

NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

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

July 1, 2003, through June 30, 2007



JOHN CHIANG
California State Controller

January 2011



JOHN CHIANG
California State Controller

January 6, 2011

Barbara Dunsheath
President, Board of Trustees
North Orange County Community College District
1830 W. Romneya Drive
Anaheim, CA 92801

Dear Ms. Dunsheath:

The State Controller's Office audited the costs claimed by the North Orange County 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, 2003, through June 30, 2007.

The district claimed \$1,635,170 for the mandated program. Our audit disclosed that \$974,518 is allowable and \$660,652 is unallowable. The costs are unallowable because the district understated direct costs, claimed unallowable services and supplies, overstated and understated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district \$267,747. The State will pay allowable costs claimed that exceed the amount paid, totaling \$706,771, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). 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 the CSM's Web site 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: Ned Doffoney, Ed.D, Chancellor
North Orange County Community College District
Fred Williams, Vice Chancellor
Finance and Facilities
North Orange County Community College District
Claudette Dain, Director of Fiscal Affairs
North Orange County Community College District
Christine Atalig, Auditor
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the North Orange County 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, 2003, through June 30, 2007.

The district claimed \$1,635,170 for the mandated program. Our audit disclosed that \$974,518 is allowable and \$660,652 is unallowable. The costs are unallowable because the district understated direct costs, claimed unallowable services and supplies, overstated and understated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district \$267,747. The State will pay allowable costs claimed that exceed the amount paid, totaling \$706,771, contingent upon available appropriations.

Background

Chapter 1, Statutes of 1984, 2nd Extraordinary Session (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 were to 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. The 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, 2003, through June 30, 2007.

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 limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

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 and did not submit a representation letter.

Conclusion

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

For the audit period, the North Orange County Community College District claimed \$1,635,170 for costs of the Health Fee Elimination Program. Our audit disclosed that \$974,518 is allowable and \$660,652 is unallowable.

For the FY 2003-04 claim, the State made no payment to the district. Our audit disclosed that \$331,430 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$331,430, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the district. Our audit disclosed that \$359,483 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$359,483, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that \$182,094 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$182,094, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district \$267,747. Our audit disclosed that \$101,511 is allowable. The State will offset \$166,236 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

**Views of
Responsible
Official**

We issued a draft audit report on October 29, 2010. Fred Williams, Vice Chancellor, responded by letter dated December 2, 2010 (Attachment), agreeing with Findings 1, 2, and 5, partially agreeing with Finding 3, and disagreeing with Finding 4. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the North Orange County 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

