

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Statutes 1984, Chapter 1747; Statutes 1985,
Chapter 1274; California Code of Regulations,
Tit. 2, Div. 9, §§ 60000-60610 (Emergency
Regulations filed December 31, 1985,
Designated Effective January 1, 1986
(Register 86, No. 1) and Refiled June 30, 1986,
Designated Effective July 12, 1986
(Register 86, No. 28)) CSM 4282

Directed By Statutes 2004, Chapter 493,
Section 7, (Sen. Bill No. 1895)

Effective September 13, 2004.

Case Nos.: CSM 4282, 04-RL-4282-10

Handicapped & Disabled Students

NOTICE OF HEARING ON PROPOSED
AMENDMENT TO PARAMETERS AND
GUIDELINES (CSM 4282) AND
PROPOSED PARAMETERS AND
GUIDELINES (04-RL-4282-10)

Hearing: January 26, 2006

TO: California State Association of Mental Health Directors
California State Association of Counties (SB 90 Service)
Department of Finance
State Controller's Office
Department of Mental Health
Department of Education
Legislative Analyst
Interested Parties

**NOTICE OF HEARING ON
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES (CSM4282)
AND PROPOSED PARAMETERS AND GUIDELINES (04-RL-4282-10)**

The final staff analysis, the proposed amendment to the parameters and guidelines in Handicapped and Disabled Students (CSM 4282), and the proposed parameters and guidelines for the reconsideration of Handicapped and Disabled Students (04-RL-4282-10) are enclosed for your review.

This filing is being posted to the Commission's website:

<http://www.csm.ca.gov/reconsiderations/> and [http://www.csm.ca.gov/Hearing
Agendas/January 26, 2006/Item 10](http://www.csm.ca.gov/HearingAgendas/January%2026,%202006/Item%2010)

Commission Hearing – January 26, 2006

The Commission will hear and determine this item on January 26, 2006.

This item is proposed for the consent calendar unless any party objects. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions regarding this matter, please contact Camille Shelton, Chief Legal Counsel, at (916) 323-8215.

Dated: January 13, 2006

PAULA HIGASHI, Executive Director

ITEM 10

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES (EXHIBIT A) *Handicapped and Disabled Students (CSM 4282)*

and

PROPOSED PARAMETERS AND GUIDELINES (EXHIBIT B) *Reconsideration of Handicapped and Disabled Students (04-RL-4282-10)*

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);

Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations,¹ Title 2, Sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))

Reconsideration Directed By Statutes 2004, Chapter 493, Section 7
(Sen. Bill No. 1895)

Executive Summary

Background

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directs the Commission to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). Section 7 of the bill states the following:

Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

On May 26, 2005, the Commission adopted a Statement of Decision on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10). The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully

¹ When the test claim was originally filed, the California Code of Regulations was known as the California Administrative Code.

identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. In addition, the existing parameters and guidelines reflect prior law enacted by the Short-Doyle Act, whereby counties were entitled to ten percent (10%) reimbursement for mental health treatment services. This prior finding is not consistent with current law or the Commission's decision on reconsideration. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. The Commission's Statement of Decision on reconsideration has a period of reimbursement beginning July 1, 2004.

To accurately reflect the Commission's decision on reconsideration, staff recommends that the Commission:

- Amend the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RI-4282-10). (**Exhibit A**).
- Adopt proposed parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RI-4282-10) for costs incurred beginning July 1, 2004. (**Exhibit B**).

This recommendation authorizes reimbursement for the costs incurred to comply with the original program, without a gap in time.

Future Action

In addition to the Statements of Decision adopted by the Commission in CSM 4282 and 04-RL-4282-10, two other Statements of Decision and parameters and guidelines on the Handicapped and Disabled Students program have been adopted. They include *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). The Commission's decision in *Seriously Emotionally Disturbed Pupils* addresses the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students and has a reimbursement period beginning January 1, 1997. The Commission's decision in *Handicapped and Disabled Students II* addresses the statutory and regulatory amendments to the program and has a reimbursement period beginning July 1, 2001.

After the Commission's consideration and adoption of the parameters and guidelines in this item, staff will propose the consolidation of all the parameters and guidelines for the Handicapped and Disabled Students program, including *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), into a single document for claims filed in future years, beginning with the costs incurred in fiscal year 2006-2007.

Staff Recommendation

Staff recommends that the Commission adopt **Exhibit A**, Staff's Proposed Amendment to the Parameters and Guidelines for *Handicapped and Disabled Students* (CSM 4282),

by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-R1-4282-10).

