

EL CAMINO 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

August 2009



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California State Controller

August 28, 2009

Nathaniel Jackson, Ph.D., President
Board of Trustees
El Camino Community College District
16007 Crenshaw Boulevard
Torrance, CA 90506

Dear Dr. Jackson:

The State Controller's Office audited the costs claimed by El Camino 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 \$884,825 (\$885,825 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$210,613 is allowable and \$674,212 is unallowable. The costs are unallowable primarily because the district understated authorized health service fees. The State paid the district \$108,137. Allowable costs claimed exceed the amount paid by \$102,476.

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 CSM's Web site link at www.csm.ca.gov/docs/IRCFForm.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:sr

cc: Janice Ely, Business Manager
El Camino Community College District
Thomas M. Fallo, Ed.D., Superintendent/President
El Camino Community College District
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by El Camino 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 \$884,825 (\$885,825 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$210,613 is allowable and \$674,212 is unallowable. The costs are unallowable primarily because the district understated authorized health service fees. The State paid the district \$108,137. Allowable costs claimed exceed the amount paid by \$102,476.

Background

Chapter 1, Statutes of 1984, 2nd Extraordinary Session repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing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

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

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd Extraordinary Session 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. 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 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.

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, El Camino Community College District claimed \$884,825 (\$885,825 less a \$1,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that \$210,613 is allowable and \$674,212 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the district. Our audit disclosed that \$736 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$736, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the district. Our audit disclosed that \$133,241 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$133,241, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that \$76,636 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$76,636, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district \$108,137. Our audit disclosed that the claimed costs are unallowable. The State will offset \$108,137 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 February 27, 2009. Jo Ann Higdon, Vice-President, responded by letter dated March 18, 2009 (Attachment), disagreeing with the audit results for Finding 1 and 2, and stating that the district is not disputing the adjustment for Finding 3 at this time. This final report includes the district's response.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

August 28, 2009

**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	\$ 401,476	\$ 401,476	\$ —	
Services and supplies	61,701	61,701	—	
Total direct costs	463,177	463,177	—	
Indirect costs	143,446	79,944	(63,502)	Finding 1
Total direct and indirect costs	606,623	543,121	(63,502)	
Less authorized health fees	(365,650)	(518,256)	(152,606)	Finding 2
Subtotal	240,973	24,865	(216,108)	
Less offsetting savings/reimbursements	(24,129)	(24,129)	—	
Total program costs	<u>\$ 216,844</u>	736	<u>\$ (216,108)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 736</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 416,298	\$ 416,298	\$ —	
Services and supplies	54,998	54,998	—	
Total direct costs	471,296	471,296	—	
Indirect costs	165,990	160,193	(5,797)	Finding 1
Total direct and indirect costs	637,286	631,489	(5,797)	
Less authorized health fees	(301,410)	(472,680)	(171,270)	Finding 2
Subtotal	335,876	158,809	(177,067)	
Less offsetting savings/reimbursements	(27,910)	(24,568)	3,342	Finding 3
Subtotal	307,966	134,241	(173,725)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 306,966</u>	133,241	<u>\$ (173,725)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 133,241</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 450,337	\$ 450,337	\$ —	
Services and supplies	64,383	64,383	—	
Total direct costs	514,720	514,720	—	
Indirect costs	180,255	164,144	(16,111)	Finding 1
Total direct and indirect costs	694,975	678,864	(16,111)	
Less authorized health fees	(417,078)	(580,230)	(163,152)	Finding 2
Subtotal	277,897	98,634	(179,263)	
Less offsetting savings/reimbursements	(25,019)	(21,998)	3,021	Finding 3
Total program costs	<u>\$ 252,878</u>	76,636	<u>\$ (176,242)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 76,636</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 469,417	\$ 469,417	\$ —	
Services and supplies	67,152	67,152	—	
Total direct costs	536,569	536,569	—	
Indirect costs	171,702	170,146	(1,556)	Finding 1
Total direct and indirect costs	708,271	706,715	(1,556)	
Less authorized health fees	(580,536)	(792,825)	(212,289)	Finding 2
Subtotal	127,735	(86,110)	(213,845)	
Less offsetting savings/reimbursements	(19,598)	(19,598)	—	
Subtotal	108,137	(105,708)	(213,845)	
Adjustment to eliminate negative balance	—	105,708	105,708	
Total program costs	<u>\$ 108,137</u>	—	<u>\$ (108,137)</u>	
Less amount paid by the State		(108,137)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (108,137)</u>		
<u>Summary: July 1, 2003, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 1,737,528	\$ 1,737,528	\$ —	
Services and supplies	248,234	248,234	—	
Total direct costs	1,985,762	1,985,762	—	
Indirect costs	661,393	574,427	(86,966)	
Total direct and indirect costs	2,647,155	2,560,189	(86,966)	
Less authorized health fees	(1,664,674)	(2,363,991)	(699,317)	
Subtotal	982,481	196,198	(786,283)	
Less offsetting savings/reimbursements	(96,656)	(90,293)	6,363	
Subtotal	885,825	105,905	(779,920)	
Less late filing penalty	(1,000)	(1,000)	—	
Adjustment to eliminate negative balance	—	105,708	105,708	
Total program costs	<u>\$ 884,825</u>	210,613	<u>\$ (674,212)</u>	
Less amount paid by the State		(108,137)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 102,476</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Overstated indirect cost rates

The district overstated its indirect cost rates, and thus claimed unallowable indirect costs totaling \$86,966 for the audit period. A similar issue was noted in Finding 2 of the SCO audit report dated October 5, 2005. That report covered the period from July 1, 2000, through June 30, 2003.

