YOSEMITE 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, 2002, through June 30, 2007

JOHN CHIANG
California State Controller

April 2009

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California State Controller

April 30, 2009

Anne DeMartini, Board Chair
Board of Trustees
Yosemite Community College District
2201 Blue Gum Avenue
Modesto, CA 95358

Dear Ms. DeMartini:

The State Controller's Office audited the costs claimed by Yosemite 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, 2002, through June 30, 2007.

The district claimed $1,203,995 ($1,213,995 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $752,122 is allowable and $451,873 is unallowable. The costs are unallowable because the district claimed understated services and supplies costs, overstated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district $273,783. Allowable costs claimed exceed the amount paid by $478,339.

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/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Teresa Scott, Executive Vice Chancellor
Yosemite Community College District
Kuldeep Kaur, Specialist
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California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Yosemite 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, 2002, through June 30, 2007.

The district claimed $1,203,995 ($1,213,995 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $752,122 is allowable and $451,873 is unallowable. The costs are unallowable because the district claimed understated services and supplies costs, overstated indirect costs, understated authorized health service fees, and understated offsetting savings/reimbursements. The State paid the district $273,783. Allowable costs claimed exceed the amount paid by $478,339.

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, 2002, 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, Yosemite Community College District claimed $1,203,995 ($1,213,995 less a $10,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that $752,122 is allowable and $451,873 is unallowable.

For the FY 2002-03 claim, the State paid the district $39,067. Our audit disclosed that the claimed costs are unallowable. The State will offset $39,067 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

For the FY 2003-04 claim, the State made no payment to the district. Our audit disclosed that $70,158 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the district. Our audit disclosed that $268,128 is allowable. The State will that amount, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that $230,962 is allowable. The State will that amount, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district $234,716. Our audit disclosed that $182,874 is allowable. The State will offset $51,842 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 March 12, 2009. Teresa Scott, Executive Vice Chancellor, responded by letter dated March 24, 2009 (Attachment), disagreeing with the audit results except for Findings 1 and 3. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of Yosemite 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

