

STATE CENTER 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

June 2010



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California State Controller

June 11, 2010

Patrick E. Patterson, President
Board of Trustees
State Center Community College District
1525 East Weldon Avenue
Fresno, CA 93704

Dear Mr. Patterson:

The State Controller's Office audited the costs claimed by State Center 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 \$2,258,471 (\$2,268,471 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$1,355,727 is allowable and \$902,744 is unallowable. The costs are unallowable because the district understated salaries, benefits, and services and supplies; overstated indirect costs; and understated authorized health service fees. The State paid the district \$807,192. Allowable costs claimed exceed the amount paid by \$548,535.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCForm.pdf.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Deborah G. Blue, Ph.D., Chancellor
State Center Community College District
Edwin Eng, Director of Finance
State Center Community College District
Douglas R. Brinkley, Vice Chancellor, Finance and Administration
State Center Community College District
Christine Atalig, Auditor
Fiscal Services Unit
California Community Colleges Chancellor's Office
Thomas Todd, Principal Program Budget Analyst
Education Systems Unit
Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by State Center 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 \$2,258,471 (\$2,268,471 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$1,355,727 is allowable and \$902,744 is unallowable. The costs are unallowable because the district understated salaries, benefits, and services and supplies; overstated indirect costs; and understated authorized health service fees. The State paid the district \$807,192. Allowable costs claimed exceed the amount paid by \$548,535.

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. Except for the following issue, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We were unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment. As a result, we increased our substantive testing; however, this would not necessarily identify fraud or abuse that may have occurred.

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

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

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, State Center Community College District claimed \$2,258,471 (\$2,268,471 less a \$10,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that \$1,355,727 is allowable and \$902,744 is unallowable.

For the fiscal year (FY) 2002-03 claim, the State paid the district \$615,935. Our audit disclosed that \$378,171 is allowable. The State will offset \$237,764 from other mandated program payments due the district. Alternatively, the district may remit this amount to the State.

For the FY 2003-04 through FY 2005-06 claims, the State made no payment to the district. Our audit disclosed that \$877,337 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2006-07 claim, the State paid the district \$191,257. Our audit disclosed that \$100,219 is allowable. The State will offset \$91,038 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 April 23, 2010. Douglas R. Brinkley, Vice-Chancellor, responded by letter dated May 12, 2010 (Attachment), agreeing with Finding 1 and disagreeing with Findings 2 through 5. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of State Center 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

June 11, 2010

**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
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries	\$ 504,055	\$ 504,055	\$ —	
Benefits	103,765	103,765	—	
Services and supplies	<u>97,869</u>	<u>105,906</u>	<u>8,037</u>	Finding 1
Total direct costs	705,689	713,726	8,037	
Indirect costs	<u>287,146</u>	<u>107,630</u>	<u>(179,516)</u>	Finding 2
Total direct and indirect costs	992,835	821,356	(171,479)	
Less authorized health service fees	(368,100)	(434,385)	(66,285)	Finding 3
Less offsetting savings/reimbursements	<u>(8,800)</u>	<u>(8,800)</u>	<u>—</u>	
Total program costs	<u>\$ 615,935</u>	378,171	<u>\$ (237,764)</u>	
Less amount paid by the State		<u>(615,935)</u>		
Allowable costs claimed in excess of (less than) amount paid			<u>\$ (237,764)</u>	
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 334,958	\$ 424,961	\$ 90,003	Finding 1
Benefits	82,966	97,236	14,270	Finding 1
Services and supplies	<u>56,086</u>	<u>86,107</u>	<u>30,021</u>	Finding 1
Total direct costs	474,010	608,304	134,294	
Indirect costs	<u>183,820</u>	<u>98,241</u>	<u>(85,579)</u>	Finding 2
Total direct and indirect costs	657,830	706,545	48,715	
Less authorized health service fees	(279,653)	(429,150)	(149,497)	Finding 3
Less offsetting savings/reimbursements	<u>(8,850)</u>	<u>(8,850)</u>	<u>—</u>	
Total program costs	<u>\$ 369,327</u>	268,545	<u>\$ (100,782)</u>	
Less amount paid by the State		<u>—</u>		
Allowable costs claimed in excess of (less than) amount paid			<u>\$ 268,545</u>	

