellor's Office data for audits for several years, so it is being used as a rule of general application. This enrollment information was collected, processed, and reported by a separate state agency for other purposes and not audited by the Controller. There has been no examination or validation of the data for the data's relevance for purposes of mandated cost reimbursement calculations. Since this data is used to calculate the collectible offsetting revenues, the data must be relevant and supported by the Controller since the Controller is making the adjustment. The Controller has the burden of going forward on this issue of validating the accuracy and relevance of the Chancellor's enrollment data for purposes of mandated cost reimbursement.¹⁰¹

The following issues arise from the Districts' argument:

1. Whether the State Controller's Office has the discretion to use the enrollment data from the Chancellor's Office when conducting audits of the Districts' reimbursement claims.

⁹⁸ Exhibit __, Chancellor's Office Management Information System, User's Manual: Data Submission (2004). Since the publishing of the user's manual, four colleges have been created within the districts.

⁹⁹ Exhibit __, MIS "Data Element Dictionary – STD Student Characteristics Derived Data Elements, Student Characteristics Data Elements (SB), and Student Financial Aid Data Elements (SF) and (FA)" at <<http://www.cccco.edu/SystemOffice/Divisions/TechResearchInfo/MIS/DED/tabid/266/Default.aspx>> as of July 6, 2011.

¹⁰⁰ Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011, pages 8-9.

¹⁰¹ Exhibit I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011, page 8.

2. If the State Controller's Office has this discretion, whether the State Controller's Office's discretionary decision to rely on the Chancellor's Office enrollment data was arbitrary and capricious.¹⁰²

In regard to the first issue, at its essence the Districts' argument suggests that an audit of a district's enrollment data is limited to the review of data and evidence provided only by the district being audited. This limitation would prevent the use of enrollment data provided by another source as evidence when auditing a district's enrollment data. However, the Districts provide no legal authority to support this argument. In fact, the State Controller's Office maintains broad discretion in how to perform its duty to audit all claims against the state. As provided by Government Code section 12410:

Whenever, in [the Controller's] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination*. (Italics added.)

Thus, the State Controller's Office has the discretion to consider evidence provided by the Chancellor's Office when conducting audits of the Districts' reimbursement claims. However, it still must be determined whether the State Controller's Office exercise of this discretion was done in an arbitrary or capricious manner.

In regard to the second issue, the State Controller's Office exercised its discretion to use enrollment data from the Chancellor's Office in conducting its duty to audit the Districts' reimbursement claims. Although the statutory scheme in Government Code section 17500 et seq. does not specify the standard of review of an audit by the State Controller's Office resulting in an incorrect reduction claim, courts have held, "[o]rdinary mandate is used to review an adjudicatory decision when an agency is not required to hold an evidentiary hearing. [Citation.] The scope of review is limited, out of deference to the agency's authority and presumed expertise"¹⁰³ Under an ordinary mandamus a trial court reviews an administrative action to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires.¹⁰⁴

¹⁰² Exhibit __, *Munroe v. Los Angeles County Civil Service Com'n* (2009) 173 Cal.App.4th 1295, 1300.

¹⁰³ Exhibit __, *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *Harris v. Civil Service Com.* (1998) 65 Cal.App.4th 1356, 1363, in which the court finds:

We question, as the [San Francisco civil service commission] does, whether review by administrative mandate is available. Unless (1) a hearing, (2) the taking of evidence and (3) discretion to determine facts are all required "by law" (§1094.5, subd. (a)), review can be had only by traditional mandate [Citation]. Those three elements codify the essence of "adjudicatory function" [Citation], as opposed to legislative or quasi-legislative function, in an administrative body.

¹⁰⁴ Exhibit __, *Munroe v. Los Angeles County Civil Service Com'n*, *supra*, 173 Cal.App.4th at p. 1300.

Here, the Commission is tasked with reviewing an audit conducted by the State Controller's Office, in which the State Controller's Office was not required to hold an evidentiary hearing. Thus, to review the State Controller's decision to rely on enrollment data provided by the Chancellor's Office in conducting an audit of the Districts' claims, it must be determined whether or not the State Controller's decision was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires.

