

California State Auditor

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California Community Colleges:

The Chancellor's Office Should Collect Additional Funds for Questionable Training Agreements



November 1997
97501

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November 5, 1997

97501

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Summary

The Chancellor's Office allocates general apportionment and other state funds appropriated by the Legislature to the State's 71 community college districts (districts). In May 1996, the Bureau of State Audits (bureau) concluded that some districts inappropriately received millions of dollars in additional state support by claiming general apportionment funding through training agreements for instructional hours provided by state, local, and private entities. We recommended that the Chancellor's Office calculate and recover funds from three of the four districts in our May 1996 report where the instructional hours claimed did not satisfy the requirements of state regulations. We also recommended the Chancellor's Office recover state funds from any other districts using similar agreements to claim state funds if the instructional hours under those agreements did not satisfy state regulations.

Because of the significance of the findings and the recommendations in our May 1996 audit report, the bureau determined a follow-up audit was warranted. Our current audit examines the actions the Chancellor's Office has taken during the past 16 months to implement the original recommendations.

Overall, the Chancellor's Office has been slow to implement the recommendations made in our May 1996 report. It could potentially recover as much as \$1.8 million more for ineligible claims identified in the audit. For example, although the Chancellor's Office has recovered \$444,354 in apportionment funds and \$25,715 in lottery revenue from San Joaquin Delta

Community College District (Delta) for fiscal years 1994-95 and 1995-96, our analysis shows it should recover an additional \$48,295.

In another example, although we believe the liability of San Bernardino Community College District (San Bernardino) to the State for fiscal years 1994-95 and 1995-96 could be as much as \$704,189 for general apportionment and lottery funds, the Chancellor's Office has concluded that the district does not owe the State any money. The Chancellor's Office reached this conclusion despite our opinion and that of San Bernardino's independent Certified Public Accountant to the contrary.

Furthermore, while the Chancellor's Office sent a letter to Monterey Peninsula Community College District (Monterey Peninsula) in June 1996 and met with representatives of the district in September 1996, it has not yet determined the district's liability to the State. Even though Monterey Peninsula could owe the State as much as \$1,095,894 for fiscal years 1994-95 and 1995-96, the Chancellor's Office delayed following up with the district until it resolved Delta's audit issues in January 1997.

On the other hand, we reviewed the current practices of the California Department of Corrections (CDC) and the California Department of Youth Authority (Youth Authority). In our May 1996 report, we found these agencies received \$853,000 for invalid agreements with Delta. We determined that these two state agencies no longer obtain goods and services in return for entering into training agreements. In fact, neither the CDC nor the Youth Authority currently have training agreements with any community college district.

Background

The Board of Governors (board) of the California Community Colleges was established to provide statewide direction, coordination, and leadership to the public community college segment of California higher education. The board seeks to ensure the most prudent use of public funds and to improve district and campus programs through informational and technical services. The Legislature appropriates funds to the board for support of the Chancellor's Office which allocates general apportionment and other state funds to the various districts.

General apportionment funds supplement local resources in financing the general education programs for the 106 community colleges organized within 71 districts. Each year the Chancellor's Office apportions state aid to the 71 districts in accordance with the Education Code and Title 5 of the California Code of Regulations. The Chancellor's Office determines the amount of general apportionment funds to allocate to each district based primarily on the number of full-time equivalent students (FTES) the districts report.

FTES is a workload measure representing 525 class hours of student instruction or activity in credit or noncredit courses. Generally, one FTES represents a student who attends community college courses three hours per day for one academic year. The Chancellor's Office calculates general apportionment funding based on a predetermined maximum number of FTES for each district. FTES in excess of this cap are not funded; however, if supplemental state funds later become available, the Chancellor's Office allocates the supplemental funds based on the district's unfunded FTES.

In May 1996, the bureau issued an audit report titled "*California Community Colleges: The State Paid Millions of Dollars to Community Colleges for Questionable Training Agreements.*" The report concluded that some districts inappropriately received millions of dollars in additional state support by entering into independent service contracts (training agreements) with state, local, and private entities for which the entities also received benefits at the expense of the State. The public and private entities provided the instruction and the facilities while the districts furnished administrative support services such as registration, attendance record keeping, grade reporting, and conferring college academic credit for the courses.

In return for these services, the districts claimed general apportionment funding equivalent to funding for courses using their own instructors. The districts then compensated the public and private entities for the training agreements with cash payments or goods and services. For example, Delta generated approximately \$1.9 million of general apportionment funding in fiscal year 1994-95 by providing primarily administrative services to the CDC and another \$127,000 for providing similar services to the Youth Authority. Delta received this funding even though the CDC and the Youth Authority furnished all the instructional staff and training facilities. As a result, the CDC and Youth Authority earned a combined \$853,000 in fiscal year 1994-95 for instructional courses they were already providing to their employees.

We estimated that 28 districts used such training agreements in fiscal year 1994-95 to obtain more than \$11.4 million that they shared with other state and local entities. The four districts we visited during the 1996 audit generated approximately \$3.9 million from such agreements. The state, local, and private entities contracting with the four districts earned revenues totaling more than \$2.6 million for training programs that, in most cases, they already provided to their own employees. The four districts generated this additional revenue through the State's system for claiming FTES entitlements.

Because of the significance of the findings and the recommendations in our May 1996 report, we determined a follow-up audit was warranted. Recommendations from our May 1996 report are included in the Appendix.

Scope and Methodology

This current audit examined the actions the Chancellor's Office has taken to implement the recommendations made in our report issued in May 1996. In addition, we determined whether the state agencies previously using training agreements to generate additional revenue have ceased such practices. In general, to determine the Chancellor's Office's and state agencies' responsiveness to the recommendations, we reviewed their 60-day, 6-month, and 1-year responses to our May 1996 report. In addition, we interviewed management and other key personnel at the Chancellor's Office and at Delta to better understand the corrective actions they had taken.

We also intended to visit those districts for which the Chancellor's Office had completed its review and recalculation of ineligible FTES and determined the extent of any district liability to the State; however, when we reviewed the actions taken by the Chancellor's Office since our May 1996 report, we discovered that it had only recalculated fiscal year 1994-95 and 1995-96 FTES apportionments for Delta. Therefore, we could only evaluate the action taken by the Chancellor's Office, Delta, and the associated state agencies to implement our recommendations.

For the remaining districts cited in our May 1996 report, we determined the status of efforts the Chancellor's Office had taken to recalculate and recover apportionment funds that those districts inappropriately received. Because the new legislation passed in response to our original report has just recently been incorporated into Section 84752 of the Education Code, we

believed it was still too early to assess its effectiveness in controlling the districts' use of training agreements to obtain additional state funding for providing relatively minor services.