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 347,653	\$ 522,636	\$ 174,983	Finding 1
Benefits	94,282	124,140	29,858	Finding 1
Services and supplies	94,296	99,366	5,070	Finding 1
Total direct costs	536,231	746,142	209,911	
Indirect costs	195,724	203,548	7,824	Finding 2
Total direct and indirect costs	731,955	949,690	217,735	
Less authorized health service fees	(332,627)	(460,769)	(128,142)	Finding 3
Less offsetting savings/reimbursements	(4,165)	(4,165)	—	
Less allowable costs that exceed costs claimed ²	—	(89,593)	(89,593)	
Total program costs	<u>\$ 395,163</u>	395,163	<u>\$ —</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 395,163</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 534,260	\$ 534,260	\$ —	
Benefits	127,785	127,785	—	
Services and supplies	103,914	103,914	—	
Total direct costs	765,959	765,959	—	
Indirect costs	279,575	192,868	(86,707)	Finding 2
Total direct and indirect costs	1,045,534	958,827	(86,707)	
Less authorized health service fees	(338,695)	(725,148)	(386,453)	Finding 3
Less offsetting savings/reimbursements	(10,050)	(10,050)	—	
Less late filing penalty	(10,000)	(10,000)	—	
Total program costs	<u>\$ 686,789</u>	213,629	<u>\$ (473,160)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 213,629</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 556,482	\$ 644,821	\$ 88,339	Finding 1
Benefits	126,554	148,315	21,761	Finding 1
Services and supplies	110,591	154,682	44,091	Finding 1
Total direct costs	793,627	947,818	154,191	
Indirect costs	289,674	252,120	(37,554)	Finding 2
Total direct and indirect costs	1,083,301	1,199,938	116,637	
Less authorized health service fees	(883,224)	(1,090,899)	(207,675)	Finding 3
Less offsetting savings/reimbursements	(8,820)	(8,820)	—	
Total program costs	<u>\$ 191,257</u>	100,219	<u>\$ (91,038)</u>	
Less amount paid by the State		(191,257)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (91,038)</u>		
<u>Summary: July 1, 2002, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 2,277,408	\$ 2,630,733	\$ 353,325	
Benefits	535,352	601,241	65,889	
Services and supplies	462,756	549,975	87,219	
Total direct costs	3,275,516	3,781,949	506,433	
Indirect costs	1,235,939	854,407	(381,532)	
Total direct and indirect costs	4,511,455	4,636,356	124,901	
Less authorized health service fees	(2,202,299)	(3,140,351)	(938,052)	
Less offsetting savings/reimbursements	(40,685)	(40,685)	—	
Less late filing penalty	(10,000)	(10,000)	—	
Less allowable costs that exceed costs claimed ²	—	(89,593)	(89,593)	
Total program costs	<u>\$ 2,258,471</u>	1,355,727	<u>\$ (902,744)</u>	
Less amount paid by the State		(807,192)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 548,535</u>		

¹ See the Findings and Recommendations section.

² Government Code section 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in the SCO's claiming instructions. That deadline has expired for FY 2004-05.

Findings and Recommendations

**FINDING 1—
Understated salaries,
benefits, and services
and supplies**

The district understated salaries, benefits, and services and supplies by \$506,433. The district understated costs for the following reasons:

- For fiscal year (FY) 2003-04 and FY 2004-05, the district did not claim mandate-related psychological interns’ costs.
- For FY 2002-03, FY 2003-04, and FY 2004-05, the district did not claim mandate-related health service costs that it funded with California Lottery revenue. The district’s Lottery revenue does not result from the statute that established the mandated program. In addition, the district does not receive Lottery revenue specifically to fund mandated program costs. Therefore, Lottery revenue is not offsetting revenue for mandated program purposes.
- For FY 2006-07, the district did not claim mandate-related costs for its North Centers locations. The district believed that these costs were not mandate-related because the North Centers locations did not exist in the 1986-87 base year. However, the mandated program requires that the *district* provide the same level of health services that it provided in the 1986-87 base year; the *location(s)* where it provides those services is irrelevant.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2006-07	
Salaries:					
Psychological interns	\$ —	\$ 90,003	\$ 174,983	\$ —	\$ 264,986
North Centers	—	—	—	88,339	88,339
Total, salaries	—	90,003	174,983	88,339	353,325
Benefits:					
Psychological interns	—	14,270	29,858	—	44,128
North Centers	—	—	—	21,761	21,761
Total, benefits	—	14,270	29,858	21,761	65,889
Services and supplies:					
Psychological interns	—	1,116	2,772	—	3,888
Lottery-funded costs	8,037	28,905	2,298	—	39,240
North Centers	—	—	—	44,091	44,091
Total, services and supplies	8,037	30,021	5,070	44,091	87,219
Audit adjustment	\$ 8,037	\$ 134,294	\$ 209,911	\$ 154,191	\$ 506,433

