

SixTen and Associates

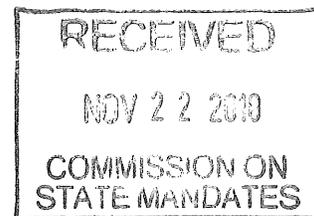
Mandate Reimbursement Services

KEITH B. PETERSEN, President
3270 Arena Blvd. Suite 400-363
Sacramento, CA 95834
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

November 18, 2010

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: Foothill-De Anza Community College District
Health Fee Elimination #2
Fiscal Years: 2002-03 through 2005-06
Incorrect Reduction Claim

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced *revised* incorrect reduction claim for Foothill-De Anza Community College District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

Kevin McElroy, Vice Chancellor
Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Thank-you.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Petersen".

Keith B. Petersen

COMMISSION ON STATE MANDATES

1. REVISED INCORRECT REDUCTION CLAIM TITLE

1/84, 1118/87 Health Fee Elimination #2

Original Incorrect No: 09-4206-I-24

2. CLAIMANT INFORMATION

Foothill-De Anza Community College District

Kevin McElroy, Vice Chancellor
Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022
Phone: 650-949-6201
Fax: 650-941-1638
E-mail: mcelroykevin@fhda.edu

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834
Voice: (916) 419-7093
Fax: (916) 263-9701
E-mail: Kbpsixten@aol.com

For CSM Use Only	
Filing Date:	NOV 22 2010
IRC #:	COMMISSION ON STATE MANDATES

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

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

5. AMOUNT OF INCORRECT REDUCTION

<u>Fiscal Year</u>	<u>REVISED Amount of Reduction</u>
2002-03	\$ 13,783
2003-04	\$ 12,652
2004-05	\$258,180
2005-06	\$ 0
TOTAL:	\$284,615

6. NOTICE OF NO INTENT TO CONSOLIDATE

____ This claim is not being filed with the intent to consolidate on behalf of other claimants.

Sections 7-9 are attached as follows:

7. **Written Detailed Narrative:** Pages 1 to 11
8. **SCO Results of Review Letters:** Exhibit A
9. **SCO Revised Audit Report:** Exhibit B

10. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Kevin McElroy, Vice Chancellor
Business Services

Signature Kevin McElroy Date 11/16/10

1 Claim Prepared by:
2 Keith B. Petersen
3 SixTen and Associates
4 3270 Arena Blvd., Suite 400-363
5 Sacramento, California 95834
6 Voice: (916) 419-7093
7 Fax: (916) 263-9701
8 E-mail: kbpsixten@aol.com

9
10 BEFORE THE
11 COMMISSION ON STATE MANDATES
12 STATE OF CALIFORNIA

12 **REVISED**)
13 INCORRECT REDUCTION CLAIM OF:)
14) No. CSM 09-4206-I-24
15)
16) Chapter 1, Statutes of 1984, 2nd E.S.
17) Chapter 1118, Statutes of 1987
18 **Foothill-De Anza**)
19 **Community College District,**) Education Code Section 76355
20)
21) **Health Fee Elimination # 2**
22 Claimant.)
23) Annual Reimbursement Claims:
24)
25) Fiscal Year 2002-2003
26) Fiscal Year 2003-2004
27) Fiscal Year 2004-2005
28) Fiscal Year 2005-2006
29)

30 INCORRECT REDUCTION CLAIM FILING

31 PART I. AUTHORITY FOR THE CLAIM

32 The Commission on State Mandates has the authority pursuant to Government
33 Code Section 17551(d) to “hear and decide upon a claim by a local agency or school
34 district filed on or after January 1, 1985, that the Controller has incorrectly reduced
35 payments to the local agency or school district pursuant to paragraph (2) of subdivision

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 (d) of Section 17561.” Foothill-De Anza Community College District (hereinafter
2 “District” or “Claimant”) is a school district as defined in Government Code Section
3 17519. Title 2, California Code of Regulations (CCR), Section 1185(a), requires
4 claimants to file an incorrect reduction claim with the Commission.

5 Original Incorrect Reduction Claim

6 The Controller issued the original final audit report on May 20, 2009. The District
7 submitted an incorrect reduction claim on September 24, 2009. By letter dated October
8 13, 2009, the Commission on State Mandates notified the District that the incorrect
9 reduction claim was received and accepted for filing.

10 Revised Incorrect Reduction Claim

11 The Controller issued a “revised” final audit report on August 18, 2010. The
12 revised final audit report is attached as Exhibit “B.” The revised audit report constitutes
13 a new and separate demand for repayment and an adjudication of the claim. The
14 District also received “results of review” letters dated September 10, 2010, for all four
15 fiscal years that are notices of payment action. Copies of these letters are attached as
16 Exhibit “A.”

