

**COMMISSION ON STATE MANDATES**

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October 1, 2015

Mr. Charles W. Rogers  
San Diego Community College District  
3375 Camino del Rio South  
San Diego, CA 92108

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

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

Re: **Decision**

*Health Fee Elimination, 09-4206-I-29*

Former Education Code Section 72246, (Renumbered as Section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, and 2006-2007

San Diego Community College District, Claimant

Dear Mr. Rogers and Ms. Kanemasu:

On September 25, 2015, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM  
ON:**

Former Education Code Section 72246  
(Renumbered as § 76355)<sup>1</sup>

Statutes 1984, Chapter 1 (1983-1984 2nd Ex.  
Sess.) (AB2X 1) and Statutes 1987, Chapter  
1118 (AB 2336)

Fiscal Years 2003-2004, 2004-2005, 2005-  
2006, and 2006-2007

San Diego Community College District,  
Claimant

Case No.: 09-4206-I-29

*Health Fee Elimination*

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

*(Adopted September 25, 2015)*

*(Served October 1, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on September 25, 2015. Jim Venneman appeared on behalf of the State Controller's Office (Controller).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the proposed decision to deny the IRC at the hearing by a vote of 6-0 as follows:

<b>Member</b>	<b>Vote</b>
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Richard Chivaro, Representative of the State Controller, Vice Chairperson	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

<sup>1</sup> Statutes 1993, chapter 8.

## **Summary of the Findings**

This analysis addresses reductions by the Controller, totaling \$379,946, for costs claimed by the San Diego Community College District (claimant) for fiscal years 2003-2004 through 2006-2007 under the *Health Fee Elimination* program. Claimant has health centers at three locations (San Diego City College, Miramar College, and Mesa College), but filed reimbursement claims based only on the costs and revenues of the health center at San Diego City College applicable to the mandated program.

After reviewing the costs incurred and revenues received by all of the health centers in claimant's district during fiscal years 2003-2004 through 2006-2007, the Controller reduced the reimbursement claims by a net of \$379,946 as follows:

- Health fees authorized to be charged and required to be deducted from the costs claimed for Miramar and Mesa Colleges.<sup>2</sup>
- Other unreported offsetting revenues and reimbursements received by the health centers at Miramar and Mesa Colleges.

The Commission finds that the Controller's audit of the costs and revenues of the claimant's district as a whole is correct as matter of law, and is required by article XIII B, section 6, the test claim statute, and the parameters and guidelines for this program. The Commission further finds that the Controller's reduction of costs claimed based on fees authorized to be charged to all students enrolled in the district (except for those that are exempt under the test claim statute) is correct as a matter of law, and that the calculation of the fees based on enrollment reports provided to the Chancellor's Office is not arbitrary, capricious, or entirely lacking in evidentiary support. And finally, the Controllers' reduction based on offsetting revenues received by the health centers at Miramar and Mesa Colleges is required by the parameters and guidelines and is, therefore, correct as a matter of law.

For these reasons, the Commission denies this IRC.

### **I. Chronology**

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|----------|---|
| 10/26/05 | Claimant signed the reimbursement claim for fiscal year 2003-2004. <sup>3</sup>         |
| 01/06/06 | Claimant signed the reimbursement claim for fiscal year 2004-2005. <sup>4</sup>         |
| 01/08/07 | Claimant signed the reimbursement claim for fiscal year 2005-2006. <sup>5</sup>         |
| 11/26/07 | Claimant signed the amended reimbursement claim for fiscal year 2005-2006. <sup>6</sup> |
| 01/14/08 | Claimant signed the reimbursement claim for fiscal year 2006-2007. <sup>7</sup>         |

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<sup>2</sup> Exhibit A, IRC, final audit report, Finding 3, pages 40-42.

<sup>3</sup> Exhibit A, IRC, page 52.

<sup>4</sup> Exhibit A, IRC, page 58.

<sup>5</sup> Exhibit A, IRC, page 64.

<sup>6</sup> Exhibit A, IRC, page 66.

<sup>7</sup> Exhibit A, IRC, page 69.