The program’s parameters and guidelines state:

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

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. . . .

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 claim mandate-related costs that its accounting records support.

District’s Response

The district agreed with the audit finding.

**FINDING 2—
Overstated indirect costs**

The district overstated indirect costs by \$381,532.

For 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). However, the district did not obtain federal approval for these rates.

For FY 2004-05, FY 2005-06, and FY 2006-07, the district claimed indirect costs based on its federally approved rate. However, the parameters and guidelines and the SCO’s claiming instructions do not provide districts the option of using a federally approved rate for these fiscal years.

We calculated each fiscal year’s allowable indirect cost rate using the SCO’s FAM-29C methodology. We applied each fiscal year’s allowable rate to the corresponding allowable direct costs.

The following table summarizes the audit adjustment:

	Fiscal Year					Total
	2002-03	2003-04	2004-05	2005-06	2006-07	
Allowable direct costs	\$ 713,726	\$ 608,304	\$ 746,142	\$ 765,959	\$ 947,818	
Allowable indirect cost rate	× 15.08%	× 16.15%	× 27.28%	× 25.18%	× 26.60%	
Allowable indirect costs	107,630	98,241	203,548	192,868	252,120	
Indirect costs claimed	(287,146)	(183,820)	(195,724)	(279,575)	(289,674)	
Audit adjustment	<u>\$(179,516)</u>	<u>\$(85,579)</u>	<u>\$ 7,824</u>	<u>\$(86,707)</u>	<u>\$(37,554)</u>	<u>\$(381,532)</u>

The parameters and guidelines state:

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

For FY 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 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 District's FY 2002-03 and FY 2003-04 annual claims used a federal study method prepared by District staff pursuant to a federal rate proposal, including capital costs. The Controller used the CCFS-311, less capital costs, to calculate the indirect cost rate using its Form FAM-29C method. The Controller's policy was not to include depreciation costs in the calculation for these fiscal years. The Controller has not stated a basis for not including depreciation or capital costs. . . .

The District used a federally approved cost study rate for FY 2004-05, FY 2005-06, and FY 2006-07. The Controller has decided, but has not stated a basis for this decision, to discontinue, retroactively to FY 2004-05, the use of federal rates, approved or not. Instead, the Controller is using the CCFS-311, less capital costs, but with audited district financial statement depreciation costs included, to calculate the indirect cost rate using its Form FAM-29C method.

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)). However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law. If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act. . . .

SCO's Comment

Our finding and recommendation are unchanged.

The district implies that it need not comply with the SCO's claiming instructions. We disagree with the district's interpretation of the parameters and guidelines language. Using the district's interpretation of the parameters and guidelines, districts would be allowed to claim

indirect costs in whatever manner they choose. The phrase “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, “. . . 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.

**FINDING 3—
Understated
authorized health
service fees**

The district understated authorized health service fees by \$938,052. 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. In addition, we noted that the district did not charge all students the full authorized fee amount for the 2004 and 2005 summer sessions, the 2006 fall semester, and the 2007 spring semester. Also, for all school terms, the district did not charge the full authorized fee amount for students attending off-campus classes only.

