SAN BERNARDINO 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

March 2010

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California State Controller

March 18, 2010

James C. Ramos, President
Board of Trustees
San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408

Dear Mr. Ramos:

The State Controller's Office audited the costs claimed by San Bernardino 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 $2,204,916 ($2,224,916 less a $20,000 penalty for filing late claims) for the mandated program. Our audit disclosed that $1,309,302 is allowable and $895,614 is unallowable. The costs are unallowable because the district claimed unallowable service and supply costs, overstated indirect costs, and understated authorized health service fees. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, 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/vb

cc: Bruce Baron, Acting Chancellor
San Bernardino Community College District
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by San Bernardino 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 $2,204,916 ($2,224,916 less a $20,000 penalty for filing late claims) for the mandated program. Our audit disclosed that $1,309,302 is allowable and $895,614 is unallowable. The costs are unallowable because the district claimed unallowable service and supply costs, overstated indirect costs, and understated authorized health service fees. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, 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 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. 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, San Bernardino Community College District claimed $2,204,916 ($2,224,916 less a $20,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that $1,309,302 is allowable and $895,614 is unallowable. The State made no payment to the district. The State will pay $1,309,302 to the district, contingent upon available appropriations.

Views of Responsible Official

We issued a draft audit report on February 10, 2010. Bruce Baron, Acting Chancellor, responded by letter dated February 18, 2010 (Attachment). The district disagreed with Finding 2 and Finding 4, partially disagreed with Finding 1, and agreed with Finding 3. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of San Bernardino 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

March 18, 2010

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]
July 1, 2003, through June 30, 2004				
Direct costs:				
Salaries	$ 356,228	$ 356,228	$ —	
Benefits	60,631	60,631	—	
Services and supplies	133,212	79,290	(53,922)	Finding 1
Total direct costs	550,071	496,149	(53,922)	
Indirect costs	226,685	96,749	(129,936)	Finding 2
Total direct and indirect costs	776,756	592,898	(183,858)	
Less authorized health service fees	(222,624)	(249,153)	(26,529)	Findings 3, 4
Less offsetting savings/reimbursements	(21,944)	(21,944)	—	
Total program costs	$ 532,188	321,801	$ (210,387)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 321,801		
July 1, 2004, through June 30, 2005				
Direct costs:				
Salaries	$ 351,288	$ 351,288	$ —	
Benefits	72,578	72,578	—	
Services and supplies	150,958	98,598	(52,360)	Finding 1
Total direct costs	574,824	522,464	(52,360)	
Indirect costs	262,235	225,600	(36,635)	Finding 2
Total direct and indirect costs	837,059	748,064	(88,995)	
Less authorized health service fees	(205,881)	(282,337)	(76,456)	Finding 4
Less offsetting savings/reimbursements	(28,720)	(28,720)	—	
Total program costs	$ 602,458	437,007	$ (165,451)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 437,007		
July 1, 2005, through June 30, 2006				
Direct costs:				
Salaries	$ 367,883	$ 367,883	$ —	
Benefits	74,169	74,169	—	
Services and supplies	146,966	88,781	(58,185)	Finding 1
Total direct costs	589,018	530,833	(58,185)	
Indirect costs	281,197	241,104	(40,093)	Finding 2
Total direct and indirect costs	870,215	771,937	(98,278)	
Less authorized health service fees	(211,753)	(409,914)	(198,161)	Finding 4
Less offsetting savings/reimbursements	(37,376)	(37,376)	—	
Less late filing penalty	(10,000)	(10,000)	—	
Total program costs	$ 611,086	314,647	$ (296,439)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 314,647		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 2006, through June 30, 2007				
Direct costs:				
Salaries	$ 399,133	$ 399,133	$ —	
Benefits	74,159	74,159	—	
Services and supplies	158,236	137,043	(21,193)	Finding 1
Total direct costs	631,528	610,335	(21,193)	
Indirect costs	340,582	294,669	(45,913)	Finding 2
Total direct and indirect costs	972,110	905,004	(67,106)	
Less authorized health service fees	(458,938)	(619,719)	(160,781)	Finding 4
Less offsetting savings/reimbursements	(43,987)	(43,987)	—	
Less late filing penalty [2]	(10,000)	(5,450)	4,550	
Total program costs	$ 459,185	235,848	$ (223,337)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 235,848		
Summary: July 1, 2003, through June 30, 2007				
Direct costs:				
Salaries	$ 1,474,532	$ 1,474,532	$ —	
Benefits	281,537	281,537	—	
Services and supplies	589,372	403,712	(185,660)	
Total direct costs	2,345,441	2,159,781	(185,660)	
Indirect costs	1,110,699	858,122	(252,577)	
Total direct and indirect costs	3,456,140	3,017,903	(438,237)	
Less authorized health service fees	(1,099,196)	(1,561,123)	(461,927)	
Less offsetting savings/reimbursements	(132,027)	(132,027)	—	
Less late filing penalty	(20,000)	(15,450)	4,550	
Total program costs	$ 2,204,917	1,309,303	$ (895,614)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 1,309,303		