After we issued our May 1996 audit report, the Chancellor's Office requested that Delta review its apportionment claims for fiscal years 1994-95 and 1995-96 and amend any affected by the findings in our audit. To validate Delta's calculation of state liability for revenue generated from courses taught at the CDC and the Youth Authority training centers, we visited Delta and assessed its calculation of the liability by reviewing training schedules, instructor contracts, and recalculating the number of ineligible FTES claims.

The CDC trains its correctional officer cadets at its training center in Galt. Every fiscal year, the facility conducts seven officer academy classes, each lasting approximately six weeks. For fiscal years 1994-95 and 1995-96, we selected 2 of the 14 CDC academy sessions conducted and independently recalculated any liability due to the State for funds the district should not have received. We then compared our calculations with the liability previously determined by Delta and the Chancellor's Office. We did not test any Youth Authority academies for fiscal year 1994-95 because the Chancellor's Office had previously determined that all were ineligible and had already offset them with Delta's unfunded FTES for that year. However, the small size and lack of complexity of the Youth Authority's academies allowed us to test all four of the fiscal year 1995-96 academy sessions for which Delta claimed FTES apportionments.

Finally, we reviewed current practices at Delta, the CDC, and the Youth Authority to determine if they were still using instructional agreements to generate additional revenue for the district and whether these agencies were using the agreements to obtain goods or services outside normal budgeting practices.

***The Chancellor's Office Has Provided
Additional Guidelines for Completing
State Compliance Audits***

Subsequent to our May 1996 report, the Chancellor's Office issued the revised "California Community Colleges Contracted District Audit Manual" (district audit manual), which it has provided to all community colleges and district CPAs since fiscal year 1990-91. The revision included additional guidance for complying with the rules and regulations for claiming general apportionment funding using the FTES generated through training agreements with state and local entities. The

revised district audit manual also includes criteria for auditing training agreements in the following cases:

- Instruction is conducted at the contractor's facility.
- The contractor's employees instruct the classes.
- The district pays the contractor on a per-unit basis for use of the facilities or reimburses the contractor for its employees' salaries.
- The contractor pays the students' enrollment fees.
- The district claims the FTES entitlements generated from these classes for general apportionment funding.

In addition to the revised guidelines for annual compliance audits, the Chancellor's Office provided a "Contract Guide for Instructional Service Agreements Between College Districts and Public Agencies" (contract guide) to the districts. The contract guide paraphrases all the necessary Title 5 provisions that districts should include in their contracts with public agencies to properly claim FTES and receive general apportionment funding.

The contract guide and the district audit manual cover all the issues affecting FTES eligibility that we addressed in our May 1996 report. For example, they emphasize that students must be under the immediate supervision of a district employee who possesses valid credentials or meets the minimum district qualifications for instructors. In addition, the district audit manual requires the district's auditor to report any instances where the college or district lacks supporting documentation of its compliance with the appropriate regulations. They must demonstrate the following:

- The instruction is conducted by an employee of the district.
- The educational program is under the control and direction of the college or district.
- The classes are open to the public.
- The instructors meet certain minimum qualifications.
- The course is either part of a program approved by the Chancellor's Office, or the college has received delegated authority to separately approve such courses.

- The auditor is also required to report the number of FTES generated from those activities that do not comply with the Title 5 regulations.

The Chancellor's Office Has Only Partially Completed Its Review of the Districts Included in Our May 1996 Report

More than a year after our previous audit, the Chancellor's Office has not entirely completed its review of the districts we identified as having claimed apportionment funds for which they were not entitled. During the audit we conducted in 1996, we examined the FTES instructional hours for fiscal years 1994-95 and 1995-96 that San Bernardino, Monterey Peninsula, Allan Hancock, and Delta community college districts reported to the Chancellor's Office. We determined that some of the FTES for three of the four districts did not meet the eligibility requirements for apportionment funding because the districts had not fully complied with Title 5 regulations. As a result, we recommended that the Chancellor's Office calculate and recover from those districts any ineligible general apportionment funds. As shown in Table 1 below, the three districts generated nearly \$6.7 million using FTES derived through their agreements with other state and local entities.

Table 1
Questionable FTES and Funds Generated by Three Community College Districts^a

| Community College Districts and Contractors | Fiscal Year 1994-95 | | Fiscal Year 1995-96 ^b | | Total | |
|--|--------------------------|-----------------------------------|----------------------------------|-----------------------------------|--------------------------|-----------------------------------|
| | Number of FTES Generated | Estimate of State Funds Generated | Number of FTES Generated | Estimate of State Funds Generated | Number of FTES Generated | Estimate of State Funds Generated |
| San Joaquin Delta Community College District: | | | | | | |
| California Department of Corrections | 1,356.13 | \$1,859,322 | 1,405.02 | \$2,137,457 | 2,761.15 | \$3,996,779 |
| California Department of the Youth Authority | 92.61 | 126,973 | 102.02 | 155,203 | 194.63 | 282,176 |
| District Subtotal | 1,448.74 | 1,986,295 | 1,507.04 | 2,292,660 | 2,955.78 | 4,278,955 |
| San Bernardino Community College District: | | | | | | |
| San Bernardino County Sheriff's Department | 435.57 | 418,648 | 348.28 | 414,119 | 783.85 | 832,767 |
| District Subtotal | 435.57 | 418,648 | 348.28 | 414,119 | 783.85 | 832,767 |
| Monterey Peninsula Community College District: | | | | | | |
| California Department of Justice | 217.22 | 246,310 | 133.43 | 198,365 | 350.65 | 444,675 |
| San Francisco Police Department | 360.78 | 409,096 | 492.40 | 732,031 | 853.18 | 1,141,127 |
| District Subtotal | 578.00 | 655,406 | 625.83 | 930,396 | 1,203.83 | 1,585,802 |
| Total | 2,462.31 | \$3,060,349 | 2,481.15 | \$3,637,175 | 4,943.46 | \$6,697,524 |

^a The above information was extracted from Table 1, page 7, of our May 1996 report "California Community Colleges: The State Paid Millions of Dollars to Community Colleges for Questionable Training Agreements."

^b The number of fiscal year 1995-96 FTES is annualized as reported to the Chancellor's Office for the first period state apportionment funding.