Based on the evidence in the record described below, staff finds that the State Controller's Office did not act in an arbitrary or capricious manner by using the enrollment data from the Chancellor's Office instead of relying on the data provided by the Districts for purposes of auditing the Districts' reimbursement claims.

Despite the fact that the *Health Fee Elimination* parameters and guidelines require the inclusion of total student enrollment numbers,¹⁰⁵ only eight of the 29 reimbursement claims contained enrollment data for the fiscal years claimed.¹⁰⁶ After receiving the reimbursement claims from the Districts, the State Controller's Office issued letters to the Districts requesting student enrollment data and fee amounts by semester as requested by the claiming forms and instructions.¹⁰⁷ The claiming forms and instructions requested the maximum fee authorized, total enrollment numbers, and enrollment numbers for students that fall within the health fee exemptions.¹⁰⁸ In response, the Districts stated:

As you may know, when we prepare the annual claim, we utilize actual student health insurance income received by the [Districts] to determine the net reimbursable costs rather than calculate the "amount collectible." We consider

¹⁰⁵ Exhibit __, *Health Fee Elimination* parameters and guidelines, as amended on May 25, 1989.

¹⁰⁶ Exhibits A-G, incorrect reduction claims filed by the Districts. Enrollment numbers were identified by Citrus Community College District for fiscal years 2003-2004 through 2005-2006; Los Rios Community College District for fiscal year 2007-2008; Redwoods Community College District for fiscal year 2002-2003; Allan Hancock Joint Community College District for fiscal year 2004-2005; and Rancho Santiago for fiscal years 2007-2008 and 2008-2009.

¹⁰⁷ Exhibit J, State Controller's Office letter to Citrus Community College District for information for fiscal year 2006-2007, dated July 1, 2008; State Controller's Office letter to Cerritos Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller's Office letter to Los Rios Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller's Office letter to Redwoods Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller's Office letter to Allan Hancock Joint Community College District for information for fiscal years 2005-2006 through 2006-2007, dated July 2, 2008; State Controller's Office letter to Rancho Santiago Community College District for information for fiscal years 2005-2006 through 2006-2007, dated July 1, 2008; State Controller's Office letter to Pasadena Area Community College District for information for fiscal years 2004-2005 and 2005-2006.

¹⁰⁸ Education Code sections 76355(c)(1)-(3), which set forth the exemptions based on religion, enrollment as an apprentice, and income.

the amount collectible calculation method (total students subject to the student health insurance fee multiplied by the highest authorized student health insurance fee per student) to be less accurate than actual revenues received. This difference in reporting methods has been the subject of past field audits, pending incorrect reduction claims, and pending litigation. We will continue to utilize the actual income received amount until the dispute is decided by competent authority in order to preserve the [Districts'] rights.

This letter transmits an HFE 1.1 form for each fiscal year which includes the student enrollment data that you requested. The individual student health insurance fee amount is not included since it is the Controller's policy to use the highest authorized rate regardless of the rate charged by the [Districts]. The highest authorized rate is a matter of public record available to the Controller's staff, so is not provided here.¹⁰⁹

The enrollment data provided by the Districts does not identify any students exempt from the health service fee on the basis of religion (Ed. Code, § 76355(c)(1)).¹¹⁰ Additionally, the data provided by the Districts identifies only two districts and one fiscal year that had students that were exempt from the health service fee on the basis of students attending the college under an apprenticeship training program (Ed. Code, § 76355(c)(2)).¹¹¹ No other districts identify students enrolled in an apprenticeship training program. In regard to students who were exempt from the health service fee based on income (former Ed. Code, § 76355(c)(3)), most of the Districts identified full-time and part-time enrollment "net of BOG [*sic*] waivers," without identifying how many students were actually excluded from the enrollment numbers identified.¹¹² Also, the income exception was inoperative as of January 1, 2006. It is unclear from the evidence in the record whether the Districts excluded low-income students after January 1, 2006 from the health service fee for reimbursement claims made during fiscal year 2005-2006. Viewing the enrollment data described above in conjunction with the Districts' response to the Chancellor's Office for the enrollment data, it is unclear whether or not the Districts provided the total enrollment of students minus students exempted from the health service fee or if the Districts provided enrollment numbers of students the Districts *actually* charged the health service fee.