[1] See the Findings and Recommendations section.

[2] The district incorrectly self-assessed a $10,000 late claim penalty. The correct penalty amount is $5,450.

Findings and Recommendations

FINDING 1—
Unallowable services and supplies

The district claimed unallowable services and supplies totaling $185,660. The district claimed unallowable student athletic insurance costs totaling $184,129. In addition, the district claimed $1,531 for gift certificates that it distributed during a health services volleyball tournament and for health fair food and promotional items (bargain bags).

The following table summarizes the audit adjustment:

	Fiscal Year				
	2003-04	2004-05	2005-06	2006-07	Total
Athletic insurance	$ (53,200)	$ (52,360)	$ (57,495)	$ (21,074)	$ (184,129)
Gift certificates, food, and promotional items	(722)	—	(690)	(119)	(1,531)
Audit adjustment	$ (53,922)	$ (52,360)	$ (58,185)	$ (21,193)	$ (185,660)

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

Education Code section 76355, subdivision (d)(2), states that authorized expenditures shall not include athletic insurance.

Government Code section 17514 defines "mandated costs" as any increased costs that the district is *required* to incur. In addition, Government Code section 17561 states that the Controller may reduce any excessive or unreasonable claim. Food and promotional item expenditures are not required to maintain health services at the level that the district provided during fiscal year (FY) 1986-87.

Recommendation

We recommend that the district claim only those services and supplies supported by its accounting records, allowable under the mandated program, and required to maintain health services at the level provided in FY 1986-87.

District's Response

The district concurred with the unallowable athletic insurance costs. The district had the following comments regarding unallowable costs for gift certificates, food, and promotional items:

> Health Fair Expenses
>
> The Controller asserts that costs incurred by the District to purchase food and promotional items for the student health fair are unallowable costs because these are not expenditures the District is required to make in order to maintain the base-year level of health services.
>
> The draft audit report cites Government Code Section 17514 as a reason to disallow the health fair costs as not required. This conclusion directly contradicts the parameters and guidelines which include health

> fairs as reimbursable activities in Section V. Since the Commission has determined that health fair activities are reimbursable, then they are necessary, which invalidates the Controller's reliance upon Section 17514.
>
> The draft audit report also cites Government Code Section 17561 which allows the Controller to audit and reduce any excessive or unreasonable claims. Since the parameters and guidelines allow reimbursement for the health fair activities, the costs associated with the activity cannot be unreasonable per se. The draft audit report concludes that the claimed health fair costs are "not required," thus any health fair cost would be ostensibly excessive. The conclusion is subjective because the Controller has not cited a published standard for the type and scope of allowable health fair activity costs. The audit report makes no factual claims to support the adjustment on the grounds that the claimed costs were excessive. Absent a fact-based finding that the food (purchased at a supermarket), for example, was too expensive or some similar finding, there is no basis for the adjustment on the grounds that the claimed costs were excessive. . . .