The Chancellor's Office has completed its evaluation and reduced Delta's apportionment for fiscal year 1995-96 by \$444,354. In addition, the Chancellor's Office will offset the \$19,035 lottery overpayment for fiscal year 1995-96 against subsequent lottery entitlements. The Chancellor's Office has also completed its review of San Bernardino and determined that no liability exists. However, the Chancellor's Office has not completed its review of Monterey Peninsula.

***The Chancellor's Office Should Recover
Approximately \$48,000 More From Delta***

In response to our prior audit report, the Chancellor's Office and Delta together determined the extent of Delta's liability to the State. Delta acknowledged that, as we identified in our May 1996 report, some instructors did not meet minimum qualifications, as required by Title 5, Section 58050(a)(8), and some instructors did not have signed contracts with the district within a reasonable time of providing instructional services, as required by Sections 58058(a)(2) and (b). Consequently, Delta returned \$25,715 in lottery revenue to the State for fiscal year 1994-95 and the Chancellor's Office offset \$444,354 of apportionment funds and plans to offset \$19,035 of lottery revenue against subsequent lottery entitlements.

We examined the supporting documentation Delta used to determine its repayment to the State for training agreements with the CDC and the Youth Authority. Our intent was to verify the accuracy of the repayment amount. What we found, however, was that additional items increased Delta's liability to the State by \$48,295, as shown in Table 2.

***The Chancellor's Office Should Recover
an Additional \$30,000 From Delta
for Its Agreements With CDC***

Based on our review of the documents supporting Delta's calculation of its liability, the Chancellor's Office should recover an additional \$30,167 from Delta under its original training agreements with the CDC. We reviewed the supporting documentation from Delta and the CDC training center for 2 of the 14 academy sessions held during fiscal years 1994-95 and 1995-96. For one of the seven academies in fiscal year 1994-95, we identified 571 ineligible hours of instruction while Delta only identified 510 such hours. The difference of 61 hours equated to 4.44 FTES and an overpayment of \$12,463

for fiscal year 1994-95. However, because it had enough unfunded FTES for that fiscal year to offset the entire amount, Delta is not required to return the \$12,463 to the State.

For the academy session we selected from fiscal year 1995-96, we identified 1,183 ineligible hours of instruction while Delta identified 881, a difference of 302 hours. Delta did not have any remaining unfunded FTES for fiscal year 1995-96; therefore, the entire amount received for these FTES is a liability to the State. These additional hours equated to 21.28 FTES, for which the district received \$61,568.79. Table 2 includes a calculation of the amount still owed.

Table 2

***A Comparison of Delta's
Ineligible Hours of Instruction***

| Sessions Reviewed | Variance Between Delta's and the Bureau's Count of Ineligible Instructor Hours | | Dollars per FTES | Total Dollars | Offset | Additional Liability |
|---|--|---------|---------------------|------------------|--------------------------|-------------------------|
| | In Hours | In FTES | | | | |
| CDC Academy Class V-94 (Fiscal Year 1994-95) | 61.00 | 4.44 | \$2,807.09 | \$12,463.48 | \$(12,463.48) | \$ 0.00 ^a |
| CDC Academy Class VII-95 (Fiscal Year 1995-96) | 302.00 | 21.28 | 2,893.27 | 61,568.79 | (31,401.62) ^b | 30,167.17 |
| Youth Authority (Fiscal Year 1995-96) | 86.25 | 5.41 | 2,893.27 | 15,652.59 | | 15,652.59 |
| <u>State Lottery:</u> | | | | | | |
| Fiscal Year 1994-95 | | 4.44 | 116.38 | 516.73 | | 516.73 |
| Fiscal Year 1995-96 | | 26.69 | 123.65 | 3,300.22 | (1,341.60) ^b | 1,958.62 |
| Net Difference: | | | | | | \$48,295.11 |

^a After the Chancellor's Office calculated Delta's liability for fiscal year 1994-95, Delta still had \$14,611 of unfunded FTES remaining. These remaining unfunded FTES offset the \$12,463.48 additional liability identified for 1994-95; therefore, no additional liability from Academy Class V-94 is included in the calculation of Delta's total liability.

^b Delta incorrectly reimbursed \$31,401.62 to the State as part of its settlement for audit findings from our May 1996 audit. This offset to Academy Class VII-95, and a corresponding offset to fiscal year 1995-96 lottery revenue, compensates Delta for its erroneous reimbursement to the State.

Four instructors at the CDC training center taught 205 of the 302 hours we determined as ineligible for state funds. We concluded that the hours did not qualify for state funds because the instructors were employees of the correctional training center but had not entered into instructional contracts with Delta. Delta and the Chancellor's Office agreed that since the instructors had contracts in the preceding fiscal year, Delta had demonstrated its intent to have the proper contracts for fiscal year 1995-96. The Chancellor's Office further argued that by

contracting with the instructors in the preceding year, Delta had established and demonstrated the right to direct and control the instructors.

We disagree with the above rationale and have classified these instructors' hours as ineligible for claiming FTES. To be eligible for FTES apportionment funds, Sections 58051(a)(1) and 58056(a) of Title 5 require that students be under the immediate supervision and control of an "academic employee" of the district. In addition, Section 58058(b) requires that the district enter into a written agreement with each instructor provided by the public or private agency specifying that the district has the primary right to control and direct the instructor's activities. In this manner, an individual may continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

Although the four instructors taught classes during the fall semester of 1995, the earliest any of these instructors signed a contract with Delta was February 24, 1996. Thus, they were not employees of the district until nine weeks after the end of the academy session for which the hours were claimed.

Although we determined that Delta owes the State an additional \$61,569 for general apportionment funds from ineligible FTES, this additional liability is partially offset by the \$31,402 that Delta incorrectly reimbursed the State. Specifically, for fiscal year 1995-96, Delta determined one CDC instructor did not have a valid contract, although his contract was properly signed and met Title 5 requirements. We therefore reduced the \$61,569 liability associated with CDC by \$31,402. As a result, Delta still owes the State \$30,167 for apportionment funds previously received.

***Delta Still Owes the State Over \$15,000
of Funds It Received Through Its
Agreement With the Youth Authority***

Along with the additional liability we identified for the training agreement Delta had with the CDC, we determined that a portion of the FTES Delta generated through its training agreement with the Youth Authority for fiscal year 1995-96 did not meet the minimum requirements of Title 5 regulations. As shown in Table 2 on page 9, the additional ineligible hours we identified generated 5.41 FTES, for which Delta received \$15,653.