- 07/17/09 Controller issued the draft audit report.<sup>8</sup>
- 07/27/09 Claimant submitted comments on the draft audit report.<sup>9</sup>
- 08/28/09 Controller issued the final audit report.<sup>10</sup>
- 07/17/10 Claimant filed the IRC.<sup>11</sup>
- 12/02/14 Controller filed comments on the IRC.<sup>12</sup>
- 06/17/15 Commission staff issued the draft proposed decision.<sup>13</sup>
- 06/23/15 Controller filed comments on the draft proposed decision.<sup>14</sup>

## **II. Background**

### Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.<sup>15</sup> In 1984, the Legislature repealed the community colleges' fee authority for health services.<sup>16</sup> However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee at \$7.50 for each semester (or \$5 per quarter or summer session).<sup>17</sup>

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

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<sup>8</sup> Exhibit A, IRC, page 46.

<sup>9</sup> Exhibit A, IRC, page 46.

<sup>10</sup> Exhibit A, IRC, page 24.

<sup>11</sup> Exhibit A, IRC, page 1.

<sup>12</sup> Exhibit B, Controller's comments on the IRC, page 1.

<sup>13</sup> Exhibit C.

<sup>14</sup> Exhibit D.

<sup>15</sup> Former Education Code section 72246 (Stats. 1981, ch. 763). Students that were low-income, depend upon prayer for healing, or attend a college under an approved apprenticeship training program, were exempt from the fee (Ed. Code, § 76355(c)). The exemption for low-income students was removed by Statutes 2005, chapter 320.

<sup>16</sup> Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

<sup>17</sup> Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

year until January 1, 1988.<sup>18</sup> As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.<sup>19</sup> In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer session.<sup>20</sup> As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services.<sup>21</sup> In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.<sup>22</sup>

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

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

#### Controller's Audit and Summary of the Issues

Claimant has health centers at three locations (San Diego City College, Miramar College, and Mesa College), but filed reimbursement claims for fiscal years 2003-2004 through 2006-2007 based only on the costs and revenues, applicable to the mandated program, of San Diego City College health center. The Controller stated that during the audit, claimant representatives acknowledged that the health centers at Mesa and Miramar Colleges operated at a profit and that the health center at San Diego City College operated at a loss.<sup>23</sup> Claimant states that it did not

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<sup>18</sup> Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

<sup>19</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

<sup>20</sup> Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

<sup>21</sup> In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar (Ed. Code, § 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered to section 76355 (Stats. 1993, ch. 8).

<sup>22</sup> Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246 was renumbered to section 76355 (Stats. 1993, ch. 8).

<sup>23</sup> Exhibit B, Controller's comments on the IRC, page 17.

operate a health center at Miramar College in the 1986-1987 base year, and that Mesa College no longer provides the same level of health services that it did during the 1986-1987 base year.<sup>24</sup> Thus, claimant did not claim reimbursement or identify any health fee authority or other revenues received by Mesa and Miramar in its reimbursement claims.

After reviewing the costs incurred and revenues received by all three of the health centers in claimant's district during fiscal years 2003-2004 through 2006-2007, the Controller reduced the reimbursement claims by a net of \$379,946.

Claimant does not dispute the adjustments for the health center at San Diego City College, but disputes findings 1 and 2 of the audit report regarding unreported direct and indirect costs at Miramar and Mesa College health centers that would *increase* costs claimed.<sup>25</sup> The Commission's jurisdiction on an IRC, however, is limited to whether "the Controller has incorrectly *reduced* payments to a local agency or school district . . ." and not over findings that increase reimbursable costs.<sup>26</sup> Thus, this decision does not address the adjustments in findings 1 and 2 that would increase reimbursable costs.

The claimant also disputes audit findings 3 and 4 regarding:

- Reduction of costs claimed based on health fees authorized to be charged by Miramar and Mesa Colleges.<sup>27</sup>
- Reduction of costs claimed based on other unreported offsetting revenues and reimbursements received by the health centers at Miramar and Mesa Colleges.