April 30, 2009

Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2007

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 2002, through June 30, 2003				
Direct costs:				
Salaries	$ 248,395	$ 248,395	$ —	
Benefits	77,779	77,779	—	
Services and supplies	70,613	70,613	—	
Total direct costs	396,787	396,787	—	
Indirect costs	95,030	84,206	(10,824)	Finding 2
Total direct and indirect costs	491,817	480,993	(10,824)	
Less authorized health service fees	(446,250)	(490,194)	(43,944)	Finding 4
Less offsetting savings/reimbursements	(6,500)	(21,458)	(14,958)	Finding 5
Subtotal	39,067	(30,659)	(69,726)	
Audit adjustments that exceed costs claimed	—	30,659	30,659	
Total program costs	$ 39,067	—	$ (39,067)	
Less amount paid by the State		(39,067)		
Allowable costs claimed in excess of (less than) amount paid		$ (39,067)		
July 1, 2003, through June 30, 2004				
Direct costs:				
Salaries	$ 264,370	$ 264,370	$ —	
Benefits	116,417	116,417	—	
Services and supplies	89,423	90,508	1,085	Finding 1
Total direct costs	470,210	471,295	1,085	
Indirect costs	118,916	89,621	(29,295)	Finding 2
Total direct and indirect costs	589,126	560,916	(28,210)	
Less authorized health service fees	(431,580)	(442,899)	(11,319)	Findings 3, 4
Less offsetting savings/reimbursements	(6,500)	(47,859)	(41,359)	Finding 5
Total program costs	$ 151,046	70,158	$ (80,888)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 70,158		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 2004, through June 30, 2005				
Direct costs:				
Salaries	$ 303,647	$ 303,647	$ —	
Benefits	141,296	141,296	—	
Services and supplies	73,063	73,237	174	Finding 1
Total direct costs	518,006	518,180	174	
Indirect costs	180,680	187,633	6,953	Finding 2
Total direct and indirect costs	698,686	705,813	7,127	
Less authorized health service fees	(411,492)	(416,184)	(4,692)	Finding 4
Less offsetting savings/reimbursements	(6,500)	(21,501)	(15,001)	Finding 5
Total program costs	$ 280,694	268,128	$ (12,566)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 268,128		
July 1, 2005, through June 30, 2006				
Direct costs:				
Salaries	$ 344,990	$ 344,990	$ —	
Benefits	159,108	159,108	—	
Services and supplies	99,407	107,911	8,504	Finding 1
Total direct costs	603,505	612,009	8,504	
Indirect costs	219,555	203,371	(16,184)	Finding 2
Total direct and indirect costs	823,060	815,380	(7,680)	
Less authorized health service fees	(402,179)	(554,058)	(151,879)	Finding 4
Less offsetting savings/reimbursements	(7,557)	(30,360)	(22,803)	Finding 5
Total program costs	$ 413,324	230,962	$ (182,362)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 230,962		
July 1, 2006, through June 30, 2007				
Direct costs:				
Salaries	$ 453,320	$ 453,320	$ —	
Benefits	187,474	187,474	—	
Services and supplies	105,929	105,929	—	
Total direct costs	746,723	746,723	—	
Indirect costs	306,679	259,188	(47,491)	Finding 2
Total direct and indirect costs	1,053,402	1,005,911	(47,491)	
Less authorized health service fees	(709,335)	(774,633)	(65,298)	Finding 4
Less offsetting savings/reimbursements	(14,203)	(38,889)	(24,686)	Finding 5
Less late filing penalty [2]	(10,000)	(9,515)	485	
Total program costs	$ 319,864	182,874	$ (136,990)	
Less amount paid by the State		(234,716)		
Allowable costs claimed in excess of (less than) amount paid		$ (51,842)		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
Summary: July 1, 2002, through June 30, 2007				
Direct costs:				
Salaries	$ 1,614,722	$ 1,614,722	$ —	
Benefits	682,074	682,074	—	
Services and supplies	438,435	448,198	9,763	
Total direct costs	2,735,231	2,744,994	9,763	
Indirect costs	920,860	824,019	(96,841)	
Total direct and indirect costs	3,656,091	3,569,013	(87,078)	
Less authorized health service fees	(2,400,836)	(2,677,968)	(277,132)	
Less offsetting savings/reimbursements	(41,260)	(160,067)	(118,807)	
Less late filing penalty [2]	(10,000)	(9,515)	485	
Subtotal	1,203,995	721,463	(482,532)	
Audit adjustments that exceed costs claimed	—	30,659	30,659	
Total program costs	$ 1,203,995	752,122	$ (451,873)	
Less amount paid by the State		(273,783)		
Allowable costs claimed in excess of (less than) amount paid		$ 478,339		

[1] See the Findings and Recommendations section.

[2] The district incorrectly self-assessed a $10,000 late claim penalty. The correct penalty amount is $9,515.

Findings and Recommendations

FINDING 1—Understated services and supplies

The district understated services and supplies by $9,763 for the audit period. The district accounted for most health services-related revenues and expenses in its Fund 14 accounts. The district claimed costs based on its Fund 14 accounts. However, the district separately accounted for some student fee revenue and related materials and supplies expenses in separate Fund 12 accounts that the district did not include in claimed costs. This finding reports an audit adjustment for the understated services and supplies. We reported an audit adjustment for the associated understated revenue in Finding 5 of our report.

The following table summarizes the audit adjustment.

	Fiscal Year			
	2003-04	2004-05	2005-06	Total
Audit adjustment	$ 1,085	$ 174	$ 8,504	$ 9,763

The 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.

Recommendation

We recommend that the district claim health services costs that its accounting records support.

District's Response

The District does not dispute this finding.

SCO's Comment

Our finding and recommendation are unchanged.

FINDING 2—Overstated indirect costs

The district overstated indirect costs by $96,841 for the audit period. The district overstated or understated indirect costs for each fiscal year.

For fiscal year (FY) 2002-03 and FY 2003-04, the district claimed indirect costs based on indirect cost rates prepared using the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget Circular A-21). The district also had separate federally-approved rates. The district claimed indirect costs using indirect cost rates that did not agree with its federally-approved rate. We calculated allowable indirect costs based on the district's federally-approved rate. We applied the district's federally-approved rate to allowable salaries and wages, which is the direct cost base identified in the federal approval letter.