Delta underestimated the number of ineligible hours of instruction at the Youth Authority's training center because it erroneously assumed the training center's executive officers attended the instructional classes along with the assigned staff instructor. Based on that assumption, Delta used those executive officers who had valid contracts with the district to qualify the instructional hours for the eight staff instructors who did not have properly signed contracts with Delta during fiscal year 1995-96. As previously mentioned, for instructional hours to qualify for apportionment funding, the students must be under the immediate supervision and control of a district employee.

Contrary to Delta's assumption, the executive officers only supervised guest instructors to ensure that the course curriculum was completely and properly presented. Since guest instructors did not have contracts with Delta, their supervision by a contracted executive officer qualified their hours of instruction for apportionment funding. However, because executive officers did not attend staff instructor classes, the hours taught by staff instructors lacking valid contracts did not qualify for general apportionment funding; therefore, Delta owes the State \$15,653 for FTES generated by those staff instructors.

***Delta Owes the State \$2,475
for Lottery Funds It Was Not
Eligible To Receive***

The allocation of lottery revenue to the community college districts is based on the district's total FTES for each fiscal year. Any change in the number of FTES a district claims for a fiscal year will affect the district's entitlement to lottery revenue. Because of the direct relationship between total FTES and the lottery entitlement, Delta also reimbursed the State for overpayments of lottery revenue it received for fiscal year 1994-95. However, we determined that Delta owes the State an additional \$2,475 for lottery revenue it received in fiscal years 1994-95 and 1995-96 based on the FTES we identified as not meeting minimum conditions necessary to qualify for state funds.

***San Bernardino's Liability to the State
Could Be as Much as \$700,000***

During our review of records maintained by the Chancellor's Office, we determined that San Bernardino's liability to the State could be as much as \$704,189 for general apportionment funds it received in fiscal year 1995-96 and state lottery

revenue it received in fiscal years 1994-95 and 1995-96. In our May 1996 report, we identified 435.57 questionable FTES for which San Bernardino received general apportionment funds in fiscal year 1994-95; however, the district had 514.87 unfunded FTES which offset the ineligible FTES we identified. Therefore, the district did not have a liability for fiscal year 1994-95. In contrast, for fiscal year 1995-96, we identified 348.28 questionable FTES and San Bernardino had only 142.23 unfunded FTES. Even after offsetting a portion of the 348.28 FTES we questioned, San Bernardino's potential liability could reach \$610,433 for the remaining FTES we questioned if it cannot prove it met all Title 5 requirements. Because the district's lottery revenue is based only on eligible FTES, San Bernardino could owe the State as much as \$93,756 of the lottery revenue it received during fiscal years 1994-95 and 1995-96.

San Bernardino believes that it satisfied the Title 5 regulatory requirements that an authorized employee be available to provide immediate instructional supervision and control by using a two-tiered approach. First, a district employee, the head of the police science department, was at the San Bernardino County Sheriff's training center three to five days per week. In addition, this employee was available by pager 24 hours a day, 7 days a week and was generally within a 15-minute commute of the training center. Second, on those occasions when the district employee was not on site, sheriff's department staff serving as on-site supervisors observed the classes.

In discussions between the Chancellor's Office and San Bernardino following our May 1996 audit report, the Chancellor's Office agreed with the district's claim that it clearly exercised control and provided direct supervision for its program with the Sheriff's Department. The Chancellor's Office has determined that, while the district did not have written agreements with the supervisors, the district has subsequently ensured that it complied with the Title 5 requirements for claiming FTES. The Chancellor's Office therefore determined that San Bernardino would have no liability for fiscal year 1995-96.

Nevertheless, we, concluded that the district's approach was deficient. Specifically, the district had not entered into individual contracts with each of the designated on-site supervisors, as required by Title 5, Section 58058(b). Because San Bernardino failed to enter into written contracts with each of the supervisors, they did not qualify as "employees of the district." Further, since the supervisors were responsible for the immediate supervision of the students in the absence of

the district employee, San Bernardino did not comply with the regulation that requires students in the courses to be under the immediate supervision of a district employee.

The CPA firm that conducted San Bernardino's state compliance audit for fiscal year 1995-96 confirmed this finding. It concluded that "the district did not enter into individual contracts with each of the designated on-site supervisors at the San Bernardino Sheriff's Academy [training center]. As a result, the students in these courses were not deemed to be under the immediate supervision of a district employee at all times."

***The Chancellor's Office
Has Not Determined
Monterey Peninsula's Liability***

Although Monterey Peninsula's liability to the State could be as high as \$1,095,894, the Chancellor's Office has not recovered any funds from the district. In June 1996, the Chancellor's Office actively requested additional information from Monterey Peninsula regarding the findings we reported in May 1996. However, the Chancellor's Office did not meet with representatives of the district until September 1996. The Chancellor's Office actively followed up with the district only after Delta's audit issues were resolved in January 1997. The failure of the Chancellor's Office to pursue resolution of Monterey Peninsula's outstanding audit issues allowed the district to delay submitting supporting documentation for fiscal years 1994-95 and 1995-96 FTES apportionment claims until June 1997.

Monterey Peninsula generated 578 FTES for fiscal year 1994-95 and 625.83 FTES for fiscal year 1995-96 through training agreements with the San Francisco Police Department (SFPD) and the Department of Justice (DOJ); however, Monterey Peninsula did not meet certain minimum conditions to qualify the resulting FTES for general apportionment funding. Specifically, Monterey Peninsula had not entered into contracts with any of the instructors who taught training courses for the SFPD and the DOJ. Further, Monterey Peninsula did not ensure that the courses conducted through its agreement with the DOJ were open to the public, as required by the regulations.

In our May 1996 audit report, we questioned Monterey Peninsula's receipt of \$655,406 in apportionment funding for fiscal year 1994-95 and \$930,396 in apportionment funding for fiscal year 1995-96 through its agreements with the SFPD and the DOJ. Despite the discrepancies we identified, Title 5 provisions related to "growth and decline" and "decline

restoration" exempt Monterey Peninsula from reimbursing the entire amount to the State. Specifically, Title 5, Section 58777, restores reductions in general apportionment funding due to declines in FTES for credit instructional services, student services, noncredit activities, and corresponding institutional support for three years following the initial year of the decline, if there is a subsequent increase in FTES. Based on the conclusions from our May 1996 audit, we believe that the number of ineligible FTES will result in negative growth for the district. If Monterey Peninsula's revised numbers show negative growth for fiscal year 1995-96 while the number of FTES claimed for fiscal year 1996-97 increases to its maximum for general apportionment funding, the Chancellor's Office can restore some of the apportionment funding that Monterey Peninsula would have otherwise been obligated to return to the State. Notwithstanding consideration of the Title 5 provisions for negative growth, Monterey Peninsula's liability for fiscal years 1994-95 and 1995-96 could still reach \$951,242.

