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RECEIVED
September 26, 2014
Commission on
State Mandates

September 26, 2014

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

Dear Ms. Halsey:

RE: CSM 05-4206-I-11
El Camino Community College District
Fiscal Years: 2000-01, 2001-02, and 2002-03
Health Fee Elimination
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd. E.S.
Statutes of 1987, Chapter 1118
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated August 1, 2014, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

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

1. Audit Initiation

The District asserts that the audit of the FY 2000-01 and FY 2001-02 annual claims were not initiated before the expiration of the statute of limitations to commence an audit. The District's FY 2000-01 claim was submitted to the Controller on January 14, 2002, and the FY 2001-02 annual claim was submitted December 30, 2002. Pursuant to the then relevant version of Government Code Section 17558.5, (Statutes of 1995,

Chapter 945, Section 18, operative July 1, 1996)[1], these claims were subject to audit no later than December 31, 2004. The Controller asserts that the audit was timely commenced:

> SCO's Comment
>
> We disagree with the district's assertion that the audit and the related adjustment of the claims are barred by the statute of limitations. *Government Code* Section 17558.5(a), in effect during the audit period, states that district's reimbursement claim is subject to an audit no later than two years after the end of the calendar year in which the claim is filed or last amended. The claims were filed in January 2002 and December 2002, respectively. On December 2, 2004, we made phone contact with the district's business manager and sent a follow-up letter dated December 9, 2004, wherein we agreed to delay the start of the audit until January 5, 2005. In both the phone call and the letter, we clearly stated that the audit would include the claims filed in the 2002 calendar year. This audit was initiated prior to the statutory deadline of December 2004 in which to commence an audit. *(Audit Report, p. 12)*

The Controller asserts that the December 2004 communications with the District initiated the audit rather than the entrance conference in January 2005, which was after the 1995 two-year statutory period to start and finish the audit. The Controller's apparent measurement date for "initiation" of an audit is different for different audits. For this audit, and two audits issued in 2004 for Los Rios Community College District [2],

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[1] First Amendment

Statutes of 1995, Chapter 945, Section 18, operative July 1, 1996, repealed and replaced Section 17558.5, changing only the period of limitations:

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

[2] The two Controller's audits which were released before the El Camino audit which assert that the telephone contact is the action which "initiates" the audit are:

- Los Rios Community College District, Health Fee Elimination, issued June 24, 2004.

the Controller asserts the telephone contact as the initiation date for the audit. In other mandate audit reports issued both after the Los Rios audits and after this audit report, the Controller states that the entrance conference date initiates the audit.[3] Further, in the matter of the Health Fee Elimination audit of North Orange Community College District, the draft audit report dated May 6, 2005, included the three fiscal years audited by the Controller: FY 2000-01, FY 2001-02, and FY 2002-03. In its response letter dated June 15, 2005, North Orange County asserted that the statute of limitations for the audit of the FY 2000-01 claim expired December 31, 2003, pursuant to Government Code Section 17558.5, because the audit report was issued after that date. In the final

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- Los Rios Community College District, Mandate Reimbursement Process, issued June 24, 2004.

[3] The following Controller's audit reports were issued after the Los Rios audit reports and before the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Newport-Mesa Unified School District, School District of Choice, issued August 31, 2004.
- State Center Community College District, Health Fee Elimination, issued September 17, 2004.
- Clovis Unified School District, Graduation Requirements, issued October 22, 2004.
- San Bernardino Community College District, Health Fee Elimination, issued November 10, 2004.
- West Valley-Mission Community College District, Health Fee Elimination, issued April 8, 2005.
- Long Beach Community College District, Health Fee Elimination, issued April 27, 2005.
- North Orange County Community College District, Health Fee Elimination, issued July 22, 2005.
- Poway Unified School District, Emergecy Procedures, Earthequakes and Disasters, issued August 31, 2005.

The following Controller's audit reports were issued after the El Camino audit report and specifically state that the entrance date is the initiation date for the audit:

- Norwalk-La Mirada Unified School District, School District of Choice, issued October 7, 2005.
- Norwalk-La Mirada Unified School District, Intradistrict Attendance, issued December 23, 2005.
- Norwalk-La Mirada Unified School District, Collective Bargaining, issued December 23, 2005.

audit North Orange report dated July 22, 2005, the Controller agreed that FY 2000-01 was barred from audit, but for another reason, the stated reason being that the "FY 2000-01 claim was not subject to audit due to the expiration of the statute of limitations within which to initiate an audit." The North Orange County audit entrance conference date was January 26, 2004, which is the date, according to the Controller, that the audit was "initiated." All of the referenced audits are available at the Controller's web site. The administrative record for the incorrect reduction claims for the referenced audits is available at the Commission web page.