For fiscal year (FY) 2003-04, the district claimed indirect costs based on an indirect cost rate prepared using the principles of Title 2, *Code of Federal Regulations*, Part 220, Office of Management and Budget (OMB) Circular A-21. However, the district did not obtain federal approval for this rate. Therefore, we calculated the allowable indirect cost rate using the FAM-29C methodology that the SCO claiming instructions allow.

For FY 2004-05, FY 2005-06, and FY 2006-07, the parameters and guidelines and the SCO’s claiming instructions do not allow the district to use a federally-approved rate. The district claimed indirect costs based on indirect cost rates it prepared using the FAM-29C methodology allowed by the parameters and guidelines and the SCO’s claiming instructions. However, the district did not allocate direct and indirect costs as specified in the claiming instructions. We calculated the rates and applied the allowable indirect cost rates to allowable direct costs.

The district used expenditures from the prior year’s CCFS-311 to prepare the current year’s indirect costs rates in each of the four fiscal years. The district indicated that it used the most current data available to prepare its ICRPs and believes that federal approval is not necessary. However, state regulations require every college district to complete and file the financial statements on Form CCFS-311 on or before October 15, and file the annual audit report on or before December 31. Therefore, current data should have been available each year, as the mandated cost claims are not due until January 15 of the subsequent fiscal year for FY 2003-04 through FY 2005-06 and February 15 of the subsequent calendar year for FY 2006-07.

The following table summarizes the unallowable indirect cost rates:

	Fiscal Year				Total
	2003-04	2004-05	2005-06	2006-07	
Allowable indirect cost rate	17.26%	33.99%	31.89%	31.71%	
Less claimed indirect cost rate	(30.97)%	(35.22)%	(35.02)%	(32.00)%	
Overstated indirect cost rate	(13.71)%	(1.23)%	(3.13)%	(0.29)%	
Allowable direct costs claimed	× \$463,177	× \$471,296	× \$514,720	× \$536,569	
Audit adjustment	\$ (63,502)	\$ (5,797)	\$ (16,111)	\$ (1,556)	\$ (86,966)

The program’s 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 and G's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate.

Recommendation

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

District's Response

The Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, that it used prior year CCFS-311 reports, and noted that a similar finding was made in the previous Controller's audit of this mandate for previous fiscal years.

"INAPPROPRIATE" METHOD

The draft audit report states that the District prepared its indirect cost rate as a "proposal" in accordance with OMB A-21. The draft audit utilizes the Controller's FAM-29C method base don the CCFS-311.

The draft audit report is factually in error when it states that the District prepared the indirect cost rate proposals in accordance with OMB A-21. No proposal was made to any state or federal agency for an "approved" indirect cost rate. The District used the same CCFS-311 process as the auditor for all four fiscal years but made different allocations of indirect costs. No federally prepared or approved cost rate was used for any of the fiscal years.

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

Controller wishes to enforce difference audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

PRIOR YEAR CCFS-311

The draft audit report notes that the District did not use the most recent CCFS-311 information available for the calculation of the indirect cost rate. For each fiscal year the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year. This is how the CCFS-311 process operates.

The draft audit report asserts that since the CCFS-311 is due to the state by October 15 each year, that district annual financial audits (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and that claims are due February 15 every year, the claimants have adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report errs when it states that all of these claims were due on February 15. The February 15 due date was effective starting with the FY 2006-07 claims. The annual claim due date for the previous fiscal year claims was January 15. The audit report also assumes that districts will have received the prior year financial statements by January 1 each year, which is a conclusion of fact without foundation. Further, the audit report does not indicate an enforceable requirement to use the most current CCFS-311.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that the federally approved indirect cost rates (that the Controller allows for some mandate programs) are approved for periods of two to four years. This means the data from which the rates were calculated can be three to five years prior to the last year in which the federal rate is used.

PREVIOUS AUDIT

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the Commission on State Mandates and that the District is therefore neither legally nor practically compelled to alter its position until a final adjudication of this issue.

SCO's Comment

The fiscal effect of the finding remains unchanged. However, we modified our finding to clarify the methodology used by the district in preparing its indirect cost rates and the due date of the filed claims.

“INAPPROPRIATE” METHOD

The finding has been updated to state that the district prepared its indirect cost rates using Title 2, *Code of Federal Regulations*, Part 220 (OMB Circular A-21) for FY 2003-04 and the SCO's FAM-29C methodology for FY 2004-05 through FY 2006-07.

The parameters and guidelines state, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The district misinterprets the phrase “may be claimed” by concluding that compliance with the claiming instructions is voluntary. The district's assertion is invalid, as such an interpretation would allow districts to claim indirect costs in whatever manner they choose. Instead, “may be claimed” simply permits the district to claim indirect costs. However, if the district claims indirect costs, then it must comply with the SCO's claiming instructions.

PRIOR YEAR CCFS-311

The district states that, “. . . the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year. This is how the CCFS-311 process operates.” Although this is how the district used its data, there are no mandate-related authoritative criteria supporting this methodology. Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. In addition, the parameters and guidelines require the district to report actual costs. For each fiscal year, “actual costs” are costs of the current fiscal year, not costs from a prior fiscal year.