¹⁰⁹ Exhibits A-G, incorrect reduction claims filed by the Districts, "Exhibit C" of Citrus Community College District's incorrect reduction claim; "Exhibit C" of Cerritos Community College District's incorrect reduction claim; "Exhibit C" of Los Rios Community College District's incorrect reduction claim; "Exhibit C" of Redwoods Community College District's incorrect reduction claim; "Exhibit B" of Allan Hancock Joint Community College District's incorrect reduction claim; "Exhibit A" of Rancho Santiago Community College District's incorrect reduction claim; and "Exhibit B" of Pasadena Area Community College District's incorrect reduction claim.

¹¹⁰ Exhibits A-G, incorrect reduction claims filed by the Districts.

¹¹¹ *Ibid.* Cerritos Community College District and Allan Hancock Joint Community College District identify enrollment numbers of students attending each district under an apprenticeship training program for fiscal year 2006-2007.

¹¹² *Ibid.*

In order to audit the Districts' reimbursement claims, including the above-described enrollment data provided by the Districts, the State Controller's Office used the enrollment data from MIS. As discussed above, the data maintained and organized in MIS is reported to the Chancellor's Office by community college districts and identifies overall enrollment, enrollment in an apprenticeship program, and BOGG grant recipients. In fact, although the enrollment numbers provided by Cerritos Community College District differ from those identified by the State Controller's Office, Cerritos Community College District acknowledges that the enrollment data it provided came from the Chancellor's Office's MIS.¹¹³ Thus, the Chancellor's Office MIS is a reasonable and reliable source for enrollment data of community college districts, and the State Controller's Office's use of the MIS for enrollment data for auditing the Districts' claims is not unreasonable.

Additionally, the State Controller's Office did not simply use random data contained in the MIS in order to determine the total number of students that the Districts had the authority to charge the health service fee. Instead, the State Controller's Office identified specific MIS data elements in order to identify total enrollment and to exclude students exempted from the health service fee from the enrollment of each district.

Specifically, the State Controller's Office identified total enrollment from MIS data element STD7, codes A through G, which identifies total student headcount based on enrollment type.¹¹⁴ Duplicate students were eliminated by students' social security numbers.¹¹⁵ From the total headcount, the State Controller's Office subtracted students enrolled in apprenticeship training programs as identified by the MIS data element SB23, which identifies students registered as apprentices.¹¹⁶ Also, the State Controller's Office subtracted from the total enrollment number BOGG recipients identified (low income students receiving a Board of Governors Grant) based on MIS data element SF21, all codes beginning with B or F, which identifies students in receipt

¹¹³ Exhibit A, incorrect reduction claim filed by Cerritos Community College District, *supra*, "Exhibit C."

¹¹⁴ Exhibit __, Chancellor's Office Data Element Dictionary, page L.015-L.016. Code "A" identifies credit students enrolled in a weekly/daily census section; code "B" identifies students enrolled in a positive attendance section with 8 or more hours or 0.50 or more units earned; code "C" identifies the students enrolled in an independent study section with 0.50 or more units earned; code "D" identifies credit students enrolled in positive attendance section with less than 8 hours and less than 0.50 units earned; code "E" identifies credit students enrolled in an independent study with less than 0.50 units earned; code "F" identifies noncredit students enrolled in a positive attendance section with 8 or more hours; and code "G" identifies noncredit students enrolled in a positive attendance section with less than 8 hours.