SCO's Comment

Our finding and recommendation are unchanged. The district concludes that we contradicted the parameters and guidelines by citing Government Code section 17514. We disagree. The district did not recognize the correlation between Government Code sections 17514 and 17561. Although the parameters and guidelines identify health fairs as a reimbursable activity, the district essentially asserts that any related expense is reimbursable, regardless of necessity or reasonableness.

The parameters and guidelines identify the reimbursable activity of health talks/fairs for the purpose of providing information on sexually transmitted diseases, drugs, AIDS, child abuse, birth control/family planning, and smoking cessation. The district is not required to purchase food and promotional items, nor is it required to distribute gift certificates at a volleyball tournament, to complete the activity of providing health information to those who inquire. Therefore, these are not costs the district is *required* to incur (Government Code section 17514), nor are the costs reasonable (Government Code section 17561).

FINDING 2—
Overstated indirect costs

The district overstated indirect costs by $252,577 for the audit period.

To claim FY 2003-04 indirect costs, the district used an indirect cost rate that it calculated based on the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget Circular A-21). However, the district did not obtain federal approval of this rate.

To claim FY 2004-05, FY 2005-06, and FY 2006-07 indirect costs, the district used indirect cost rates that it calculated based on the SCO's FAM-29C methodology. However, the district did not allocate direct and indirect costs as specified in the SCO's claiming instructions. In addition, the district calculated its FY 2004-05 and FY 2005-06 rates based on costs that it reported in its CCFS-311 reports for FY 2003-04 and FY 2004-05, respectively.
We calculated each fiscal year's allowable indirect cost rate using the SCO's FAM-29C methodology and the corresponding CCFS-311 report. We allocated costs as specified in the SCO's claiming instructions and applied each fiscal year's rate to the corresponding allowable direct costs.

The following table summarizes the audit adjustment:

	Fiscal Year				
	2003-04	2004-05	2005-06	2006-07	Total
Allowable direct costs	$ 496,149	$ 522,464	$ 530,833	$ 610,334	
Allowable indirect cost rate	× 19.50%	× 43.18%	× 45.42%	× 48.28%	
Allowable indirect costs	96,749	225,600	241,104	294,669	
Less indirect costs claimed	(226,685)	(262,235)	(281,197)	(340,582)	
Audit adjustment	$ (129,936)	$ (36,635)	$ (40,093)	$ (45,913)	$ (252,577)

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 computed in accordance with the SCO's FAM-29C methodology.

District's Response

The draft audit report concludes that the District overstated indirect costs. . . .

The most significant difference in the claimed and audited rates is for FY 2003-04. At that time, the Controller policy was not to include depreciation or capital costs in the indirect cost rate calculation. The Controller's policy excluded the capital costs every year until FY 2004-05 when financial statement depreciation was included. The District claims used the "capital costs" reported in the 311 until FY 2005-06. The District amended the FY 2006-07 claim after the audit fieldwork was completed, but before the draft audit report was issued, to use financial statement depreciation in lieu of capital costs in compliance with the Controller's policy change. The remaining few percentage points differences for FY 2004-05 and thereafter result from a different treatment of certain overhead accounts and which 311 was used for the calculation.

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 from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law.

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. Instead, the burden is on the Controller to show that the indirect cost method 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.

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. The Controller appears to believe that because the CCFS-311 is due to the state by October 15 each year, because audited district annual financial statements (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and because the annual claims that are the subject of this audit were due January 15 each year, the District had adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report assumes that districts receive the audited financial statements on time, which is a conclusion of fact without foundation.

Regardless of the factual issue of when the necessary supporting documentation is available to districts, the audit report does not indicate an enforceable legal requirement to use the most current CCFS-311. In

> fact, the Controller accepts indirect cost rates based on older data. Federally approved indirect cost rates are allowed by the Controller for some mandate programs and some fiscal years. Federally approved rates are approved for periods of two or more years. This means the data from the fiscal year from which the federal rates were calculated would be at least three years prior to the last year in which the federal rate is used. . . .