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:

Fiscal Year	Authorized Health Fee Rate	
	Fall and Spring Semesters	Summer Session
2002-03	\$12	\$9
2003-04	\$12	\$9
2004-05	\$13	\$10
2005-06	\$14	\$11
2006-07	\$15	\$12

We obtained student enrollment, Board of Governors Grant (BOGG) recipient, and apprenticeship program enrollee data from the CCCCCO. The CCCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. The CCCCCO identified the district's enrollment based on CCCCCO's MIS data element STD7, codes A through G. The CCCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, the CCCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. The CCCCCO also identified the number of apprenticeship program enrollees based on its data element SB 23, code 1. The district did not identify any students 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:

	Summer Session	Fall Semester	Spring Semester	Total
Fiscal Year 2002-03:				
Number of enrolled students	13,064	32,522	31,597	
Less number of BOGG recipients	(6,209)	(16,703)	(16,189)	
Less number of apprenticeship program enrollees	(2)	(85)	(83)	
Subtotal	6,853	15,734	15,325	
Authorized health fee rate	× \$9	× \$(12)	× \$(12)	
Authorized health service fees	\$ (61,677)	\$ (188,808)	\$ (183,900)	\$ (434,385)
Less authorized health service fees claimed				368,100
Audit adjustment, FY 2002-03				(66,285)
Fiscal Year 2003-04:				
Number of enrolled students	9,416	32,811	31,236	
Less number of BOGG recipients	(4,658)	(15,727)	(15,941)	
Less number of apprenticeship program enrollees	(4)	(80)	(102)	
Subtotal	4,754	17,004	15,193	
Authorized health fee rate	× \$9	× \$(12)	× \$(12)	
Authorized health service fees	\$ (42,786)	\$ (204,048)	\$ (182,316)	(429,150)
Less authorized health service fees claimed				279,653
Audit adjustment, FY 2003-04				(149,497)

	Summer Session	Fall Semester	Spring Semester	Total
Fiscal Year 2004-05:				
Number of enrolled students	10,825	32,216	30,985	
Less number of BOGG recipients	(4,853)	(16,314)	(15,949)	
Less number of apprenticeship program enrollees	(4)	(85)	—	
Subtotal	5,968	15,817	15,036	
Authorized health fee rate	× \$(10)	× \$(13)	× \$(13)	
Authorized health service fees	\$ (59,680)	\$ (205,621)	\$ (195,468)	(460,769)
Less authorized health service fees claimed				332,627
Audit adjustment, FY 2004-05				(128,142)
Fiscal Year 2005-06:				
Number of enrolled students	12,184	32,720	30,757	
Less number of BOGG recipients	(5,957)	(16,428)	—	
Less number of apprenticeship program enrollees	(3)	(57)	(86)	
Subtotal	6,224	16,235	30,671	
Authorized health fee rate	× \$(11)	× \$(14)	× \$(14)	
Authorized health service fees	\$ (68,464)	\$ (227,290)	\$ (429,394)	(725,148)
Less authorized health service fees claimed				338,695
Audit adjustment, FY 2005-06				(386,453)
Fiscal Year 2006-07:				
Number of enrolled students	12,105	32,988	30,139	
Less number of apprenticeship program enrollees	(3)	(82)	—	
Subtotal	12,102	32,906	30,139	
Authorized health fee rate	× \$(12)	× \$(15)	× \$(15)	
Authorized health service fees	\$ (145,224)	\$ (493,590)	\$ (452,085)	(1,090,899)
Less authorized health service fees claimed				883,224
Audit adjustment, FY 2006-07				(207,675)
Total audit adjustment				\$ (938,052)

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 the CCCC data element STD7, codes A through G.
- Identify the number of apprenticeship program enrollees based on data elements SB 23, code 1, and STD7, codes A through G.
- Eliminate duplicate entries for students who attend more than one college within the district.

- Maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). 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.
- 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 and recommendation are unchanged.

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 fee rates. Our report does not state or infer that any state agency “authorizes” the health service fee rate.

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 CCCCCO is not authorized to direct districts to increase fees. Our finding states that the CCCCCO *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. The district's failure to collect authorized fees does not relieve it from its responsibility to offset authorized fees from its mandated program claims.

Government Code Section 17514

The district states, “. . . charging a fee has no relationship to whether costs are incurred to provide the student health services program.” We disagree. The simple correlation is that if the district charges a fee that in turn pays for a health service expense, then there is no “cost” to the district. 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 CCCCCO dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, since the CSM's staff concluded that the DOF's proposed language did not substantively change the scope of staff's proposed language. The CSM's meeting minutes of May 25, 1989, show that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM's interpretation regarding authorized health service fees.