¹¹⁵ Exhibit J, comments filed by the State Controller's Office, dated April 14, 2011. Response to Citrus Community College incorrect reduction claim, "Tab 5." Response to Cerritos Community College incorrect reduction claim, "Tab 5." Response to Los Rios Community College incorrect reduction claim, "Tab 5." Response to Redwoods Community College District incorrect reduction claim, "Tab 5." Response to Allan Hancock Joint Community College District, "Exhibit B." Response to Rancho Santiago Community College District, "Exhibit A." Response to Pasadena Area Community College District, "Exhibit B."

¹¹⁶ Exhibit __, Chancellor's Office Data Element Dictionary.

of a BOGG.¹¹⁷ In doing the above, the State Controller's Office identified the total number of students that the Districts' were authorized to charge the health service fee.

Thus, based on the evidence in the record, staff finds that the State Controller's Office has not acted in an arbitrary and capricious manner. Rather, in light of the data provided by the Districts, the State Controller's Office reasonably utilized enrollment data from the Chancellor's Office MIS in order to audit the enrollment data provided by the Districts.¹¹⁸ As a result, the State Controller's Office has properly utilized enrollment data provided by the Chancellor's Office and conducted an audit.

b. The State Controller's Office has adjusted the Districts' claims based on the correct standard.

In addition to arguing that the State Controller's Office has not conducted an audit pursuant to Government Code section 17561(d)(2), the Districts argue that the State Controller's Office does not "assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard of review."¹¹⁹

In response the State Controller's Office argues:

The SCO did in fact conclude that the district's claim was excessive. Excessive is defined as "Exceeding what is usual, *proper, necessary*, [emphasis added] or normal." The [Districts'] mandated cost claims exceeded the proper amount based on the reimbursable costs allowed by statutory language and the program's parameters and guidelines.¹²⁰

Staff agrees with the State Controller's Office. The Districts acknowledge offsetting reimbursement claims by the health service fees actually charged and collected, not by the amount that the Districts were authorized to charge.¹²¹ Pursuant to the court's decision in *Clovis*, the Districts are not entitled to reimbursement for costs of the mandated program to the extent

¹¹⁷ Exhibit __, Chancellor's Office Data Element Dictionary.

¹¹⁸ The Districts make reference to the utilization of the Chancellor's Office data for audits as being a rule of general application. The Districts make this assertion based on the State Controller's Office's use of enrollment data from the Chancellor's Office "for audits for several years." However, the fact that the auditors have used enrollment data for audits for several years does not necessarily lead to a conclusion that there was a rule generally applied to reimbursement claim audits. Rather, it could indicate that individual auditors found the Chancellor's Office enrollment data to be more reliable evidence in light of what was provided by the Districts in each reimbursement claim filed. There is no indication that if the Districts provided more information to support its data that the Chancellor's Office would not have relied upon the Districts' data.

¹¹⁹ Exhibits I, comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 9.

¹²⁰ Exhibit J, comments filed by the State Controller's Office, "Response by the State Controller's Office to the Incorrect Reduction Claims by [the Districts]."

¹²¹ Exhibits A-G, incorrect reduction claims filed by the Districts, "Letters in response to the State Controller's Office request for enrollment information and health fee data."

the Districts had the authority to charge a fee for the mandated program. Staff finds that the State Controller's Office adjusted the Districts' claims for reimbursement based on the correct standard.

c. The State Controller's Office has met the statute of limitations to initiate and complete the audits.

The Districts assert that Government Code section 17558.5(a) is impermissibly vague, and thus unenforceable. The Districts propose a different statute of limitations and argue that the State Controller's Office has failed to meet the statute of limitations to conduct audits for some of the reimbursement claims filed by the Districts during certain fiscal years. As a result, the Districts contend that reductions made to reimbursement claims during these fiscal years are void and should be withdrawn.¹²²

The Districts make this assertion for claims made by the following districts during the following fiscal years:

- Citrus Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed on January 4, 2004 and December 13, 2004.
- Cerritos Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed on January 12, 2004 and January 7, 2005.
- Redwoods Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed January 13, 2004 and January 12, 2006.
- Allan Hancock Joint Community College District claims made for fiscal years 2002-2003 through 2004-2005, filed January 13, 2004, December 13, 2004, and December 30, 2005.