Monterey Peninsula could also incur an additional liability to the state lottery of \$144,652 if it is unable to provide evidence to reduce the number of ineligible FTES for fiscal years 1994-95 and 1995-96. As mentioned earlier, any number of FTES determined ineligible for general apportionment affects the district's total lottery revenue and requires an adjustment. Unfunded FTES have no bearing on the district's lottery allocation. Therefore, the Chancellor's Office should recover the excess lottery revenue received by Monterey Peninsula for both fiscal years 1994-95 and 1995-96.

***The Chancellor's Office Has Not Reviewed
Districts Identified by CPAs as Not Qualifying
for General Apportionment Funds***

In response to one of our recommendations in the May 1996 report, the Chancellor's Office provided a revised version of its district audit manual to all the community colleges throughout the State. The revised district audit manual required independent CPAs who audit community college districts to determine compliance with the minimum requirements for claiming general apportionment funding for FTES generated through instructional training agreements. The Chancellor's Office screened each of the CPA reports for fiscal year 1995-96 and found that three community college districts—Lassen, Victor Valley, and Yuba Community College District (Yuba)—did not meet the minimum conditions necessary to qualify for general apportionment funding.

While the CPA reports for both Lassen and Victor Valley found they failed to comply with Title 5 requirements because they lacked instructor contracts, the CPAs did not estimate the districts' potential liability to the State. Similarly, Yuba violated Title 5 requirements by claiming and receiving general apportionment funding for classes not included in the college catalog. However, the CPAs did not estimate the monetary effect of this problem or furnish sufficient data in their reports for us to calculate the monetary effect of these problems for any of the above districts. The Chancellor's Office has not reviewed any of these cases or determined whether these districts have utilized ineligible instructional hours to claim general apportionment or lottery funds.

***CDC and Youth Authority No Longer
Use Training Agreements To Generate
Additional Revenue From the State***

We reviewed the current relationships between state agencies and community college districts to determine if state agencies had ceased the practices we criticized in our May 1996 audit. Our review of the current activities of the CDC and the Youth Authority confirms that these state agencies have discontinued all such practices. Neither the CDC nor the Youth Authority has a current training agreement with Delta or any other community college district. In addition, Delta does not have any current FTES-generating training agreements with these or any other state agency.

Conclusion

The Chancellor's Office has only partially implemented the recommendations made in our May 1996 report titled "California Community Colleges: The State Paid Millions of Dollars to Community Colleges for Questionable Training Agreements." Specifically, the Chancellor's Office has only reviewed and reclaimed general apportionment funds from Delta, one of the three community college districts identified in our report as not meeting minimum conditions necessary to qualify for the funds. We determined that the Chancellor's Office should have recovered more funds from Delta.

In addition, even though Monterey Peninsula may owe the State as much as \$1,095,894, the Chancellor's Office did not meet with representatives of the district until September 1996 or actively follow up until after Delta's audit issues were resolved

in January 1997. This allowed the district to delay providing documentation supporting their fiscal years 1994-95 and 1995-96 apportionment claims until June 1997.

Similarly, San Bernardino failed to comply with the Title 5 regulation requirements and its potential liability to the State, for fiscal years 1994-95 and 1995-96, could be as high as \$704,189. Nonetheless, the Chancellor's Office has accepted San Bernardino's explanation that the district complied with the intent of the regulations.

Finally, the Chancellor's Office revised the district audit manual that independent CPAs use to audit each of the districts throughout the State; however, the Chancellor's Office has not reviewed the three districts the CPAs reported as not meeting the minimum requirements for claiming general apportionment funds for instructional training agreements.

Recommendations

The Chancellor's Office should take the following actions:

- Complete its implementation of the original audit recommendations from our report, *"California Community Colleges: The State Paid Millions of Dollars to Community Colleges for Questionable Training Agreements."*
- Recalculate and recover the additional apportionment funds that San Joaquin Delta Community College District received for instructional hours for failing to meet the minimum Title 5 requirements. In addition, the Chancellor's Office should consider reviewing all other CDC training academy sessions for fiscal years 1994-95 and 1995-96 not examined during this audit.
- Recalculate and recover apportionment funds received by San Bernardino Community College District for instructional hours that did not meet the minimum Title 5 requirements.
- Complete its review of Monterey Peninsula Community College District and then calculate and recover any ineligible apportionment funds the district received.

- Continue to review CPA reports to identify districts that may have inappropriately received apportionment funding. The Chancellor's Office should then determine the correct amount of apportionment funding for those districts and should recover any funds that the districts were not entitled to receive.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Staff: Elaine M. Howle, CPA, Audit Principal
Arthur Monroe, CPA

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Appendix

Recommendations From Prior Audit Report— “California Community Colleges: The State Paid Millions of Dollars to Community Colleges for Questionable Training Agreements”

As part of our 1996 report, the Bureau of State Audits made the following recommendations to the Legislature, the Chancellor’s Office, and certain state agencies.

The Legislature should prohibit districts from generating additional state funds through instructional contracts for which the services provided by the districts are primarily administrative rather than instructional in nature.

The Chancellor’s Office should calculate and recover the amount of apportionment funds that the three districts received for which they did not meet the minimum conditions necessary to qualify the training courses for apportionment funding. In addition, the Chancellor’s Office should determine whether the four districts we visited have other agreements for which they inappropriately received apportionment funds.

The Chancellor’s Office should also determine whether the remaining districts that have had these types of agreements have met the conditions necessary to qualify for apportionment funding. After making this determination, the Chancellor’s Office should recover funds from those that have not met the requirements.

Finally, state agencies should discontinue the practice of generating additional revenues and procuring goods and services “off the books.” Rather, state agencies should ensure that they include all revenues and expenditures in their annual budget to the Department of Finance.