January 6, 2011

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2007**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 710,725	\$ 729,586	\$ 18,861	Finding 1
Materials and supplies	118,683	133,311	14,628	Finding 1
Total direct costs	829,408	862,897	33,489	
Indirect costs	323,469	218,141	(105,328)	Finding 3
Total direct and indirect costs	1,152,877	1,081,038	(71,839)	
Less authorized health fees	(630,828)	(636,252)	(5,424)	Finding 4
Less offsetting savings/reimbursements	—	(113,356)	(113,356)	Finding 5
Total program costs	<u>\$ 522,049</u>	331,430	<u>\$ (190,619)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 331,430</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 696,238	\$ 741,486	\$ 45,248	Finding 1
Materials and supplies	113,568	121,952	8,384	Finding 1
Total direct costs	809,806	863,438	53,632	
Indirect costs	271,534	286,230	14,696	Finding 3
Total direct and indirect costs	1,081,340	1,149,668	68,328	
Less authorized health fees	(656,587)	(673,135)	(16,548)	Finding 4
Less offsetting savings/reimbursements	—	(117,050)	(117,050)	Finding 5
Total program costs	<u>\$ 424,753</u>	359,483	<u>\$ (65,270)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 359,483</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 780,194	\$ 780,194	\$ —	
Materials and supplies	<u>105,371</u>	<u>93,098</u>	<u>(12,273)</u>	Finding 2
Total direct costs	885,565	873,292	(12,273)	
Indirect costs	<u>304,275</u>	<u>291,243</u>	<u>(13,032)</u>	Finding 3
Total direct and indirect costs	1,189,840	1,164,535	(25,305)	
Less authorized health fees	(769,469)	(851,592)	(82,123)	Finding 4
Less offsetting savings/reimbursements	<u>—</u>	<u>(130,849)</u>	<u>(130,849)</u>	Finding 5
Total program costs	<u>\$ 420,371</u>	182,094	<u>\$ (238,277)</u>	
Less amount paid by the State		<u>—</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 182,094</u>		
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 865,701	\$ 865,701	\$ —	
Materials and supplies	<u>186,639</u>	<u>177,597</u>	<u>(9,042)</u>	Finding 2
Total direct costs	1,052,340	1,043,298	(9,042)	
Indirect costs	<u>255,360</u>	<u>353,156</u>	<u>97,796</u>	Finding 3
Total direct and indirect costs	1,307,700	1,396,454	88,754	
Less authorized health fees	(1,039,703)	(1,137,093)	(97,390)	Finding 4
Less offsetting savings/reimbursements	<u>—</u>	<u>(157,850)</u>	<u>(157,850)</u>	Finding 5
Total program costs	<u>\$ 267,997</u>	101,511	<u>\$ (166,486)</u>	
Less amount paid by the State		<u>(267,747)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (166,236)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2003, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 3,052,858	\$ 3,116,967	\$ 64,109	
Materials and supplies	<u>524,261</u>	<u>525,958</u>	<u>1,697</u>	
Total direct costs	3,577,119	3,642,925	65,806	
Indirect costs	<u>1,154,638</u>	<u>1,148,770</u>	<u>(5,868)</u>	
Total direct and indirect costs	4,731,757	4,791,695	59,938	
Less authorized health fees	(3,096,587)	(3,298,072)	(201,485)	
Less offsetting savings/reimbursements	<u>—</u>	<u>(519,105)</u>	<u>(519,105)</u>	
Total program costs	<u>\$ 1,635,170</u>	974,518	<u>\$ (660,652)</u>	
Less amount paid by the State		<u>(267,747)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 706,771</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Understated direct costs**

The district understated direct costs by \$87,121.

The district understated costs because it did not claim mandate-related costs identified in its accounting records under Organization No. 5565 (Fullerton College). The district excluded mandate-related direct costs that were funded by the Innovative Tobacco Demonstration Project grant and the California Nutrition Network grant. The district also understated offsetting savings/reimbursements related to these understated costs. We identified these understated offsetting savings/reimbursements in Finding 5.

The following table summarizes the audit adjustments:

Cost Center	Fund No.	Fiscal Year		Total
		2003-04	2004-05	
Salaries and benefits:				
Innovative Tobacco				
Demonstration Project	19460	\$ 18,861	\$ —	\$ 18,861
California Nutrition Network	18985	—	45,248	45,248
Total salaries and benefits		18,861	45,248	64,109
Services and supplies:				
Innovative Tobacco				
Demonstration Project	19460	14,628	—	14,628
California Nutrition Network	18985	—	8,384	8,384
Total services and supplies		14,628	8,384	23,012
Audit adjustments		\$ 33,489	\$ 53,632	\$ 87,121

The program’s parameters and guidelines include the following provisions:

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.

Actual costs for one fiscal year should be included in each claim. . . .

For auditing purposes, 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 all mandate-related direct costs that its accounting records support.

District’s Response

The draft audit report increases the program amounts claimed by \$87,121 for the direct costs of two grant programs not included in the FY 2003-04 and FY 2004-05 annual claims. The District concurs that the program costs for the Innovative Tobacco Demonstration Project and California Nutrition Network grants are within the scope of the assessment, intervention and counseling mandate activities. Therefore, the cost of these services performed by student health service center staff are properly included in the total cost of providing student health services. The related grant revenues are discussed in Finding 5.

SCO’s Comment

The district agreed with the finding.

**FINDING 2—
Unallowable services
and supplies claimed**

The district claimed unallowable services and supplies totaling \$21,315.

The district claimed mandate-related costs identified in its California Nutrition Network Fund and High-Risk Drinking Prevention Services Fund under Organization 5565 (Fullerton College). However, the direct costs claimed included Account No. 5900, which the district identified as indirect costs. In addition, the district overstated indirect costs claimed because it applied its indirect cost rate to the indirect costs reported in Account No. 5900. The Account No. 5900 indirect costs claimed are unallowable as direct costs. We separately calculated allowable indirect costs in Finding 3.