Given this contradiction in measurement dates, it does not appear that the Controller has a single position on this issue, but rather chooses the rule that would yield compliance with the 1995 two-year rule. It appears the Controller discarded the pre-entrance conference telephone call/e-mail date rule after the Los Rios audits and then reinstated it for this audit, perhaps in order to avoid losing jurisdiction of the first two fiscal years. It can therefore be concluded that the Controller has no legal basis for their policy on the initiation date of audits. The Commission must make this determination.

However, the Commission makes no explicit finding regarding whether the date of first communication or date of the entrance conference commences the audit. Instead, the Commission (DPD, 16) asserts that *at the time the claims were filed* the annual claims were subject to the 1995 calendar two-year initiation rule (without defining the date of initiation), but that *at the time of audit,* the statute of limitations had become "enlarged" to the 2002 three-year from the date of filing rule[4]:

> At the time the reimbursement claims were filed, the reimbursement claims in issue would be "subject to audit," pursuant to the 1995 version of section

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[4] Second Amendment

Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003, amended Section 17558.5 to state:

"(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~ three years after the ~~end of the calendar year in which 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 ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."

> 17558.5, within two years after the end of the calendar year that the reimbursement claim was filed. However, pursuant to the *Douglas Aircraft* case, "[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred." Therefore, in this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the statute of limitations to three years after the date the actual reimbursement claim is filed or last amended, would control, and gives the SCO additional time to initiate the audit. The SCO therefore had until January 14, 2005 to initiate the audit of the 2000-2001 reimbursement claim, and had until December 30, 2005, to initiate the 2001-2002 reimbursement claim. Since the audit was initiated "no later than January 5, 2005," when the entrance conference was held, the audit was timely initiated.

The Commission analysis fails on the facts. Government Code section 17558.5 is specific to administrative claims, not civil actions, and needs no further interpretation by analogy. For the enlargement issue to operate, again misapplying a civil action concept, there has to be a "matter pending" and not barred. If the matter is the filed claim, the claimant accomplished all that was necessary by timely filing the claim, thus nothing was pending. If the "matter" is the Controller's audit, it was barred by the 1995 law and therefore could not be "pending." Further, the alleged "enlargement" works a benefit for the Controller, but is a post-facto reduction of the previous statutory right of the claimant extant at the time of claim filing to be exposed to audit (and thus record retention requirements) for a shorter period. The Commission incorrectly applies the concept of enlargement to the extension of relief to a state agency rather than its effect as an impairment of previous rights to the claimants. The Commission cites cases that allow the Legislature to retroactively curtail the rights of state agencies, but none that allow post-facto impairment of claimants' rights.

2. Audit Completion

It is uncontested here that an audit is complete only when the final audit report is issued. The District asserts that the FY 2000-01 annual claim (filed January 14, 2002) and FY 2001-02 annual claim (filed December 30, 2002) were beyond the statute of limitations for completion of the audit (December 31, 2004) when the Controller completed its audit on October 5, 2005.

The Commission (DPD, 16-17) asserts that the 1995 version of Section 17558.5 "did not have a statutory deadline for the completion of an audit," and citing in footnote 61 the *Cedar-Sinai Medical Center* decision, proposes that claimants rely upon the defense of laches. Again, this is a misapplication of a decision in a civil matter. The Commission seems to be asserting that the Controller was required under common law to complete the audit within a reasonable period of time without regard to the positive

law of the legislature's statute of limitations. Reliance on the reasonableness of the actual length of the audit period process would mean in practice that the determination of a reasonable audit completion date would become a question of fact for every audit, which is contrary to the concept of a *statute* of limitations.

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

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

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

Having concluded that there was no statutory time limit to finish an audit until the 2004 amendment to Section 17558.5[5], and that (DPD, 17) "the restriction in the new law

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[5] Third Amendment

Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5 to state:

"(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the

becomes effective immediately upon the operative date of the change in law for all pending claims," the Commission then concludes that the audit was completed within the 2004 two-year period allowed to complete an audit, in this case, January 5, 2007 (DPD, 18), which would seem to endorse, without an explicit finding, that an audit commences on the entrance conference date (which would decide the initiation date issue above). This is a misapplication of the law to the facts. If the matter is the filed claim, the claimant accomplished all that was necessary by timely filing the claim, thus nothing was pending. If the "matter" is the Controller's audit, it was barred by the 1995 law and therefore could not be "pending."