For FY 2004-05, FY 2005-06, and FY 2006-07, the parameters and guidelines and the SCO's claiming instructions do not provide districts the option of using 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 recalculated the rates and applied the allowable indirect cost rates to allowable direct costs.

The following table summarizes the audit adjustment:

	Fiscal Year					
	2002-03	2003-04	2004-05	2005-06	2006-07	Total
Allowable salaries and wages	$ 248,395	$ 264,370	$ —	$ —	$ —	
Allowable direct costs	—	—	518,180	612,009	746,723	
Allowable indirect cost rate	× 33.90%	× 33.90%	× 36.21%	× 33.23%	× 34.71%	
Allowable indirect costs	84,206	89,621	187,633	203,371	259,188	
Less indirect costs claimed	(95,030)	(118,916)	(180,680)	(219,555)	(306,679)	
Audit adjustment	$ (10,824)	$ (29,295)	$ 6,953	$ (16,184)	$ (47,491)	$ (96,841)

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

For FY 2002-03 and 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 [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.

Because the Health Fee Elimination Program's parameters and guidelines do not specifically allow for a federally-approved rate, the district's federally-approved rates are irrelevant for FY 2004-05, FY 2005-06, and FY 2006-07.

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 prepare its indirect cost rate proposals using SCO's FAM-29C methodology.

District's Response

FY 2002-03 and FY 2003-04

Since federally approved rates are an acceptable alternative method, the District does not dispute this audit finding as to FY 2002-03 and FY 2003-04.

FY 2004-05 and FY 2005-06

The draft audit report is factually in error when it states that the District prepared indirect cost rate proposals for FY 2004-05 and FY 2005-06 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 FAM-29C method based on the CCFS-311 as the auditor, but made different allocations of indirect costs. The principal difference is that the District used the capital costs stated in the CCFS-311, whereas the Controller deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements.

FY 2006-07

The District used the same FAM-29C method based on the CCFS-311 as did the auditor. . . . The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of differences in how some of the indirect costs were treated.

Parameters and Guidelines

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 did not disclose that for FY 2004-05, FY 2005-06, and FY 2006-07, the audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of how unjustifiable the Controller's position is on prior year CCFS-311 reports, note that the federally approved indirect cost rates (such as the federal rate the audit used for FY 2002-03 and FY 2003-04) are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five years prior to the last year in which the federal rate is used.

SCO's Comment

We modified our audit finding slightly for clarification. Our audit adjustment and recommendation are unchanged. Our comments to the district's response are as follows:

FY 2004-05 and FY 2005-06

The district inaccurately states "No proposal was made to any state or federal agency for an 'approved' indirect cost rate." On March 25, 2004, the U.S. Department of Health and Human Services approved the district's indirect cost rate for FY 2004-05 through FY 2007-08. However, the district did not use these federally approved rates to claim mandate-related indirect costs. We modified our audit finding to state that the district submitted indirect cost rate proposals using FAM-29C methodology for FY 2004-05 and FY 2005-06. In its response, the district states that it did not adhere to the SCO's claiming instructions because it "made different allocations of indirect costs." The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

FY 2006-07

The district did not provide its FY 2006-07 ICRP in time for inclusion in the draft report. Therefore, our draft audit report stated that the district did not provide its FY 2006-07 ICRP. We modified our audit finding to state that the district prepared its FY 2006-07 ICRP using FAM-29C methodology.

The district did not allocate direct and indirect costs as specified in the SCO's claiming instructions.

Parameters and Guidelines

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 it 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 the district must comply with the SCO's claiming instructions.

Neither this district nor any other district requested that the Commission on State Mandates (CSM) review the SCO's claiming instructions pursuant to Title 2, *California Code of Regulations* (CCR), Section 1186. Furthermore, the district may not now request a review of the claiming instructions applicable to the audit period. Title 2 CCR 1186(j)(2) states, "A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

The district contends that "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 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs <u>and</u> reduce any claim that the SCO determines is excessive or unreasonable. In addition, Government Code section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is without merit.