**FINDING 4—
Inaccurate reporting
of health services
provided**

For all fiscal years, the district inaccurately reported base-year and current-year services provided. We reviewed the services that the district reported in the 1986-87 base year, along with the base-year and current-year services that the district reported for each fiscal year of the audit period. We noted the following inconsistencies:

- The district's 1986-87 base-year report identified a service provided; however, the district did not report the same service as a base-year and/or current-year service in one or more fiscal years during the audit period.
- For one or more years during the audit period, the district reported that it provided a service during the base year and the current year; however, the district's 1986-87 base-year report did not show that it provided the same service.

The table shown on the following page summarizes the reporting inconsistencies.

The parameters and guidelines state:

Community college districts which provided health services in 1986-87 fiscal year *and continue to provide the same services as a result of this mandate* [emphasis added] are eligible to claim reimbursement of those costs.

The parameters and guidelines identify reimbursable health services and state that the district will be reimbursed only for those services that it provided in the 1986-87 base year. They also state:

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim. . . .

Recommendation

We recommend that the district accurately report health services that it provided in the 1986-87 base year and during the current year for which it intends to claim mandate-related costs. We recommend that the district refrain from claiming any mandated costs if it does not provide one or more services that it provided during the 1986-87 base year. In addition, we recommend that the district deduct the actual cost of any current-year services that exceed the services that the district provided during the 1986-87 base year.

REPORTING INCONSISTENCIES											
Health Services	FY 1986-87	FY 2002-03		FY 2003-04		FY 2004-05		FY 2005-06		FY 2006-07	
	Base Year	Base Year	Current Year	Base Year	Current Year	Base Year	Current Year	Base Year	Current Year	Base Year	Current Year
Assessment, Intervention and Counseling:											
Acquired Immune Deficiency Syndrome	✓							✓	✓	✓	✓
Other medical problems:	✓										
Hypertension		✓	✓								
Cardiovascular		✓	✓								
Seizure disorder		✓	✓								
Pulmonary		✓	✓								
Health Talks or Fairs, Information:											
Other - blood drive	✓										
Immunizations:											
Diphtheria/Tetanus	✓										
Insurance:											
Insurance Inquiry/claim administration	✓										
Medications:											
RID	✓										
Tolnaftate		✓	✓	✓	✓	✓	✓	✓	✓		
Cortisone		✓	✓	✓	✓	✓	✓	✓	✓		
CTM		✓	✓	✓	✓	✓	✓	✓	✓		
Pseudoephedrine HCE	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Diphenhydramine	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Pediculosis Control		✓	✓	✓	✓	✓	✓	✓	✓		
Cough syrup		✓	✓	✓	✓	✓	✓	✓	✓		
Lozenges		✓	✓	✓	✓	✓	✓	✓	✓		
Referrals to Outside Agencies:											
Crisis Centers		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tests:											
Vision	✓	✓	✓	✓	✓			✓	✓	✓	✓
Glucometer	✓					✓	✓				
Urinalysis	✓			✓	✓			✓	✓	✓	✓
Hemoglobin		✓	✓								
Committees:											
Environmental	✓										
Communicable disease control	✓										
Self-esteem groups	✓										
Mental health crisis	✓										
Alcoholics anonymous group	✓										
Adult children of alcoholics group	✓										
Workshops:											
Stress management	✓										
Communication skills	✓										
Weight loss	✓										
Assertiveness skills	✓										

District's Response

... As to the base-year, using the documentation provided by the auditor and originally submitted by the District many years ago, the District will be able to accurately report the FY 1986-87 base-year services on future claims.

For each subsequent fiscal year, claimants must certify that the base year services continue to be *available*, although not necessarily *provided*. The District is certifying that the same level of services continues to be available, not that each and every service was *rendered* each subsequent year. The draft audit report incorrectly recommends that "the district refrain from claiming any mandated costs if it does not provide one or more services that it provided during the 1986-87 base year." Rather, the District has to continue to make these services available, whether they are rendered or not. For example, hearing tests may be available every year, but there may be a year in which no hearing tests were required by students. Of course, if an available service is not provided in the current year, then there would be no cost incurred to be claimed.

The District must first certify the services available, then it is required to identify the cost of current year services, and then deduct the cost of any services provided in excess of the base-year services available. Base-year services must continue to be available, but cost is claimed on services actually utilized, which is to say *rendered*, each year. District staff will continue to evaluate the list of services available each future year to make sure they are correctly reported and claim costs only for those services available in the base-year.