17 The revised audit report transmittal letter states that the District may file an
18 amended incorrect reduction claim if the District disagrees with the audit findings.
19 There is no other dispute resolution process. Title 2, CCR, Section 1185 (b), requires
20 incorrect reduction claims to be filed no later than three years following the date of the
21 Controller’s action. There are no regulations specific to “revised” incorrect reduction

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 claims, but the District infers the same three-year period of limitations would be
2 applicable for filing a “revised” incorrect reduction claim in response to a “revised” audit
3 report. Thus, this “revised” incorrect reduction claim is timely filed.

4 **PART II. SUMMARY OF THE CLAIM**

5 The Controller has conducted a field audit of the District’s annual reimbursement
6 claims for the actual costs of complying with the legislatively mandated Health Fee
7 Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and
8 Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

9 Original Final Audit Report Dated May 20, 2009

10 As a result of the audit, the Controller determined that \$440,752 of the claimed
11 costs were unallowable:

12	Fiscal	Amount	Audit	SCO	Amount Due
13	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u><State></u>
14	2002-03	\$ 479,709 ¹	\$ 13,783	\$432,638	\$ 33,288
15	2003-04	\$ 537,473	\$ 2,974	\$ 0	\$534,499
16	2004-05	\$1,037,466	\$403,644	\$ 0	\$633,822
17	2005-06	<u>\$ 214,410²</u>	<u>\$ 20,351</u>	<u>\$ 0</u>	<u>\$194,059</u>
18	Totals	\$2,269,058	\$440,752	\$432,638	\$1,395,668

¹ The original claim amount was \$480,709. The audit report correctly applied a \$1,000 late filing penalty. The original claim had erroneously reported a 10% late-filing penalty (\$48,071) due to some contemporaneous confusion regarding a recent change in the Government Code section pertaining to late-fee penalties. The unlimited 10% rate applies only to “initial” reimbursement claims, that is, new program annual claims, and not to “ongoing” program annual claims.

² \$215,410 less \$1,000 late filing penalty.

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 The audit report stated that the District was paid \$432,638 for these claims and that
2 \$1,395,668 is due to the District.

3 Revised Audit Report Dated August 18, 2010

4 As a result of the revised final audit, the Controller determined that \$284,615 of
5 the claimed costs were unallowable:

6	Fiscal	Amount	Audit	SCO	Amount Due
7	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u><State></u>
8	2002-03	\$ 479,709	\$ 13,783	\$432,638	\$ 33,288
9	2003-04	\$ 537,473	\$ 12,652	\$ 0	\$524,821
10	2004-05	\$1,037,466	\$258,180	\$ 0	\$779,286
11	2005-06	<u>\$ 214,410</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$214,410</u>
12	Totals	\$2,269,058	\$284,615	\$432,638	\$1,551,805

13 The revised audit report states that the District has been paid \$432,638 for these claims
14 and that \$1,551,805 is due to the District.

15 **PART III. PREVIOUS INCORRECT REDUCTION CLAIMS**

16 The District filed a previous incorrect reduction claim for this mandate program
17 on September 24, 2009, in response to the original audit report dated May 20, 2009.
18 This previous incorrect reduction claim is pending Commission action. This "revised"
19 incorrect reduction claim incorporates that incorrect reduction claim in its entirety and
20 supplements that claim to the extent that the findings of the revised final audit report
21 differ from the original final audit report.

22 /

1 PART IV. BASIS FOR REIMBURSEMENT

2 No change.

3 PART V. STATE CONTROLLER CLAIM ADJUDICATION

4 The Controller conducted an audit of the District's annual reimbursement claims
5 for Fiscal Years 2002-03, 2003-04, 2004-05, and 2005-06. The revised audit report
6 dated August 18, 2010, concluded that \$1,984,443 of the District's costs claimed were
7 allowable. A copy of the revised audit report is attached as Exhibit "B."

8 VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER

9 No draft revised audit report or other notice of the revised audit findings was
10 provided to the District, so no District response was possible.

11 PART VII. STATEMENT OF THE ISSUES

12 **Finding 1-- Misstated counseling-related salaries and benefits**

13 No change.

14 **Finding 2-- Understated services and supplies-Student insurance costs**

15 No change.

16 **Finding 3-- Overstated and understated indirect cost rates**

17 The revised audit report concludes that the District both overstated indirect costs
18 because the District did not obtain federal approval for the indirect cost rate used for FY
19 2002-03 and FY 2003-04, and understated indirect costs because the District did not
20 correctly compute the FAM-29 C indirect cost rate for FY 2004-05 and FY 2005-06.
21 The unallowable amount as stated in the original audit report was \$511,782. The

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 revised audit report reduces the adjustment by \$270,751 to \$241,031. The revised
2 audit report (p.11) states:

3 “Subsequent to our final audit report issued May 20, 2009, we revised the
4 allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. For
5 FY 2003-04, our original calculation included an incorrect amount for one direct
6 cost line item. For FY 2004-05 and FY 2005-06, our original calculations
7 excluded allowable depreciation expense. As a result, we revised the total audit
8 adjustment from \$511,782 to \$241,031. Our recommendation is unchanged.
9 The revised calculations do not affect issues that the district discussed in its draft
10 audit report response or the remainder of our comments below.”