State regulations require every college district to complete and file the financial statements on Form CCFS-311 on or before October 15, and file the annual audit report on or before December 31. The district had the information on hand or could have obtained it from its external auditors before submitting its claims for reimbursement.

PREVIOUS AUDIT

We do recognize that the Commission on State Mandates has not scheduled a hearing to respond to a prior Incorrect Reduction Claim that the district filed.

**FINDING 2—
Understated authorized
health service fees**

The district understated its reported authorized health service fees by \$699,317 during the audit period.

There are two reasons for the error. The district reported actual health service fee revenue that it collected rather than authorized health service fees. This same issue was noted in Finding 3 of the SCO audit report dated October 5, 2005, covering the period from July 1, 2000, through June 30, 2003. The district believes that only the actual health fees collected should be reported. In addition, for FY 2006-07, the district did not recognize students enrolled at its Compton Community Educational Center (Compton Center).

The Compton Center was created in August 2006 based on a partnership agreement between the El Camino Community College District (El Camino CCD) and the Compton Community College District (Compton CCD). The agreement length is based on the time necessary for the Compton Center to regain full accreditation as a two-year public college. Under this partnership, the El Camino CCD provides instructional services, as well as financial aid and related student support services, to the students at the Compton Center. The El Camino CCD excluded 2,775 students in the fall semester of 2006 and 2,834 students in the spring semester of 2007, totaling 5,609 students enrolled at the Compton Center, resulting in understated health service fees of \$84,135 (5,609 students multiplied by the authorized health fee of \$15).

Education Code section 74292, subdivision (j)(2), states that students enrolling in classes provided by the partner district shall be considered students of the partner district. In this case, El Camino CCD is the partner district. In addition, we rely on Item 2 of the August 24, 2006 Memorandum of Understanding (MOU) between the El Camino CCD and the Compton CCD, which states that the El Camino CCD would offer a full range of credit and non-credit offerings and related student support services. Student support services include the health center.

The Compton CCD does not have a health facility; however, El Camino CCD does provide a health center. The El Camino CCD is approximately 8 miles from the Compton CCD. The California Community Colleges Chancellor's Office's (CCCCO) Legal Affairs Division published its October 31, 2006 Student Fee Handbook, which reflects changes in student fees resulting from actions of the Legislature and the Board of Governors as well as pertinent formal or informal legal opinions issued from its office through October 31, 2006.

Section 3.1 of the handbook states that:

... the health fee may be charged to students who take only online classes or who attend classes at sites away from where the health services center is physically located. The health fee is not designated as a "use" fee, and it appears that so long as the statutory exemptions are offered to all affected students, the fact that their classes may not be physically proximate to a student health center does not remove the fee obligation.

Further, El Camino CCD staff advised us that no processes were in place to formally or informally prevent Compton Center students from receiving services at the El Camino CCD health services center as long as they individually paid the health 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 (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

For the audit period until 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, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need. The CCCCCO identified the fees authorized by Education Code section 76355, subdivision (a). The authorized health fees per semester are \$12 for FY 2003-04, \$13 for FY 2004-05, \$14 for FY 2005-06, and \$15 for FY 2006-07.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO data is based on student data that the district reported. We calculated total authorized health service fees using the authorized health service fee rates that the CCCCCO identified.

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

	Semester		Total
	Fall	Spring	
FY 2003-04:			
Student enrollment	27,497	25,948	
BOGG recipients	<u>(6,088)</u>	<u>(4,169)</u>	
Students subject to health service fee	21,409	21,779	
Authorized health service fee rate	× \$ (12)	× \$ (12)	
Audited health service fee	<u>\$ (256,908)</u>	<u>\$ (261,348)</u>	\$ (518,256)
Less authorized health service fee claimed			<u>365,650</u>
Audit adjustment, FY 2003-04			<u>(152,606)</u>
FY 2004-05:			
Student enrollment	25,576	24,730	
BOGG recipients	<u>(6,623)</u>	<u>(7,323)</u>	
Students subject to health service fee	18,953	17,407	
Authorized health service fee rate	× \$ (13)	× \$ (13)	
Audited health service fee	<u>\$ (246,389)</u>	<u>\$ (226,291)</u>	(472,680)
Less authorized health service fee claimed			<u>301,410</u>
Audit adjustment, FY 2004-05			<u>(171,270)</u>

	Semester		Total
	Fall	Spring	
FY 2005-06:			
Student enrollment	24,663	23,154	
BOGG recipients	(6,372)	—	
Students subject to health service fee	18,291	23,154	
Authorized health service fee rate	× \$ (14)	× \$ (14)	
Audited health service fee	\$ (256,074)	\$ (324,156)	(580,230)
Less authorized health service fee claimed			417,078
Audit adjustment, FY 2005-06			(163,152)
FY 2006-07:			
Students subject to health service fee	26,823	26,032	
Authorized health service fee rate	× \$ (15)	× \$ (15)	
Audited health service fee	\$ (402,345)	\$ (390,480)	(792,825)
Less authorized health service fee claimed			580,536
Audit adjustment, FY 2006-07			(212,289)
Total audit adjustment			\$ (699,317)

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. The district should maintain records that support its calculation of authorized health service fees. These records should identify the actual non-duplicated student enrollment and students who are exempt from health service fees under Education Code section 76355, subdivision (c).