Nevertheless, the SCO did conclude that the district's FY 2005-06 and FY 2006-07 indirect cost rates were excessive. (The SCO concluded that the district understated its FY 2004-05 indirect cost rate. The district did not explain why it is contesting an audit adjustment in its favor.) "Excessive" is defined as "exceeding what is usual, *proper*, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . [emphasis added]."[1] The SCO calculated indirect cost rates using the alternative methodology identified in the SCO's claiming instructions. The alternative methodology indirect cost rates did not support the rates that the district claimed; thus, the claimed rates were excessive.

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[1] Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

Prior Year CCFS-311

The district states, "The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year." 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.

The parameters and guidelines and the SCO's claiming instructions do not allow districts to claim indirect costs based on federally approved rates in FY 2004-05, FY 2005-06, and FY 2006-07. Therefore, the district's comments regarding federally approved rates are irrelevant.

FINDING 3—Offsetting savings/ reimbursements incorrectly reported as authorized health service fees

The district incorrectly reported offsetting savings/reimbursements totaling $39,090 as authorized health service fees in FY 2003-04. This amount included interest revenue, duplicate staff charges that the district also claimed as offsetting savings/reimbursements, and miscellaneous student fees that the district recognized when it converted from cash to accrual-basis accounting.

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

	Fiscal Year 2003-04
Interest	$ 12,625
Staff charges	6,500
Miscellaneous student fees	19,965
Audit adjustment	39,090
Authorized health service fees claimed	(431,580)
Adjusted authorized health service fees claimed	$ (392,490)

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. Except for the duplicate staff charges, we recognized these revenues in our audit adjustment for understated offsetting savings/reimbursements in Finding 5.

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 does not dispute this finding.

SCO's Comment

Our finding and recommendation are unchanged.

FINDING 4—Understated authorized health service fees

The district understated authorized health service fees by $316,222 for the audit period. The district understated these fees because it reported actual receipts rather than authorized fees and because it did not charge students the full authorized fee amount in FY 2005-06 and FY 2006-07.

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 audit period, 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. The California Community Colleges Chancellor's Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). For FY 2002-03 and FY 2003-04, the authorized fees were $12 per semester and $9 per summer session. For FY 2004-05, the authorized fees were $13 per semester and $10 per summer session. For FY 2005-06, the authorized fees were $14 per semester and $11 per summer session. For FY 2006-07, the authorized fees were $15 per semester and $12 per summer session.

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:

	Semester			
	Summer	Fall	Spring	Total
Fiscal Year 2002-03				
Number of enrolled students	10,568	24,587	22,472	
Less number of BOGG recipients	(2,694)	(6,214)	(5,901)	
Subtotal	7,874	18,373	16,571	
Authorized health fee rate	× $ (9)	× $(12)	× $(12)	
Authorized health service fees	$ (70,866)	$(220,476)	$(198,852)	$(490,194)
Less authorized health service fees claimed				446,250
Audit adjustment				(43,944)
Fiscal Year 2003-04				
Number of enrolled students	9,580	22,631	22,031	
Less number of BOGG recipients	(2,569)	(6,486)	(6,526)	
Subtotal	7,011	16,145	15,505	
Authorized health fee rate	× $ (9)	× $(12)	× $(12)	
Authorized health service fees	$ (63,099)	$(193,740)	$(186,060)	(442,899)
Less adjusted authorized health service fees claimed (Finding 3)				392,490
Audit adjustment				(50,409)
Fiscal Year 2004-05				
Number of enrolled students	9,865	21,620	20,839	
Less number of BOGG recipients	(3,734)	(7,672)	(7,489)	
Subtotal	6,131	13,948	13,350	
Authorized health fee rate	× $(10)	× $(13)	× $(13)	
Authorized health service fees	$ (61,310)	$(181,324)	$(173,550)	(416,184)
Less authorized health service fees claimed				411,492
Audit adjustment				(4,692)
Fiscal Year 2005-06				
Number of enrolled students	10,127	21,763	21,020	
Less number of BOGG recipients	(4,007)	(8,016)	—	
Subtotal	6,120	13,747	21,020	
Authorized health fee rate	× $(11)	× $(14)	× $(14)	
Authorized health service fees	$ (67,320)	$(192,458)	$(294,280)	(554,058)
Less authorized health service fees claimed				402,179
Audit adjustment				(151,879)
Fiscal Year 2006-07				
Number of enrolled students	10,579	22,214	20,965	
Authorized health fee rate	× $(12)	× $(15)	× $(15)	
Authorized health service fees	$(126,948)	$(333,210)	$(314,475)	(774,633)
Less authorized health service fees claimed				709,335
Audit adjustment				(65,298)
Total audit adjustment				$(316,222)