SCO's Comment

Our finding and recommendation are unchanged.

The district misstates the SCO's claiming instructions. In particular, the district incorrectly concludes that both a federally approved rate and a flat 7% rate are options available for FY 2004-05 through FY 2006-07. Our audit finding specifies the actual claiming instructions applicable to each fiscal year. The district also states, " . . . the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law." We disagree. The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

The Commission on State Mandates (CSM) adopted the parameters and guidelines pursuant to Government Code section 17557. The SCO issued its claiming instructions pursuant to Government Code section 17558, subdivision (b). If the district believes that the SCO's claiming instructions are deficient, it should request that the CSM review the claiming instructions pursuant to Title 2, *California Code of Regulations* (CCR), section 1186. If the district believes that the program's parameters and guidelines are deficient, it should initiate a request to amend the parameters and guidelines pursuant to Government Code section 17557, subdivision (d). However, in either case, any amendment would not be applicable to this audit period.

The district infers that it need not comply with the SCO's claiming instructions. The district misconstrues the language of the parameters and guidelines. Using the district's interpretation, districts would be allowed to claim indirect costs in whatever manner they choose. "May be claimed" simply 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.

The district states that it is required to submit its CCFS-311 to the State by October 15 each year. The correct due date is October 10 each year (Title 5, CCR, section 58305, subdivision (d)). The district correctly states that it is required to complete audited annual financial statements by December 31 each year (Title 5, CCR, section 59106). The district infers that it might not meet one or both due dates and implies that this is sufficient reason to use a prior year's CCFS-311 to calculate its current-year indirect cost rate. We disagree. The district's failure to comply with one or both due dates is irrelevant to its mandated cost claim requirements. Government Code section 17560, subdivision (a), states "A local agency or school district may . . . file an annual reimbursement claim that details the costs *actually incurred for that fiscal year* [emphasis added]." Government Code section 17560 requires the district

to submit its reimbursement claim by February 15 (previously January 15) following the fiscal year for which costs are claimed. Government Code section 17561, subdivision (d)(3), allows the district to submit an amended or late claim up to one year after the filing deadline specified in Government Code section 17560. Therefore, the district has ample time to calculate its indirect cost rate using the current-year CCFS-311.

The district's response includes comments regarding federally approved indirect cost rates. Those comments are irrelevant to this audit. The district did not claim costs based on a federally approved rate. In addition, the SCO's claiming instructions do not permit districts to use a federally approved rate for FY 2004-05 and thereafter.

FINDING 3—
Duplicate offsetting savings/reimbursements deductions claimed

For FY 2003-04, the district claimed duplicate deductions for hepatitis immunization revenue and other local revenue. This district properly claimed $21,944 as offsetting savings/reimbursements. However, the district also included this revenue in the amount that it reported for authorized health service fees.

The following table summarizes the audit adjustment and the adjusted authorized health service fees claimed:

	Fiscal Year 2003-04
Other local revenues (object code 8890)	$ 17,366
Hepatitis immunizations (object code 8896)	4,578
Audit adjustment	21,944
Authorized health service fees claimed	(222,624)
Adjusted authorized health service fees claimed	$ (200,680)

The parameters and guidelines state, "Reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim." The SCO's claiming instructions direct claimants to separately report authorized health service fees and other reimbursements.

Recommendation

We recommend that the district properly claim revenue as offsetting savings/reimbursements when the revenue is unrelated to the authorized student health fee.

District's Response

The district concurred with the audit finding.