The claimant argues that the health fees and other revenues applicable to the health centers at Miramar and Mesa Colleges must not be used to offset the costs of mandated services provided by the health center at San Diego City College.<sup>28</sup>

### **III. Positions of the Parties**

#### **A. San Diego Community College District**

The claimant maintains that the Controller incorrectly adjusted its claims to account for costs and revenues at its health centers at Mesa College and Miramar College. Claimant argues that services and related costs for those health centers should not be included on the San Diego City College claim, nor may those health centers' revenues be used to offset the cost of mandated services provided by the health center at San Diego City College. Claimant argues that section 1 of the parameters and guidelines recognizes that community college districts operate multiple health centers, and that this necessitates districts to submit individual claims for multiple centers and not combine them in one claim. Claimant relies on Section V of the parameters and guidelines, which states: "Only services provided in 1986-87 fiscal year may be claimed." Additionally, the Mandated Cost Claiming instructions Form HFE-1.1 section 4 states, "Indicate

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<sup>24</sup> Exhibit B, Controller's comments on the IRC, page 12.

<sup>25</sup> Exhibit A, IRC, pages 3-6; and final audit report, Findings 1 and 2, pages 33-38.

<sup>26</sup> Government Code section 17551(d), emphasis added.

<sup>27</sup> Exhibit A, IRC, final audit report, Finding 3, pages 40-42.

<sup>28</sup> Exhibit A, IRC, page 6.

with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed." Claimant further points to the Mandated Cost Claiming instructions Form HFE-1.0 section 3 that requires that a listing of colleges identified as operating at 1986-87 levels be documented. According to claimant:

As indicated in the Entrance Conference Miramar College did not operate a health center in FY 1986-87 and the health center at Mesa College did not maintain the same level of services as it did in FY 1986-87.

With the exception of a medical emergency, students who seek health services at a campus other than their campus of primary enrollment are directed to seek care at the health center of their campus of primary enrollment. Health fees collected from students are budgeted and expended at the campus of primary enrollment. Reciprocity is to be considered in extreme or emergency situations only.<sup>29</sup>

### **B. State Controller's Office**

The Controller maintains that the audit findings are correct and that this IRC should be denied. According to the Controller, if "the community college district, as a whole, provides the same level of health services within its overall health services program, then it is entitled to claim costs, net of associated health fee revenues, for the operation of its overall health services program."<sup>30</sup> The Controller emphasizes language in the parameters and guidelines that claimants eligible for reimbursement are "community college districts" rather than individual community colleges. Student health *centers* are only mentioned in the background section of the parameters and guidelines, while section II. describes the Commission's conclusions in the decision that the test claim statute imposed a new program on *community college districts* "by requiring any community college district which provided health services for which it was authorized to charge a fee to maintain health services at the level provided during the 1984-85 fiscal year and each fiscal year thereafter."<sup>31</sup>

The Controller quotes language from Education Code section 76355 (former § 72246) and the Community Colleges Budget and Accounting Manual, as referenced in section 76355(d), that refers to district (not campus) provided health services and fees, and a district maintenance of effort.

The Controller argues that nothing in the parameters and guidelines prohibits a district from claiming mandated costs for expanding its base-year level of health services to college health centers that did not exist in 1986-1987. The Controller also notes that there is no prohibition for claiming costs for individual campus health centers that no longer provide the same level of services that were provided during the base year.

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<sup>29</sup> Exhibit A, IRC, page 6.

<sup>30</sup> Exhibit B, Controller's comments on the IRC, page 13.

<sup>31</sup> Exhibit B, Controller's comments on the IRC, page 14.

#### IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>32</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>33</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>34</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>35</sup>

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<sup>32</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>33</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>34</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>35</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th 534, 547-548.

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>36</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>37</sup>

**A. The Audit of the District as a Whole Is Correct as a Matter of Law.**

As indicated in section II. Background, the Controller audited the reimbursement claims by reviewing the costs and revenues of the district as a whole. The Controller found that the claimant did not report the health fee revenue the district was authorized to collect from Miramar and Mesa Colleges, or other health center revenues received by these colleges during the audit period.

Claimant argues that costs and revenues at Miramar and Mesa colleges should not be considered because Miramar did not operate a health center during the 1986-1987 base year, and Mesa did not provide the same level of services that it did during the 1986-1987 base year, so no costs were claimed for those colleges.<sup>38</sup> Claimant contends that the audit should be limited to a review of the costs and revenues of San Diego City College only. In support of its position, claimant notes that section I of the parameters and guidelines recognizes that community college districts operate multiple health centers, and argues that this necessitates districts to submit claims for multiple centers and not combine them in one claim. Additionally, section V of the parameters and guidelines states: "Only services provided in 1986-87 fiscal year may be claimed." Claimant also relies on the Mandated Cost Claiming instructions Form HFE-1.1 section 4 that states, "Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed." Claimant further points to the Mandated Cost Claiming instructions Form HFE-1.0 section 3 that requires that a listing of colleges identified as operating at 1986-1987 levels be documented.