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. The district should eliminate duplicate entries for students who attend more than one of the district's colleges. In addition, we recommend that 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 and documentation identifying the number of students excluded.

District's Response

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the District and independently audited each year. However, 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 District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" rate other than the amounts stated in Education Code Section 76355. 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). Therefore, districts have the option of charging a fee to some or all of its students.

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 XIII B of the California Constitution.

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenue to increased cost, or 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 (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."

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 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 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." The parameters and guidelines do not allow the Controller to reduce claimed costs by revenue never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

SCO's Comment

Our finding and recommendation are unchanged. The district states, "The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate or superior to enrollment data maintained by the District. . . ." This is the district's own data. In addition, the district implies that the SCO used data that is somehow different from "enrollment data maintained by the District." Our audit used data retrieved from the California Community Colleges Chancellor's Office (CCCCO). The CCCCO data is extracted directly from enrollment information that the district submitted. Districts are required to submit this data to the CCCCO within one month after each term ends; thus, the district has its fiscal year enrollment data available approximately seven months before its mandated program claims are due to the state.

The district also 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. For its FY 2002-03 claim, the district reported inaccurate student enrollment. For its FY 2003-04 through FY 2006-07 claims, the district failed to follow specific SCO claiming instructions. The district did not report student enrollment and did not calculate the total health fees that could have been collected.

"Authorized" Fee Amount

We agree that 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 CCCCO *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 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 the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

Government Code Section 17556

The district presents an invalid argument that the statutory language applies only when the fee authority is sufficient to offset the "entire" mandated costs. The CSM recognized that the Health Fee Elimination Program's costs are not uniform 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 it is insufficient to pay the "entire" cost 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.[2] 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.

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[2] *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 concluded that claimants must 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, as the CSM's staff concluded that DOF's proposed language did not substantively change the scope of its 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 conclusion regarding authorized health service fees.

The district states that "such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched." This statement is presented 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.

FINDING 5—Understated offsetting savings/reimbursements

The district understated offsetting savings/reimbursements by $118,807 for the audit period.

The district did not report offsetting savings/reimbursements for interest, student fees, and other miscellaneous revenue documented in its accounting records. The district charged students a separate fee for various health services that it provided. In FY 2003-04, the district also recognized miscellaneous revenue as it converted from a cash to accrual basis accounting system.

The following table summarizes the audit adjustment:

	Fiscal Year					
	2002-03	2003-04	2004-05	2005-06	2006-07	Total
Interest	$ (16,890)	$ (12,625)	$ (13,216)	$ (17,014)	$ (24,686)	$ (84,431)
Student fees and other miscellaneous revenue	1,932	(28,734)	(1,785)	(5,789)	—	(34,376)
Audit adjustment	$ (14,958)	$ (41,359)	$ (15,001)	$ (22,803)	$ (24,686)	$(118,807)

The parameters and guidelines state:

> Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Recommendation

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

District's Response

> Finding 5 offsets $84,431 of interest income against the claimed cost of the student health services program. . . . The interest income is paid by the Stanislaus County Treasurer where the District deposits its cash in a pooled investment fund. The District allocates the total investment income reported by the County to its various funds.
>
> The draft audit report characterizes the interest income offset as an "offsetting savings/reimbursement". . . .
>
> The parameters and guidelines criteria for offsetting savings and reimbursements do not apply to interest income. First, the interest income is not generated "as a direct result of" Education Code 76355, the statutory basis for the student health services program. Indeed, since the student health service program operates at a loss (the reason for the annual mandate claim for excess costs), the student health service program cannot generate investment principal. Second, the interest income is neither state nor federal reimbursement for providing the student health service program. Third, the interest income is not fees paid by others for services not included in the student health service program.