FINDING 4—Understated authorized health service fees

The district understated authorized health service fees by $483,871. The district understated these fees because it reported actual receipts rather than authorized fees. The district believes that it is required to report only actual receipts. However, the district also understated its actual receipts because it did not report health service fee revenue totaling $147,025 that it separately identified as "accident fees." In addition, we noted that the district did not charge students the authorized fee amount for the 2004, 2005, and 2006 summer sessions and the 2004 and 2005 fall semesters. Also, the district voluntarily waived the health service fee for students enrolled exclusively in Distributed Education classes.

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 July 1, 2002, 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:

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

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCO. The CCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. CCCCO identified the district's enrollment based on CCCCO's MIS data element STD7, codes A through G. CCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, CCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. The district does not have an apprenticeship program and it 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			
	Summer Session	Fall Semester	Spring Semester	Total
Fiscal Year 2003-04:				
Number of enrolled students	3,865	17,785	17,470	
Less number of BOGG recipients	(2,060)	(7,926)	(7,920)	
Subtotal	1,805	9,859	9,550	
Authorized health fee rate	× $ (9)	× $(12)	× $(12)	
Authorized health service fees	$ (16,245)	$ (118,308)	$ (114,600)	$ (249,153)
Less adjusted authorized health service fees claimed (Finding 3)				200,680
Audit adjustment, FY 2003-04				(48,473)
Fiscal Year 2004-05:				
Number of enrolled students	6,727	18,225	17,845	
Less number of BOGG recipients	(3,647)	(8,359)	(8,362)	
Subtotal	3,080	9,866	9,483	
Authorized health fee rate	× $(10)	× $(13)	× $(13)	
Authorized health service fees	$ (30,800)	$ (128,258)	$ (123,279)	(282,337)
Less authorized health service fees claimed				205,881
Audit adjustment, FY 2004-05				(76,456)
Fiscal Year 2005-06:				
Number of enrolled students	7,321	17,366	17,114	
Less number of BOGG recipients	(3,805)	(7,963)	—	
Subtotal	3,516	9,403	17,114	
Authorized health fee rate	× $(11)	× $(14)	× $(14)	
Authorized health service fees	$ (38,676)	$ (131,642)	$ (239,596)	(409,914)
Less authorized health service fees claimed				211,753
Audit adjustment, FY 2005-06				(198,161)
Fiscal Year 2006-07:				
Number of enrolled students	6,897	17,317	18,480	
Authorized health fee rate	× $(12)	× $(15)	× $(15)	
Authorized health service fees	$ (82,764)	$ (259,755)	$ (277,200)	(619,719)
Less authorized health service fees claimed				458,938
Audit adjustment, FY 2006-07				(160,781)
Total audit adjustment				$ (483,871)

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 CCCCO data element 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). If the district denies health services to any portion of its student population, it should maintain contemporaneous documentation of a district policy that excludes those students from receiving health services and documentation identifying the number of students excluded. The district must also provide documentation that it excluded the same student population from receiving health services during the 1986-87 base year.

- Charge students the authorized fee amount for each school term. California community colleges routinely publish fee schedules noting that the fees are subject to change.

- Waive the health service fee only for those students specified in Education Code section 76355, subdivision (c).

District's Response

"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." First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. . . .

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. . . ."

The draft audit report misrepresents the law. 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."

SCO's Comment

Our finding remains unchanged. We made non-substantive changes to our recommendation. Our comments are as follows:

Authorized Fee Amount

The district states, "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. . . ." The audit finding specifies Education Code section 76355, subdivision (a), as the statutory basis to calculate authorized health service fees. Our report does not state or infer that any state agency "authorizes" the health service fee amount.

The district also states, "The State Chancellor is not authorized by statute to direct the local districts to increase the student health service fee." We agree that the CCCCO is not authorized to direct districts to increase fees. Our finding states that the CCCCO *identified* the fees authorized by Education Code section 76355, subdivision (a).

Education Code Section 76355

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.

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, mandated costs do not include those health service expenses that may be paid by authorized fees.

Government Code Section 17556

The district believes that the statutory language applies only when the fee authority is sufficient to offset the "entire" mandated costs. We disagree. 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 is 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 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.