The following table summarizes the audit adjustments:

Cost Center	Fund No.	Fiscal Year		Total
		2005-06	2006-07	
Services and supplies:				
California Nutrition Network	18985	\$ (12,273)	\$ —	\$ (12,273)
High-Risk Drinking Prevention Services	19425	—	(9,042)	(9,042)
Audit adjustments		<u>\$ (12,273)</u>	<u>\$ (9,042)</u>	<u>\$ (21,315)</u>

The parameters and guidelines state:

... only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.

Recommendation

We recommend that the district claim only those mandate-related direct costs that its accounting records support.

District’s Response

The draft audit report states that the District claimed excess costs in the amount of \$21,315 in the form of indirect costs applied to the California Nutrition Network Fund and the High-risk Drinking Prevention Services Fund for FY 2005-06 and FY 2006-07. The application of the indirect cost rate to the grant program in the general ledger for these funds at year-end is appropriate fund accounting. However, for purposes of mandate cost accounting, the District agrees that the indirect costs applied should be removed so that these programs are included in total student health service center costs that are later subject to the application of the indirect cost rate.

SCO’s Comment

The district agreed with the finding.

**FINDING 3—
Overstated and
understated indirect
costs**

The district overstated indirect costs by \$5,868 for the audit period. The district overstated indirect costs in FY 2003-04 and FY 2005-06. The district understated indirect costs in FY 2004-05 and FY 2006-07.

For FY 2003-04, the district claimed indirect costs by using a federally approved indirect cost rate. The federal approval identifies the allowable direct cost base as “direct salaries and wages including vacation, holiday, sick pay and other paid absences but excluding all other fringe benefits.” However, the district incorrectly applied the indirect cost rate to salaries, benefits, and services and supplies. The allowable indirect cost calculation includes the understated Innovative Tobacco Demonstration Project Fund salaries identified in Finding 1.

The district also used a federally approved rate to claim indirect costs for FY 2004-05 through FY 2006-07. However, for these years, the parameters and guidelines and the SCO claiming instructions do not provide the district the option of using a federally approved rate. Therefore, we calculated allowable indirect cost rates using the SCO’s FAM-29C methodology in accordance with the claiming instructions applicable to each fiscal year. We applied the rate to allowable direct costs.

The following table summarizes the audit adjustments:

	Fiscal Year				Total
	2003-04	2004-05	2005-06	2006-07	
Allowable salaries	\$ 559,335	\$ —	\$ —	\$ —	
Allowable direct costs	—	863,438	873,292	1,043,298	
Allowed indirect cost rate	× 39.00%	× 33.15%	× 33.35%	× 33.85%	
Allowable indirect costs	218,141	286,230	291,243	353,156	
Indirect costs claimed	(323,469)	(271,534)	(304,275)	(255,360)	
Audit adjustments	<u>\$ (105,328)</u>	<u>\$ 14,696</u>	<u>\$ (13,032)</u>	<u>\$ 97,796</u>	<u>\$ (5,868)</u>

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

For 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 forward, 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 & 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 Health Fee Elimination Program indirect costs based on indirect cost rates calculated in accordance with the SCO's claiming instructions.

District's Response

The draft audit report concludes that the District overstated indirect costs by \$5,868 for the four fiscal years included in the audit. The District used a federally approved indirect cost rate applied to all direct costs for all four annual claims that are the subject of the audit.

For FY 2003-04, the draft audit report accepts the federally approved indirect cost rate used by the District, but asserts that the District overstated indirect costs for FY 2003-04 by \$105,328 because the District applied its federally approved indirect cost rate of 39% to total direct costs, instead of just to the salaries and benefits only. The Controller's position is apparently based on the conclusion that since the federal rate was calculated using salary and benefits only, it can be applied only to salary and benefits. There is no such limitation in the parameters and guidelines or the claiming instructions, nor does the audit report cite a basis for this restriction of the application of the indirect cost rate only to the cost that were the source of the direct cost base used for the calculation. The adjustment for FY 2003-04 should be withdrawn.

The draft audit report asserts that the District cannot use the federally approved rate for the annual claims for FY 2004-05, FY 2005-06, and FY 2006-07, because the Commission on State Mandates parameters and guidelines and the claiming instructions do not provide claimants the option of using federally approved rates for these fiscal years. The draft audit report states that the Controller's claiming instructions relevant to these fiscal years stated that when claiming indirect costs, college districts have the option of using a federally approved rate only when "specifically allowed" by the parameters and guidelines. The parameters and guidelines for the Health fee Elimination program (as amended on May 25, 1989), which are the 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.