Staff further recommends that the Commission adopt **Exhibit B**, the Proposed Parameters and Guidelines for the reconsideration of *Handicapped and Disabled Students* (CSM 04-RL-4282-10), which has a reimbursement period beginning July 1, 2004.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Chronology

- 07/30/87 *Handicapped and Disabled Students* test claim (CSM 4282) filed by County of Santa Clara
- 04/26/90 Commission adopts Statement of Decision in *Handicapped and Disabled Students* (CSM 4282)
- 08/22/91 Commission adopts Parameters and Guidelines in *Handicapped and Disabled Students* (CSM 4282); Reimbursement period begins July 1, 1986
- 08/29/96 Commission adopts amended Parameters and Guidelines in *Handicapped and Disabled Students* (CSM 4282)
- 09/13/04 Statutes 2004, chapter 493 (Sen. Bill No. 1895) becomes effective and requires the Commission to reconsider *Handicapped and Disabled Students* (CSM 4282)
- 05/26/05 Commission reconsiders *Handicapped and Disabled Students* (CSM 4282) and adopts Statement of Decision on Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10)
- 05/26/05 Commission adopts Statement of Decision in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)
- 06/23/05 County of Stanislaus submits proposed consolidated parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282; 04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05)
- 09/28/05 Pre-hearing conference conducted
- 10/07/05 County of Los Angeles files comments and draft parameters and guidelines (04-RL-4282-10)
- 12/09/05 Commission adopts parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)
- 12/16/05 Staff issues draft staff analysis, proposed parameters and guidelines, and order to set aside the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282)
- 01/03/06 Comments filed by the County of Los Angeles
- 01/05/06 Comments filed by the County of Stanislaus

Summary of the Mandate

In 1990, the Commission on State Mandates (Commission) adopted a Statement of Decision approving the *Handicapped and Disabled Students* test claim (CSM 4282) as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The *Handicapped and Disabled Students* program was

enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP). Parameters and guidelines were adopted in 1991, and amended in 1996, and have a reimbursement period beginning July 1, 1986.

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directs the Commission to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). Section 7 of the bill states the following:

Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

On May 26, 2005, the Commission adopted a Statement of Decision on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10). The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. The Commission's Statement of Decision on reconsideration has a period of reimbursement beginning July 1, 2004.

Other Related Parameters and Guidelines

In addition to the Statements of Decision adopted by the Commission in CSM 4282 and 04-RL-4282-10, two other Statements of Decision on the Handicapped and Disabled Students program have been adopted. They include *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). The Commission's decision in *Seriously Emotionally Disturbed Pupils* addresses the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students and has a reimbursement period beginning January 1, 1997. The Commission's decision in *Handicapped and Disabled Students II* addresses the statutory and regulatory amendments to the program and has a reimbursement period beginning July 1, 2001.

Staff originally proposed to present consolidated parameters and guidelines to the Commission that included all Statements of Decision addressing the Handicapped and Disabled Students program. Due to the complexity of the program, however, staff

recommends that the Commission first adopt separate parameters and guidelines for the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). Thereafter, staff will propose the consolidation of the parameters and guidelines for the Handicapped and Disabled Students program, including *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), into a single document for claims filed in future years, beginning with the costs incurred in fiscal year 2006-2007.

Discussion

EXHIBIT A, PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES (CSM 4282)

The Counties of Los Angeles and Stanislaus propose that the Commission amend the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by consolidating them with the Commission's findings on reconsideration.² Staff finds that the Counties' proposal may result in parameters and guidelines that are vague and ambiguous. The existing parameters and guidelines do not reflect the statutory language of Government Code sections 7570 et seq., or the regulations adopted by the Departments of Mental Health and Education, both of which the Commission found, on reconsideration, to impose a reimbursable state-mandated program. In addition, the existing parameters and guidelines reflect prior law enacted by the Short-Doyle Act, whereby counties were entitled to ten percent (10%) reimbursement for mental health treatment services. This prior finding is not consistent with current law or the Commission's decision on reconsideration. An amended document would also contain two separate reimbursement periods to reflect the original reimbursement period of July 1, 1986, and the reimbursement period for the Commission's decision on reconsideration of July 1, 2004. Thus, the counties' proposal is not recommended.

In the draft staff analysis for this item, staff initially proposed that the Commission set aside the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282), effective July 1, 2004. Staff further proposed that the Commission adopt new parameters and guidelines for the decision on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), with a reimbursement period beginning July 1, 2004. Under this proposal, reimbursement for the costs incurred to comply with the original program continued without a gap in time.³

In response to the draft staff analysis, the County of Stanislaus argues that setting aside the existing parameters and guidelines in CSM 4282 results in more confusion due to pending audits and a pending request filed by claimants to amend the existing parameters

² See Exhibits D, E, and I.