The statute of limitations for the State Controller's Office to initiate an audit is set forth in Government Code section 17558.5(a). As applicable to reimbursement claims filed before January 1, 2005, Government Code section 17558.5(a) provided in relevant part:

(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.¹²³

For reimbursement claims filed on and after January 1, 2005, section 17558.5(a) requires the State Controller's Office to complete any audit not later than two years after commencement of the audit.¹²⁴

The State Controller's Office states, and has included evidence in the record to support, that it has only made payments on the claims made by Citrus, Cerritos, Redwoods, and Allan Hancock

¹²² Exhibits A-G, incorrect reduction claims filed by the Districts.

¹²³ Government Code section 17558.5(a), as amended by Statutes 2002, chapter 1128.

¹²⁴ Government Code section 17558.5(a), as amended by Statutes 2004, chapter 890.

Joint Community College Districts for fiscal year 2002-2003, and that payment for these claims were made on October 25, 2006.¹²⁵ Based on the plain language of Government Code section 17558.5(a), the second sentence of subdivision (a) applies because no payment was made for the claims for fiscal year 2002-2003 until October 25, 2006. The audits for the claims made for fiscal year 2002-2003 were required to be initiated by October 25, 2009 (three years from the date of initial payment). The State Controller's Office states, and has included evidence in the record to support, that these audits were initiated by May 8, 2009. Thus, the State Controller's Office has met the statute of limitations set forth in the second sentence of subdivision (a).

The Districts do not dispute that the State Controller's Office has met the statute of limitations set forth in the second sentence of Government Code section 17558.5(a). However, the Districts assert that the second sentence of Government Code section 17558.5(a) is impermissibly vague, and therefore unenforceable. As a result, the Districts contend that the running of the three-year statute of limitations begins when the reimbursement claim is filed or last amended, as provided in the first sentence of section 17558.5(a).

In response, the State Controller's Office argues:

[T]he language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the "date of initial payment," in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning vagueness is moot, as the [Commission] has no authority to determine that a statute, or any portion thereof, is unconstitutional. [Citation omitted] This power is reserved to the Judiciary. For this reason, the Commission should reject the Claimants' vagueness argument and hold that the statute of limitations begins to run on the date of initial payment.¹²⁶

The State Controller's Office is correct in stating that the Commission lacks the authority to determine that a statute is unconstitutional and therefore unenforceable.¹²⁷ As a result, staff

¹²⁵ Exhibit J, comments filed by the State Controller's Office, *supra*.

¹²⁶ Exhibit J, comments filed by the State Controller's Office, Response by the State Controller's Office to the Incorrect Reduction Claims filed by Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts, *supra*. The State Controller's Office cites to article III, section 3.5 of the California Constitution.

¹²⁷ Article III, section 3.5 of the California Constitution provides:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such

makes no findings on the constitutionality of Government Code section 17558.5(a), and must treat all of subdivision (a) as enforceable. Applying the plain language of Government Code section 17558.5(a) to the evidence presented to the Commission, staff finds that the State Controller's Office has initiated and completed the audits within the statute of limitations.

- 2) Although the State Controller's Office did not provide an explanation of the adjustments made to reimbursement claims within the 30-day time limit of Government Code section 17558.5(c), the State Controller's Office has not denied the Districts the opportunity to comprehensively contest the adjustments.