District's Response

The draft audit report concludes that the student health service fee revenue offsets were understated for the four-year audit period. The audit report states that there are two reasons for this "error." The first is that the District utilized actual revenues reviewed rather than a calculation of the student health service fees potentially collectible. The second is that the District did not "recognize" the students enrolled at Compton Center for FY 2006-07. Since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller's audit adjustment rationale.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The auditor calculated "authorized health fee revenues," that is, the student fees collectible, based on the highest student health service fee chargeable from all eligible students, rather than the full-time or part-time student health service fee actually charged to the student and actually collected by the District.

"Authorized" Fee Amount

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

Optional Fee

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

Government Code Section 17514

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

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, 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 revenues 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 Mandate (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.” Government Code Section 17556, as amended by Statutes of 2004, Chapter 895, actually states:

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

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

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandate 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 mandate costs.

Parameters and Guidelines

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

COMPTON CENTER

The draft audit report concludes Compton Center students should be included in the count of students from which student health service fees are collectible. SixTen and Associates responded to this issue in a letter dated December 8, 2008, to Art Luna, the audit supervisor. That letter is incorporated into this response by reference.

Education Code Section 76355

. . . Compton Community College District is not subject to this requirement [Education Code section 76355] because it did not provide a student health service program in FY 1986-87 and does not now operate a student health services center.

. . . Compton CCD governing board does not require and has not previously required or collected a student health services fee. The El Camino CCD governing board has no authority to impose a student health service fee on Compton CCD students and did not do so.

Section 75355 [sic] does not require the Compton CCD governing board to provide a student health service program. Compton CCD did not provide such a program, and the Compton CCD governing board did not authorize the collection of a student health services fee. Therefore, there are no collected or collectible fees from the Compton Center students.

Enabling Legislation: Chapter 50, Statutes of 2006 (AB 318)

AB 318 was enacted to provide for uninterrupted education of students attending Compton CCD through another accredited district, the “partner district.” The partner district is El Camino CCD.

Education Code section 71093, as amended by AB 318, states that the state Board of Governors has the authority to suspend the authority of the Compton CCD governing board, that is, to make governance decisions for the District. While so empowered by AB 318, neither the Chancellor nor Board of Governors has authorized or directed the governing board of the Compton CCD to commence a student health services program for Compton students.

Section 74292 enumerates the “continuing services” to be provided to Compton CCD. The partner district (at subdivision (d)(1)) is authorized to enter into agreements to provide instructional services or other services and related necessary administrative or support services to ensure that services to Compton students will not be interrupted. Subdivision (e) states that any programs or courses previously

approved by the Compton CCD board of governor may continue to be offered by the partner district in the territory of the Compton CCD. The El Camino CCD governing board has not authorized El Camino CCD to provide student health services within the territory of the Compton CCD, and there was no such program in the Compton CCD to “continue.”

The MOU and Agreement

A. The MOU established August 24, 2006, is a contract between Compton CCD and El Camino CCD. The MOU requires:

-Item 1 reiterates the purposes of AB 318.

-Item 2 reiterates the AB 318 duties of the partner district.

-Item 3 lists the independent programs and services to be provided by El Camino, which does not include student health services.

-Item 4 specifies that if El Camino CCD does not currently offer instructional programs or services mutually determined to be in the best interests of the students and residents of Compton, El Camino shall undertake reasonable efforts to adopt appropriate curriculum and services. No such undertaking has been made regarding student health services at Compton Center.

-Item 5 states that the instructional programs and support services provided at Compton Center shall be under the authority of El Camino CCD. Note that, as describing above, the El Camino CCD governing board has not authorized providing student health services at Compton Center.

-Item 14 B states that business and other administrative functions that relate exclusively to the management of the Compton CCD shall remain independent of the Center and be managed exclusively by Compton CCD. Compton CCD does not have a student health services program to continue to manage.

-Item 18 states that the budget for the Center shall be jointly developed and approved by the parties. The Center has its own independent budget that does not include a student health services program, nor are Center costs included in El Camino CCD annual mandate reimbursement claims.

B. The Agreement established July 1, 2008, is not relevant to any year that is the subject of this audit. However, in the interest of resolving this issue for the future, I have included a review of its terms and conditions, which are essentially similar to the previous agreement.

-Items 5 and 6 enumerate the Compton Center programs and support services, and the enumeration does not include student health services.

-Item 11, of particular interest to you, states that:

“As authorized by the Education Code, El Camino shall collect fees as follows:

A. Non-resident tuition fees, materials fees, health fees, Associated Student Body fees, and ASB Student Representation fees, which shall be set by El Camino upon the recommendation of Compton.

- B. ...All fees collected by El Camino from students enrolled at the Center, or others who use the Center's facilities or participate in its programs or services, shall be devoted to supporting programs and services at the Center or remitted to Compton, as the parties may from time to time specify."

... it must somehow be inferred that the two words "health services" specifically means the universal "student health services fee" for this provision to be relevant. Even assuming that to be so, as previously stated, the Compton CCD governing board never authorized the collection of student health service fees, and the El Camino CCD governing board did not and cannot authorize (or "set") the collection of universal student health service fees from Compton CCD students. Which is to say, El Camino CCD cannot collect a fee, even if authorized by both governing boards, for a program that does not exist.

El Camino CCD has collected fees from five or fewer Compton Center students that were provided services at El Camino College. These fees certainly qualify as "health fees" as specified in the MOU, but not as student health services fees universally collected from all Compton Center students. By collecting those few fees, El Camino CCD has fulfilled the MOU by collecting actual fees for services that were actually provided at El Camino College.