SCO's Comment

The parameters and guidelines state, "Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed." In its response, the district confirms that it received pooled investment fund income attributable to its health services fund. The health services fund and its associated revenues exist specifically because of Chapter 1118, Statutes of 1987, which authorized districts to assess a health service fee.

The district states, "Indeed, since the student health service program operates at a loss . . . the student health service program cannot generate investment principal." The district's response fails to consider basic cash flow principles. Each term, districts collect health fee revenue at the beginning of the term. This revenue is available for deposit in the county pooled investment fund and is depleted during the term as the district incurs health service program expenses. The revenue earns interest until such time that it is depleted.

During our exit conference conducted January 23, 2009, the district's consultant stated to district personnel that the district's mistake was that it posted interest revenue to the health services fund. We strongly recommend that the district continue to allocate interest earned on pooled investment funds according to generally accepted accounting principles.

OTHER ISSUE—FY 2006-07 amounts paid

The district's response included comments regarding FY 2006-07 amounts paid. The district's response and SCO's comment are as follows:

District's Response

> The draft audit report states that the District was paid $234,716 on the FY 2006-07 annual claim. The last remittance advice (March 12, 2007) received by the District for this fiscal year indicates that the amount paid was $263,110.

SCO's Comment

The Summary of Program Costs (Schedule 1) is unchanged. The district is contesting a reported amount that is in its favor. The district's response fails to disclose that the district re-paid the SCO $28,394, as documented by the SCO's remittance advice dated April 23, 2008. Thus, the net amount that the State paid to the district is $234,716.

OTHER ISSUE—
FY 2006-07 late claim filing penalty

The district's response included comments regarding the FY 2006-07 late claim penalty. The district's response and SCO's comment are as follows:

District's Response

> On February 6, 2009, the District submitted an amended FY 2006-07 claim in the amount of $329,864 that incorporates some of the audit adjustments. presented at the January 23, 2009, exit conference. Since this amended claim is a late claim, it is subject to a late filing penalty of 10% of the amount claimed up to $10,000. The draft audit report adjusts the late filing penalty to $9,515 for the audited allowed "total program costs" of $192,389. Ten percent of $192,389-is not $9,515. It appears the late filing penalty should be $10,000.

SCO's Comment

The Summary of Program Costs (Schedule 1) is unchanged. Again, the district is contesting an adjustment in its favor. Nevertheless, the district is in error. The district erroneously equates an "amended claim" with a "late claim." When a district amends its claim after the claim filing date established by Government Code section 17560, only the additional claimed costs are subject to the late claim penalty assessment (i.e., the original amount claimed is not late; only the new, additional costs are filed late). The district's amended claim increased total claimed costs by $95,148, from $234,716 to $329,864. The SCO correctly applied a 10% late penalty assessment to the $95,148 increase pursuant to Government Code section 17568. Allowable costs are irrelevant to the late claim penalty assessment.

OTHER ISSUE—
Statute of limitations

The district's response included comments related to the statute of limitations applicable to the district's FY 2002-03 and FY 2003-04 mandated cost claims. The district's response and SCO's comment are as follows:

District's Response

> Government Code Section 17558.5, as amended effective January 1, 2003, requires the Controller to initiate an audit within three years after a claim is filed. The District's FY 2002-03 claim was filed on January 12, 2004. The District's FY 2003-04 claim was filed on January 10, 2005. The entrance conference date for the audit was March 24, 2008, which is after the three-year period to commence the audit for those two fiscal years had expired.

SCO's Comment

Our findings and recommendations are 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 2002-03 claim, the district received its initial payment on October 25, 2006. Pursuant to Government Code section 17558.5, subdivision (a), the SCO had until October 24, 2009, to initiate an audit of this claim. For its FY 2003-04 claim, the district received no payment. Pursuant to the same statutory language, 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.

OTHER ISSUE—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 the requested records by separate letter dated April 7, 2009.