SCO's Comment

Our finding and recommendation are unchanged. The district makes a distinction between "services provided," "services available", and "services rendered." Such a distinction is not relevant; the parameters and guidelines address services *provided*.

The parameters and guidelines, Section III, Eligible Claimants, states:

Community college districts which *provided* [emphasis added] health services in 1986-87 fiscal year and continue to *provide* [emphasis added] the same services as a result of this mandate are eligible to claim reimbursement of those costs.

Section V, subdivision A, Scope of Mandate, states:

Eligible community college districts shall be reimbursed for the costs of providing a health services program. Only services *provided* [emphasis added] in 1986-87 fiscal year may be claimed.

Section V, subdivision B, Reimbursable Activities, states:

For each eligible claimant, the following cost items are reimbursable to the extent they were *provided* [emphasis added] by the community college district in fiscal year 1986-87.

The district did not comment on the factual accuracy of the reporting inconsistencies noted in the audit finding.

The district states, “The draft audit report incorrectly recommends that ‘the district refrain from claiming any mandated costs if it does not provide one or more services that it provided during the 1986-87 base year.’” We stand by the recommendation. The parameters and guidelines state, “Community college districts which provided health services in 1986-87 fiscal year *and continue to provide the same services* [emphasis added] as a result of this mandate are eligible to claim reimbursement of those costs.” Districts that do not provide the same services are ineligible to claim mandated costs.

**FINDING 5—
Insufficient
documentation of
health services
provided**

Fresno City College and the district’s North Centers (Clovis Center, Madera Center, and Oakhurst Center) did not sufficiently document actual health services that they provided. These locations maintained health service records that do not identify the services provided consistent with the parameters and guidelines. The records either identified the services provided using general, vague descriptions or did not identify a specific service provided.

The parameters and guidelines identify approximately 125 specific reimbursable health services and state that the district will be reimbursed only for those services that it provided in FY 1986-87. They state that the district must support claimed salaries and benefits in the following manner:

Identify the employee(s), show the classification of the employee(s) involved, *describe the mandated functions performed and specify the actual number of hours devoted to each function* [emphasis added]. . . .

The parameters and guidelines also state:

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that Fresno City College and the district’s North Centers maintain health service records identifying actual services that they provided in the same manner that the parameters and guidelines and the SCO’s claim forms identify health services.

District’s Response

The draft audit report states that Fresno City College and the North Centers did not sufficiently document actual health services provided. As stated in Finding 4, claimants are required to certify that base-year services continue to be *available*, and the certification is at the district-level, not by site. Claimants are also required to deduct the cost of current year services *rendered* in excess of base-year services *available*. We will evaluate our recordkeeping systems district wide to improve the identification of any excess services provided, if any, for each future fiscal year.

SCO's Comment

Our finding and recommendation are unchanged. Similar to Finding 4, the district makes a distinction between “services provided,” “services available”, and “services rendered.” Such a distinction is not relevant; the parameters and guidelines address services *provided*.

Regarding insufficient documentation of health services provided, the district states, “We will evaluate our recordkeeping systems district wide to improve the identification of any excess services provided, if any, for each future fiscal year.” The district did not comment on the factual accuracy of the audit finding. The parameters and guidelines state that only services provided in FY 1986-87 are eligible for reimbursement. They also state that the district must identify the mandated functions performed.

We continue to recommend that the district maintain health service records identifying actual services that it provided in the same manner that the parameters and guidelines and the SCO's claim forms identify those services. If the district is unable to validate that it has claimed costs only for services that are reimbursable under the mandated program, the SCO will conclude that the entire claim is unallowable.

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 2002-03, FY 2003-04, and FY 2004-05 mandated cost claims. The district’s comment and SCO’s response are as follows:

District’s Response

<u>Fiscal Year</u>	<u>Date Claim Filed</u>	<u>Audit Statute of Limitations</u>
FY 2002-03	January 9, 2004	Past audit January 9, 2007
FY 2003-04	December 13, 2004	Past audit December 13, 2007
FY 2004-05	December 5, 2005	Past audit December 5, 2008

Regarding the annual claims for FY 2002-03 and FY 2003-04, Government Code Section 17558.5 (as amended by Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003) states:

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

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

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

Since there were state appropriations, although minimal and not specifically or contemporaneously paid to this District, for those three fiscal years, the statute of limitations to initiate the audit of those three fiscal years expired three years after the date of annual claim filing. The audit was initiated with the entrance conference conducted on June 9, 2009, which is more than three years after the annual claims were filed.