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Response to the report provided as text only

Chancellor's Office
California Community Colleges
1107 Ninth Street
Sacramento, CA 95814-3607
<http://www.cccco.edu>
(916) 445-8752

October 27, 1997

Kurt R. Sjoberg
California State Auditor
600 J Street, Suite 300
Sacramento, California 95814

Subject: Response to Draft Audit Report: California Community Colleges: Additional Funds Should Be Collected on Questionable Training Agreements

Dear Mr. Sjoberg:

The Chancellor's Office and the Board of Governors, California Community Colleges thank you for the opportunity to respond to the draft report "California Community Colleges: Additional Funds Should Be Collected on Questionable Training Agreements". While we may disagree with some of your findings and recommendations, we will try to respond to the issues you raise in the report. The draft report was delivered to me on October 20 without advance notification and prior to any exit conference with staff. (The Bureau's regular process calls for the issuance of the draft report after the exit conference giving the Agency five working days to respond.) The revised response date from October 24 to October 27 is appreciated since two of my key staff were on travel status through October 22. ①*

As I committed in my May 14, 1996, response to the initial audit (see attached), we will complete our review and will recover any disallowance as appropriate, based on our resolution of the Bureau's citings and recommendations. As I stated in my memo to you, we believe the central question in the audit was whether the community college districts have exercised sufficient direction and control over the instructional activities to evidence that they are clearly district programs that warrant receipt of state apportionment.

The draft report states that "...The Chancellor's Office has been slow to implement the recommendations made in our [Bureau's] May 1996 report." I concede that this office has not entirely completed its resolution of the Bureau's citings and recommendations; however, given the limited staff, staff changes (new Chancellor and Acting Vice Chancellor - Fiscal Policy coming from existing staffing without replacements) and the complexities of the issues, this office immediately developed Guidelines for Instructional Service Agreements which were shared in draft form in numerous meetings and issued formally to the field November 13, 1996. Our highest priority was to respond and provide direction to the community colleges rather than wade through the resolution process for the four districts audited and delay systemwide corrective action.

The Chancellor's Office also immediately developed an audit compliance question that was included in the revised "California Community Colleges Contracted District Audit Manual" for the audit required of every community college district to assess the extent of districts

*The California State Auditor's comments on this response begin on page 29.

conducting instructional service activities that fell within the criteria used by the Bureau in selecting the original colleges audited. While the review of these audit reports disclosed districts (3) that were in questionable compliance, we have not yet initiated further review with those districts to resolve the findings.

Lastly, this office developed Title 5 regulations in response to AB 444 requiring third party entities to certify that they are not already being fully funded for the instructional activities for which the community college is reporting student attendance hours for state general apportionment funding.

The following are the Chancellor's Office responses to the specific recommendations included in the Bureau's draft audit report:

"Recalculate and recover any additional apportionment funds that San Joaquin Delta Community College District received for instructional hours for which it did not meet the minimum Title 5 requirements."

Our next highest priority was the resolution of the San Joaquin Delta citings and recommendations which would serve as the foundation for the resolution of the Monterey Peninsula Community College District citings and recommendations. To the extent that there were errors in the numbers used in the calculation of the state apportionment and lottery dollars recovered, the Chancellor's Office will request response from San Joaquin Delta to confirm if there are additional dollars to be recovered.

"Recalculate and recover apportionment funds San Bernardino Community College District received for instructional hours that did not meet the minimum Title 5 requirements."

To our knowledge the district fully complied with the following requirements:

- o programs or courses were fully approved;
- o courses were advertised and open to the general public;
- o instructors possessed valid credentials or met the minimum qualifications required for the assignment.

2

The basis for the citings was that the individual instructors were not employees of the district consistent with Title 5 regulations. However, the district had a college employee on-site as a co-director. The staff providing instruction reported directly to the college employee. In our judgment, the district evidenced direction and control of the instructional activities. Consequently, no FTES were disallowed and the district was informed to obtain contracts with the County and sheriffs officers involved in the future.

2

"Complete its [Chancellor's Office] review of Monterey Peninsula Community College District and then calculate and recover any apportionment funds the district received for which it did not, meet the minimum Title 5 requirements to qualify for state apportionment funding."

Beyond the delay caused by first resolving the San Joaquin Delta citations and recommendations, the resolution process has been further delayed by the departure of Monterey's superintendent, the increased workload assumed by the district chief business officer as acting, then permanent, superintendent, and the appointment to the Monterey grand jury of a key staff member important to our review. The Chancellor's Office will continue to work with the district to resolve the citing.

"Continue to review CPA reports to identify districts that may have inappropriately received apportionment funding."

This will be done. However, the Bureau's draft report states that the Chancellor's review noted findings in two districts regarding instructional service agreements when there were actually four. The Chancellor's Office review identified three with findings. Mount San Antonio had no citing regarding instructional service agreements. (3)

In conclusion, the Chancellor's Office does not disagree that the districts were in technical violation of the regulations. The Issue is the penalty. As I weigh concerns about noncompliance with law, I must also weigh concerns about the continuity of programs and services. The report seems to conclude that any violation--no matter how technical, and no matter what the response of the district--must result in a monetary withholding. I disagree. The determination of a withholding is within the statutory functions and jurisdiction of the Chancellor and Board of Governors. I fully respect the right of the State Auditor to disagree with the conclusions of the Chancellor's Office; however, I believe the audit report should recognize the Chancellor's role in weighing all concerns to bring resolution to this matter. (4)

My staff and I would be happy to meet with your staff to discuss further any of these issues. Please contact Gary Cook at 327-6222, if you have any questions regarding this response.

Sincerely,

Thomas J. Nussbaum
Chancellor

Attachment

cc: Patrick Lenz
Gary Cook
Art Monroe

Chancellor's Office
California Community Colleges
1107 Ninth Street
Sacramento, CA 95814-3607
<http://www.cccco.edu>
(916) 445-8752

Attachment

May 14, 1996

Kurt R. Sjoberg
State Auditor
Bureau of State Audits
660 J Street
Sacramento, CA 95814

Dear Mr. Sjoberg:

The Chancellor's Office and the Board of Governors, California Community Colleges thank you for the opportunity to respond to the draft report of the audit 96103 conducted by your staff. From the outset, we have enjoyed the opportunity to work cooperatively with your office on this audit. Staff from my office have worked closely with your staff in the development of the initial survey form, the interpretation of the applicable regulations and the determination of the funding involved. While we may disagree with some of your findings and recommendations, we believe we will responsibly address the issues you raise in the report.

First, there is the issue of some of the districts not complying with Board of Governors regulations for claiming state support (FTES) in relation to these training agreements. We will follow-up on all violations which are documented in the final report, and will proceed with any necessary disallowance of reported full-time equivalent students (FTES) and recovery of apportionment funding after allowing the districts involved an opportunity to respond.

Second, there is the issue of your recommendation that the Legislature should prohibit community college districts from generating additional funds through instructional contracts where the services provided by districts are primarily administrative rather than instructional in nature. The central question in these audits is whether the community college districts have exercised sufficient direction and control over the instructional activities to evidence that they are clearly district programs that warrant receipt of state apportionment.