Attachment—
District's Response to
Draft Audit Report

Office of the Executive Vice Chancellor

Yosemite Community College District
P.O. Box 4065 / Modesto, CA 95352 / 2201 Blue Gum Avenue
Phone (209) 575-6530 / FAX (209) 575-6562

March 24, 2009 CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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
Yosemite Community College District
Fiscal Years: 2002-03, 2003-04, 2004-05, 2005-06, and 2006-07 (amended)

Dear Mr. Spano:

This letter is the response of the Yosemite 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 March 12, 2009, and received by the District on March 13, 2009.

Finding 1: Understated services and supplies

This District does not dispute this finding. See Finding 5.

Finding 2: Overstated indirect costs

	Indirect Cost Rates Claimed and Audited			
Fiscal Year	As Claimed	Claimed Source	As Audited	Audit Report Source
2002-03	23.95%	CCFS-311	33.90%	"Federally approved rate"
2003-04	25.29%	CCFS-311	33.90%	"Federally approved rate"
2004-05	34.88%	CCFS-311	36.21%	CCFS-311 and depreciation
2005-06	36.38%	CCFS-311	33.23%	CCFS-311 and depreciation
2006-07 (amended)	41.07%	CCFS-311 and depreciation	34.71%	CCFS-311 and depreciation

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.

CHOICE OF METHODS

The draft audit report states that the District prepared its indirect cost rates for the fiscal years 2002-03 through 2005-06 as "proposals" in accordance with OMB A-21 that were not federally approved.

FY 2002-03 and FY 2003-04

The District had an "approved" federal rate for FY 2002-03 and FY 2003-04 that was used for the audit adjustment. Since federally approved rates are an acceptable alternative method, the District does not dispute this audit finding as to FY 2002-03 and FY 2003-04.

FY 2004-05 and FY 2005-06

The draft audit report is factually in error when it states that the District prepared indirect cost rate proposals for FY 2004-05 and FY 2005-06 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 FAM-29C method based on the CCFS-311 as the auditor, but made different allocations of indirect costs. The principal difference is that the District used the capital costs stated in the CCFS-311, whereas the Controller deleted these capital costs and substituted depreciation expense as stated on the District's annual financial statements.

FY 2006-07

On February 6, 2009, the District submitted an amended FY 2006-07 claim. The District used the same FAM-29C method based on the CCFS-311 as did the auditor. The District deleted the capital costs stated in the CCFS-311 and substituted the depreciation expense as reported in the District's annual financial statements. The District was not on notice of this method of treating depreciation costs at the time the FY 2004-05 and FY 2005-06 annual claims were timely filed. The audit report uses this method retroactively to FY 2004-05. The remaining difference in the rate claimed by the District in the amended FY 2006-07 claim and the audited rate is a result of differences in how some of the indirect costs were treated.

Parameters and Guidelines

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 did not disclose that for FY 2004-05, FY 2005-06, and FY 2006-07, the audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. When the audit utilizes a different CCFS-311 than the District, this constitutes an undisclosed audit adjustment. The audit report does not state an enforceable requirement to use the most current CCFS-311.

As a practical example of how unjustifiable the Controller's position is on prior year CCFS-311 reports, note that the federally approved indirect cost rates (such as the federal rate the audit used for FY 2002-03 and FY 2003-04) are approved for periods of two to four years. This means the data from which the rates were calculated can be from three to five 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 rates as unreasonable or excessive, the adjustments should be withdrawn.

Finding 3: Offsetting savings/reimbursements incorrectly reported as authorized health service fees

This District does not dispute this finding. See Finding 5.

Finding 4: Understated authorized health service fees

The draft audit report concludes that the student health service fee revenue offsets were understated for the five-year audit period. The difference between the claimed amount and the audited amount is that the District utilized actual revenues received rather than a calculation of the student health service fees potentially collectible. The auditor calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable to all eligible students, rather than the full-time or part-time student health service fee actually charged by the District to the students not exempted by state law or District policy (e.g., BOGG waiver students).

The audit utilizes student enrollment information from the State Community College Chancellor's data base. These statistics are not available to districts at the time the claims are prepared nor does the audit report substantiate this source as either uniquely accurate

or superior to enrollment data maintained by the District and independently audited each year. However, 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 District asserts that the "collectible method" of determining the student health service fee revenue offset is not supported by law or fact.