³ Reimbursable activities were not vacated with this proposal, but increased in the parameters and guidelines for the Commission's decision on reconsideration. Thus, there was no intention to "penalize" local governments, as asserted by the County of Stanislaus. (Exhibit I.)

and guidelines in CSM 4282. The County also argues that the Commission does not have the authority to set aside and vacate existing parameters and guidelines.⁴

Staff finds that Statutes 2004, chapter 493 (Sen. Bill No. 1895) gives the Commission the authority to amend the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) in any manner consistent with the Statement of Decision on reconsideration (04-RL-4282-10). Section 7 of the bill states the following:

“Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, *reconsider* its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, *and the parameters and guidelines* for calculating the state reimbursements for these costs.” (Emphasis added.) In this regard, the Commission concluded that the period of reimbursement for the decision on reconsideration begins on July 1, 2004.⁵

However, staff agrees that vacating or setting aside the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) beginning July 1, 2004, when there is a pending request to amend the parameters and guidelines (00-PGA-03/04) with a *potential* reimbursement period of July 1, 2001, may also cause confusion.⁶

Therefore, staff recommends that the Commission amend the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission’s decision on reconsideration, *Handicapped and Disabled Students* (04-RI-4282-10). This recommendation authorizes reimbursement for the costs incurred to comply with the original program, without a gap in time. In addition, the proposed amendment adds language summarizing the Commission’s decision on reconsideration. The amended language is noted with strikeout and underline.

EXHIBIT B, PROPOSED PARAMETERS AND GUIDELINES (04-RL-4282-10)

The parties have raised the following substantive issues:

- Whether certain activities constitute reasonable methods of complying with the mandated activities and are, therefore, reimbursable.
- Whether Statutes 2005, chapter 78 (Sen. Bill No. 68), effective July 19, 2005, should be identified as an offset for purposes of the reconsidered test claim.

⁴ Exhibit I.

⁵ Statement of Decision, Exhibit C, page 13.

⁶ In 00-PGA-03/04, the counties request that the parameters and guidelines be amended to delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services; to add an activity to provide reimbursement for room and board for in-state placement of pupils in residential facilities; and to amend the language regarding the reimbursement of indirect costs.

- Whether the county match of funds for Medi-Cal should be excluded from the Medi-Cal offset determined by the Commission to be identified and deducted from the costs claimed.

Reimbursable Activities

The Counties of Los Angeles and Stanislaus request that certain activities, not expressly mandated by the test claim legislation, that are related to the initial assessment of the pupil, the mental health services provided to the pupil, and the due process hearings be reimbursable as reasonable methods of complying with the mandated program.⁷ These activities are discussed below.

Initial Assessment of a Pupil

The Commission’s Statement of Decision includes the following reimbursable state-mandated activities relating to the initial assessment of a pupil:

2. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040).
 - Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided “specialized” counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
 - If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
 - If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent’s written informed consent for the assessment.
 - Assess the pupil within the time required by Education Code section 56344.
 - If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
 - Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship

⁷ California Code of Regulations, section 1183.1

of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.

- Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
- In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
- Review independent assessments of a pupil obtained by the parent.
- Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
- In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

Page 31 of the Statement of Decision, footnote 90, recognizes that the existing parameters and guidelines allow reimbursement for mental health assessments and include within that activity the interview with the child and the family, and collateral interviews, as necessary. These activities are not expressly required by the test claim legislation. However, the Commission has the authority when adopting parameters and guidelines to include activities that are considered “the most reasonable methods of complying with the mandate.”⁸

The County of Los Angeles, in its draft parameters and guidelines, requests reimbursement to interview the child and family, and to conduct collateral interviews as necessary.⁹ Staff agrees.

As recognized on page 30 of the Statement of Decision, federal law, through the IDEA, requires the state to *identify*, locate, and evaluate *all* children with disabilities, including children attending private schools, who are in need of special education and related services.¹⁰ The state is also required by federal law to conduct a full and individual initial evaluation to determine whether a child is a child with a qualifying disability and the educational needs of the child.¹¹ Government Code section 7572, subdivision (a), is consistent with federal law and requires that a child shall be assessed in all areas related

⁸ California Code of Regulations, title 2, section 1183.1, subdivision (a)(1)(A)(4).

⁹ Exhibit E, page 3.

¹⁰ 20 United States Code section 1412, subdivision (a)(3).

¹¹ 20 United States Code section 1414, subdivision (a).

to the suspected handicap by those qualified to make a determination of the child's need for the service. In cases where the pupil is suspected of needing mental health services, the state has delegated to the counties the activity of determining the need for service.

Therefore, staff finds that the activities of interviewing the pupil and the family, and conducting collateral interviews, when the county determines these activities are necessary to perform the mandated activity of assessing the pupil constitute reasonable methods of complying with the mandated program.

Providing Psychotherapy or Other Mental Health Services

The Commission's Statement of Decision authorizes reimbursement for providing psychotherapy or other mental health services identified in a pupil's IEP, as defined in sections 542 and 543 of the Department of Mental Health regulations. As noted in the Statement of Decision, however, the original definition of the types of services was repealed and replaced by the Departments of Mental Health and Education in 1998.¹² The Commission concluded that the new definition of psychological and other mental health services constitutes a reimbursable new program or higher level of service in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) and, in December 2005, the Commission adopted parameters and guidelines for *Handicapped and Disabled Students II*. The reimbursement period for *Handicapped and Disabled Students II* begins July 1, 2001.