The claimant's interpretation conflicts with article XIII B, section 6 of the California Constitution, the test claim statute, and the parameters and guidelines adopted for this program.

Article XIII B, section 6 of the California Constitution requires subvention of funds when "the Legislature or any state agency mandates a new program or higher level of service on any local government." This constitutional provision was intended to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of

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<sup>36</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>37</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

<sup>38</sup> Exhibit A, IRC, pages 3-6.

increased expenditures that are counted against the local government's annual spending limit.<sup>39</sup> The courts have explained the purpose as follows:

Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency.<sup>40</sup>

Local government is defined in article XIII B, section 8(d) as "any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state." Government Code sections 17500 et seq. implement article XIII B, section 6 and these statutes define school district to include a "community college district."<sup>41</sup> It is the governing body of the community college district that is subject to the tax and spend limitations of articles XIII A and XIII B, which is the "local government" entity entitled to reimbursement for the increased costs mandated by the state pursuant to article XIII B, section 6.<sup>42</sup> There are no provisions in the Constitution or implementing statutes authorizing reimbursement for individual college campuses because only districts are subject to the constitutional spending limit.

Moreover, the plain language of Education Code, section 76355, as amended by the test claim statute requires the "community college district" that provided health services in the 1986-87 fiscal year, to maintain health services at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter. Education Code section 76355 states in relevant part the following:

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

(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

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<sup>39</sup> California Constitution, article XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

<sup>40</sup> *Hayes v. Commission on State Mandates, supra*, 11 Cal.App.4th 1564, 1595.

<sup>41</sup> Government Code section 17519.

<sup>42</sup> Government Code sections 17514, 17561.

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).

[¶] . . . [¶]

(e) Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

Thus, section 76355(e) specifies that health services are provided, and section 76355(a) specifies that health fees are determined and imposed, at the district and not the campus level.

In addition, the claimant misinterprets the parameters and guidelines to argue that reimbursement claims may be filed by individual college campuses within a district. Section II. of the parameters and guidelines states that the Commission determined that the test claim statute “imposed a ‘new program’ on *community college districts* by requiring any community college district which provided health services for which it was authorized to charge a fee . . . to maintain health services at the level provided” in the 1986-1987 base year. That section further states that “this maintenance of effort requirement applies to all *community college districts* which levied a health services fee” in the base year (emphasis added). Section V.A of the parameters and guidelines provides that “only services provided in 1986-1987 fiscal year may be claimed,” which means health services provided by the community college *district*, not an individual campus health center. This is clarified in Section V.B of the parameters and guidelines that states: “the following cost items [i.e., health services] are reimbursable to the extent they were provided by the community college *district* in fiscal year 1986-87.”<sup>43</sup> Moreover, section III. of the parameters and guidelines describes the eligible claimants for this program as: “Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.”<sup>44</sup> As these sections of the parameters and guidelines make clear, the increased costs incurred for health services provided at the district level rather than the campus level are eligible for reimbursement.

As the Controller points out, there is nothing in the parameters and guidelines to prohibit a district from claiming mandated costs for expanding its base-year level of health services to campus health centers that did not exist in 1986-1987. Nor is there any prohibition for a district to include, in its reimbursement claims, costs for individual campus health centers that no longer provide the same level of services that were provided during the base year, although the test claim statute does require that districts maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter.

Claimant also relies on the Mandated Cost Claiming instructions Form HFE-1.1 section 4 that states, "Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is

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<sup>43</sup> Exhibit B, Controller’s comments on the IRC, page 68. Emphasis added.