The only statutory basis to adjust mandate costs is whether the claimed costs are excessive or unreasonable, pursuant to Government Code Section 17561(d)(2). The auditor used the CCFS-311, less capital costs, but with audited district financial statement depreciation costs included, to calculate the indirect cost rate using the Controller's Form FAM-29C method. The District agrees that the FAM-29C is one of several reasonable methods and for that reason does not dispute the adjustments for FY 2004-05, FY 2005-06, and FY 2006-07.

SCO's Comment

The finding and recommendation remain unchanged.

FY 2003-04 Allocation Basis

The district implies that it may apply the indirect cost rate to the base it chooses. The district draws a distinction between federal approval of the rate itself versus federal approval of the allocation base. There is no distinction. The federal approval letter defines both the rate and the applicable base.

FY 2004-05, FY 2005-06, and FY 2006-07 Adjustments

The district states that it calculated the indirect costs rate using the Controller's Form FAM-29C method. The district further states that it agrees that this method is "one of several reasonable methods and for that reason does not dispute the adjustments for FY 2004-05, FY 2005-06, and FY 2006-07."

In its response, the district indicates that the parameters and guidelines 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.

The district infers that it can calculate an indirect cost rate in the manner that it chooses. We disagree with the district's interpretation of the parameters and guidelines. The phrase "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the parameters and guidelines require that it comply with the SCO's claiming instructions.

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

The district understated authorized health service fees by \$201,485 during the audit period. 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 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 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.

For the period of July 1, 2003, through December 31, 2005, 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. Effective January 1, 2006, only Education Code section 76355, subdivisions (c) (1) and (2) are applicable.

The California Community Colleges Chancellor’s Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). The following table summarizes the authorized fees:

Fiscal Year	Authorized Health Fee Rate	
	Fall and Spring Semesters	Summer Session
2003-04	\$12	\$ 9
2004-05	13	10
2005-06	14	11
2006-07	15	23

We obtained student enrollment, Board of Governors Grant (BOGG) recipient, and apprenticeship program enrollee 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 its 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. The CCCCCO also identified the number of apprenticeship program enrollees based on its data element SB23, code 1. CCCCCO data element and code definitions are available at <http://www.cccco.edu/SystemOffice/Divisions/TechResearchInfo/MIS/DED/tabid/266/Default.aspx>. The district did not identify any students that it excluded from the health service fee pursuant to Education Code section 76355, subdivision (c)(1).

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

	Period			Total
	Summer Session	Fall Semester	Spring Semester	
Fiscal Year 2003-04:				
Number of enrolled students	13,093	31,921	30,893	
Less number of BOGG recipients	(2,529)	(8,831)	(8,883)	
Less number of apprenticeship program enrollees	—	—	(2)	
Subtotal	10,564	23,090	22,008	
Authorized health fee rate	× \$ (9)	× \$(12)	× \$(12)	
Authorized health service fees	<u>\$ (95,076)</u>	<u>\$ (277,080)</u>	<u>\$ (264,096)</u>	\$ (636,252)
Less authorized health service fees claimed				630,828
Review adjustment, FY 2003-04				<u>(5,424)</u>
Fiscal Year 2004-05:				
Number of enrolled students	13,339	33,034	31,531	
Less number of BOGG recipients	(3,154)	(10,298)	(10,322)	
Subtotal	10,185	22,736	21,209	
Authorized health fee rate	× \$ (10)	× \$(13)	× \$(13)	
Authorized health service fees	<u>\$ (101,850)</u>	<u>\$ (295,568)</u>	<u>\$ (275,717)</u>	(673,135)
Less authorized health service fees claimed				656,587
Review adjustment, FY 2004-05				<u>(16,548)</u>
Fiscal Year 2005-06:				
Number of enrolled students	13,606	32,524	30,754	
Less number of BOGG recipients	(3,358)	(10,502)	—	
Subtotal	10,248	22,022	30,754	
Authorized health fee rate	× \$(11)	× \$(14)	× \$(14)	
Authorized health service fees	<u>\$ (112,728)</u>	<u>\$ (308,308)</u>	<u>\$ (430,556)</u>	(851,592)
Less authorized health service fees claimed				769,469
Review adjustment, FY 2005-06				<u>(82,123)</u>
Fiscal Year 2006-07:				
Number of enrolled students	13,404	32,980	32,105	
Less number of apprenticeship program enrollees	—	(2)	—	
Subtotal	13,404	32,978	32,105	
Authorized health fee rate	× \$(12)	× \$(15)	× \$(15)	
Authorized health service fees	<u>\$ (160,848)</u>	<u>\$ (494,670)</u>	<u>\$ (481,575)</u>	(1,137,093)
Less authorized health service fees claimed				1,039,703
Review adjustment, FY 2006-07				<u>(97,390)</u>
Total audit adjustment				<u>\$ (201,485)</u>