11 The District agrees that the correction made by the revised audit report does not
12 mitigate any of the issues raised in the original incorrect reduction claim.

13 Indirect Cost Rates Claimed and Audited

14		As		As		Revised	Net
15	<u>Fiscal Year</u>	<u>Claimed</u>	<u>Difference</u>	<u>Audited</u>	<u>Difference</u>	<u>Audit</u>	<u>Difference</u>
16	2002-03	32.50%	<15.86%>	16.64%	0	16.64%	<15.86%>
17	2003-04	31.46%	< 12.72%>	18.74%	<0.65%>	18.09%	<13.37%>
18	2004-05	29.66%	< 3.51%>	26.15%	9.71%	35.86%	6.20%
19	2005-06	28.90%	< 2.37%>	26.53%	9.98%	36.51%	7.61%

20
21 The indirect cost rates calculated by the District are more consistent from year-
22 to-year and recognize capital costs in the fiscal years incurred. The District rates are
23 reasonable and not excessive. The revised audited indirect cost rates for FY 2002-03
24 and FY 2003-04, where the Controller recognizes neither capital costs nor depreciation
25 expenses, are significantly different (about 50% less) than the claimed rate. The
26 revised audited indirect cost rates for FY 2004-05 and FY 2005-06, where the Controller
27 recognizes depreciation expenses, vary less than the two prior years (6% to 7%), but in

REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination

1 this case the revised rates are higher, which indicates the accounting timing differences
2 between the CCFS-311 capital costs used by the District and the financial statement
3 depreciation expenses used by the Controller.

4 Because the Controller's method of utilizing depreciation expenses in lieu of
5 CCFS-311 capital costs is also a reasonable method, the District does not dispute that
6 choice of methods for FY 2004-05 and FY 2005-06 and will utilize that method in future
7 annual claims to insure consistency. The District still disputes the audit findings for FY
8 2002-03 and FY 2003-04 because neither capital costs nor depreciation expenses are
9 allowed.

10 **Finding 4 -- Understated authorized health service fees**

11 No change.

12 **Finding 5 -- Understated offsetting savings/reimbursements**

13 No change.

14 **OTHER ISSUES**

15 **Limit on audited costs**

16 As a result of the revised audit findings for the indirect cost rate calculation, the
17 revised audit report increases the indirect cost rate amount for FY 2005-06 to \$102,915
18 from the previous amount of <\$32,050>, an increase of \$134,965. As a result, the total
19 "allowable costs" exceeds the total claimed cost by \$114,614. The audit report deducts
20 from its findings of total reimbursable "program costs" the \$114,614 as "less allowable
21 costs that exceed cost claimed." The stated basis for this limitation on allowable costs

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 is Government Code Section 17568, cited in footnote 2 on page 6 of the audit report,
2 that states "that the State will not reimburse any claim more than one year after the
3 filing deadline."

4 Section 17561 (and Section 17568 for late claims) pertains to the timely filing of
5 an annual claim in order to be eligible for payment, not to the contents of the claim
6 itself. There is no Government Code Section cited that prohibits the Controller from
7 reimbursement of *audited* costs in excess of claimed costs. Government Code Section
8 17561(d)(2), as amended by Statutes of 2002, Chapter 1124³, effective September 30,
9 2002, states:

10 "[T]he Controller (A) may audit the records of any local agency or school district
11 to verify the actual amount of the mandated costs . . . and (C) shall adjust the
12 payment to correct for any underpayments or overpayments which occurred in
13 previous fiscal years."

14 The use of the word "shall" makes the adjustment of *both* underpayments and
15 overpayments mandatory. Thus, the Controller does not have the discretion to
16 unilaterally determine that it will require reimbursement for audit adjustments in favor of
17 the State and simply ignore audit adjustments in favor of the claimants. The Controller
18 has no legal basis to exclude any unclaimed allowable mandated cost discovered as
19 the result of an audit.

20 /

³ There have been subsequent technical amendments to this code section. However, this is the version that was in effect at the time the annual reimbursement claims that are the subject of this Incorrect Reduction Claim were filed.

1 **Statute of limitation for audit**

2 This issue is not an audit report finding. The District asserted in the original
3 incorrect reduction claim that the FY 2002-03 and FY 2003-04 annual claims were
4 beyond the statute of limitations for audit when the Controller commenced the original
5 audit on September 11, 2008. The District now additionally asserts that the revised
6 audit for all four fiscal years was beyond the statute of limitations when the revised
7 audit was commenced and the revised audit report was issued on August 18, 2010.

8 The new findings of the revised audit report appear to have been initiated as a
9 result of the original incorrect reduction claim filed on September 24, 2009. However,
10 the revised audit was not noticed to the District until the revised audit report was
11 published on August 18, 2010, which is more than three years after the last annual
12 claim was filed (FY 2005-06 on July 2, 2007). Clearly, the Controller did not initiate
13 these new findings during the statutory period allowed to initiate an audit for all four
14 fiscal years that are the subject of this audit. Notwithstanding, the changes made by
15 the Controller in the revised audit report are for substantive reasons that are now a
16 matter of record for the original incorrect reduction claim and can be adjudicated by the
17 Commission.