The adjudication of the audit completion date should end with the 1995 version of Section 17558.5. Section 17558.5 was amended two more times after the FY 2000-01 and FY 2001-02 annual claims were filed. As a matter of law, these amendments are not relevant to the determination of statute of limitations for the FY 2000-01 and FY 2001-02 annual claims, so reliance upon the language of the subsequent amendments as a declaration of retroactively consistent legislative policy, or intent, or a source of enlargement, is without foundation. Regardless, the Commission concludes that its interpretation of the significance of the second sentence in the 1995 version is supported by the 2002 amendment to Section 17558.5 which extends the audit initiation period to three years. The 2002 amendment provides no new information about the audit completion date. The 2004 amendment to Section 17558.5 does establish a two-year limit to complete a timely filed audit based on date of audit initiation, not based on the date of claim filing. The 2004 amendment to Section 17558.5 is definitive to the issue of when the audit completion period was first placed in statute, but it is of no assistance to resolve the 1995 issue.

There is no objective basis or evidence in the record to conclude that the period of time allowed to complete an audit is contingent on the notice provision as to when the audit can commence. The cases cited by the Commission speak to the issue of commencing an audit and the extension of that time by future changes to the statute of limitations. These are not relevant to the issue of the completion of the audit. The Commission cites no cases contradicting the practical requirement that completion is measured by the date of the audit report.

If, as the Commission asserts, that the first amended version establishes no statutory

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> 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. In any case, an audit shall be completed not later than two years after the date that the audit is commenced."

time limit to complete a timely commenced audit, Section 17558.5 becomes absurd. Once timely commenced, audits could remain unfinished for years either by intent or neglect and the audit findings revised at any time. Thus, the claimant's document retention requirements would become open-ended and eventually punitive. Statutes of limitations are not intended to be open-ended; they are intended to be finite, that is, a period of time measured from an unalterable event, and in the case of the 1995 version of the code, it is the filing date of the annual claim.

PART B. APPLICATION OF AN INDIRECT COST RATE

The audit asserts that the District overstated its indirect cost rates and costs in the amount of $188,652 for the audit period. This finding is based upon the Controller's statement that the district did not obtain federal approval for its indirect cost rate proposals (ICRPs), a stated requirement of the Controller's claiming instructions.

The threshold Commission conclusion is that claimants must comply with the Controller's claiming instructions and that the Controller's use of its own instructions and forms to recalculate the indirect cost rates was not arbitrary and correct as a matter of law. The District asserts that the Controller's claiming instructions are not alone enforceable as a matter of law as they are not regulations nor were they adopted pursuant to the administrative rulemaking process required to enforce agency manuals and instructions, as did the *Clovis* Court.[6]

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[6] From the Clovis Appellate Court Decision (4):

"Once the Commission determines that a state mandate exists, it adopts regulatory "[P]arameters and [G]uidelines" (P&G's) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory "[C]laiming [I]nstructions" for each Commission-determined mandate; these instructions must derive from the Commission's test claim decision and its adopted P&G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs." Emphasis added.

From the Clovis Appellate Court Decision (15):

"Given these substantive differences between the Commission's pre-May 27, 2004 SDC P&G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P&G's for the SDC Program (§ 17558 [the Commission submits regulatory P&G's to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561,subd. (d)(2))." Emphasis added.

The Controller has never asserted that its claiming instructions are alone legally enforceable. The Community College Mandated Cost Manual General Instructions revised or updated September 29, 2000, September 28, 2001, and September 30, 2003 included the following language (DPD, 19):

> The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

Therefore, any documentation standards or cost accounting formulas published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions.

Regardless of the lack of legal sources for the indirect cost rate calculation, the Commission asserts (DPD, 20): because "the reference in the parameters and guidelines to the Controller's claiming instructions necessarily includes the general provisions of the School Mandated Cost Manual, and the manual provides ample notice to claimants as to how they may properly claim indirect costs," and because the parameters and guidelines (DPD, 20) "which *were* duly adopted at a Commission hearing, require compliance with the claiming instructions," that (DPD, 20) claimants are required "to claim indirect costs in the manner described in the SCO's the claiming instructions." To the contrary, claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission's attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather than the subsequent discretionary choice to use claiming instructions method, is gratuitous.

The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller's claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller's claiming instructions. The Controller's use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground

regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50).

Somehow the "assistance" provided by the claiming instructions has become a requirement even though the parameters and guidelines use the word "may." The Commission now has concluded that the contents of the claiming instructions are as a matter of law derivative of the authority of the parameters and guidelines, without benefit of a legal citation for this leap of jurisprudence. Assuming for argument that the leap can be made, would that derivative authority continue for any changes made to the claiming instructions after the adoption of the 1989 parameters and guidelines, that is, an open-ended commitment of the Commission's authority to the Controller who can make changes without reference to the Commission process? Is this derivative authority limited to Health Fee Elimination or applicable to all mandates?