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 CCCC data element STD7, codes A through G.
- Identify the number of apprenticeship program enrollees based on data elements SB23, code 1, and STD7, codes A through G.

- Eliminate duplicate entries for students who attend more than one college within 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).

District's Response

The draft audit report states that “authorized” student health service fee revenues were understated by \$201,485 for the audit period. The adjustment is due to the fact that the District reported the actual student health service fees that it collected rather than ‘authorized” student health service fees that could have been collected.

“Authorized” Fee Amount

The draft audit report asserts that claimants must compute the total student health service 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 service fee amounts, absent rulemaking or compliance with the Administrative Procedure Act by the “authorizing” state agency. The fee amounts “identified” by the State Chancellor’s Office referenced in the draft audit report merely informs, by form letter to the local districts, that the Implicit Price Deflator has increased and that the districts may increase their student health service fee if the district so chooses. The State Chancellor is not authorized by statute to direct the local districts to increase the student health service fee.

Education Code Section 76355

Education Code Section 76355, subdivision (a)(1), 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. . . (emphasis added).” 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 added).

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

“Cost 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 or higher level of service of an existing 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 revenue to increased cost, 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 shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandate program or increase level of service.” Government Code Section 17556, as last amended by Statutes of 2006, Chapter 538, 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 any one of the following: . . .

(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 increase level of service.

Government Code Section 17556 prohibits the Commission 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 amended on May 25, 1989, state, in relevant part: “Any offsetting savings 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).” Therefore, the 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.”

Therefore, the audit report findings and recommendations regarding enrollment data obtained from the Chancellor’s Office, the students to be charged, and the amounts to charge these students are not relevant to the District claimed amounts since the District claimed actual revenues collected that resulted from the District’s policy regarding which students are to be charged and how much they are to be charged.

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

The finding and recommendation remain unchanged.

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 CCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Education 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.¹ 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.

¹ 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/reimbursements by \$519,105 for the following reasons:

- The district did not claim self-supported program revenue. Self-supported program revenue consists of moneys collected from students for health center services such as medications and medical supplies. This revenue is in addition to the health service fee assessed to students. The revenue related to services that the district provided in the 1986-87 base year (base-year services) and additional services that it did not provide in the base year (excess services). The district did not segregate expenditures and revenues attributable to base-year services versus excess services. Therefore, we identified all self-supported revenue as understated offsetting savings/reimbursements. The district claimed the related expenditures.
- The district did not claim mandate-related expenditures and the corresponding offsetting savings/reimbursements for the Innovative Tobacco Demonstration Project grant (FY 2003-04) and the California Nutrition Network grant (FY 2004-05). We adjusted for the understated offsetting savings/reimbursements in this finding and the understated direct costs in Finding 1.
- The district claimed mandate-related expenditures recorded in the California Nutrition Network Fund (FY 2005-06) and the High Risk Drinking Prevention Services Fund (FY 2005-06 and FY 2006-07). However, the district did not report the related offsetting savings/reimbursements.
- The district accounted for the California Nutrition Network grant revenues by fund number rather than by Organization (Org.) number. Consequently, some of the non-mandate-related preschool revenues relating to Org. No. 5626 for FY 2004-05 and FY 2005-06 were recorded in Org. No. 5565. We adjusted revenues to include only mandate-related offsetting savings/reimbursements based on documentation the district provided.