Government Code section 17558.5(c) requires the State Controller's Office to notify why an adjustment of a claim for reimbursement was made to claimants in writing within 30 days of issuing a remittance advice for the adjustment made. In regard to Citrus, Cerritos, Los Rios, and Redwoods Community College Districts, the Districts noted in their incorrect reduction claims that the State Controller's Office had not provided an explanation of adjustments made to the reimbursement claims filed as required by Government Code section 17558.5(c). After the Districts filed their incorrect reduction claims and well after 30 days from issuing remittance advices to the Districts, the State Controller's Office provided the explanations of the adjustments, missing the 30-day time limit.¹²⁸

Prior to receiving the State Controller's Office explanations, the Districts made the assertion that the State Controller's Office actions deny the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims filed with the Commission.¹²⁹ Other than generally requesting the Commission to make a finding on all issues raised by the Districts and to order the State Controller's Office to correct the adjustments made, the Districts do not seek any specific relief based on this assertion.

Although the State Controller's Office did not provide an explanation of adjustments made to the reimbursement claims within the 30-day time limit, staff finds that the Districts are not denied the opportunity to comprehensively contest adjustments made. Claimants are authorized to file an incorrect reduction claim with the Commission upon receiving a remittance advice or other notice of adjustment notifying the claimant of a reduction.¹³⁰ This is the *beginning* of a claimant's opportunity to contest adjustments made by the State Controller's Office. After a

statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

¹²⁸ Beginning on July 1, 2009 through July 22, 2009, the State Controller's Office issued remittance advices for reimbursement claims for fiscal years 2002-2003 through 2007-2008 to Citrus, Cerritos, Los Rios, and Redwoods Community College Districts. The State Controller's Office issued notifications explaining the adjustments made to these districts' reimbursement claims on October 20, 2009 and October 21, 2009. Thus, in regard to Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, and Pasadena Area Community College Districts the State Controller's Office failed to meet the 30-day time limit for issuing a notification explaining adjustments made to the reimbursement claims.

¹²⁹ Exhibits A-G, incorrect reduction claims filed by the Districts. page ____.

¹³⁰ Former California Code of Regulations, title 2, section 1185(b) (Register 2003, No. 17); currently 1185(c) (Register 2010, No. 44).

claimant has filed an incorrect reduction claim, the claimant has the ability to amend its incorrect reduction claim and is provided multiple opportunities to submit comments to respond to comments or issues raised during the Commission's incorrect reduction claims process.¹³¹ Additionally, if the State Controller's Office fails to provide a needed explanation of adjustments made to a reimbursement claim, the Commission maintains subpoena power. Here, the State Controller's Office provided detailed analyses to all of the claim reductions on October 20, 2009 and October 21, 2009, to which the Districts responded on January 11, 2011. Thus, the actions of the State Controller's Office have not denied the Districts the opportunity to comprehensively contest adjustments made to the reimbursement claims.

C. Has the State Controller's Office improperly reduced reimbursement for the cost of reimbursable services?

This section will address the following issues: (1) whether the State Controller's Office properly accounted for the students that fall within the health service fee exemptions; and (2) whether the scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of health service fees.

1) The State Controller's Office properly accounted for students exempt from the Health Service Fee.

In conducting audits on the Districts' claims for reimbursement, the State Controller's Office calculated the offsetting revenue from health service fees for each term for each fiscal year claimed by multiplying the maximum fee authority for the term during the fiscal year claimed by the total enrollment minus exempted students for each term.¹³² The State Controller's Office then subtracted the offsetting revenue for each fiscal year from the total reimbursable claim amounts submitted by the Districts for each fiscal year. Other than the Districts' understating the offsetting revenue generated by the health service fee authorized for each fiscal year, the State Controller's Office did not find any other issue with the costs claimed by the Districts.

The Districts argue:

Education Code section 76355, subdivision (c), *requires* the districts to adopt local rules, that is, to utilize its legislative power, to exempt certain students from payment of the health service fee. To the contrary, Section 76355 merely *authorizes* districts to charge the fee to any other class of student. Subdivision (c) states that the districts cannot charge a fee to apprenticeship students or students that request a religion-based exemption. Until January 1, 2006, students receiving BOGG [Board of Governors Grant] fee waivers (perhaps as much as 30% of the enrollment) were also exempted from paying the fee. Note that these exemptions do not automatically mean that the district can exclude these students from student health services, rather, the district just cannot collect a fee. Thus, to the extent that these students utilize the student health services, the district is incurring an unfunded program cost.