Notwithstanding the MOU, all student fees at Compton Center are actually collected by Compton USD, deposited into the Compton bank accounts, reported as Compton income in the general ledger, annual financial statements, and the State CCSF-311.

Chancellor's "Student Fee Handbook"

... Unlike the MOU's which are contracts between the districts required by AB 318, the Chancellor's student fee handbook does not appear to have the force of law.

Further, the factual basis for the state's conclusion, and indeed the language on page 17 of the handbook, appears speculative in that it proceeds from an unfounded premise. Compton Center is not in a site located "away from" El Camino College. Compton CCD students are enrolled at Compton Center, not El Camino College. The other premise, that "such students" will travel to the health center or otherwise receive student health services," has been refuted by El Camino College student health services staff. . .

Compton Center Student Handbook and Planner

The Compton Center Student Handbook and Planner indicates that the "health fee" is optional. This clearly indicates that there is no universal "student health service fee" collected or collectible from the Compton Center students.

Generally Accepted Accounting Principles

Legal requirements and the facts aside, your audit is subject to generally accepted accounting principles that, among other things, require revenues and expenses to be "matched." If you include the enrollment of the Compton Center in the El Camino CCD cost claim as an offset, you are applying revenues with no corresponding matching expenses. The insignificant actual cost and revenues of the five or

fewer Compton Center students obtaining health services at the El Camino College campus have already been included in the El Camino general ledger and have thus been accurately “matched.”

In sum, there is no legal compulsion or factual circumstance to support your position that Compton Center student enrollment should be included in the mandated cost claim for El Camino Community College District, and to do so would be contrary to accounting principles.

PREVIOUS AUDIT

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the commission on State Mandates and that the District is neither legally nor practically compelled to alter its position until a final adjudication of this issue.

Since the draft audit report has stated no legal basis to disallow actual revenues as the amount of the offsetting revenues, the adjustments should be withdrawn. If actual revenues are used, the Compton Center student count is no longer an issue since student count is not the basis for the calculation of the revenue offset.

SCO’s Comments

The finding and recommendation remain unchanged.

The district states, “Since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller’s audit adjustment rationale.” We disagree; this *is* a district annual claim issue. The district failed to follow specific SCO claiming instructions. For the audit period, the district did not report student enrollment and did not calculate the total health fee that could have been collected.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

“Authorized” Fee Amount

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).

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

Optional Fee

We agree that community college districts may choose not to levy a health service fee or to levy a fee that is 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.

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. . .” The district ignores the direct correlation that if it 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 CSM recognized that the Health Fee Elimination Program's costs are not uniform between 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 being insufficient to pay the “entire” costs of other districts. Meanwhile, 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 district incorrectly interprets the parameters and guidelines' requirement regarding authorized health service fees. The CSM clearly 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, the 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, stating that 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, as the CSM's staff concluded that the DOF's proposed language did not substantively change the scope of the 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.

COMPTON CENTER

The December 8, 2008 letter from SixTen and Associates states that Education Code section 76355, the enabling legislation for Compton CCD students to be provided uninterrupted education, and the MOU Agreement between Compton CCD and El Camino CCD, supports the district's assertion that health service fees do not apply to Compton CCD students.

Education Code Section 76355

Based on Chapter 50, Statutes of 2006 (AB 318), students formerly under the Compton CCD became students under the El Camino CCD. Therefore, they are subject to the same fees as other El Camino Students. It is irrelevant that the Compton CCD provided a student health service program in FY 1986-87 or provides one currently, or that the Compton

CCD governing board, which had its authority suspended by this same law, required a health fee. Education Code Section 76355 applies to all El Camino students.

Enabling Legislation: Chapter 50, Statutes of 2006 (AB 318)

We agree that AB 318 was enacted to provide accredited instructional programs to students residing in the Compton Community College District through a partner district. In addition, the partner district would provide related administrative and support services. El Camino CCD is the partner district.

The fact that Education Code section 71093, as amended by AB 318, allows the Board of Governors to suspend the authority of the Compton CCD is irrelevant because the students formerly under the Compton CCD are now El Camino students.

Education Code section 74292, as added by AB 318, unambiguously states, in relevant part:

- (j) Students enrolled in the Compton Community College District as of January 31, 2006, shall be subject to the following conditions: . . .
 - (2) Students enrolling in classes provided by the partner district pursuant to this section shall be considered students of the partner district.

As a result, if the students are “considered students of the partner district,” which is the El Camino CCD, then they should be included in any authorized health service fee calculation that the district performs.

The MOU and Agreement

A. We agree that the MOU established August 24, 2006, is a contract between Compton CCD and El Camino CCD. We also based our stance on Item 2 of the MOU, which states:

As authorized by the Chapter 50 of the Statues of 2006 (A.B. 318), El Camino shall establish an education center to be known as the “El Camino Community College District Compton Community Educational Center,” also known as El Camino College Compton Center” (hereinafter referred to as the “Center”) on Compton’s facilities in Compton, California. The educational program offered by El Camino at the Center shall consist of a full range of credit and non-credit offerings, and related student support services. . .

It is our position that “related student support services” includes student health services. In addition, the fact that the name El Camino Community College District is included in the Center’s name makes it apparent that the students attending the Center are El Camino CCD students, who are subject to the health fees.

- B. Although the agreement was entered into on July 1, 2008, the conditions were the same as those of the MOU dated August 24, 2006. As indicated in Mr. Petersen's response, the El Camino CCD is required to collect health fees. The health fees can be used only to offset health services costs and no other purpose. As the health center is located at the El Camino Campus, the fees would go to El Camino CCD and not to Compton CCD.