Therefore, costs incurred by eligible claimants for the activity of providing psychological and other mental health services may be claimed pursuant to the parameters and guidelines in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), beginning July 1, 2001. Since the proposed parameters and guidelines for the reconsideration of the original *Handicapped and Disabled Students* program (04-RL-4282-10) has a later reimbursement period, the activity is not included in these proposed parameters and guidelines.

Participation in Due Process Hearings

The Commission's Statement of Decision contains a finding that Government Code section 7586 and section 60550 of the regulations adopted by the Departments of Mental Health and Education constitute a reimbursable state-mandated program by requiring counties to participate in due process hearings relating to issues involving mental health assessments or services. Pursuant to Government Code section 7586, resolution of all issues "shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code."¹³

As noted in the Statement of Decision, the due process hearing procedures identified in Education Code section 56501 allow the parent and the public education agency to initiate the due process hearing procedures when there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.¹⁴ The due process hearing

¹² Statement of Decision, pages 38-42.

¹³ Statement of Decision, pages 42-43.

¹⁴ See also, California Code of Regulations, title 2, section 60550.

rights include the right to a mediation conference pursuant to Education Code section 56503 at any point during the hearing process; the right to examine pupil records; and the right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Education Code section 56505.¹⁵

Education Code section 56505, subdivision (e), further affords the parties the right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities; the right to present evidence, written arguments, and oral arguments; the right to confront, cross-examine, and compel the attendance of witnesses; the right to written findings of fact and decision; the right to be informed by the other parties to the hearing of the issues in dispute; and the right to receive a copy of all documents and a list of witnesses from the opposing party. Section 60550 of the regulations further states that “[E]ach agency which is identified by the Superintendent of Public Instruction or designee as a potentially responsible party and which has been involved in a proposal or refusal to provide a service is responsible for preparing documentation and providing testimony for the hearing officer.”

The County of Los Angeles requests reimbursement for the following activities:

- Attendance and participation in formal mediation conferences.
- Attendance and participation in due process hearings conducted by the Office of Administrative Hearings.
- Preparation of witnesses and documentary evidence to be presented at hearings.

Staff agrees that the activities listed above are required by the test claim legislation and are eligible for reimbursement.

The County also requests reimbursement for the following activities the County argues are necessary to comply with the mandated program:

- County counsel fees incurred when representing county mental health agencies in dispute resolution.
- Attendance and participation in information resolution conferences.
- Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.
- Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.

¹⁵ See also, California Code of Regulations, title 2, section 60550. With regard to mediation, section 60550, subdivision (b), provides that the Superintendent of Public Instruction shall send the state and local agency involved a copy of the hearing request, the name of the assigned mediator, and the date of the mediation meeting in accordance with Education Code section 56503.

- Correspondence/responses to motions for dismissal, continuance, and other procedural issues.
- Travel associated with dispute resolution.

Staff finds that attendance and participation in informal conferences, pre-hearing conferences, and settlement conferences are part of the due process hearing procedures, and, thus, constitute activities that are reasonably necessary methods of complying with the county's mandated activity of participating in the due process hearings. Staff further finds that preparing correspondence and/or responses to motions on procedural issues are reasonably necessary methods of complying with the due process hearings. Additionally, staff finds that retaining county counsel to represent the county in these hearings, and the attendant costs associated with the retention of county counsel, are reasonably necessary to comply with the mandated activity since the Education Code expressly authorizes the parties to be represented by counsel. (Ed. Code, § 56505.)

However, the proposed parameters and guidelines do not include a separate activity for travel costs since these costs can be claimed under the direct costs of section V of the proposed parameters and guidelines.

Finally, the Counties of Los Angeles and Stanislaus request reimbursement for the cost of services provided under the program to a student as a result of due process hearings and litigation, and for the payment of attorneys' fees. The County of Los Angeles proposes the following language:

- Attorneys fees and costs when parents prevail in due process hearings and negotiated settlements in treatment related litigation (including administrative proceedings) over such issues as eligibility, assessment, provision of services, placement, and reimbursement.¹⁶

The County of Stanislaus asserts the following:

One of the issues which occurs in the due process hearings, and attendant mediations and negotiations, is the provision of services to the child. Often times, if the parents disagree with the IEP, they will enroll the child in services at their own cost, and seek to recoup same through the due process hearing and settlement procedure...[I]t is reimbursement for costs paid to the parents because of the requirements that counties provide mental health treatment, rather than LEA's.¹⁷

Staff finds that paying for psychological and other mental health treatment services mandated by the test claim legislation, and the out-of-home residential care of a seriously emotionally disturbed pupil, that are required to be provided to a pupil following due process hearing procedures initiated by a parent or guardian, are reimbursable.

However the payment of attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is *not* reimbursable. In support of the request for

¹⁶ Exhibit H.