<sup>44</sup> Exhibit B, Controller’s comments on the IRC, page 67.

checked, STOP, do not complete the form. No reimbursement is allowed." Claimant further points to the Mandated Cost Claiming instructions Form HFE-1.0 section 3 that requires that a listing of colleges identified as operating at 1986-1987 levels be documented. This language, however, does not conflict with the requirements in the parameters and guidelines, which does not require or allow individual college campuses to file reimbursement claims. Section 4 of the claiming instructions requests information about the level of health services provided by the district, as indicated by the instructions on the back of the form stating: "Only a community college district may file a claim with the State Controller's Office (SCO) on behalf of its colleges."<sup>45</sup>

More importantly, it is the parameters and guidelines that govern reimbursement. Courts have referred to the parameters and guidelines as "regulatory" and the claiming instructions as "non-regulatory."<sup>46</sup>

Accordingly, the reimbursement requirement of article XIII B, section 6, and the parameters and guidelines at issue, focus on the increased costs incurred by the district as a whole and not by individual health centers within the district. Therefore, the Commission finds that the Controller's audit of the district as a whole is correct as a matter of law.

**B. The Audit Reduction for Unreported Health Fee Authority for Miramar and Mesa Colleges Is Correct as a Matter of Law, and the Controller's Calculation of Health Fee Authority Is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller found that claimant did not identify and deduct over \$3.2 million from its reimbursement claims in health fees collected at its Miramar and Mesa College health centers, finding that this should be included in and deducted from the reimbursement claims as offsetting revenue. Although claimant collected health fees at all its health centers, it argues that fees collected at the Mesa and Miramar College health centers should not be included on the San Diego City College claim.<sup>47</sup>

The Commission finds that the Controller's reduction for unreported health fees, authorized to be collected and required to be deducted, for the health centers at Miramar and Mesa Colleges is correct as a matter of law.

Section VIII. of the parameters and guidelines addresses offsetting savings and other reimbursements:

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per

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<sup>45</sup> Exhibit B, Controller's comments on the IRC, page 55.

<sup>46</sup> *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794.

<sup>47</sup> Exhibit A, IRC, page 5.

full-time student per quarter, as authorized by [former] Education Code section 72246(a).<sup>48</sup>

Former Education Code section 72246(a) gave fee authority to the governing board of a community college district for health services provided as follows:

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 seven dollars and fifty cents (\$7.50) for each semester, and five dollars (\$5) for summer school, or five dollars (\$5) 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, authorized by Section 72244, or both.

Former section 72246(c) and (d) provided an exemption for payment of these fees for only the following students enrolled in the district: low-income students, students who depend exclusively on prayer for healing, and students attending a community college under an approved apprenticeship training program.<sup>49</sup> Former section 72246 was renumbered to section 76355 in 1993, and continued the fee authority without substantive change.<sup>50</sup>

The court in *Clovis Unified School Dist. v. Chiang*<sup>51</sup> specifically addressed the Controller's practice of reducing community college district claims under the *Health Fee Elimination* program by the maximum fee amount that districts are statutorily authorized to charge students. Calling this practice "The Controller's Health Fee Rule," the court expressed it as:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.<sup>52</sup>

The court in the *Clovis* decision upheld, as a matter of law, the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the total fees *districts* are authorized to charge.<sup>53</sup> The court noted that its conclusion is consistent with the state mandates process embodied in Government Code sections 17514 and 17556(d), and that: "To the extent a local agency or school district 'has the authority' to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost."<sup>54</sup> The court also noted that,

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<sup>48</sup> Exhibit B, Controller's comments on the IRC, page 73.

<sup>49</sup> The exemption for low-income students in subdivision (c)(3) was removed by Statutes 2005, chapter 320.

<sup>50</sup> Statutes 1993, chapter 8.

<sup>51</sup> *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794.

<sup>52</sup> *Id.*, page 811.

<sup>53</sup> *Id.*, pages 810 – 811.

<sup>54</sup> *Clovis*, *supra*, 188 Cal.App.4th 794, 812.

“... 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.’”<sup>55</sup>

Although the claimant here was not a party to the *Clovis* case, it is binding on the claimant under principles of collateral estoppel, which applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.<sup>56</sup> The issue decided by the court- that the fees community college districts are authorized to charge must be deducted as offsetting revenue - is identical to the issue in this IRC. In addition, the claimant here has privity with the petitioners in the *Clovis* case. “A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party’s interest that the latter was the former’s virtual representative in the earlier action.”<sup>57</sup> Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.<sup>58</sup>

Thus, the Commission finds that the audit reduction for offsetting fees that Miramar and Mesa Colleges are authorized to charge is correct as a matter of law.