The following table summarizes the audit adjustment:

Cost Center	Org. No.	Fund No.	Fiscal Year				Total
			2003-04	2004-05	2005-06	2006-07	
Self-supported programs	5565 2520	14000 14000	\$ (29,373) (45,694)	\$ (21,623) (36,365)	\$ (35,031) (33,171)	\$ (45,116) (38,550)	\$ (131,143) (153,780)
Innovative Tobacco Demonstration Project	5565	19460	(38,289)	—	—	—	(38,289)
California Nutrition Network	5565	18985	—	(59,062)	(26,827)	—	(85,889)
High Risk Drinking Prevention Services	5565 5565	19425 19427	— —	— —	(35,820) —	(33,501) (40,683)	(69,321) (40,683)
Audit adjustment			<u>\$ (113,356)</u>	<u>\$ (117,050)</u>	<u>\$ (130,849)</u>	<u>\$ (157,850)</u>	<u>\$ (519,105)</u>

The parameters and guidelines state:

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.

Recommendation

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

District's Response

The draft audit report states that the District understated offsetting savings and reimbursements by \$519,105 for two reasons:

“Self-supported” program revenues: The draft audit report identifies \$131,143 (14000-5565) and \$153,780 (14000-2520) in amounts collected from students for health services such as medications and supplies that were not included in the annual claim as an offset of total student health service program costs. The District concurs that since the cost of the services is included in the total program cost of the student health services centers, these clinical and miscellaneous revenues should be reported as an offset of these costs after the indirect cost rate is applied.

Grant program revenues: The remaining adjustment amounts pertain to properly matching grant funding for the Innovative Tobacco Demonstration Project, California Nutrition Network, and High-risk Drinking Prevention Services grant programs as offsets since these program costs were included by the District, or by the audit by Finding 1, in the total program costs. The District concurs that the grant funds are proper offsets to total program costs if the cost of the services is included in the total program cost for the student health services centers as originally claimed or audited.

SCO's Comment

The district agreed with the finding.

OTHER ISSUES

The district’s response included other comments related statute of limitations, fraud risk assessment, management representation letter, and public records request. The district’s responses and SCO’s comments are presented below.

Statute of Limitations for Audit

District’s Response

This issue is not a finding of the audit report. The District asserts that the first two years of the four annual claims audited, Fiscal Years 2003-04 and 2004-05, were beyond the statute of limitations for an audit. The audit was initiated with the entrance conference conducted on January 7, 2009, a date that is more than three years after the annual claims were filed.

<u>Fiscal Year</u>	<u>Date Filed</u>	<u>Audit Status</u>
FY 2003-04	December 23, 2004	Past audit December 23, 2007
FY 2004-05	December 13, 2005	Past audit December 13, 2008

Regarding the annual claim for FY 2003-04, Government Code Section 17558.5 (as amended by Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003) states:

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

Regarding the annual claim for FY 2004-05, Government Code Section 17558.5 (as amended by Statues of 2004, Chapter 890, Section 18, operative January 1, 2005) states:

- (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

Since there were state appropriations, although minimal and not specifically or contemporaneously paid to this District, for these fiscal years, the statute of limitations to initiate the audit of these fiscal years expired three years after the date of annual claim filing. Regardless, the clause in Government Code Section 17558.5 that delays the commencement of the tie for the Controller to audit to the date of initial payment is void because it is impermissibly vague.

SCO's Comment

The SCO initiated its audits for FY 2003-04 and FY 2004-05 within the period allowed by Government Code section 17558.5, subdivision (a). It states that "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." As of this final report, the State made no payment to the district for FY 2003-04 and FY 2004-05 Health Fee Elimination Program claims.

Fraud Risk Assessment

District's Response

The draft audit report (page 2) states that the auditor was "unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment." This is not an accurate statement of what occurred. The District determined that providing written responses to the Controller's boilerplate fraud assessment questionnaire could be construed as a waiver of future appeal rights and outside the scope of a mandate compliance audit. However, the District was willing and did respond verbally to any questions posed by the auditor.

SCO's Comment

We believe the statement is valid. The district's mandate consultant advised us at the entrance conference that the district would not respond to the fraud section of the internal control questionnaire. Consequently, we did not ask the district verbal fraud risk assessment questions.

Management Representation Letter

District's Response

The District will not be providing the requested management representation letter since it could be construed as a waiver of future appeal rights.

SCO's Comment

The district's mandate consultant also advised us at the entrance conference that the district would not be signing the management representation letter.