¹⁷ Exhibit I, page 2.

attorneys' fees, the County of Los Angeles cites to section 1415 of Title 20 of the United States Code, which states that procedural safeguards notice given to parents shall include an explanation of attorneys' fees.¹⁸ Section 1415 also states that "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonably attorneys' fees as part of the costs" to the prevailing party.¹⁹ These costs, however, are not expressly mandated by federal law or the test claim legislation, but are incurred as a result of a negotiated settlement agreement by the parties or by an order of a hearing officer and/or court at its discretion. Staff finds that the County's request for attorneys' fees goes beyond the scope of the Commission's Statement of Decision.

Accordingly, the proposed parameters and guidelines recommend reimbursement for the following activities:

Participate in due process hearings relating to issues involving mental health assessments or services. (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.
7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in due process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to

¹⁸ See Exhibit H, page 7.

¹⁹ See Exhibit H, page 18.

be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Statutes 2005, chapter 78 (Sen. Bill No. 68)

The Commission's Statement of Decision provides that the following activity constitutes a reimbursable state-mandated activity:

Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility. (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e).)²⁰

With respect to this activity, the Department of Finance requests that the Commission identify section 36.5 of Statutes 2005, chapter 78 (Sen. Bill No. 68) as an offset in the parameters and guidelines.²¹ Section 36.5 of Statutes 2005, chapter 78 added section 18355.5 to the Welfare and Institutions Code, effective July 19, 2005, to provide the following:

Notwithstanding any other provision of law, counties shall not claim reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs of 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code, if those costs are claimed by the county under this chapter and the county receives reimbursement for those costs through the Local Revenue Fund established pursuant to Section 17600.

Pursuant to section 18355.5, if a county claims reimbursement under Welfare and Institutions Code section 17600 for the costs of 24 hour out-of-home care for seriously

²⁰ Statement of Decision, pages 36-38, 49-50, 56.

²¹ This request was made by the Department of Finance in comments filed on the proposed parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). (Exhibit F.) In the analysis on the proposed parameters and guidelines for *Handicapped and Disabled Students II*, it was noted that the county's 60 percent share of the total residential and non-educational costs of a seriously emotionally disturbed pupil placed in an out-of-home residential facility was found eligible for reimbursement by the Commission in the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), **not** in *Handicapped and Disabled Students II*. Thus, Statutes 2005, chapter 78, which added Welfare and Institutions Code section 18355.5 was not relevant for purposes of *Handicapped and Disabled Students II*, but would be addressed in the parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10).

emotionally disturbed pupils and receives the funding, then the county cannot file a separate reimbursement claim with the State Controller's Office for those costs pursuant to the mandate reimbursement procedures in Government Code section 17561. Welfare and Institutions Code section 17600 et seq. was added as part of the realignment legislation enacted by Statutes 1991, chapter 89 to "realign" the state and county fiscal relationship regarding the funding of a number of health and welfare programs, including county mental health treatment services outlined in the Welfare and Institutions Code. In this regard, Welfare and Institutions Code section 17600 creates a Local Revenue Fund, which includes the Sales Tax Account, the Vehicle License Fee Account, the Vehicle License Collection Account, the Sales Tax Growth Account, and the Vehicle License Fee Growth Account.

The Department of Finance states that the purpose of Welfare and Institutions Code section 18355.5 is "to protect the state from having to pay twice for the costs of SED [seriously emotionally disturbed] children, once with State-Local Program Realignment (Realignment) revenues designated for this purpose and then again through the mandate claim process." The Department requests that the following offset language be included in the parameters and guidelines:

Section 36.5 of Chapter 78, Statutes 2005 (SB 68, the Social Services Trailer Bill), which was chaptered on July 19, 2005, adds WIC Section 18355.5 which prohibits counties from claiming as a state mandate, the county's 60 percent share-of-costs for residential placements of SED children, if the county receives reimbursement for those costs from State-Local Program Realignment funds (i.e., the Local Revenue Fund established pursuant to [Welfare and Institutions Code] section 17600.)

The County of Los Angeles contends that the Commission no longer has jurisdiction to consider Welfare and Institutions Code section 18355.5 since the statute was enacted after the Statement of Decision was adopted by the Commission. The County further contends that the Department's concern about double reimbursement should be covered by the boilerplate offset language found in parameters and guidelines. The boilerplate offset language provides that:

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds; and grant monies received by the state and passed through to local agencies, shall be identified and deducted from this claim.

For the reasons below, staff finds that the Commission has jurisdiction to consider Welfare and Institutions Code section 18355.5, as enacted in 2005, for purposes of the parameters and guidelines.