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 CCCCO dated April 3, 1989. In that letter, the CCCCO 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.

OTHER ISSUES

The district's response included other comments related to the mandated cost claims. The district's comments and SCO's responses are presented below.

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 claim. The district's comment and SCO's response are as follows:

District's Response

> The District's FY 2003-04 claim was mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference for the audit was conducted December 11, 2008, which is after the expiration of the three-year period to commence the audit. 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

Our findings and recommendations are unchanged. The district paraphrased only a portion of Government Code section 17558.5, subdivision (a), which 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 as of February 26, 2010. Pursuant to the unambiguous statutory language, the SCO's time limitation to initiate an audit has not yet commenced. Therefore, the SCO properly initiated its audit within the statutory time allowed.

Public Records Request

The district's response included a public records request. The district's comment and SCO's response 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 (regarding student health fair expenditures), Finding 2 (indirect cost rate calculation standards), and Finding 4 (calculation of the student health services fees offset).

SCO's Response

The SCO provided the district the requested records by separate letter dated March 1, 2010.

Attachment—
District's Response to
Draft Audit Report

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT
114 South Del Rosa Drive • San Bernardino, CA 92408 • Phone (909) 382-4000

February 18, 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
San Bernardino Community College District

Dear Mr. Spano:

This letter is the response of the San Bernardino Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey V. Brownfield, Chief, Division of Audits, State Controller's Office, dated February 5, 2010, and received by the District on February 10, 2010.

Finding 1 - Unallowable services and supplies

The draft audit report concludes that the District claimed $185,660 of unallowable services and supplies. This adjustment includes $1,531 in unallowable student health fair expenses and $184,129 in student athletic insurance.

Athletics Insurance

The District concurs that insurance costs for the athletics program are not reimbursable. In the absence of more precise information that is unfortunately not available from our insurance company, the auditor's allocation of the portion of the insurance premiums applicable to the athletics program is satisfactory.

Health Fair Expenses

The Controller asserts that costs incurred by the District to purchase food and promotional items for the student health fair are unallowable costs because these

are not expenditures the District is required to make in order to maintain the base-year level of health services.

The draft audit report cites Government Code Section 17514 as a reason to disallow the health fair costs as not required. This conclusion directly contradicts the parameters and guidelines which include health fairs as reimbursable activities in Section V. Since the Commission has determined that health fair activities are reimbursable, then they are necessary, which invalidates the Controller's reliance upon Section 17514.

The draft audit report also cites Government Code Section 17561 which allows the Controller to audit and reduce any excessive or unreasonable claims. Since the parameters and guidelines allow reimbursement for the health fair activities, the costs associated with the activity cannot be unreasonable per se. The draft audit report concludes that the claimed health fair costs are "not required," thus any health fair cost would be ostensibly excessive. The conclusion is subjective because the Controller has not cited a published standard for the type and scope of allowable health fair activity costs. The audit report makes no factual claims to support the adjustment on the grounds that the claimed costs were excessive. Absent a fact-based finding that the food (purchased at a supermarket), for example, was too expensive or some similar finding, there is no basis for the adjustment on the grounds that the claimed costs were excessive.

Because there is no question that the health fair activity is appropriate, and no evidence that the costs were excessive, the adjustment should be withdrawn.

Finding 2 - Overstated indirect costs

The draft audit report concludes that the District overstated indirect costs by $252,577 for the four fiscal years included in the audit. The draft audit report states that the District overstated indirect costs for three reasons:

- The FY 2003-04 claim used an indirect cost rate based on the principles of OMB Circular A-21, but that it was not a cost study approved by the federal government as required by the Controller's claiming instructions.

- The claims for FY 2004-05, FY 2005-06, and FY 2006-07 utilized the Controller's FAM -29C method, but that district did not properly allocate some direct and indirect costs.

- The indirect cost rates calculated for FY 2004-05 and FY 2005-06 were based on prior year CCFS-311 reports.