The Commission further finds that the Controller’s calculation of claimant’s fee authority during the audit period is not arbitrary, capricious, or entirely lacking in evidentiary support. For its calculation of the fees, the Controller obtained data reported by the claimant to the Community College’s Chancellor’s Office, as explained:

We obtained the authorized health fee information for the applicable school terms during the audit period pursuant to Education Code section 76355, subdivision (a), from the California Community Colleges Chancellor's Office (CCCCO). The applicable fee amounts are identified in our audit report. CCCCCO provided the district's student enrollment information from their database based on MIS data element STD7, codes A through G. For school terms prior to January 1, 2006, we excluded from student enrollment those students that were recipients of Board of Governors Grants (BOGG) and apprenticeship enrollees. CCCCCO identified BOGG recipients based on MIS data element SF21 for all codes with a first letter of B or F. CCCCCO identified apprenticeship enrollees based on data element SB23, code 1.<sup>59</sup>

The calculation is consistent with the fee authority in Education Code section 76355, and claimant does not argue that the Controller’s calculation is incorrect. The Commission therefore

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

<sup>57</sup> *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

<sup>58</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

<sup>59</sup> Exhibit B, Controller’s comments on the IRC, page 19.

finds that the Controller's calculation of authorized offsetting health fee authority is not arbitrary, capricious, or entirely lacking in evidentiary support.

**C. The Reductions for Other Revenues at Miramar and Mesa College Health Centers Is Correct as a Matter of Law.**

The Controller found that the claimant understated offsetting reimbursements for all its colleges, but claimant contests only the unreported revenues of the health centers at Miramar and Mesa Colleges. The revenue comprises student insurance fees of \$533,702 (\$171,894 for Miramar College and \$361,808 for Mesa College) and \$71,133 for other miscellaneous revenue (\$22,176 for Miramar College and \$48,957 for Mesa College). The student health insurance fees posted to the health center's ledgers are for accident and liability insurance. The miscellaneous or local revenues consist of fees charged to students by the district's health centers for various services provided.<sup>60</sup>

Section VIII. of the parameters and guidelines addresses offsetting savings and other reimbursements and requires that "reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim." These revenues "include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services."<sup>61</sup>

The Controller found that the claimant did not identify and report the revenues received by the health centers at Miramar and Mesa Colleges and, thus, did not comply with the parameters and guidelines.<sup>62</sup>

Therefore, the Commission finds that the Controller's reduction of costs based on offsetting revenues or reimbursements for the health centers at Miramar and Mesa Colleges is correct as a matter of law.

**V. Conclusion**

Pursuant to Government Code section 17551(d), the Commission finds that the Controller's reductions to the reimbursement claims of the San Diego Community College District for fiscal years 2003-2004 through 2006-2007 are correct as a matter of law, and that the Controller's calculation of authorized fees is not arbitrary, capricious or entirely lacking in evidentiary support. Therefore, the Commission denies this IRC.

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<sup>60</sup> Exhibit B, Controller's comments on the IRC, page 20.

<sup>61</sup> Exhibit B, Controller's comments on the IRC, page 73.

<sup>62</sup> Exhibit A, IRC, pages 51-75. The reimbursement claims contain no information on this other revenue.

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RE: **Decision**

*Health Fee Elimination, 09-4206-I-29*

Former Education Code Section 72246, (Renumbered as Section 76355)

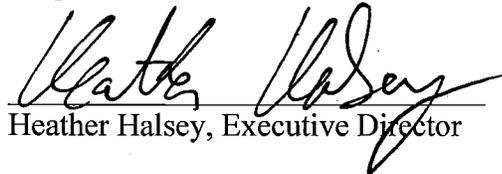
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, and 2006-2007

San Diego Community College District, Claimant

On September 25, 2015, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.

  
Heather Halsey, Executive Director

Dated: October 1, 2015

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On October 1, 2015, I served the:

**Decision**

*Health Fee Elimination, 09-4206-I-29*

Former Education Code Section 72246, (Renumbered as Section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, and 2006-2007

San Diego Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 1, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/10/15

**Claim Number:** 09-4206-I-29

**Matter:** Health Fee Elimination

**Claimant:** San Diego Community College District

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

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