The Commission's Statement of Decision in this case was adopted in May 2005. On page 49 of the decision, there is a finding that counties are not required to fund the cost of any part of the services under the *Handicapped and Disabled Students* program with

money received from the Local Revenue Fund established in Welfare and Institutions Code section 17600. This finding was based on Section 38 of Statutes 2002, chapter 1167 (Assem. Bill No. 2781), which stated the following: “For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services [required by the test claim legislation] with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 [of the Welfare and Institutions Code].” The finding was also based on section 6 of Statutes 2004, chapter 493 (Sen. Bill No. 1895), which added section 5701.6 to the Welfare and Institutions Code (as part of the Bronzan-McCorquodale Act) to provide that if the money from the Local Revenue Fund is used by the counties for the *Handicapped and Disabled Students program*, counties “are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health treatment services ...” Since the provisions of Statutes 2002, chapter 1167, and Statutes 2004, chapter 493, were still in effect in May 2005, the Commission determined that *all* of the costs for psychotherapy or other mental health treatment services, including the county’s 60-percent share of the residential and non-educational costs of seriously emotionally disturbed pupils, were reimbursable and that realignment funds used by a county for this program were not required to be identified as an offset and deducted from the costs claimed.²²

Welfare and Institutions Code section 18355.5 became operative on July 19, 2005, two months after the Commission issued its Statement of Decision in this case. Welfare and Institutions Code section 18355.5 conflicts with the Commission’s finding that none of the funds received through the Local Revenue Fund in Welfare and Institutions Code section 17600 are counted to offset a county’s reimbursement claim for the counties’ 60-percent share of the residential and non-educational costs of seriously emotionally disturbed pupils placed in out-of-home residential facilities. Nevertheless, the Commission, for purposes of adopting the parameters and guidelines, has jurisdiction to consider and address this subsequent change in the law.

The California Supreme Court, in *Arakelian Farms, Inc. v. Agricultural Labor Relations Board (ALRB)*, determined that the ALRB had the jurisdiction to reopen the proceedings and reconsider a finding in light of an intervening change in the law since the ALRB’s process for considering unfair labor claims was bifurcated.²³ The ALRB divided the process for determining unfair labor claims into the liability phase and the compliance phase, and the intervening change in the law occurred between these phases.²⁴ The employer petitioned the ALRB to reopen the liability phase of the case and reconsider its order in light of the intervening change in the law. The ALRB refused to reopen the proceedings, citing the rule of *res judicata*.²⁵ *Res judicata* generally bars the re-litigation

²² See also page 53 of the Statement of Decision.

²³ *Arakelian Farms, Inc. v. Agricultural Labor Relations Board* (1989) 49 Cal.3d 1279, 1291.

²⁴ *Id.* at page 1289.

²⁵ *Id.* at page 1288.

of issues that were previously resolved in an administrative hearing by an agency acting in a judicial capacity. The policy of res judicata is to prevent repetitious litigation of issues that are finally resolved. The Supreme Court, however, held that the doctrine of res judicata did not apply since the order adopted by the ALRB during the liability stage of the proceedings contemplated further administrative action and, therefore, “the policy underlying the doctrine of res judicata – avoiding repetitious litigation – is not implicated by reopening the proceedings...”²⁶ The court held that:

Such finality is lacking, and thus the rules of res judicata do not apply, if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination, or if the administrative agency has decided that one party should have relief but the amount of damages, or the form or scope of other relief, remains to be determined.²⁷

The court’s reasoning and analysis in *Arakelian Farms* applies here. Like the ALRB, the Commission’s process for adjudicating claims for reimbursement of state-mandated local costs is bifurcated. At the first stage, the Commission determines the question of law whether the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. If the test claim is approved, the Commission continues to the second stage of the proceedings, the adoption of parameters and guidelines. Government Code section 17557 requires the Commission to adopt parameters and guidelines and determine the amount to be subvended to local agencies for reimbursement. In this case, the Commission was required by Senate Bill 1895 to reconsider the Statement of Decision *and* the parameters and guidelines for the *Handicapped and Disabled Students* program. Even though Welfare and Institutions Code section 18355.5 was enacted after the Commission’s Statement of Decision on reconsideration was adopted, the Commission still has jurisdiction, pursuant to Government Code section 17557, Senate Bill 1895, and *Arakelian Farms*, to determine the amount to be subvended by adopting parameters and guidelines with respect to this program and to consider the effects of Welfare and Institutions Code section 18355.5.

Welfare and Institutions Code section 18355.5 states that “[n]otwithstanding any other provision of law,” counties shall not claim reimbursement for 24-hour out-of-home care for seriously emotionally disturbed pupils if the county received reimbursement for those costs from the realignment funds. The Legislature is deemed to be aware of existing statutes, such as Statutes 2002, chapter 1167, and Statutes 2004, chapter 493, when it enacts a new statute, such as Welfare and Institutions Code section 18355.5.²⁸ The phrase “notwithstanding any other provision of law” has expressly been interpreted by the courts as “an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern.”²⁹ Thus, any other provision of

²⁶ *Id.* at page 1290.

²⁷ *Id.* at pages 1290-1291.

²⁸ *McLaughlin v. State Board of Education* (1999) 75 Cal.App.4th 196, 212.