Note that the Heath Fee Elimination parameters and guidelines were amended on January 29, 2010. However, the indirect cost rate language remained the same:

> 3. Allowable Overhead Cost
>
> > Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

The Commission has had numerous opportunities to clarify its intent and language regarding the indirect cost rate calculation methods and resolve or avoid the delegation and derivation issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

> B. Indirect Cost Rates
>
> Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.
>
> Indirect costs include: (a) the indirect costs originating in each department or

> agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.
>
> Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their regulatory discretion and has utilized it in new program college mandate parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code Section 17561. No particular indirect cost rate calculation method is required by law. Government Code Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

There is no rebuttable presumption for this mandate that the Controller's methods are per se the only reasonable method. The Controller made no determination as to whether the method used by the District was reasonable or not, but merely substituted the Controller's method for the method used by the Districts. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. In order to move forward with the adjustment, the burden of proof is on the Controller to prove that the District's calculation is unreasonable. Indeed, federally "approved" rates which the Controller will accept without further action, are "negotiated" rates calculated by the district and submitted for approval, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used. Neither the Commission nor the Controller can assume that the Controller's calculation methods are intrinsically more accurate and the Commission cannot shift that burden or create the presumption to the contrary where none is present in law.

PART C. UNDERSTATED OFFSETTING REVENUES

This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of $195,333 for the audit period. The Controller computed the total student health fees collectible based on state rates while the District reported actual fees collected.

The Commission (DPD, 23) finds that the correct calculation and application of offsetting revenue from student health fees have been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law:

> After claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the issue of whether the SCO properly reduced reimbursement claims for state-mandated health services required by the *Health Fee Elimination* program by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees (i.e., the "Health Fee Rule). As cited by the court, the Health Fee Rule states in pertinent part:
>
> > Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355. (Underline in original.)

The District agrees that claimants and state agencies are bound to apply the Health Fee Rule as decided law and that this extends to retroactive fiscal years still within the Commission's or Controller's jurisdiction.

On October 27, 2011, the Commission adopted a consolidated statement of decision for seven Health Fee Elimination incorrect reduction claims. The statement of decision for these seven districts included issues presented in this current incorrect reduction claim. The application of the Health Fee Rule, as determined by the Commission's October 27, 2011, statement of decision, however, involves two factual elements: the number of exempt students and the specific enrollment statistics for each semester. That decision approved the Controller's use of specific Community College Chancellor's MIS data to obtain these enrollment amounts. That approved method is stated in the more recent HFE audits as:

> **FINDING— Understated authorized health service fees**
>
> We obtained student enrollment data from the CCCCO. The CCCCO identified enrollment data from its management information system (MIS) based on student data that the district reported. CCCCO identified the district's enrollment

based on its MIS data element STD7, codes A through G. CCCCO eliminated any duplicate students based on their Social Security numbers. *Cited from the October 19, 2012 HFE Audit Report for State Center CCD. Available at the Controller's web site.*

For this audit, completed October 5, 2005, well before the October 27, 2011, Commission decision, the source of the enrollment statistics used by the auditor was different:

FINDING 3— Understated authorized health fee revenues claimed

The district is incorrect when it states that we used student enrollment and Board of Governors Grants (BOGG) waiver counts based on data from the office of Chancellor of the Community Colleges. As mentioned above, the district did not use the actual number of student counts and BOGG waiver counts in its reporting of the health fee revenue. We recalculated the authorized health fees the district was authorized to collect using the district's Student Enrollment Reports and the BOGG Detail Reports dated January 2005 through March 2005. *Audit report, p. 11.*

Therefore, to properly implement the Health Fee Rule, it will be necessary for the Controller to utilize the statistics approved by the October 27, 2011, decision. Until then, the Commission's ultimate conclusion that the adjustments here are not arbitrary or lacking in evidentiary support is unfounded.

CERTIFICATION

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

Executed on September 26, 2014, at Sacramento, California, by

Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

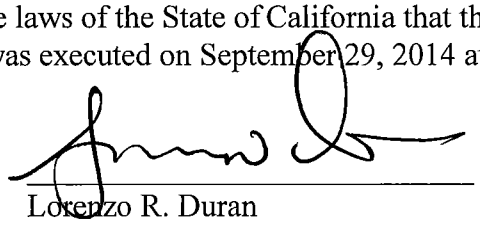
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 29, 2014, I served the:

Claimant Comments
Health Fee Elimination, 05-4206-I-11
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2000-2001, 2001-2002, and 2002-2003
El Camino 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 September 29, 2014 at Sacramento, California.



Lorenzo R. Duran
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/14

Claim Number: 05-4206-I-11

Matter: Health Fee Elimination

Claimant: El Camino Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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