18 **Errata**

19 On page 5 of the revised audit report, the audit adjustment amount for “indirect
20 costs” for FY 2004-05 is stated as <\$63,941>. The correct amount is \$63,941.

21 /

PART VIII. RELIEF REQUESTED

The District filed its annual reimbursement claims within the time limits prescribed by the Government Code. The amounts claimed by the District for reimbursement of the costs of implementing the program imposed by Chapter 1, Statutes of 1984, 2nd Extraordinary Session, Chapter 1118, Statutes of 1987, and Education Code Section 76355 represent the actual costs incurred by the District to carry out this program. These costs were properly claimed pursuant to the Commission's parameters and guidelines. Reimbursement of these costs is required under Article XIII B, Section 6 of the California Constitution. The Controller denied reimbursement without any basis in law or fact. The District has met its burden of going forward on this claim by complying with the requirements of Section 1185, Title 2, CCR. Because the Controller has enforced and is seeking to enforce these adjustments without benefit of statute or regulation, the burden of proof is now upon the Controller to establish a legal basis for these actions.

The District requests that the Commission make findings of fact and law on each and every adjustment made by the Controller and each and every procedural and jurisdictional issue raised in this claim, and order the Controller to correct the audit report findings therefrom.

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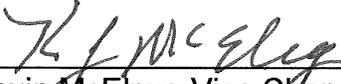
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REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84, 1118/87 Health Fee Elimination

1 PART IX. CERTIFICATION

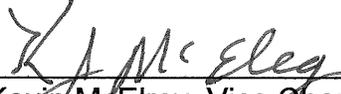
2 By my signature below, I hereby declare, under penalty of perjury under the laws
3 of the State of California, that the information in this incorrect reduction claim
4 submission is true and complete to the best of my own knowledge or information or
5 belief, and that the attached documents are true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

7 Executed on ^{Nov} October 16, 2010, at Los Altos Hills, California, by

8 
9 Kevin McElroy, Vice Chancellor Business Services
10 Foothill-De Anza Community College District
11 12345 El Monte Road
12 Los Altos Hills, CA 94022
13 Phone: 650-949-6201
14 Fax: 650-941-1638
15 E-mail: mcelroykevin@fhda.edu

16 APPOINTMENT OF REPRESENTATIVE

17 Foothill-De Anza Community College District appoints Keith B. Petersen, SixTen
18 and Associates, as its representative for this incorrect reduction claim.

19 
20 Kevin McElroy, Vice Chancellor Business Services
21 Foothill-De Anza Community College District

11/16/10
Date

22 Attachments:

23 Exhibit "A" Controller's "results of review" letters dated September 10, 2010

24 Exhibit "B" Controller's revised audit report dated August 18, 2010

10-13-10 02:49pm From-Foothill De Anza CCD

850 941 1638

T-827

P.005/005

F-911



California State Controller 2010/09/10
Division of Accounting and Reporting
SEPTEMBER 10, 2010

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2002/2003 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		480,709.00
TOTAL ADJUSTMENTS (DETAILS BELOW)	-	14,783.00
TOTAL PRIOR PAYMENTS (DETAILS BELOW)		-432,638.00
AMOUNT DUE CLAIMANT	\$	33,288.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	13,783.00
LATE CLAIM PENALTY	-	1,000.00
TOTAL ADJUSTMENTS	-	14,783.00
PRIOR PAYMENTS:		
SCHEDULE NO. MA64136A		
PAID 10-25-2006	-432,638.00	
TOTAL PRIOR PAYMENTS		-432,638.00

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10

02:49pm

From-Foothill De Anza CCD

650 941 1638

T-827

P.004/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2003/2004 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 537,473.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 12,652.00

TOTAL ADJUSTMENTS - 12,652.00

AMOUNT DUE CLAIMANT \$ 524,821.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10

02:49pm

From-Foothill De Anza CCD

650 941 1638

T-627

P.003/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2004/2005 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		1,037,466.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	258,180.00
TOTAL ADJUSTMENTS	-	<u>258,180.00</u>
AMOUNT DUE CLAIMANT		<u>\$ 779,286.00</u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 325-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10 02:48pm From-Foothill De Anza CCD

650 941 1628

T-627

P.002/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2005/2006 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		215,410.00
ADJUSTMENT TO CLAIM:		
LATE CLAIM PENALTY	-	1,000.00
TOTAL ADJUSTMENTS	-	<u>1,000.00</u>
AMOUNT DUE CLAIMANT		<u><u>\$ 214,410.00</u></u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