Public Records Request

District's Response

The District requests that the Controller provide the District any and all written instructions, memoranda, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (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 ten 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 possession of the agency and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, the agency must state the estimated date and time when the records will be made available.

The District requests that the final audit report comply with the appropriate application of the parameters and guidelines regarding allowable activity costs and the Government Code sections concerning audits of mandate claims.

SCO's Comment

The SCO will respond to the public records request in a separate letter dated January 14, 2011.

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



NORTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

FRED WILLIAMS
*Vice Chancellor
Finance & Facilities*

NED DOFFONEY, Ed. D.
Chancellor

December 2, 2010

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, 2nd E. S.
Chapter 1118, Statutes of 1987
Health Fee Elimination Program
Annual Claim Fiscal Years: 2003-04 through 2006-07
North Orange County Community College District

Dear Mr. Spano:

This letter is the response of the North Orange County Community College District to the draft audit report dated October 27, 2010, for the above referenced program and fiscal years transmitted by the letter from Jeffrey V. Brownfield, Chief, Division of Audits, State Controller's Office.

Finding 1 - Understated direct costs

The draft audit report increases the program amounts claimed by \$87,121 for the direct costs of two grant programs not included in the FY 2003-04 and FY 2004-05 annual claims. The District concurs that the program costs for the Innovative Tobacco Demonstration Project and California Nutrition Network grants are within the scope of the assessment, intervention and counseling mandate activities. Therefore, the cost of these services performed by student health service center staff are properly included in the total cost of providing student health services. The related grant revenues are discussed in Finding 5.

Finding 2 - Unallowable services and supplies claimed

The draft audit report states that the District claimed excess costs in the amount of \$21,315 in the form of indirect costs applied to the California Nutrition Network Fund and the High-risk Drinking Prevention Services Fund for FY 2005-06 and FY 2006-07. The application of the indirect cost rate to the grant program in the general ledger for these funds at year-end is appropriate fund accounting. However, for purposes of mandate cost accounting, the District agrees that the indirect costs applied should be removed so that these

programs are included in total student health service center costs that are later subject to the application of the indirect cost rate.

Finding 3 - Overstated and understated indirect costs

The draft audit report concludes that the District overstated indirect costs by \$5,868 for the four fiscal years included in the audit. The District used a federally approved indirect cost rate applied to all direct costs for all four annual claims that are the subject of the audit.

For FY 2003-04, the draft audit report accepts the federally approved indirect cost rate used by the District, but asserts that the District overstated indirect costs for FY 2003-04 by \$105,328 because the District applied its federally approved indirect cost rate of 39% to total direct costs, instead of just to the salaries and benefits only. The Controller's position is apparently based on the conclusion that since the federal rate was calculated using salary and benefits only, it can be applied only to salary and benefits. There is no such limitation in the parameters and guidelines or the claiming instructions, nor does the audit report cite a basis for this restriction of the application of the indirect cost rate only to the costs that were the source of the direct cost base used for the calculation. The adjustment for FY 2003-04 should be withdrawn.

The draft audit report asserts that the District cannot use the federally approved rate for the annual claims for FY 2004-05, FY 2005-06, and FY 2006-07, because the Commission on State Mandates parameters and guidelines and the claiming instructions do not provide claimants the option of using federally approved rates for these fiscal years. The draft audit report states that the Controller's claiming instructions relevant to these fiscal years state that when claiming indirect costs, college districts have the option of using a federally approved rate only when "specifically allowed" by the parameters and guidelines. The parameters and guidelines for the Health Fee Elimination program (as amended on May 25, 1989), which are the 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.

The only statutory basis to adjust mandate costs is whether the claimed costs are excessive or unreasonable, pursuant to Government Code Section 17561(d)(2). The auditor used the CCFS-311, less capital costs, but with audited district financial statement depreciation costs included, to calculate the indirect cost rate using the Controller's Form FAM-29C method. The District agrees that the FAM-29C is one of several reasonable methods and for that reason does not dispute the adjustments for FY 2004-05, FY 2005-06, and FY 2006-07.

Finding 4 - Understated authorized health service fees

The draft audit report states that “authorized” student health service fee revenues were understated by \$201,485 for the audit period. This adjustment is due to the fact that the District reported the actual student health service fees that it collected rather than “authorized” student health service fees that could have been collected.