SCO’s Comment

Our findings and recommendations are unchanged. The district infers that the time for the SCO to initiate an audit commenced with the appropriation made for each fiscal year. We disagree. Government Code section 17558.5, subdivision (a), states, “. . . 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* [emphasis added], the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. . . .” Only one condition need be true to extend the time for the SCO to commence an audit; i.e., either no funds are appropriated *or no payment is made*.

For its FY 2002-03 claim, the district did not receive its initial payment until October 25, 2006. Therefore, the SCO had until October 25, 2009, to commence an audit. As stated in the district’s response, the SCO commenced the audit on June 9, 2009, before the statute of limitations expired for this fiscal year.

For its FY 2003-04 and FY 2004-05 claims, the district received no payment as of the audit entrance conference date. Therefore, the SCO properly initiated its audit of these fiscal years within the statute of limitations.

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, memoranda, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (calculation of the student health services fees offset).

SCO’s Comment

The SCO provided the district the requested records by separate letter dated May 19, 2010.

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



State Center Community College District

1525 East Weldon Avenue • Fresno, California 93704-6398 • (559) 226-0720 • FAX 559-229-7039 • www.scccd.edu

May 12, 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: 2002-03 through 2006-07
State Center Community College District

Dear Mr. Spano:

This letter is the response of the State Center 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 April 23, 2010, and received by the District on May 3, 2010.

Finding 1 - Understated salaries, benefits, and services and supplies

The draft audit report increases the program amounts claimed by \$506,433 for three types of program costs not included in the claims.

1. Psychological Intern Program Costs

The adjustments add the psychological intern costs (salaries, benefits, and supply costs) to FY 2003-04 and FY 2004-05 which were not included in those annual claims. The District agrees that the costs should have been included in those claims. The District included these program costs in FY 2005-06 and FY 2006-07 annual claims.

2. Lottery Funds

The adjustment adds costs funded by the State Lottery in a separate program fund for FY 2002-03, FY 2003-04, and FY 2004-05. The District agrees that the costs should have been included in these claims, without offset.

3. North Center Costs

The adjustments add program costs for the North Centers for FY 2006-07. The District agrees that the costs should have been included in that claim.

Finding 2 - Overstated indirect costs

The draft audit report concludes that the District overstated indirect costs by \$381,532 for the four fiscal years included in the audit. The draft audit report states that the District overstated indirect costs for two reasons:

- The FY 2002-03 and FY 2003-04 annual claims 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 a federally approved rate, but that the Commission on State Mandates parameters and guidelines and the Controller's claiming instructions do not provide claimants the option of using federally approved rates for these fiscal years.

<u>Claimed Fiscal Year</u>	<u>Audited</u>			
	<u>Rate</u>	<u>Source</u>	<u>Rate</u>	<u>Source</u>
FY 2002-03 depreciation	40.69%	District	15.08%	FAM 29C-no
FY 2003-04 depreciation	38.78%	District	16.15%	FAM 29C-no

The draft audit report states that the Controller's claiming instructions relevant to these fiscal years state that when claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The District's FY 2002-03 and FY 2003-04 annual claims used a federal study method prepared by District staff pursuant to a federal rate proposal, including capital costs. The Controller used the CCFS-311, less capital costs, to calculate the indirect cost rate using its Form FAM-29C method. The Controller's policy was not to include depreciation costs in the calculation for these fiscal years. The Controller has not stated a basis for not including depreciation or capital costs.

FY 2004-05 depreciation	36.50%	Federal	27.28%	FAM 29C-with
FY 2005-06 depreciation	36.50%	Federal	25.18%	FAM 29C-with
FY 2006-07 depreciation	36.50%	Federal	26.60%	FAM 29C-with

The District used a federally approved cost study rate for FY 2004-05, FY 2005-06, and FY 2006-07. The Controller has decided, but has not stated a basis for this decision, to discontinue, retroactively to FY 2004-05, the use of federal rates, approved or not. Instead, the Controller is using the CCFS-311, less capital costs, but with audited district financial statement depreciation costs included, to calculate the indirect cost rate using its Form FAM-29C method.