Chancellor's "Student Fee Handbook"

The Legal Opinion M06-11 included the Student Fee Handbook issued by the Legal Affairs Division of the Chancellor's Office provides guidance to all community colleges in California. Although M06-11 is not law, it presents the Chancellor's Legal Division's opinion that the health fee may be charged to all students whether or not they choose to use the health services. In addition, it states that a health fee can be charged to students taking online classes or classes that are offered at sites away from the student health center. Consequently, we believe that students from the Center can be charged the health fee.

Compton Center Student Handbook and Planner

We agree that the El Camino College Community District Compton Center Student Handbook and Planner indicates that the "health fee" is optional. However, the current law exempts only students who depend exclusively on prayer for healing and students attending an approved apprenticeship training program. We believe that the students in question are El Camino students and are thus subject to the health fee.

Generally Accepted Accounting Principles

The statement, "your audit is subject to generally accepted accounting principles that, among other things, require revenues and expenses to be 'matched'" presents those principles out of context. Generally accepted accounting principles are not controlling criteria in identifying authorized health fee revenues attributable to the Health Fee Elimination mandated program. If a district voluntarily assesses less than the authorized health service fees, or fails to collect fees assessed, it is the district's responsibility to "match" health service expenditures with other district revenue sources.

PREVIOUS AUDIT

We do recognize that the Commission on State Mandates has not scheduled a hearing to respond to a prior Incorrect Reduction Claim that the district filed. However, contrary to the district's contention, we have stated the legal basis for our position and why we believe that reporting actual revenues received, rather than the fees that could have been collected as the amount of the offsetting revenues, is invalid.

**FINDING 3—
Overstated offsetting
reimbursements**

The district overstated offsetting reimbursements by \$6,363.

The district reported \$3,342 for FY 2004-05 and \$3,021 for FY 2005-06 as offsetting savings and again as other reimbursements. The district indicated that the errors were due to oversight.

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

The following table summarizes the overstated offsetting revenues:

	Fiscal Year		Total
	2004-05	2005-06	
Offsetting savings/reimbursements	\$ 3,342	\$ 3,021	\$ 6,363
Audit adjustment	\$ 3,342	\$ 3,021	\$ 6,363

Recommendation

We recommend that the district ensure that it does not duplicate offsetting savings or other reimbursements.

District’s Response

The District is not disputing this adjustment at this time.

OTHER ISSUES

The district's response included comments related to the statute of limitations applicable to the district's FY 2003-04 mandated cost claims and a public records request.

Statute of Limitations

The district's response included comments related to the statute of limitations applicable to the district's FY 2003-04 mandated cost claims. The district's response and SCO's comment are as follows:

District's Response

The District FY 2003-04 claim was mailed to the Controller on January 7, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period (January 7, 2008) to commence the audit had expired. Therefore, the proposed audit adjustments for FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5

SCO's Comment

The findings and recommendations remain unchanged. The district cited only a portion of Government Code section 17558.5, subdivision (a), which actually states:

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

For its FY 2003-04 claim, the district received no payment. Therefore, the time for the SCO to initiate an audit has not yet commenced. Therefore, the SCO properly initiated an audit of these claims within the statutory time allowed.

Public Records Request

The district's response included a public records request. The district's response and SCO's comment are as follows:

District's Response

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 1 (indirect cost rate calculation standards) and Finding 2 (calculation of the student health services fees offset).

SCO's Comment

The SCO provided the district with the requested records by separate letter dated April 7, 2009.

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



EL CAMINO COMMUNITY COLLEGE DISTRICT

16007 Crenshaw Boulevard Torrance, California 90506-0001
Telephone (310)532-3670 or 1-877-ECAMINO

March 18, 2009

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

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
El Camino Community College District
Annual Claim Fiscal Years: 2003-04, 2004-05, 2005-06 and 2006-07

Dear Mr. Spano:

This letter is the response of the El Camino Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated February 27, 2009, and received by the District on March 12, 2009.

Finding 1 - Overstated indirect cost rates

The Controller asserts that the indirect cost method used by the District was inappropriate since it was not a cost study specifically approved by the federal government, that it used prior year CCFS-311 reports, and noted that a similar finding was made in the previous Controller's audit of this mandate for previous fiscal years.

"INAPPROPRIATE" METHOD

The draft audit report states that the District prepared its indirect cost rate as a "proposal" in accordance with OMB A-21. The draft audit utilizes the Controller's FAM-29C method based on the CCFS-311.

The draft audit report is factually in error when it states that the District prepared the indirect cost rate proposals in accordance with OMB A-21. No proposal was made to any state or federal agency for an "approved" indirect cost rate. The District used the same CCFS-311 process as the auditor for all four fiscal years but made different allocations of indirect costs. No federally prepared or approved cost rate was used for any of the fiscal years.

The parameters and guidelines for the Health Fee Elimination program (as last 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. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

PRIOR YEAR CCFS-311

The draft audit report notes that the District did not use the most recent CCFS-311 information available for the calculation of the indirect cost rate. For each fiscal year, the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year. This is how the CCFS-311 process operates.