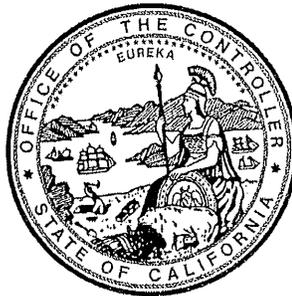
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Revised Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987

July 1, 2002, through June 30, 2006



JOHN CHIANG
California State Controller

August 2010



JOHN CHIANG
California State Controller

August 18, 2010

Bruce Swenson, President
Board of Trustees
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Dear Mr. Swenson:

The State Controller's Office audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

This revised final report supersedes our previous report dated May 20, 2009. We revised Finding 3 to correct errors in the allowable indirect cost rate calculations for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06. As a result, allowable costs increased by \$156,137 for the audit period.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated indirect costs. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

The district previously filed an Incorrect Reduction Claim (IRC) on September 14, 2009. The district may file an amended IRC with the Commission on State Mandates (CSM) based on this revised final audit report. The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk:vb

cc: Linda M. Thor, Ed.D., Chancellor
Foothill-De Anza Community College District
W. Andrew Dunn, Vice Chancellor, Business Services
Foothill-De Anza Community College District
Brett Watson, Grants Monitor
Foothill-De Anza Community College District
Christine Atalig, Auditor
Fiscal Services Unit
California Community Colleges Chancellor's Office
Thomas Todd, Principal Program Budget Analyst
Education Systems Unit
Department of Finance
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

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Revised Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated indirect costs. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

Background

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as section 76355 by Chapter 8, Statutes of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year for FY 1987-88 and for each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year for FY 1984-85 and for each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level in FY 1987-88 and for each fiscal year thereafter.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted parameters and guidelines on August 27, 1987, and amended them on May 25, 1989. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2002, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. Except for the following issue, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We were unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment. The district did not respond based on its consultant's advice. As a result, we increased our substantive testing; however, this would not necessarily identify fraud or abuse that may have occurred.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Revised Summary of Program Costs (Schedule 1) and in the Revised Findings and Recommendations section of this report.

For the audit period, Foothill-De Anza Community College District claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on February 6, 2009. W. Andrew Dunn, Vice-Chancellor, Business Services, responded by letter dated February 23, 2009 (Attachment), stating that the district disagrees with the audit results in Finding 3 and 4 and does not dispute Findings 1 and 2 at this time. We issued a final audit report on May 20, 2009.

Subsequently, we revised Finding 3 to recalculate allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. As a result, we revised the Finding 3 audit adjustment from \$511,782 to \$241,031. We advised Brett Watson, Grants Monitor, of the revisions on August 11, 2010.

Restricted Use

This report is solely for the information and use of the Foothill-De Anza Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

August 18, 2010

**Revised Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 820,845	\$ 1,068,240	\$ 247,395	Finding 1
Services and supplies	395,930	430,805	34,875	Finding 2
Total direct costs	1,216,775	1,499,045	282,270	
Indirect costs	395,452	249,441	(146,011)	Findings 1, 2, 3
Total direct and indirect costs	1,612,227	1,748,486	136,259	
Less authorized health service fees	(1,131,518)	(1,269,162)	(137,644)	Finding 4
Subtotal	480,709	479,324	(1,385)	
Less offsetting savings/reimbursements	—	(12,398)	(12,398)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 479,709</u>	465,926	<u>\$ (13,783)</u>	
Less amount paid by the State		(432,638)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 33,288</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 1,039,659	\$ 1,279,571	\$ 239,912	Finding 1
Services and supplies	174,548	209,423	34,875	Finding 2
Total direct costs	1,214,207	1,488,994	274,787	
Indirect costs	381,990	269,359	(112,631)	Findings 1, 2, 3
Total direct and indirect costs	1,596,197	1,758,353	162,156	
Less authorized health service fees	(1,058,724)	(1,195,605)	(136,881)	Finding 4
Subtotal	537,473	562,748	25,275	
Less offsetting savings/reimbursements	—	(37,927)	(37,927)	Finding 5
Total program costs	<u>\$ 537,473</u>	524,821	<u>\$ (12,652)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 524,821</u>		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 1,372,308	\$ 1,237,072	\$ (135,236)	Finding 1
Services and supplies	223,354	261,019	37,665	Finding 2
Total direct costs	1,595,662	1,498,091	(97,571)	
Indirect costs	473,274	537,215	(63,941)	Findings 1, 2, 3
Total direct and indirect costs	2,068,936	2,035,306	(33,630)	
Less authorized health service fees	(1,031,470)	(1,205,450)	(173,980)	Finding 4
Subtotal	1,037,466	829,856	(207,610)	
Less offsetting savings/reimbursements	—	(50,570)	(50,570)	Finding 5
Total program costs	<u>\$ 1,037,466</u>	779,286	<u>\$ (258,180)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 779,286</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 861,398	\$ 1,054,794	\$ 193,396	Finding 1
Services and supplies	261,562	297,562	36,000	Finding 2
Total direct costs	1,122,960	1,352,356	229,396	
Indirect costs	324,535	493,745	169,210	Findings 1, 2, 3
Total direct and indirect costs	1,447,495	1,846,101	398,606	
Less authorized health service fees	(1,213,971)	(1,482,261)	(268,290)	Finding 4
Subtotal	233,524	363,840	130,316	
Less offsetting savings/reimbursements	(18,114)	(33,816)	(15,702)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)	
Total program costs	<u>\$ 214,410</u>	214,410	<u>\$ —</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 214,410</u>		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 4,094,210	\$ 4,639,677	\$ 545,467	
Services and supplies	1,055,394	1,198,809	143,415	
Total direct costs	5,149,604	5,838,486	688,882	
Indirect costs	1,575,251	1,549,760	(25,491)	
Total direct and indirect costs	6,724,855	7,388,246	663,391	
Less authorized health service fees	(4,435,683)	(5,152,478)	(716,795)	
Subtotal	2,289,172	2,235,768	(53,404)	
Less offsetting savings/reimbursements	(18,114)	(134,711)	(116,597)	
Less late filing penalty	(2,000)	(2,000)	—	
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)	
Total program costs	<u>\$ 2,269,058</u>	1,984,443	<u>\$ (284,615)</u>	
Less amount paid by the State		(432,638)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,551,805</u>		