"Authorized" Fee Amount

There is no "authorized" rate other than the amounts stated in Education Code Section 76355. 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) Therefore, districts have the option of charging a fee to some or all of its students.

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 XIII B of the California Constitution.

The operating cost of the student health service program is not determined by the fees collected. There is nothing in the language of the statute regarding the authority to charge a fee, or any nexus of fee revenue to increased cost, or 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 (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 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 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." The parameters and guidelines do not allow the Controller to reduce claimed costs by revenue never received by the claimants and such an offset is contrary to the generally accepted accounting principle that requires revenues and costs to be properly matched.

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.

Finding 5: Understated offsetting savings/reimbursements

Findings 1, 3, and 5 are connected by their content.

"FUND 12"

In accordance with governmental accounting practices, the District separately accounted for some costs and revenues (e.g., clinical services) in a fund (Fund 12) separate from the student health service center fund (Fund 14). Finding 1 merges those costs ($9,763) and revenue ($34,376 located in Finding 5) with Fund 14 which is consistent with the cost accounting practice of matching costs and revenues. The District does not dispute Finding 1.

FY 2003-04 CORRECTIONS

Finding 3 properly reverses $39,090 in revenue reductions to the FY 2003-04 claimed costs that were either duplicated from Fund 12 or the result of changes in accruals. The District does not dispute Finding 3.

INTEREST INCOME

Finding 5 offsets $84,431 of interest income against the claimed cost of the student health services program. Of this amount, $12,625 was properly added back to the program costs in Finding 3 for FY 2003-04. The interest income is paid by the Stanislaus County Treasurer where the District deposits its cash in a pooled investment fund. The District allocates the total investment income reported by the County to its various funds.

The draft audit report characterizes the interest income offset as an "offsetting savings/reimbursement." The draft audit report cites only a portion of the parameters and guidelines for this proposition. The entire relevant citation is:

> VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS
>
> Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of $7.50 per full-time student per semester, $5.00 per full-time student for summer school, or $5.00 per full-time student per quarter, as authorized by Education Code Section 72246(a). This shall also include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

The parameters and guidelines criteria for offsetting savings and reimbursements do not apply to interest income. First, the interest income is not generated "as a direct result of"

Education Code 76355, the statutory basis for the student health services program. Indeed, since the student health service program operates at a loss (the reason for the annual mandate claim for excess costs), the student health service program cannot generate investment principal. Second, the interest income is neither state nor federal reimbursement for providing the student health service program. Third, the interest income is not fees paid by others for services not included in the student health service program.

Since interest income does not meet the parameters and guidelines criteria for offsetting savings and reimbursements and the draft audit report has stated no other basis for this finding, the adjustments should be withdrawn.

Other Issues

FY 2006-07 Amounts Paid

The draft audit report states that the District was paid $234,716 on the FY 2006-07 annual claim. The last remittance advice (March 12, 2007) received by the District for this fiscal year indicates that the amount paid was $263,110.

FY 2006-07 Late Claim Filing Penalty

On February 6, 2009, the District submitted an amended FY 2006-07 claim in the amount of $329,864 that incorporates some of the audit adjustments presented at the January 23, 2009, exit conference. Since this amended claim is a late claim, it is subject to a late filing penalty of 10% of the amount claimed up to $10,000. The draft audit report adjusts the late filing penalty to $9,515 for the audited allowed "total program costs" of $192,389. Ten percent of $192,389 is not $9,515. It appears the late filing penalty should be $10,000.

Statute of Limitations

Fiscal Year	Date Submitted to SCO	SOL to audit expires
FY 2002-03	January 12, 2004	Audit must start by January 12, 2007
FY 2003-04	January 10, 2005	Audit must start by January 10, 2008

Government Code Section 17558.5, as amended effective January 1, 2003, requires the Controller to initiate an audit within three years after a claim is filed. The District's FY 2002-03 claim was filed on January 12, 2004. The District's FY 2003-04 claim was filed on January 10, 2005. The entrance conference date for the audit was March 24, 2008, which is after the three-year period to commence the audit for those two fiscal years had expired.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

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

O O O

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,

Teresa Scott

Teresa Scott
Executive Vice Chancellor

TMS/KP/cs

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