²⁹ *People v. Tillman* (1999) 73 Cal.App.4th 771, 784-785.

law that is contrary or inconsistent with the statute “is subordinated to the latter provision” containing the “notwithstanding” language.³⁰

Therefore, beginning July 19, 2005, Welfare and Institutions Code section 18355.5 applies to this claim and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility pursuant to the test claim legislation *if* the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives reimbursement for those costs. Since Welfare and Institutions Code section 18355.5 limits who can claim reimbursement for this activity, the limiting language has been placed in Section IV, Reimbursable Activities, of the proposed parameters and guidelines. (See page 5 of the proposed parameters and guidelines.)

The Medi-Cal Offset

The Commission’s Statement of Decision states that, to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal governments for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed. The Commission determined that federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.

The County of Stanislaus requests that the counties’ match toward the Medi-Cal funding used for a pupil under this program should not be included as part of the offset. The County requests the following language be included in the offset provision of the parameters and guidelines:

Medi-Cal Federal Financial Participation funds obtained from the State for the purposes of this mandated program in accordance with federal law. Funding received and used by Counties from the State for the purpose of matching federal funding requirements, including Realignment funds, shall be considered local discretionary funding and therefore are not to be identified as an offset or deducted from the costs claimed.

The County supports its language with the following contentions:

The reason for the foregoing is that Medi-Cal reimburses the Federal Financial Participation (FFP) share, which is currently 50% of the allowable costs for eligible students, with counties required to pay the balance.

In many counties, including Stanislaus, County Realignment funds are used to pay the required county match. Realignment funds are state sales tax and vehicle license fees that are allocated to counties to cover their costs for providing mental health services. These funds have been found by the Commission to not constitute offsets to the required expenditures on Handicapped and Disabled Students.

³⁰ *Id.* at page 786.

Staff agrees that the counties' share of funding under the Medi-Cal program used for purposes of this mandated program should not be identified as an offset. Under federal law, payment is authorized to the states for medical assistance on behalf of families with dependent children and on behalf of the aged, blind, or disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services. (42 U.S.C. § 1396.) The amount of the federal share of costs for such medical services "shall in no case be less than 50 per centum or more than 83 per centum." (42 U.S.C. § 1396d.) According to the County, the federal share of costs for the state's Medi-Cal program is currently 50 percent.

Under state law, the state's share of funding for Medi-Cal is split with the counties. Welfare and Institutions Code section 12306 provides that "the state shall pay to each county, from the General Fund and any funds available for that purpose 65 percent of the nonfederal cost of providing services under [the Medi-Cal program], and each county shall pay 35 percent of the nonfederal cost of providing those services."

Article XIII B, section 6 was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.³¹ Thus, the counties' share of funding under the Medi-Cal program used for purposes of this program should not be identified as an offset.

In addition, with the exception of a county's reimbursement of its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility, if a county uses money from the Local Revenue Fund to fund the local share of Medi-Cal costs used for the *Handicapped and Disabled Students* program, such funds are not required to be identified as an offset and deducted from the costs claimed. The Commission's Statement of Decision concluded, pursuant to Statutes 2004, chapter 493 (Sen. Bill No. 1895), that realignment funds received from the Local Revenue Fund that are used by a county for the *Handicapped and Disabled Students* program are not required to be deducted from the costs claimed.

Thus, Section VII of the proposed parameters and guidelines identifies the offsets as follows:

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208,

³¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

item 6110-161-0890, provision 10), and the \$69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).

3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated \$120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students* program (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(E)(1) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed.
(Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

Other Issues

As indicated above, the costs incurred beginning July 1, 2004, shall be claimed under the proposed parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10). Language was included in the proposed parameters and guidelines indicating that reimbursement claims filed under the proposed parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10) should exclude reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) or *Seriously Emotionally Disturbed (SED) Pupils; Out-of-State Mental Health Services* (97-TC-05).

In addition, pursuant to a request of the State Controller's Office, language was added to the proposed parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10), which states that "estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines."³²

Further, appropriations made in the State Budget Act of 2005 were added to section VII of the parameters and guidelines, "Offsetting Savings and Reimbursements.

³² See pages 2 and 3 of the Proposed Parameters and Guidelines.

Staff Recommendation

Staff recommends that the Commission adopt **Exhibit A**, Staff's Proposed Amendment to the Parameters and Guidelines for *Handicapped and Disabled Students* (CSM 4282), by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-R1-4282-10).

Staff further recommends that the Commission adopt **Exhibit B**, the Proposed Parameters and Guidelines for the reconsideration of *Handicapped and Disabled Students* (CSM 04-RL-4282-10), which has a reimbursement period beginning July 1, 2004.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed
June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])

Handicapped and Disabled Students (04-RL-4282-10)

I. SUMMARY OF THE MANDATE

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission on State Mandates (Commission) to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). On May 26, 2005, the Commission adopted a Statement of Decision on *Handicapped and Disabled Students* (04-RL-4282-10) pursuant to Senate Bill 1895.

The Handicapped and Disabled Students program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education.

The Commission determined that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution for the activities expressly required by statute and regulation. The Commission also concluded that there is revenue and/or proceeds that must be identified as an offset and deducted from the costs claimed.