The following are the regulatory requirements to qualify for state apportionment funds:

- programs or courses must be approved;
- courses must be open to the general public;
- students must be under the immediate supervision of a district employee; and
- the district employees must possess valid credentials or meet the minimum qualifications required for the assignment.

Clearly, the requirements taken as a whole, evidence the intent that districts, to claim FTES for state apportionment purposes, must be in control of the instructional activities.

At the same time, Assembly Concurrent Resolution No. 93, Resolution Chapter 44, passed in 1992 (attached), clearly states legislative intent that community colleges offer such public safety training courses in partnership with the appropriate public safety agencies. That is because the cost of such instructional activities, due to the types of equipment and facilities needed, and expertise required are very high. Effective use of funding for both the public/private safety entities and community colleges results in most cases, when the training is being done through partnerships that best serve the students and citizens of the State of California.

Consequently, we do not concur with the recommendation that community colleges be prohibited altogether from entering into these types of agreements. When community colleges are truly in control of the instructional activities, subject to meeting specific training requirements prescribed by other agencies like the Department of Corrections, Fire Marshall, Peace Officer Standards and Training, Department of Justice, etc., contractual partnerships are viable. In many cases, the subject matter expertise may reside with another entity's employees; however, attempts to hire staff as part-time instructors have failed because these other entities' employees do not want to give up service credit with their primary employers. To accommodate this need, Title 5, Section 58058 (b), allows districts to have a written agreement with the primary employer and their employee, giving the district the right to direct and control the employee during the time of the instructional activity for which student contact hours of instruction are being counted for state apportionment purposes. With the exception of pay, districts are expected to treat these individuals in all other aspects (i.e. qualifications, supervision, control, etc.), as their employee.

Before making your recommendation to prohibit state support (FTES) for such contracts, we would urge you to consider the concept behind such funding. That is, FTES funding is an "averaging" concept, recognizing that different instructional programs have different costs. A course in nursing, science or a low enrollment course costs more per student than a large lecture course; however, the state funds the student attendance in such courses at the same rate. Consequently, your recommendation might make more sense if the State were to reimburse districts for all the costs of putting on the more expensive courses. This is not the position the state has taken. Rather, the Legislature has enacted a funding formula that does not distinguish between the cost of student workload in the various programs. The intent is that the lower cost programs will help pay for the higher cost programs.

The policy of allowing districts to enter into such training agreements and claim state support has been in place for about fifteen years. When the Board of Governors and Chancellor's Office were developing these regulations, we worked closely with the Department of Finance and other control agencies. We believe these policies have withstood the test of time and should not be undone unless the Legislature is also willing to consider how districts will be funded for their higher cost programs. Also, your office may not have been aware that the community colleges have the lowest cost per FTES of any segment of public education in California. Our courses have less funding per FTES than either K-12 education or either of the public four-year universities. Consequently, where districts are complying with Board-adopted regulations, we cannot agree with your recommendation that funding should be disallowed for such training agreements.

Clearly, the community college districts audited were sharing the cost of instructional activities with the other entities by paying (reimbursing) a dollar amount per student contact hour per their agreements. However, the practice of procuring goods and services "off the books" is certainly not a practice we believe should be continued and will so advise community college districts. Lastly, as to the recommendation that this office determine whether other districts have these types of agreements and qualify for state apportionment, we will add to our prescribed standards and procedures of audits of community college districts additional compliance testing of FTES. We will include the prescribed Title 5 requirements along with illustrative examples of evidence of control and supervision to entitle districts to claim the FTES in these types of instructional agreements for state apportionment purposes.

If you have any questions about this response, please do not hesitate to contact me at 3224005, or Gary L. Cook at 327-6222.

We appreciate the opportunity to respond to your report and look forward to working with your office and other appropriate agencies in addressing the concerns raised in the report.

Sincerely,

Thomas J. Nussbaum
Interim Chancellor

Attachment

cc: Vishwas More
Gary Cook

810-5/14/96

Assembly Concurrent Resolution No. 93

RESOLUTION CHAPTER 44

Assembly Concurrent Resolution No. 93—Relative to postsecondary education.

[Filed with Secretary of State June 19, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 93, Woodruff. Postsecondary education.

This measure would request California community colleges to offer sufficient public safety training courses to satisfy state-mandated training requirements.

WHEREAS, The State of California has mandated training requirements for public safety employees, including law enforcement, corrections, and fire and hazardous materials response personnel; and

WHEREAS, These training courses are directly related to the health and safety of the people of California; and

WHEREAS, California's community colleges are the primary institutions offering these state-mandated public safety training courses; and

WHEREAS, Most community colleges are experiencing significant student growth and severe financial problems necessitating a reduction of courses and programs; and

WHEREAS, The curtailment of public safety training courses has created hardships and barriers to meeting these state-mandated training requirements; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That California's community colleges offer sufficient public safety training courses to satisfy state-mandated training requirements, participate in regional consortiums of community colleges in order to minimize duplication of training courses, and make training programs more readily available; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor and the Board of Governors of the California Community Colleges.

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Comments

California State Auditor's Comments on the Response From the Chancellor's Office of California Community Colleges

To provide clarity and perspective, we are commenting on the Chancellor's Office of California Community Colleges' response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① Despite the Chancellor's assertion, we made numerous contacts with representatives of the Chancellor's Office during the past two months to refine and confirm information and data used for this report, including the calculations of amounts still owed by San Joaquin Delta Community College District, as well as the potential liability for both Monterey Peninsula and San Bernardino Community College districts. Furthermore, the issues on which the Chancellor's Office and the Bureau of State Audits (bureau) disagreed had been discussed at length with representatives of the Chancellor's Office prior to its receipt of our draft report. Therefore the Chancellor's Office was well aware of the issues included in the draft report. Moreover, we contacted the Chancellor's Office to schedule an exit conference during the week of October 13, 1997, but were unsuccessful due to scheduling conflicts. Consequently our exit was postponed to the latter part of the week of October 20, 1997, because staff at the Chancellor's Office were not available.
- ② Contrary to the Chancellor's statement, the San Bernardino Community College District (district) did not comply with regulations. As noted in our report at page 12, Title 5 regulations require that students be under the immediate supervision of a district employee. Because the employees of the sheriff's department did not have contracts with the district, they do not qualify as employees of the district. Furthermore, as we point out, a district employee, the co-director, was on site at the San Bernardino County Sheriff's training center only three to five days per week or by pager when not on site. Despite assigning sheriff's department staff as on-site supervisors during absences, none of these supervisors had a contract with the district and could not fulfill the requirement for an "employee of the district." Therefore, those instructional hours do not qualify for apportionment funding. Moreover, as noted

in our report, the external CPA firm hired by the district to conduct its state compliance audit also concluded that because the district did not enter into contracts with each of the designated on-site supervisors at the training center, the students were not under the immediate supervision of a district employee and thus the instructional hours do not qualify for apportionment funding.