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)). However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law. If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

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 - Understated authorized health service fees

The draft audit report states that "authorized" student health service fee revenues were understated by \$938,052 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. The audit report notes that the District did not charge the greatest possible fee amount "authorized" by the Chancellor's Office for several semesters and did not charge the students attending the off-campus learning centers.

"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 XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.” Government Code Section 17556, as last amended by Statutes of 2006, Chapter 538, actually states:

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

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

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."

Therefore, the audit report findings and recommendations regarding enrollment data obtained from the Chancellor's Office, the students to be charged, and the amounts to charge these students are not relevant to the District claimed amounts since the District

claimed actual revenues collected that resulted from the District's policy regarding which students are to be charged and how much they are to be charged.

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

Finding 4 - Inaccurate reporting of health services provided

The draft audit report states that the District inaccurately reported base-year and current-year services *provided*. As to the base-year, using the documentation provided by the auditor and originally submitted by the District many years ago, the District will be able to accurately report the FY 1986-87 base-year services on future claims.

For each subsequent fiscal year, claimants must certify that the base year services continue to be *available*, although not necessarily *provided*. The District is certifying that the same level of services continues to be *available*, not that each and every service was *rendered* each subsequent year. The draft audit report incorrectly recommends that "the district refrain from claiming any mandated costs if it does not provide one or more services that it provided during the 1986-87 base year." Rather, the District has to continue to make these services available, whether they are rendered or not. For example, hearing tests may be available every year, but there may be a year in which no hearing tests were required by students. Of course, if an available service is not provided in the current year, then there would be no cost incurred to be claimed.

The District must first certify the services available, then it is required to identify the cost of current year services, and then deduct the cost of any services provided in excess of the base-year services available. Base-year services must continue to be available, but cost is claimed on services actually utilized, which is to say *rendered*, each year. District staff will continue to evaluate the list of services available each future year to make sure they are correctly reported and claim costs only for those services available in the base-year.

Finding 5 - Insufficient documentation of health service provided

The draft audit report states that Fresno City College and the North Centers did not sufficiently document actual health services provided. As stated in Finding 4, claimants are required to certify that base-year services continue to be *available*, and the certification is at the district-level, not by site. Claimants are also required to deduct the cost of current year services *rendered* in excess of base-year services *available*. We will evaluate our recordkeeping systems district wide to improve the identification of any excess services provided, if any, for each future fiscal year.

OTHER MATTERS

Statute of Limitations

<u>Fiscal Year</u> <u>Limitations</u>	<u>Date Claim Filed</u>	<u>Audit Statute of</u>
FY 2002-03	January 9, 2004	Past audit January 9, 2007
FY 2003-04 2007	December 13, 2004	Past audit December 13,
FY 2004-05 2008	December 5, 2005	Past audit December 5,

Regarding the annual claims for FY 2002-03 and FY 2003-04, Government Code Section 17558.5 (as amended by Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003) states:

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

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

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

Since there were state appropriations, although minimal and not specifically or contemporaneously paid to this District, for those three fiscal years, the statute of limitations to initiate the audit of those three fiscal years expired three years after the date of annual claim filing. The audit was initiated with the entrance conference conducted on June 9, 2009, which is more than three years after the annual claims were filed.

Public Records Request

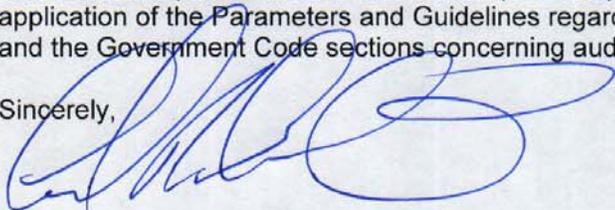
The District requests that the Controller provide the District any and all written instructions, memoranda, or other writings in effect and applicable during the claiming period to Finding 2 (indirect cost rate calculation standards) and Finding 3 (calculation of the student health services fees offset).

Government Code section 6253, subdivision ©, 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.

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

Sincerely,



Douglas R. Brinkley
Vice-Chancellor

DRB:eh

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>