The draft audit report asserts that since the CCFS-311 is due to the state by October 15 each year, that district annual financial audits (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and that claims are due February 15 every year, the claimants have adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report errs when it states that all of these claims were due on February 15. The February 15 due date was effective starting with the FY 2006-07 claims. The annual claim due date for the previous fiscal year claims was January 15. The audit report also assumes that districts will have received the prior year financial statements by January 1 each year, which is a conclusion of fact without foundation. Further, the audit report does not indicate an enforceable requirement to use the most current CCFS-311.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that the federally approved indirect cost rates (that the Controller allows for some mandate programs) are approved for periods of two to four years. This means the data from which the rates were calculated can be three to five years prior to the last year in which the federal rate is used.

PREVIOUS AUDIT

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the Commission on State Mandates and that the District is therefore neither legally nor practically compelled to alter its position until a final adjudication of this issue.

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

Finding 2 - Understated authorized health fees

The draft audit report concludes that the student health service fee revenue offsets were understated for the four-year audit period. The audit report states that there are two reasons for this "error." The first is that the District utilized actual revenues received rather than a calculation of the student health service fees potentially collectible. The second is that the District did not "recognize" the students enrolled at Compton Center for FY 2006-07. Since the District did not calculate the fees based on student enrollment, this is not a District annual claim issue, but a Controller's audit adjustment rationale.

COLLECTIBLE STUDENT HEALTH SERVICE FEES

The auditor calculated "authorized health fee revenues," that is, the student fees collectible, based on the highest student health service fee chargeable from all eligible students, rather than the full-time or part-time student health service fee actually charged to the student and actually collected by the District.

"Authorized" Fee Amount

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

Optional Fee

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

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

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

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PREVIOUS AUDIT

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the Commission on State Mandates and that the District is neither legally nor practically compelled to alter its position until a final adjudication of this issue.

Since the draft audit report has stated no legal basis to disallow actual revenues as the amount of the offsetting revenue, the adjustments should be withdrawn. If actual revenues are used, the Compton Center student count is no longer an issue since student count is not the basis for the calculation of the revenue offset.

Finding 3 - Overstated offsetting revenues

The District is not disputing this adjustment at this time.

Statute of Limitations

The District's FY 2003-04 claim was mailed to the Controller on January 7, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period (January 7, 2008) to commence the audit had expired. Therefore, the proposed audit adjustments for FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.

The audit report should be changed to exclude findings for the FY 2003-04 annual claim.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 1 (indirect cost rate calculation standards) and Finding 2 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in its possession and to promptly notify the requesting party of that determination

and the reasons therefor. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

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The District requests that the audit report be changed to 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,



Jo Ann Higdon, Vice-President
El Camino Community College District

Attachment: Letter dated December 8, 2008, to Art Luna from Keith Petersen

SixTen and Associates Mandate Reimbursement Services

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December 8, 2008

Art Luna, Audit Manager
Division of Audits
California State Controller
600 Corporate Pointe, Suite 1000
Culver City, CA 90230

Re: El Camino Community College District
Health Fee Elimination-State Controller's Audit
Fiscal Years: 2003-04 through 2006-07

Dear Mr. Luna:

At the pre-exit conference on November 19, 2008, attended by Janice Ely and Marie Yatman, you presented a proposed audit adjustment (Finding #1, student health services fees) which, commencing FY 2006-07, includes Compton Center students in the calculation of "collectible" student health service fees. As you know, the District reported actual student health center revenues as an offset to the program costs which it believes is more accurate than the calculation of collectible fees. This will be the subject of an incorrect reduction claim for this audit as it was for the previous audit on this program at this district. Our position on that general issue remains the same as stated in the incorrect reduction claim filed for the previous audit. Therefore, the scope of this letter is limited to the issue of whether the Compton Center students should be included in your calculation of collectible fees.

At the meeting, you stated that there were three sources of documentation supporting your assertion that Compton Center enrollment should be included in the calculation of "collectible" fees: the Memorandum of Understanding dated August 24, 2006, the Agreement dated July 1, 2008, and the Chancellor's Student Handbook and Planner. However, before the significance of those documents can be addressed, the applicable law must be considered.

Education Code Section 76355

The collection of student health service fees is controlled by Education Code Section 76355, but also requires independent action by the district governing board. Section 76355, as amended by Chapter 320, Statutes of 2005, effective January 1, 2006, at subdivision (e) requires that "[a]ny community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter." El Camino Community College District is subject to this requirement. I am informed and believe that Compton Community College District is not subject to this requirement because it did not provide a student health services program in FY 1986-87 and does not now operate a student health services center.

Subdivision (a) provides to the governing boards the authority to require the collection of a student health services fee. The El Camino CCD governing board requires a student health services fee for El Camino CCD students. I am informed and believe that the Compton CCD governing board does not require and has not previously required or collected a student health services fee. The El Camino CCD governing board has no authority to impose a student health service fee on Compton CCD students and did not do so.

Section 75355 does not require the Compton CCD governing board to provide a student health services program. Compton CCD did not provide such a program, and the Compton CCD governing board did not authorize the collection of a student health services fee. Therefore, there are no collected or collectible fees from the Compton Center students.

Enabling Legislation: Chapter 50, Statutes of 2006 (AB 318)

AB 318 was enacted to provide for uninterrupted education of students attending Compton CCD through another accredited district, the "partner district." The partner district is El Camino CCD.

Education Code section 71093, as amended by AB 318, states that the state Board of Governors has the authority to suspend the authority of the Compton CCD governing board, that is, to make governance decisions for the District. While so empowered by AB 318, neither the Chancellor nor Board of Governors has authorized or directed the governing board of the Compton CCD to commence a student health services program for Compton students.