“Authorized” Fee Amount

The draft audit report asserts that claimants must compute the total student health service 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 service fee amounts, absent rulemaking or compliance with the Administrative Procedure Act by the “authorizing” state agency. The fee amounts “identified” by the State Chancellor’s Office referenced in the draft audit report merely informs, by form letter to the local districts, that the Implicit Price Deflator has increased and that the districts may increase their student health service fee if the district so chooses. The State Chancellor is not authorized by statute to direct the local districts to increase the student health service fee.

Education Code Section 76355

Education Code Section 76355, subdivision (a)(1), 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 (emphasis added).” 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 added).

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.” Charging a fee has no relationship to whether costs are incurred to provide the student health services program. 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 or higher level of service of an existing 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 revenue to increased cost, 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 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.” Government Code Section 17556, as last amended by Statutes of 2006, Chapter 538, 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 any one of the following:

(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.

Government Code Section 17556 prohibits the Commission 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 amended on May 25, 1989, state, in relevant part: “Any offsetting savings 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).” Therefore, the 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.”

Therefore, the audit report findings and recommendations regarding enrollment data obtained from the Chancellor's Office, the students to be charged, and the amounts to charge these students are not relevant to the District claimed amounts since the District claimed actual revenues collected that resulted from the District's policy regarding which students are to be charged and how much they are to be charged.

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/reimbursement

The draft audit report states that the District understated offsetting savings and reimbursements by \$519,105, for two reasons:

"Self-supported" program revenue: The draft audit report identifies \$131,143 (14000-5565) and \$153,780 (14000-2520) in amounts collected from students for health services such as medications and supplies that were not included in the annual claim as an offset to total student health service program costs. The District concurs that since the cost of the services is included in the total program cost for the student health services centers, these clinical and miscellaneous revenues should be reported as an offset to these costs after the indirect cost rate is applied.

Grant program revenues: The remaining adjustment amounts pertain to properly matching grant funding for the Innovative Tobacco Demonstration Project, California Nutrition Network, and High-risk Drinking Prevention Services grant programs as offsets since these program costs were included by the District, or by the audit by Finding 1, in the total program costs. The District concurs that the grant funds are proper offsets to total program costs if the cost of the services is included in the total program cost for the student health services centers as originally claimed or audited.

OTHER MATTERS

Statute of Limitations for Audit

This issue is not a finding of the audit report. The District asserts that the first two years of the four annual claims audited, Fiscal Years 2003-04 and 2004-05, were beyond the statute of limitations for an audit. The audit was initiated with the entrance conference conducted on January 7, 2009, a date that is more than three years after the annual claims were filed.

<u>Fiscal Year</u>	<u>Date Filed</u>	<u>Audit Status</u>
FY 2003-04	December 23, 2004	Past audit December 23, 2007
FY 2004-05	December 13, 2005	Past audit December 13, 2008

Regarding the annual claim for FY 2003-04, Government Code Section 17558.5 (as amended by Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003) states:

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

Regarding the annual claim for FY 2004-05, Government Code Section 17558.5 (as amended by Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005) states:

(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

Since there were state appropriations, although minimal and not specifically or contemporaneously paid to this District, for these fiscal years, the statute of limitations to initiate the audit of these fiscal years expired three years after the date of annual claim filing. Regardless, the clause in Government Code Section 17558.5 that delays the commencement of the time for the Controller to audit to the date of initial payment is void because it is impermissibly vague.

Fraud Risk Assessment

The draft audit report (page 2) states that the auditor was “unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment.” This is not an accurate statement of what occurred. The District determined that providing written responses to the Controller’s boilerplate fraud assessment questionnaire could be construed as a waiver of future appeal rights and outside the scope of a mandate compliance audit. However, the

Mr. Jim Spano

December 2, 2010

District was willing and did respond verbally to any questions posed by the auditor.

Management Representation Letter

The District will not be providing the requested management representation letter since it could be construed as a waiver of future appeal rights.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memoranda, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (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 ten 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 possession of the agency and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, the agency must state the estimated date and time when the records will be made available.

The District requests that the final audit report comply with the appropriate application of the parameters and guidelines regarding allowable activity costs and the Government Code sections concerning audits of mandate claims.

Sincerely,



Fred Williams, Vice Chancellor
Finance and Facilities

**State Controller's Office
Division of Audits
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