¹ See the Revised Findings and Recommendations section.

² Government Code section 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in Government Code section 17560. That deadline has expired for FY 2005-06.

Revised Findings and Recommendations

**FINDING 1—
Misstated counseling-
related salaries and
benefits**

The district understated its counseling-related salaries and benefits by \$545,467 for the audit period. The related indirect costs total \$171,659. For fiscal year (FY) 2002-03, FY 2003-04, and FY 2005-06, the district understated its salaries and benefits by \$680,703, and for FY 2004-05, overstated salaries and benefits by \$135,236.

The district claimed estimated time instead of actual time spent by academic counselors on student health-related counseling tasks. During our fieldwork, the district elected to perform a time study to support the counseling-related salaries and benefits. The district’s time study plan identified the time study period as October 20, 2008, through October 31, 2008. The time study plan adequately supported the time spent in performing mandate-related activities.

The program’s parameters and guidelines state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Salaries and benefits	\$ 247,395	\$ 239,912	\$(135,236)	\$ 193,396	\$ 545,467
Indirect costs	80,403	75,476	(40,111)	55,891	171,659
Audit adjustment	<u>\$ 327,798</u>	<u>\$ 315,388</u>	<u>\$(175,347)</u>	<u>\$ 249,287</u>	<u>\$ 717,126</u>

Recommendation

We recommend that the district maintain records that document actual time spent on mandate-related activities.

District’s Response

The District does not dispute this finding at this time.

SCO’s Comment

Our finding and recommendation remain unchanged.

**FINDING 2—
Understated services
and supplies—
Student insurance costs**

The district understated allowable services and supplies by \$143,415 for costs related to student insurance. The related indirect costs total \$43,881.

The district did not claim any student accident premiums for the audit period. We allowed such costs based on documentation the insurance company provided to the district that showed actual student insurance costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Services and supplies	\$ 34,875	\$ 34,875	\$ 37,665	\$ 36,000	\$ 143,415
Indirect costs	11,334	10,972	11,171	10,404	43,881
Audit adjustment	<u>\$ 46,209</u>	<u>\$ 45,847</u>	<u>\$ 48,836</u>	<u>\$ 46,404</u>	<u>\$ 187,296</u>

For services and supplies, the parameters and guidelines state that the district may claim expenditures that can be identified as direct costs of the mandated program. They also state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that the district claim actual mandate-related costs that are supported by its accounting records and source documents.

District's Response

The District does not dispute this finding at this time.

SCO's Comment

Our finding and recommendation remain unchanged.

**FINDING 3—
Overstated and
understated indirect
cost rates**

The district claimed unallowable indirect costs totaling \$241,031 because it overstated and understated allowable indirect cost rates.

For FY 2002-03 and FY 2003-04, the district claimed indirect costs based on an indirect cost rate prepared using Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget [OMB] Circular A-21). However, the district did not obtain federal approval for its indirect cost rate proposals (ICRPs). For FY 2004-05 and FY 2005-06, the district prepared its ICRP using the SCO’s FAM-29C methodology. However, the district did not correctly compute the FAM-29C rates.

For FY 2002-03 and FY 2003-04, the SCO’s claiming instructions allow the district to use a federally-approved indirect cost rate prepared in accordance with OMB Circular A-21. For FY 2004-05 and FY 2005-06, the parameters and guidelines and the SCO’s claiming instructions do not allow the district to use a federally-approved rate.

We calculated allowable indirect cost rates for FY 2002-03 and FY 2003-04 based on the FAM-29C methodology that the parameters and guidelines and the SCO claiming instructions allow. We also recalculated FY 2004-05 and FY 2005-06 rates based on the FAM-29C methodology. We calculated allowable indirect cost rates each year by using the information contained in the California Colleges Annual Financial and Budget Report, Expenditure by Activity (CCFS-311). Our calculations revealed that the district overstated and understated indirect cost rates claimed.