¹³¹ Former California Code of Regulations, title 2, sections 1185, 1185.01, and 1185.02 (Register 2003, No. 17); currently sections 1185, 1185.1, and 1185.5.

¹³² Fee authority x (total enrollment – exempted students) = offsetting revenue for the term.

The Controller's collectible fee calculation excludes these exempted students from the calculation of the offsetting revenue, but does not determine the costs of the services to these exempt students. The *Clovis* decision has concluded that if a charge can be made, then a cost is not incurred. Since no charge can be made for exempted students, these costs should be reimbursed without regard to the offsetting savings applied to all other student program costs. The Controller has the burden of going forward on this issue of properly reimbursing the cost of services provided to the exempt students. In these seven "desk" audits, the Controller did not audit any of the program costs, so the Controller inappropriately reduced the health service costs for the exempt students. (Original italics.)

The Districts' argument suggests that the State Controller's Office is required to determine the costs of the services to students exempt from the health services fee. However, it is a claimant's responsibility to claim total reimbursable costs in its reimbursement claims filed with the State Controller's Office.¹³³ Here, the total reimbursable costs claimed by the Districts should have included the reimbursable costs of health services provided to all students, including students exempt from the health service fee. It is unclear if, or why, the Districts excluded the cost of health services provided to students exempted from the health service fee from the total reimbursable claim amounts submitted by the Districts to the State Controller's Office.¹³⁴ To the extent that reimbursable costs under the *Health Fee Elimination* program have not been claimed, it is the responsibility of the claimants (the Districts) to claim these costs, not that of the State Controller's Office.

Ultimately, the cost of health services provided to students exempt from the health service fee is irrelevant for purposes of the consolidated incorrect reduction claims because the State Controller's Office did not make any reduction to the reimbursement claims on the basis of the Districts including the cost of providing health services to students exempt from the health service fee. The *only* basis upon which the State Controller's Office reduced the Districts' reimbursement claims, was for understating offsetting revenue resulting from the health service fees that the Districts' had the *authority* to charge. Thus, staff finds that the State Controller's Office properly accounted for students exempt from the health service fee.

- 2) The scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of health service fees.

The Districts argue:

The scope of reimbursable services described in the parameters and guidelines exceed the program regulations. Therefore, districts are eligible for

¹³³ Education Code section 17550 et seq. See, Education Code section 17560, which sets forth the timing and content of reimbursement claims filed by local agencies and school districts.

¹³⁴ There is no evidence in the record suggesting that the Districts excluded the cost of health services provided to students exempt from the health service fee from the Districts' reimbursement claims.

reimbursement for some parameters and guidelines services that are outside the scope of the Title 5 constraints for use of the fees.

Staff agrees with the Districts' argument that the scope of reimbursable services described in the parameters and guidelines exceed the permissible uses of the health service fee paid by students to the extent that it pertains to: (a) physicals for athletes; and (b) physicals for employees.

a. Physicals for athletes.

The plain language of Education Code section 76355(d)(2) provides:

Authorized expenditures [of health service fees] shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, *physical examinations for intercollegiate athletics*, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs. (Italics added.)

Additionally, Education Code section 76355(g) requires the Board of Governors to adopt regulations that generally describe the types of health services included in the health service program. These regulations are found in California Code of Regulations, title 5, section 54700 et seq. Title 5 section 54706, which sets forth prohibited uses of the health service fee, provides:

Student health fees shall not be expended for the following expenses:

- (a) Salaries of personnel not directly involved in the delivery of student health services;
- (b) Administrative salaries (assistant dean level or its equivalent and above);
- (c) Athletic trainers' salaries;
- (d) Athletic insurance for the intercollegiate athletic team;
- (e) Medical supplies for athletics;
- (f) *Physical examinations for intercollegiate athletics*;
- (g) Ambulance services and salaries of health professionals for athletic events;
- (h) Any deductible expenses for accident claims filed for athletic team members;
- (i) Sabbatical expenses for health service personnel.