Indirect Cost Rate-Reported and Audited

Fiscal Year	Claimed	Audited	Difference
FY 2003-04	41.21%	19.50%	<21.71%>
FY 2004-05	45.62%	43.18%	< 2.44%>
FY 2005-06	47.74%	45.42%	< 2.32%>
FY 2006-07 (amended)	53.93%	48.28%	< 5.65%>

The most significant difference in the claimed and audited rates is for FY 2003-04. At that time, the Controller policy was not to include depreciation or capital costs in the indirect cost rate calculation. The Controller's policy excluded the capital costs every year until FY 2004-05 when financial statement depreciation was included. The District claims used the "capital costs" reported in the 311 until FY 2005-06. The District amended the FY 2006-07 claim after the audit fieldwork was completed, but before the draft audit report was issued, to use financial statement depreciation in lieu of capital costs in compliance with the Controller's policy change. The remaining few percentage points differences for FY 2004-05 and thereafter result from a different treatment of certain overhead accounts and which 311 was used for the calculation.

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 from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law.

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. Instead, the burden is on the Controller to show that the indirect cost method 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.

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. The Controller appears to believe that because the CCFS-311 is due to the state by October 15 each year, because audited district annual financial statements (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and because the annual claims that

are the subject of this audit were due January 15 each year, the District had adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report assumes that districts receive the audited financial statements on time, which is a conclusion of fact without foundation.

Regardless of the factual issue of when the necessary supporting documentation is available to districts, the audit report does not indicate an enforceable legal requirement to use the most current CCFS-311. In fact, the Controller accepts indirect cost rates based on older data. Federally approved indirect cost rates are allowed by the Controller for some mandate programs and some fiscal years. Federally approved rates are approved for periods of two or more years. This means the data from the fiscal year from which the federal rates were calculated would be at least three years prior to the last year in which the federal rate is used.

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 District's rates as unreasonable or excessive, the adjustment should be withdrawn.

Finding 3 - Duplicate offsetting savings/reimbursement deductions claimed

The draft audit report concludes that the District claimed duplicate deductions for hepatitis immunizations in FY 2003-04 in the amount of $21,944. The District claims included the following amounts as reductions ("offsetting savings/reimbursements") to the general ledger student health services costs:

Fiscal Year	SBVC	Crafton Hills	Description
FY 2003-04	$ 5,431	$11,935	Other local revenues
	$ 2,306	$ 2,272	Hepatitis B Immunizations
FY 2004-05	$ 7,101	$16,091	Other local revenues
	$ 2,346	$ 3,182	Hepatitis B Immunizations
FY 2005-06	$10,181	$21,181	Other local revenues
	$ 2,964	$ 3,050	Hepatitis B Immunizations
FY 2006-07	$14,816	$23,041	Other local revenues
	$ 3,220	$ 2,910	Hepatitis B Immunizations

The audit determined that the FY 2003-04 revenue was deducted twice because the amounts were also included as student health fee revenue collected. We concur with the adjustment.

Finding 4 - Understated authorized health service fees

The draft audit report states that "authorized" student health service fee revenues were understated by $483,871 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. In addition, the draft audit report states that the reported amount collected did not include "accident fees" in the amount of $147,025 which are reported in a separate program fund.

The auditor calculated "authorized" student health service fee revenues, that is, the student health service fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected. This means that the amounts claimed by the District, with or without the "accident fees," are irrelevant to audit adjustment.

"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." 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 XIIIB 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.

The draft audit report misrepresents the law. 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."

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.

OTHER MATTERS

Statute of Limitations

The District's FY 2003-04 claim was mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference for the audit was conducted December 11, 2008, which is after the expiration of the three-year period to commence the audit. 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 (regarding student health fair expenditures), Finding 2 (indirect cost rate calculation standards), and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 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.

Sincerely,

Bruce Baron, Acting Chancellor
San Bernardino Community College District

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