The following table summarizes the allowable and claimed indirect cost rates and the resulting audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable indirect cost rate	16.64%	18.09%	35.86%	36.51%	
Less claimed indirect cost rate	(32.50)%	(31.46)%	(29.66)%	(28.90)%	
Overstated indirect cost rate	(15.86)%	(13.37)%	6.20%	7.61%	
Allowable direct costs claimed	×\$1,499,045	×\$1,488,994	×\$1,498,091	×\$1,352,356	
Audit adjustment ¹	\$ (237,748)	\$ (199,079)	\$ 92,881	\$ 102,915	\$ (241,031)

¹ Calculation differences due to rounding.

The parameters and guidelines state, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.”

For FY 2002-03 and FY 2003-04 the SCO’s claiming instructions state:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 “Cost Principles for Educational Institutions,” or the Controller’s [FAM-29C] methodology. . . .

For FY 2004-05 and FY 2005-06, the SCO's claiming instructions state:

A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C). . . . If specifically allowed by a mandated program's P's and G's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions. For the Health Fee Elimination Program, the district should prepare its indirect cost rate proposal using the SCO's FAM-29 methodology.

District's Response

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce difference audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

SCO's Comment

Subsequent to our final audit report issued May 20, 2009, we revised the allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. For FY 2003-04, our original calculation included an incorrect amount for one direct cost line item. For FY 2004-05 and FY 2005-06, our original calculations excluded allowable depreciation expense. As a result, we revised the total audit adjustment from \$511,782 to \$241,031. Our recommendation is unchanged. The revised calculations do not affect issues that the district discussed in its draft audit report response or the remainder of our comments below.

We agree that the district prepared its FY 2004-05 and FY 2005-06 indirect cost rates using the SCO's FAM-29C methodology. Consequently, we updated the finding to clarify the methodology used by the district.

The parameters and guidelines (section VI) state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district interprets "may be claimed" as compliance with the claiming instructions is voluntary. Instead, "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions.

The district contends that "The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute..." Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d) (2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is without merit.

Nevertheless, the SCO did, in fact, conclude that the district's indirect cost rates for FY 2002-03 through FY 2005-06 were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ." ¹ The SCO calculated indirect cost rates using the FAM-29C methodology allowed in the claiming instructions. This method did not support the rates that the district claimed; thus, the rates claimed were excessive.

¹ Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

**FINDING 4—
Understated
authorized health
service fees**

The district understated authorized health service fees by \$716,795. The district reported actual health service fees that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized health service fees. Government Code section 17514 states that “costs mandated by the state” means any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. The California Community Colleges Chancellor’s Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). The authorized fees for each quarter and summer session is \$9 for FY 2002-03 and FY 2003-04, \$10 for FY 2004-05, and \$11 for FY 2005-06. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. The CCCCCO identified the district’s enrollment based on the CCCCCO’s MIS data element STD7, codes A through G. The CCCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, the CCCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

The following table shows the authorized health service fees calculation and audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Number of enrolled students	161,536	156,454	145,825	148,717	
Less number of BOGG recipients	(17,086)	(20,555)	(22,294)	(10,422)	
Less number of Apprenticeship enrollees	(3,432)	(3,054)	(2,986)	(3,544)	
Students subject to health service fee	141,018	132,845	120,545	134,751	
Authorized health service fee rate	× \$ (9)	× \$ (9)	× \$ (10)	× \$ (11)	
Authorized health service fees	\$ (1,269,162)	\$ (1,195,605)	\$ (1,205,450)	\$ (1,482,261)	\$ (5,152,478)
Less authorized health service fee claimed	1,131,518	1,058,724	1,031,470	1,213,971	4,435,683
Audit adjustment	\$ (137,644)	\$ (136,881)	\$ (173,980)	\$ (268,290)	\$ (716,795)

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G. We also recommend that the district identify the number of apprenticeship program enrollees based on data elements SB23, code 1, and STD7, codes A through G.

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district excludes any students from receiving health services, the district should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health service fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectable based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectable based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee... for health supervision and services. . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, *if any*, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional.*" (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that “[t]o the extent that community college districts can charge a fee, they are not required to incur a cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program within the meaning of Section 6 of Article XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenues to increased costs, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of services.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “*Any* offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “*any* offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

SCO's Comment

We updated the fiscal impact of the findings based on updated numbers of enrolled students and BOGG recipients provided by the CCCCCO. The updated information increased the finding by \$228,113, from \$488,682 to \$716,795. The remaining finding was modified slightly for clarity.

“Authorized” Fee Amount

We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district's decision to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy the fee. The CCCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Government Code Section 76355

Education Code section 76355 (specifically, subdivision (a)) authorizes the health service fee rate. The statutory section also provides the basis for calculating the authorized rate applicable to each fiscal year. The statutory section states:

- (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.
- (2) The governing board of each community college district may increase this 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).