Nothing within these provisions should deny a student participating in athletic programs a service which is properly supported by student health fees. (Italics added.)

The parameters and guidelines for the *Health Fee Elimination* program lists physicals for athletes as a reimbursable cost. However, Education Code section 76355 and its implementing regulations prohibit community college districts from using health service fees charged to students for physicals for athletes. Thus, the health service fees cannot be used to offset the costs of providing physicals for athletes for purposes of mandate reimbursement.

Only the following community college districts claimed costs associated with providing physicals for athletes:

- Citrus Community College District claimed costs associated with providing physicals for athletes during fiscal year 2002-2003.
- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007.
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008.
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007.
- Rancho Santiago Community College District claimed costs associated with providing physicals for athletes during fiscal years 2007-2008 and 2008-2009.

In the audits of these community college districts, the State Controller's Office used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for athletes. From the evidence in the record it is not possible for staff to determine the costs associated with providing physicals for athletes for each district for each fiscal year claimed. As a result, staff finds that the State Controller's Office incorrectly reduced reimbursable costs associated with providing physicals for athletes by applying health service fees as offsetting revenue for the community college districts listed above, during the fiscal years listed above.

b. Physicals for employees.

Like physicals for athletes, community college districts are not authorized to use health service fees paid by *students* for physicals for *employees*. California Code of Regulations, title 5, section 54702, which sets forth the proper uses of health service fees paid by students, provides in relevant part:

The [health service fee] which the governing board of a district may require students to pay shall be expended *only* to cover the direct and indirect costs necessary to provide any, all of, or a portion of the *student* health programs and services approved by the governing board for offering within the district
(Italics added.)

The parameters and guidelines for the *Health Fee Elimination* program lists physicals for employees as a reimbursable cost. However, as shown above, the language of title 5 section 54702, which implements Education Code section 76355, the health service fees paid by students shall be expended only to cover the *student* health programs and services. As a result, the health service fees cannot be used to offset the costs of providing physicals for employees for purposes of mandate reimbursement.

Only the following community college districts claimed costs associated with providing physicals for employees:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007.

- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007.

In the audits of these community college districts, the State Controller's Office used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for employees. From the evidence in the record it is not possible for staff to determine the costs associated with providing physicals for employees for each district for each fiscal year claimed. As a result, staff finds that the State Controller's Office incorrectly reduced reimbursable costs associated with providing physicals for employees by applying health service fees as offsetting revenue for the community college districts listed above, during the fiscal years listed above.

IV. Conclusion

For the foregoing reasons, staff concludes that the State Controller's Office incorrectly reduced costs incurred that are attributable to physicals for athletes by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Citrus Community College District claimed costs associated with providing physicals for athletes during fiscal year 2002-2003 (CSM 09-4206-I-19).
- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008 (CSM 09-4206-I-23).
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).
- Rancho Santiago Community College District claimed costs associated with providing physicals for athletes during fiscal years 2007-2008 and 2008-2009 (CSM 09-4206-I-28).

Staff recommends that the above community college districts' reimbursement claims be remanded back to the State Controller's Office to determine the portion of the total costs claimed that are attributable to physicals for athletes. The costs for physicals for athletes should be reinstated.

Additionally, staff concludes that the State Controller's Office incorrectly reduced costs incurred that were attributable to physicals for employees by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

Staff recommends that the above community college districts' reimbursement claims be remanded back to the State Controller's Office to determine the portion of the total costs claimed that are attributable to physicals for employees. The costs for physicals for employees should be reinstated.

Staff also concludes that the State Controller's Office correctly reduced all other costs incurred during all other fiscal years claimed by Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District for the *Health Fee Elimination* program by the amount of health service fees that the districts were authorized to charge.

V. Staff Recommendation

Staff recommends that the Commission partially approve these consolidated incorrect reduction claims as outlined above and adopt this analysis.