Two other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental*

Health Services (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students (CSM 4282)* shall be re-filed under these parameters and guidelines.

Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. For each eligible claimant, the following activities are eligible for reimbursement:

- A. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
 1. Renew the interagency agreement every three years, and revise if necessary.
 2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
- B. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)
 1. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided “specialized” counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
 2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
 3. If necessary, interview the pupil and family, and conduct collateral interviews.
 4. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent’s written informed consent for the assessment.
 5. Assess the pupil within the time required by Education Code section 56344.
 6. If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
 7. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil’s academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected

without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.

8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
 9. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
 10. Review independent assessments of a pupil obtained by the parent.
 11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
 12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.
- C. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subds. (a) and (b); Cal. Code Regs., tit. 2, § 60100)
1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
 2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
- D. Act as the lead case manager if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, § 60110)
1. Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:
 - a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
 - b. Complete the local mental health program payment authorization in order to initiate out of home care payments.
 - c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
 - d. Coordinate the completion of the residential placement as soon as possible.
 - e. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
 - f. Facilitate the enrollment of the pupil in the residential facility.

- g. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
 - h. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
- E. Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))
- 1. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.
- Beginning July 19, 2005, Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.*
- 2. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.
- F. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:
- 1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
 - 2. Preparation of witnesses and documentary evidence to be presented at hearings.
 - 3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
 - 4. Attendance and participation in formal mediation conferences.
 - 5. Attendance and participation in information resolution conferences.
 - 6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.
 - 7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.

8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Reimbursement to parents for attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV. of this document. Each claimed reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable

indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the State 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. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10), and the \$69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).
3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated \$120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students program* (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(E)(1) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and the California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Adopted: August 22, 1991
Amended: August 29, 1996
Proposed Amendment: January 26, 2006
j:mandates/reconsideration/2004 statutes/sb1895-handicapped/psgs/4282psgsamend

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

~~Sections 60000-60200~~
~~Title 2, California Code of Regulations, Division 9~~
~~Chapter 1747, Statutes of 1984~~
~~Chapter 1274, Statutes of 1985~~

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations, Title 2, Sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))

Handicapped and Disabled Students (CSM 4282)

I. SUMMARY OF MANDATE

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for “individuals with exceptional needs,” such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded “Individualized Education Program” (IEP) team and case management services for “individuals with exceptional needs” who are designated as “seriously emotionally disturbed,” pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIII B of the California Constitution.

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to “individuals with exceptional needs,” including those designated as “seriously emotionally disturbed,” and required in such individual’s IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIII B of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county’s Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

II. COMMISSION ON STATE MANDATES’ DECISIONS

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county’s Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state.

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission to reconsider the 1990 Statement of Decision and parameters and guidelines for this program. On May 26, 2005, the Commission adopted a Statement of Decision on reconsideration of Handicapped and Disabled Students (04-RL-4282-10). The Commission found that the 1990 Statement of Decision correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. The Commission’s Statement of Decision on reconsideration has a period of reimbursement beginning July 1, 2004.

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test

claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-R1-4282-10).

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

If the total costs for a given fiscal year do not exceed \$200¹, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

V. REIMBURSABLE COSTS

- A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:
 1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.
 2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, section 7572, subd. (d)(1)):
 - a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
 - i. interview with the child and family,
 - ii. collateral interviews, as necessary,
 - iii. review of the records,
 - iv. observation of the child at school, and
 - v. psychological testing and/or psychiatric assessment, as necessary.
 - b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(1)).
 - c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Government Code section 7572, subd. (d)(1)).

¹ Beginning September 30, 2002, claims must exceed \$1000. (Stats. 2002, ch. 1124.)

- d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 7572, subd. (d)(2)).
 - e. When the written mental health assessment report provided by the local mental health program determines that an 'individual with special needs' is 'seriously emotionally disturbed', and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.
 - f. When the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed,' claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572.5).
 - g. Required participation in due process procedures, including but not limited to due process hearings.
3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.
- B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act :
- 1. The scope of the mandate is ten (10) percent reimbursement.
 - 2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):
 - a. Individual therapy,
 - b. Collateral therapy and contacts,
 - c. Group therapy,
 - d. Day treatment, and
 - e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
 - 3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

VI. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.
 2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.
 3. Direct Administrative Costs:
 - a. One hundred (100) percent of any direct administrative costs related to IEP Participation, Assessment, and Case Management.
 - b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.
 4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
 - a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

OR if an indirect cost rate greater than ten (10) percent is being claimed,

 - b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).
- B. Cost Report Method. Under this claiming method the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with the claiming instructions. A complete copy of the annual cost report including all supporting schedules attached to the cost report as filed with DMH must also be filed with the claim forms submitted to the State Controller.
1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
 - a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for

program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

OR if an indirect cost rate greater than ten (10) percent is being claimed,

- b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

- A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.
- B. The following reimbursements for this mandate shall be deducted from the claim:
 1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and
 2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

IX. REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.