Government Code Section 17514

Government Code section 17514 states, “Costs mandated by the state’ means any increased costs which a local agency or school district is *required* [emphasis added] to incur. . . .” If the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

Government Code Section 17556

The district presents an argument that the statutory language applies only when the fee authority is sufficient to offset the “entire” mandated costs. The CSM recognized that the Health Fee Elimination Program's costs are not uniform among districts. Districts provided different levels of service in FY 1986-87 (the “base year”). Furthermore, districts provided

these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts' mandated program costs, while it may be insufficient to pay the "entire" costs of other districts. While health service costs vary among districts, Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the CSM adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost.

Two court cases addressed the issue of fee authority.² Both cases concluded that "costs" as used in the constitutional provision, exclude "expenses that are recoverable from sources other than taxes." In both cases, the source other than taxes was fee authority.

² County of Fresno v. California (1991) 53 Cal. 3d 482; Connell v. Santa Margarita (1997) 59 Cal. App. 4th 382.

Parameters and Guidelines

The CSM recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The CSM's staff analysis of May 25, 1989, states the following regarding the proposed parameters and guidelines amendments that the CSM adopted that day:

Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:

"If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied."

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, CSM intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from the CCCCCO dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, since the CSM's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language. The CSM's meeting minutes of May 25, 1989, show that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM's interpretation regarding authorized health service fees.

**FINDING 5—
Understated offsetting
savings/reimbursements**

The district understated offsetting savings/reimbursement by \$116,597. In addition to health service fees, the district received health services revenues of \$51,846 from students to offset services rendered and federal Medical Activities Administration funds for work performed by health center employees. The district reported only \$18,114 on its mandated cost claims; it was not able to provide any support for these costs.

The parameters and guidelines (section VIII) state that any offsetting savings/reimbursements the claimants experience as a direct result of this statute must be deducted from the costs claimed. It further states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) must be identified and deducted from this claim.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable offsetting revenues:					
Health services revenues	\$ (12,398)	\$ (12,101)	\$ (14,186)	\$ (13,161)	\$ (51,846)
Federal Medical Activities Administration funds	—	(25,826)	(36,384)	(20,655)	(82,865)
Subtotal	(12,398)	(37,927)	(50,570)	(33,816)	(134,711)
Less claimed offsetting revenues	—	—	—	18,114	18,114
Audit adjustment	<u>\$ (12,398)</u>	<u>\$ (37,927)</u>	<u>\$ (50,570)</u>	<u>\$ (15,702)</u>	<u>\$ (116,597)</u>

Recommendation

We recommend that the district report all health services program-related offsetting savings/reimbursements on its mandated cost claims.

District's Response

The District does not dispute this finding at this time.

SCO's Comment

Our finding and recommendation remain unchanged.

OTHER ISSUES

In its response to the draft audit report, the district addressed an issue related to SCO's authority to audit FY 2002-03 and FY 2003-04 claims within the statute of limitations and requested applicable laws and regulations in effect during the claiming period for Finding 3 and Finding 4.

Statutes of LimitationsDistrict's Issue

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

SCO's Comment

Government Code section 17558.5, subdivision (a), in effect for the audit period, states:

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.

On January 13, 2005, the district amended its FY 2002-03 claim and filed its FY 2003-04 claim. The district received an initial payment for its FY 2002-03 claim on October 25, 2006. The State made no payment to the district for its FY 2003-04 claim. Therefore, the FY 2002-03 claim is subject to the initiation of an SCO audit until October 25, 2009. The FY 2003-04 claim is still subject to an SCO audit. We conducted an audit entrance conference on September 11, 2008. Therefore, the SCO initiated an audit within the period the claims were subject to audit.

Public Records Request

District's Issue

The District requires that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of record, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

SCO's Comment

SCO has made available to the district the requested records via letter and attachments dated March 25, 2009.

**Attachment—
District's Response to
Draft Audit Report**



**FOOTHILL-DE ANZA
Community College District**

12345 El Monte Road
Los Altos Hills, CA 94022

February 23, 2009

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
Annual Claim Fiscal Years: 2002-03, 2003-04, 2004-05, and 2005-06

Dear Mr. Spano:

This letter is the response of the Foothill De Anza Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated February 6, 2009, and received by the District on February 12, 2009.

Finding 1 - Misstated counseling-related salaries and benefits

The District does not dispute this finding at this time.

Finding 2 - Understated services and supplies - student insurance costs

The District does not dispute this finding at this time.

Finding 3 - Unallowable indirect costs

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from

the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions."

(Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

Finding 4- Understated authorized health fee service fees

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health services fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that "[t]o the extent that community college districts can charge a fee, they are not required to incur a

cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

Finding 5 - Understated offsetting savings/reimbursements

The District does not dispute this finding at this time.

Statute of Limitations

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

Sincerely,


W. Andrew Dunn
Vice-Chancellor, Business Services

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>