Section 74292 enumerates the "continuing services" to be provided to Compton CCD. The partner district (at subdivision (d)(1)) is authorized to enter into agreements to provide instructional services or other services and related necessary administrative or support services to ensure that services to Compton students will not be interrupted. Subdivision (e) states that any programs or courses previously approved by the

Compton CCD board of governors may continue to be offered by the partner district in the territory of the Compton CCD. The El Camino CCD governing board has not authorized El Camino CCD to provide student health services within the territory of the Compton CCD, and there was no such program in the Compton CCD to "continue."

The MOU and Agreement

- A. The MOU established August 24, 2006, is a contract between Compton CCD and El Camino CCD. The MOU requires:
- Item 1 reiterates the purposes of AB 318.
 - Item 2 reiterates the AB 318 duties of the partner district.
 - Item 3 lists the independent programs and services to be provided by El Camino, which does not include student health services.
 - Item 4 specifies that if El Camino CCD does not currently offer instructional programs or services mutually determined to be in the best interests of the students and residents of Compton, El Camino CCD shall undertake reasonable efforts to adopt appropriate curriculum and services. No such undertaking has been made regarding student health services at Compton Center.
 - Item 5 states that the instructional programs and support services provided at Compton Center shall be under the authority of El Camino CCD. Note that, as described above, the El Camino CCD governing board has not authorized providing student health services at Compton Center.
 - Item 14 B states that business and other administrative functions that relate exclusively to the management of the Compton CCD shall remain independent of the Center and be managed exclusively by Compton CCD. Compton CCD does not have a student health services program to continue to manage.
 - Item 18 states that the budget for the Center shall be jointly developed and approved by the parties. The Center has its own independent budget that does not include a student health services program, nor are Center costs included in El Camino CCD annual mandate reimbursement claims.
- B. The Agreement established July 1, 2008, is not relevant to any fiscal year that is the subject of this audit. However, in the interest of resolving this issue for the future, I have included a review of its terms and conditions, which are essentially similar to the previous agreement.
- Items 5 and 6 enumerate the Compton Center programs and support services, and the enumeration does not include student health services.

-Item 11, of particular interest to you, states that:

"As authorized by the Education Code, El Camino shall collect fees as follows:

A. Non-resident tuition fees, materials fees, health fees, Associated Student Body fees, and ASB Student Representation fees, which shall be set by El Camino upon the recommendation of Compton.

B. . . .

All fees collected by El Camino from students enrolled at the Center, or others who use the Center's facilities or participate in its programs or services, shall be devoted to supporting programs and services at the Center or remitted to Compton, as the parties may from time to time specify."

For your purposes, it must somehow be inferred that the two words "health services" specifically means the universal "student health services fee" for this provision to be relevant. Even assuming that to be so, as previously stated, the Compton CCD governing board never authorized the collection of student health service fees, and the El Camino CCD governing board did not and cannot authorize (or "set") the collection of universal student health service fees from Compton CCD students. Which is to say, El Camino CCD cannot collect a fee, even if authorized by both governing boards, for a program that does not exist.

El Camino CCD has collected fees from five or fewer Compton Center students that were provided services at El Camino College. These fees certainly qualify as "health fees" as specified in the MOU, but not as student health service fees universally collected from all Compton Center students. By collecting those few fees, El Camino CCD has fulfilled the MOU by collecting actual fees for services that were actually provided at El Camino College.

Notwithstanding the MOU, all student fees at Compton Center are actually collected by Compton CCD, deposited into the Compton bank accounts, reported as Compton income in the general ledger, annual financial statements, and the State CCSF-311.

Chancellor's "Student Fee Handbook"

You have provided us page 17 of what appears to be the Chancellor's "Student Fee Handbook" which states that, it is the opinion of the Chancellor's legal or other staff that attending classes at sites away from where the health services center is physically located can be charged a universal student health services fee. Unlike the MOU's, which are contracts between the districts required by AB 318, the Chancellor's student fee handbook does not appear to have the force of law.

Further, the factual basis for the state's conclusion, and indeed the language on page 17 of the handbook, appears speculative in that it proceeds from an unfounded premise. Compton Center is not in a site located "away from" El Camino College. Compton CCD students are enrolled at Compton Center, not El Camino College. The other premise, that "such students" will "travel to the health center or otherwise receive student health services," has been refuted by El Camino College student health services staff who have stated that five or fewer Compton Center students have "traveled" to El Camino College to receive these services, which is an insignificant number compared to the total enrollment at Compton Center.

Compton Center Student Handbook and Planner

The Compton Center Student Handbook and Planner indicates that the "health fee" is optional. This clearly indicates that there is no universal "student health service fee" collected or collectible from the Compton Center students.

Generally Accepted Accounting Principles

Legal requirements and the facts aside, your audit is subject to generally accepted accounting principles that, among other things, require revenues and expenses to be "matched." If you include the enrollment of the Compton Center in the El Camino CCD cost claim as an offset, you are applying revenues with no corresponding matching expenses. The insignificant actual cost and revenue of the five or fewer Compton Center students obtaining health services at the El Camino College campus have already been included in the El Camino general ledger and have thus been accurately "matched."

In sum, there is no legal compulsion or factual circumstance to support your position that the Compton Center student enrollment should be included in the mandated cost claim for El Camino Community College District, and to do so would be contrary to accounting principles.

Sincerely,



Keith Petersen, President

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