- ③ As agreed during the exit conference between the Chancellor's Office and the bureau, this section of the report was revised.
- ④ Rules and regulations are not subject to discretionary enforcement or interpretation. In spite of the Chancellor's opinion, we find the districts cited were in violation of Title 5 regulations and therefore not entitled to the funding they inappropriately received. Selective enforcement puts districts that follow the rules at a disadvantage and rewards the violators, in this case, with additional, unearned funding.

Response to the report provided as text only

Office of the President
San Joaquin Delta College
5151 Pacific Avenue
Stockton, California 95207
(209) 954-5018

October 23, 1997

Elaine M. Howle, Audit Principal
Bureau of State Audits
660 J Street, Suite 300
Sacramento, CA 95814

Re: Draft State Audit Report

Dear Ms. Howle:

Following the exit conference at Delta College, we have carefully reviewed the draft document provided by your office on instructional agreements with the California Department of Corrections (CDC) and the California Youth Authority (CYA). While we are in agreement with most of the statements in the draft report, there is one factual correction, and several fiscal concerns.

Factual Correction

On page ten, paragraph two, it states that "Delta argued that the hours these four instructors taught should qualify for funding because the instructors had proper contracts during the previous year...."

The above statement is supposedly in reference to 1995-96 instructional agreements; however, the four instructional agreements that the college felt should qualify for funding were 1994-95 contracts for instructors who had previously signed agreements in 1993-94. These 1994-95 instructional agreements were allowed by the Chancellor's Office; however, they were disallowed by the Bureau of State Audits and are reflected in the 1994-95 adjustments. ^{①*}

Fiscal Concerns

The disallowance in 1995-96 that is referenced on page ten, paragraph two, was for four instructors who began work in mid-November 1995, but did not sign instructional agreements until February 1996. This represents a normal time frame for signature and approval; however, according to the audit assumptions, to be eligible to receive FTES, instructors are supposed to have contracts signed in the semester in which they worked. CDC presents a unique situation in that very few, if any, other courses at the college have start dates immediately before the end of a semester. It was, and remains our contention, that due to the unique constraints imposed by a class that began at the end of a semester, that the FTES for these instructors should be allowed. The 205 hours for these four instructors exceed the identified additional liability. ^②

*The California State Auditor's comments on this response begin on page 33.

The 5.41 CYA FTES for 1995-96, presents a second concern. The administrative representative for the college in 1995-96 submitted a list of CYA instructors to the Dean responsible for generating instructional agreements. These instructional agreements were approved and signed by the college and the instructors. Several years later it was determined that the list provided by our representative was inaccurate, and that there were several additional CYA instructors beyond those who originally signed instructional agreements. It is our contention that the college operated on a good faith basis relying on the administrative representative to appropriately identify and generate agreements with the instructional staff located at the CYA facility. We believe that we met the standards established by the Chancellor's Office, but that in this instance administrative error resulted in several instructors working without instructional agreements. Due to the classroom arrangements at CYA, and the number of instructors present with signed instructional agreements, we believe that the students were at all time under the immediate supervision and control of a district employee, and that therefore, the CYA FTES should be allowed. (3)

Conclusion and Recommendations

During the past two years we have willingly participated in two audit reviews by the Bureau of State Audits and one audit review by the California Chancellor's Office. We have spent considerable staff time and funding to review our records; and we have repaid \$463,389 in apportionment. Due to the fiscal concerns that we expressed above, we do not believe that additional funds should be requested from Delta College, or that the Chancellor's Office should return to Delta College to conduct further reviews. It is our contention that we have acted in good faith, and will continue to do so. We have been very thorough in the review of our past practice; we have repaid a substantial amount of funding; and, we have carefully subscribed to all new state requirements for instructional agreements. We hope you will take our concerns under consideration. (4)

Yours very truly,

L. H. Horton, Jr., Ed. D.
Superintendent/President

PNL:waf

Comments

California State Auditor's Comments on the Response From the San Joaquin Delta Community College District

To provide clarity and perspective, we are commenting on the San Joaquin Delta Community College District's (Delta) response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① Delta is incorrect in reference to the designated period. Specifically, our report found that four instructors taught academy session VII-95 during November and December 1995. These four instructors did not have contracts with Delta during that academy session. Delta incorrectly states that our concerns are with the prior year. Furthermore, Delta did not include the instructors in its calculation of the 1995-96 liability or its subsequent settlement with the Chancellor's Office and thereby the college has an outstanding liability. Finally, as stated in our report, because they did not have contracts with Delta, these instructors' hours are ineligible for claiming FTES.
- ② Delta believes that it has mitigating factors in contracting for these instructors. However, since this was the third of seven academy sessions presented under the training agreement, there is no evidence that this one is more unique than the two sessions that preceded it. Therefore, Delta should have been well aware of the contracting requirements for those instructors. The academy session selected for testing began November 13, 1995, and ended December 22, 1995, during the last week of the fall semester. The earliest any of the four instructors in question signed a contract with Delta was February 24, 1996, nine weeks after the end of that academy session and more than six weeks after the start of the spring 1996 semester.
- ③ Contrary to Delta's contention, eight Department of Youth Authority staff instructors for fiscal year 1995-96 did not have signed contracts with Delta. As noted at page 11 of our report, Delta failed to complete contracts with these eight instructors, representing one-half of all the staff instructors at the training center for fiscal year 1995-96, for whose instruction Delta claimed FTES apportionment. Furthermore, all of the contracts for these eight instructors were signed after the academy sessions were completed. Moreover, seven of the eight instructors signed the contracts after the Department of Youth Authority had notified Delta of the termination of the training

agreement between the two agencies. Finally, as stated in our report, neither these eight nor any staff instructors were accompanied by other instructors or executive officers who did have contracts with Delta. Therefore, students in classes taught by these eight staff instructors were not under the immediate supervision and control of a Delta employee, and thus the instructors' hours do not qualify for general apportionment funding.

- ④ As recommended in our report, the Chancellor's Office should recover any additional funds which Delta obtained based on ineligible FTES. Delta should not be entitled to keep funding for which they were not entitled.

cc: Members of the Legislature
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps