ITEM 5

PROPOSED DECISION

REQUEST FOR RECONSIDERATION OF AN ADOPTED DECISION

16-RAD-01

Handicapped and Disabled Students II, 12-0240-I-01

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years 2002-2003 and 2003-2004

AND

16-RAD-02

Handicapped and Disabled Students, 13-4282-I-06

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

County of Los Angeles, Requester

TABLE OF CONTENTS

Exhibit C

Excerpts from the administrative record of the *HDS* IRC, heard by the Commission on State Mandates (Commission) as Item 5 at the Commission hearing on July 22, 2016

Exhibit D

Excerpts from the administrative record of the *HDS II* IRC, heard by the Commission on State Mandates (Commission) as Item 6 at the Commission hearing on July 22, 2016

Exhibit E

Excerpts of Reporter's Transcript of Proceedings,

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

RECEIVED
August 26, 2016
Commission on
State Mandates

Exhibit A

MARY C. WICKHAM
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August 26, 2016

VIA E-FILING (www.csm.ca.gov)

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Los Angeles County's Request for Reconsideration – Handicapped and Disabled Students II, 12-0240-I-01

Dear Commission on State Mandates:

Pursuant to Government Code § 17559(a) and 2 CCR § 1187.15, the County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students II, 12-0240-I-01served on July 27, 2016 which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed.

Enclosed please find an explanation of the reasons for the request for reconsideration and documentations in support of the request. The adopted decision at issue is attached as Attachment A. The County requests the Commission to set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC.

If you have any questions, please do not hesitate to contact me at 213-974-1857 or via email at plee@counsel.lacounty.gov.

Very truly yours,

MARY C. WICKHAM
County Counsel

By 
PETER LEE
Deputy County Counsel
Government Services Division

PL

Enclosure

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County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

HANDICAPPED AND DISABLED STUDENTS II, 12-0240-I-01; Fiscal Years: 2002-2003 and 2003-2004 County of Los Angeles, Claimant	CASE NO. 12-0240-I-01 **LOS ANGELES COUNTY'S REQUEST FOR RECONSIDERATION (GOVERNMENT CODE § 17559(a); 2 CCR § 1187.15)** (Decision adopted July 22, 2016) (Decision served July 27, 2016)

INTRODUCTION

The County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students II, 12-0240-I-01("Adopted Decision" attached hereto as Attachment A) which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed. (Government Code §17559 (a); 2 CCR § 1187.15(b).) The Commission's *sua sponte* ruling[1] on the statute of limitation is an error of law for the following two independent reasons:

[1] Unlike the County's Handicapped and Disabled Students I 13-4282-I-06) Adopted Decision attached hereto as Attachment B (p. 11, fn. 66) which was adopted on the same date as this Adopted Decision and the facts are the virtually the same as to the statute of limitation issue, this Adopted Decision does not cite to any legal authority for the Commission to *sua sponte* raise the statute of limitation defense for the State Controller. For the limited purpose of this Request for Reconsideration, the County is assuming the Commission is also relying on the same United States Supreme Court as described in the County's Handicapped and Disabled Students I 13-4282-I-06) Adopted Decision.

(1) The statute of limitation is an affirmative defense that must be raised by the opposing party, the State Controller's Office ("State Controller"), and its failure to do so waives the defense.

(2) The Commission relies on an inapplicable United States Supreme Court case for the proposition that the Commission has an obligation to *sua sponte* raise the statute of limitation defense. This is an error of law and also violates the County's rights to due process and to fair and impartial hearing.

The County requests that the Commission set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC. This Request for Reconsideration does not waive any of the County's positions, including but not limited to, issues raised in the IRC, the documents the County filed with the Commission, testimony at hearing before the Commission, and the Adopted Decision for purposes of judicial review.

ARGUMENT

I. The State Controller's failure to raise the statute of limitation defense is a waiver, and it was an error of law for the Commission to rule that County's IRC was untimely filed.

Statute of limitation is an affirmative defense that must be raised by the opposing party or else it is waived. In this case, the State Controller never raised the statute of limitation in its November 25, 2014 response to the County's IRC and, therefore, waived any argument that it applied. (Attachment A at p. 8-9; State Controller's November 25, 2014 Response attached hereto as Attachment C); *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 396 (The statute of limitations operates in an action as an affirmative defense); *Gailing v. Rose, Klein & Marias*, (1996) 43 Cal.App.4th 1570, 1577 (The statute of limitations is not jurisdictional. It is an affirmative defense); *Getz v. Wallace* (1965) 236 Cal.App.2d 213 (In civil actions, the statute of limitations is a personal defense which is waived by failure to plead it.)

The fact that the State Controller did not raise the statute of limitation defense is consistent with the State Controller's official letter, which was relied upon by the County, informing the County that an "IRC must be filed within three years following the date we notified the County of

a claim reduction. The State Controller's Office notified the county of a claim reduction…on June 12, 2010, for the HDS II program audit…" (Attachment D.) In other incorrect reduction claims, the State Controller first raised the statute of limitation defense by claiming and explaining why the IRC was filed untimely and then the Commission decided this issue. (See Handicapped and Disabled Students (County of San Mateo), 05-4282-I-03 Decision at p. 11 attached hereto as Attachment E); Collective Bargaining (Gavilan Joint Community College District), 05-4425-I-11 Decision at p. 5 attached hereto as Attachment F.) In this case, the State Controller's failure to raise the statute of limitation constitutes a waiver.

The first time the statute of limitation issue was raised was by the Commission's staff in the May 20, 2016 Draft Proposed Decision. (Attachment G.) On June 3, 2016, the State Controller responded by stating that it "supports the Commission's conclusion and recommendation. The Commission found that the claimant's IRC was untimely filed..." (Attachment H.) The State Controller's belated "support of the Commission's conclusion" does not constitute an affirmative defense that must be asserted by the opposing party and failure to invoke it is a waiver. (*Samuels v. Mix*, (1999) *22* Cal.4th 1, 10 (a defendant must prove the facts necessary to enjoy the benefits of a statute of limitations…if defendant had never pled the statute of limitations as a defense, that defense would have been forfeited); *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91 (a defendant who failed to plead the statute of limitations could not raise it in trial brief.) For this reason alone, the Commission should reverse its ruling and allow the County's IRC to be ruled on the merit.

II. Commission's *sua sponte* decision to assert the statute of limitation defense for the State Controller is an error of law.

The Commission appears to incorrectly rely on a United State Supreme Court decision, *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132, for the proposition that the "Commission's limitations period is jurisdictional, and, as such, the Commission is obligated to review the limitations issue sua sponte." (Attachment B at p. 11 fn 66.)

The *John R. Sand* case involves the interpretation of a special federal court of claims' statute of limitation. (552 U.S. at 132-34.) It was decided under federal law and has no bearing on the Commission, which is a state-created quasi-judicial body. The Commission is subject to the California Constitution, laws, and regulations as interpreted by California state courts. And, as discussed above, California courts hold that the statute of limitations is an affirmative defense which must be pleaded or it is waived. Indeed, in *John R. Sand*, the Supreme Court first observed the unique jurisdictional nature of the federal court of claims statute, observing the law typically treats a limitations defense as an affirmative defense that the defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver. (*Id.* at 133.)

The Commission does not cite to any applicable California legal authority to establish that the Commission's regulation on the statute of limitation for filing an incorrect reduction is an absolute or fundamental jurisdictional matter, establishing an exception from the general rule that the statute of limitation is an affirmative defense. The Commission's *sua sponte* decision to raise the statute of limitation defense for the State Controller without any legal basis is an error of law and also violates County's rights to due process rights and to fair and impartial hearing.

CONCLUSION

For the forgoing reasons, the County requests the Commission to set aside the ruling that the County's IRC was filed untimely and allow the Commission to decide on the merits of the County's IRC.

DATED: August 26, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By _____
SANGKEE PETER LEE
Deputy County Counsel

Attorneys for County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

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VIA E-FILING (www.csm.ca.gov)

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Los Angeles County's Request for Reconsideration – Handicapped and Disabled Students, 13-4282-I-06

Dear Commission on State Mandates:

Pursuant to Government Code § 17559(a) and 2 CCR § 1187.15, the County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students, 13-4282-I-06 served on July 27, 2016 which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed.

Enclosed please find an explanation of the reasons for the request for reconsideration and documentations in support of the request. The adopted decision at issue is attached as Attachment A. The County requests the Commission to set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC.

If you have any questions, please do not hesitate to contact me at 213-974-1857 or via email at plee@counsel.lacounty.gov.

Very truly yours,

MARY C. WICKHAM
County Counsel

By
PETER LEE
Deputy County Counsel
Government Services Division

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Enclosure

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Attorneys for Claimant
County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

HANDICAPPED AND DISABLED STUDENTS, 13-4282-I-06; Fiscal Years: 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	CASE NO. 13-4282-I-06 **LOS ANGELES COUNTY'S REQUEST FOR RECONSIDERATION (GOVERNMENT CODE § 17559(a); 2 CCR § 1187.15)** (Decision adopted July 22, 2016) (Decision served July 27, 2016)

INTRODUCTION

The County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students, 13-4282-I-06 ("Adopted Decision" attached hereto as Attachment A) which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed. (Government Code §17559 (a); 2 CCR § 1187.15(b).) The Commission's *sua sponte* ruling is an error of law for the following two independent reasons:

(1) The statute of limitation is an affirmative defense that must be raised by the opposing party, the State Controller's Office ("State Controller"), and its failure to do so waives the defense.

(2) The Commission relies on an inapplicable United States Supreme Court case for the proposition that the Commission has an obligation to *sua sponte* raise the statute of

limitation defense. This is an error of law and also violates the County's right to due process and a right to fair and impartial hearing.

The County requests that the Commission set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC. This Request for Reconsideration does not waive any of the County's positions, including but not limited to, issues raised in the IRC, the documents the County filed with the Commission, testimony at hearing before the Commission, and the Adopted Decision for purposes of judicial review.

ARGUMENT

I. The State Controller's failure to raise the statute of limitation defense is a waiver, and it was an error of law for the Commission to rule that County's IRC was untimely filed.

Statute of limitation is an affirmative defense that must be raised by the opposing party or else it is waived. In this case, the State Controller never raised the statute of limitation in its November 25, 2014 response to the County's IRC and, therefore, waived any argument that it applied. (Attachment A at p. 11, fn. 66; see State Controller's November 25, 2014 Response attached hereto as Attachment B) *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 396 (The statute of limitations operates in an action as an affirmative defense); *Gailing v. Rose, Klein & Marias*, (1996) 43 Cal.App.4th 1570, 1577 (The statute of limitations is not jurisdictional. It is an affirmative defense); *Getz v. Wallace* (1965) 236 Cal.App.2d 213 (In civil actions, the statute of limitations is a personal defense which is waived by failure to plead it.) In the Adopted Decision, Commission itself cites to *Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309 and quotes that case - "the statute of limitation is an affirmative defense." (Attachment A at p. 11, fn 66.)

The fact that the State Controller did not raise the statute of limitation defense is consistent with the State Controller's official letter, which was relied upon by the County, informing the County that an "IRC must be filed within three years following the date we notified the County of a claim reduction. The State Controller's Office notified the County of a claim reduction on August 6, 2010, for the HDS program audit..." (Attachment C.) In other incorrect reduction claims, the State Controller first raised the statute of limitation defense by claiming and explaining

why the IRC was filed untimely and then the Commission decided this issue. (See Handicapped and Disabled Students (County of San Mateo), 05-4282-I-03 Decision at p. 11 attached hereto as Attachment D); Collective Bargaining (Gavilan Joint Community College District), 05-4425-I-11 Decision at p. 5 attached hereto as Attachment E). In this case, the State Controller's failure to raise the statute of limitation constitutes a waiver.

The first time the statute of limitation issue was raised in this case was by the Commission's staff in the May 20, 2016 Draft Proposed Decision. (Attachment F.) On June 3, 2016, the State Controller responded by stating that it "supports the Commission's decision and recommendation. The Commission found that the claimant's IRC was untimely filed..." (Attachment G.) The State Controller's belated "support of the Commission's conclusion" does not constitute an affirmative defense that must be asserted by the opposing party and failure to invoke it is a waiver. (*Samuels v. Mix*, (1999) *22* Cal.4th 1, 10 (a defendant must prove the facts necessary to enjoy the benefits of a statute of limitations…if defendant had never pled the statute of limitations as a defense, that defense would have been forfeited); *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91 (a defendant who failed to plead the statute of limitations could not raise it in trial brief.) For this reason alone, the Commission should reverse its ruling and allow the County's IRC to be ruled on the merits.

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which must be pleaded or it is waived. Indeed, in *John R. Sand*, the Supreme Court first observed the unique jurisdictional nature of the federal court of claims statute, observing the law typically treats a limitations defense as an affirmative defense that the defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver. (*Id.* at 133.)

The Commission does not cite to any applicable California legal authority to establish that the Commission's regulation on the statute of limitation for filing an incorrect reduction is an absolute or fundamental jurisdictional matter, establishing an exception from the general rule that the statute of limitation is an affirmative defense. The Commission's *sua sponte* decision to raise the statute of limitation defense for the State Controller without any legal basis is an error of law and also violates County's rights to due process rights and to fair and impartial hearing.

CONCLUSION

For the forgoing reasons, the County requests the Commission to set aside the ruling that the County's IRC was filed untimely and allow the Commission to decide on the merits of the County's IRC.

DATED: August 26, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By 

SANGKEE PETER LEE
Deputy County Counsel

Attorneys for County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit C1

May 20, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(Emergency regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **June 10, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 8, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2013\4282 (Handicapped and Disabled Students)\13-4282-I-06\Correspondence\draftPDtrans.docx

ITEM ___

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Government Code Sections 7572 and 7572.5;
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);

California Code of Regulations, Title 2, Division 9, Section 60040
(Emergency regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28][1]

Handicapped and Disabled Students

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

13-4282-I-06

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $18,180,829.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and
2. By clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Accordingly, staff recommends that the Commission deny this IRC.

Procedural History

The claimant submitted its reimbursement claim for fiscal year 2003-2004, dated January 5, 2005.[2] The claimant submitted its 2004-2005 reimbursement claim dated January 10, 2006.[3] The claimant then submitted an amended reimbursement claim for fiscal year 2005-2006, dated April 5, 2007.[4]

The Controller sent a letter to the claimant, dated August 12, 2008, confirming the scheduling of the audit.[5]

The Controller issued the Draft Audit Report dated May 19, 2010.[6] The claimant sent a letter to the Controller dated June 16, 2010, in response to the Draft Audit Report, agreeing with the findings and accepting the recommendations.[7] The claimant sent a letter to the Controller, also dated June 16, 2010, with regard to the claims and audit procedure.[8] The Controller issued the Final Audit Report dated June 30, 2010.[9]

On August 2, 2013, the claimant filed this IRC.[10] On November 25, 2014, the Controller filed late comments on the IRC.[11] On December 23, 2014, the claimant filed a request for an extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[12]

Commission staff issued the Draft Proposed Decision on May 20, 2016.[13]

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[2] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[3] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[4] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[5] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[6] Exhibit A, IRC, page 547.

[7] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[8] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[9] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[10] Exhibit A, IRC, pages 1, 3.

[11] Exhibit B, Controller's Late Comments on the IRC, page 1.

[12] Exhibit C, Claimant's Rebuttal, page 1.

[13] Exhibit D, Draft Proposed Decision.

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[14] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[15]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[16]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[17] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[18]

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[14] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[15] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[16] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[17] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[18] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated June 30, 2010. The Controller issued three documents, dated August 6, 2000, summarizing the audit findings that were stated in the Final Audit Report and setting a deadline for payment. On August 2, 2013, the claimant filed this IRC.	*Deny IRC as untimely* – The claimant must file an IRC within three years of "the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction." (Former Cal. Code Regs., title 2, § 1185(b), renumbered as § 1185(c) effective January 1, 2011.) Remittance advices and other communications which merely re-state the findings of the Final Audit Report do not re-set the running of the three-year limitations period.
Did the claimant waive the objections it is now raising?	In two letters both dated June 16, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Staff Analysis

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[19]

[19] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was re-numbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[20] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[21]

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[22]

On its face, the IRC was untimely filed.

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[23] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A-1)."[24]

The claimant's argument fails because: (1) the three documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the claimant's receipt of the Final Audit Report and did not re-commence upon claimant's receipt of the three documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant

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[20] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[21] See Code of Civil Procedure section 12a; Government Code section 6700(a)(1).

[22] Exhibit A, IRC, page 1.

[23] Exhibit A, IRC, pages 21-27.

[24] Exhibit A, IRC, page 6.

fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[25]

The Commission's regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.[26] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[27]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission.

Accordingly, the IRC should be denied as untimely filed.

B. In the Alternative, the County Waived Its Right To File An IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[28] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the audit findings.[29]

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[25] Compare Exhibit A, IRC, pages 21-27 with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[26] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[27] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[28] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[29] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v.*

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[30] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[31] Waiver is a question of fact and is always based upon intent.[32] Waiver must be established by clear and convincing evidence.[33]

On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[34] In response to the Draft Audit Report, the claimant's Auditor-Controller issued a four-page letter dated June 16, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[35] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[36]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following three pages of the four-page letter contain further statements of agreement with each of the Controller's findings and recommendations.[37]

The claimant also filed a separate two-page letter dated June 16, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC. For example, in its IRC, the claimant argues that it provided cost report data — not actual cost data — to the

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City of Santa Clarita (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

[30] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[31] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[32] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[33] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[34] Exhibit A, IRC, page 547.

[35] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[36] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[37] Exhibit A, IRC, pages 559-561.

Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[38] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[39] However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[40]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[41] However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[42] "We designed and implemented the County's accounting system to ensure accurate and timely records."[43] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[44] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[45]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[46] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[47] "We are

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[38] Exhibit A, IRC, pages 6-10.

[39] Exhibit A, IRC, page 9. (Emphasis in original.)

[40] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added.)

[41] Exhibit A, IRC, pages 11-15, 17-18.

[42] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[43] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[44] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[45] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[46] Exhibit A, IRC, pages 15-17.

[47] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[48]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision denying the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

[48] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Section 60040 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])[49] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *Handicapped and Disabled Students* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

[49] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[50] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts (which would then become subject to the program's reimbursement formula):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[51]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims, and that the IRC should be denied and dismissed with prejudice on that separate and independent basis.

[50] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[51] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

Accordingly, the Commission denies this IRC.

I. Chronology

01/05/2005 Claimant dated the reimbursement claim for fiscal year 2003-2004.[52]

01/10/2006 Claimant dated the reimbursement claim for fiscal year 2004-2005.[53]

04/05/2007 Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[54]

08/12/2008 Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[55]

05/19/2010 Controller issued the Draft Audit Report dated May 19, 2010.[56]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[57]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 with regard to the claims and audit procedure.[58]

06/30/2010 Controller issued the Final Audit Report dated June 30, 2010.[59]

08/02/2013 Claimant filed this IRC.[60]

11/25/2014 Controller filed late comments on the IRC.[61]

12/23/2014 Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

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[52] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[53] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[54] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[55] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[56] Exhibit A, IRC, page 547.

[57] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[58] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[59] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[60] Exhibit A, IRC, pages 1, 3.

[61] Exhibit B, Controller's Late Comments on the IRC, page 1.

03/26/2015 Claimant filed rebuttal comments.[62]

05/20/2016 Commission staff issued the Draft Proposed Decision.[63]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act ("EHA") with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[64] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[65] The EHA was ultimately re-named the Individuals with Disability Education Act ("IDEA") and guarantees 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.[66]

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[67] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[68] And, in 1985, the Legislature further amended chapter 26.5.[69]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[70]

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[62] Exhibit C, Claimant's Rebuttal, page 1.

[63] Exhibit D, Draft Proposed Decision.

[64] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) [current version].

[65] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) [current version].

[66] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[67] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[68] Statutes 1984, chapter 1747.

[69] Statutes 1985, chapter 1274.

[70] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines approving, *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[71] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[72] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[73]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[74] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.[75]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for

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providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[71] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[72] Former Welfare and Institutions Code sections 5600 et seq.

[73] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[74] Statutes 2004, chapter 493 (SB 1895).

[75] In May 2005, the Commission also adopted a statement of decision on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), a test claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health. The period of reimbursement for *Handicapped and Disabled Students II* (02-TC-40/ 02-TC-49) began July 1, 2001.

providing mental health services under IDEA back to school districts, effective July 1, 2011.[76] On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[77]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[78] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[79]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[80]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct

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[76] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[77] Exhibit A, IRC, page 547.

[78] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[79] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[80] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[81]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[82]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[83] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[84]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[85]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[86]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[87]
- "We are not aware of any . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[88]

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[81] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[82] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[83] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[84] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[85] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[86] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[87] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[88] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[89]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[90]

On June 30, 2010, the Controller issued the Final Audit Report.[91] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[92]

On August 2, 2013, the claimant filed this IRC with the Commission.[93]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[94]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of

[89] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[90] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[91] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[92] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[93] Exhibit A, IRC, pages 1, 3.

[94] Exhibit A, IRC, pages 10-11.

Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[95]

3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[96]

4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[97]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[98]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[99]

2. The documentation provided by the claimant did not verify the claimed costs.[100]

3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[101]

[95] Exhibit A, IRC, pages 11-12.

[96] Exhibit A, IRC, pages 12-15, 17-18.

[97] Exhibit A, IRC, pages 15-17.

[98] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with re-filing of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

[99] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[100] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[101] Exhibit B, Controller's Late Comments on the IRC, page 29.

4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[102]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[103] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[104]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[105] Under this standard, the courts have found:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection

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[102] Exhibit B, Controller's Late Comments on the IRC, page 28.

[103] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[104] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[105] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

> between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[106]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [107] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[108]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[109]

Thus, the applicable limitations period is "three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction."[110]

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[111] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[112]

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[106] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[107] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[108] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[109] Former Code of California Regulations, title 2, section 1185(b), which was re-numbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[110] Former Code of California Regulations, title 2, section 1185(b).

[111] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[112] See Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."). See also Code of

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[113]

On its face, the IRC was untimely filed.[114]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[115] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[116]

The claimant's argument fails because: (1) the three documents were not notices of claim adjustment; (2) even if they were, the limitations period commenced upon the claimant's receipt of the Final Audit Report and did not re-commence upon the claimant's receipt of the three documents.

1. The Three Documents Dated August 6, 2010, Are Not Notices Of Adjustment.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment."

Government Code section 17558.5(c) reads in relevant part, "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment."

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of

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Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[113] Exhibit A, IRC, page 1.

[114] "The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[115] Exhibit A, IRC, pages 21-27.

[116] Exhibit A, IRC, page 6.

all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[117]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[118]

None of the three documents provides the claimant with notice of any new finding. When the claimant received the Final Audit Report, the claimant learned of the dollar amounts which would not be reimbursed and learned of the dollar amounts which the Controller contended that the claimant owed the State.[119] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not

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[117] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment.").

[118] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[119] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

In a subsequent letter, the Controller appeared to state that the claimant was notified of the claim reductions on August 6, 2010, the date of the three documents. "An IRC must be filed within three years following the date that we notified the county of a claim reduction. The State Controller's Office notified the county of a claim reduction on August 6, 2010, for the HDS Program . . . ." Exhibit A, IRC, page 486 (Letter from Jim L. Spano to Robin C. Kay, dated May 7, 2013).

The Controller's statement is not outcome-determinative for several reasons. First, the Controller's letter does not explicitly state that August 6, 2010, was the first or earliest date on which claimant was informed of the reductions. Second, to the extent that the Controller was stating its legal conclusion regarding the running of the limitations period, the Commission is not bound by the Controller's interpretation of state mandate law. See, e.g., Government Code section 17552 (Commission's "sole and exclusive" jurisdiction). Third, to the extent that the Controller was making a statement of fact, the relative vagueness of the statement in the letter dated May 7, 2013 (which was sent more than two and a half years after the fact), is, on a preponderance of the evidence standard, outweighed by the evidence contained in the Final Audit Report and its cover letter.

remitted.[120] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously un-announced adjustments.[121]

For these reasons, the Commission is not persuaded that the three documents are notices of adjustment which re-set the running of the limitations period.

2. The Limitations Period to File this IRC Commenced on June 30, 2010, and Expired on July 1, 2013.

From May 8, 2007, to June 30, 2014, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[122]

Per this regulation, the claimant's IRC was untimely filed.

The regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element"

[120] Exhibit A, IRC, page 547.

[121] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Government Code section 17558.5(c) ("Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."). Whatever term may accurately be used to characterize the three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

[122] Former Code of California Regulations, title 2, section 1185(b), renumbered as 1185(c) effective January 1, 2011.

> accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[123]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][124]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that day, the claimant had been (from its perspective) harmed by a claim reduction, had received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission. The claimant could have filed its IRC one day, one month, or even three years after June 30, 2010; instead, the claimant filed its IRC three years and 32 days after — which is 32 days late.

This finding is consistent with three recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of adjustment in the record.[125] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[126] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[127]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a

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[123] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[124] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[125] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[126] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[127] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

notice to the claimant of the adjustment that includes the reason for the adjustment."[128] In the instant IRC, the limitations period therefore began to run when the claimant received the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was sent after the Controller's Final Audit Report.[129] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[130] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[131]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[132]

Consequently, the limitations period to file this instant IRC commenced on June 30, 2010, and expired on July 1, 2013.

The IRC is denied as untimely filed.

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[128] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[129] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[130] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[131] Exhibit A, IRC, page 542.

[132] All that being said, an administrative agency's adjudications need not be consistent. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

B. In the Alternative, the County Waived Its Right To File An IRC.

Even if the claimant filed its IRC on time (which is not the case), the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on this separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[133] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[134]

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[135]

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[133] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[134] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

[135] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[136] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[137] Waiver is a question of fact and is always based upon intent.[138] Waiver must be established by clear and convincing evidence.[139]

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims. On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[140] The record contains no evidence of the claimant objecting to the draft audit report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings, and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a four-page letter dated June 16, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[141] The first page of this four-page letter[142] contains the following statement:

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[136] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[137] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[138] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[139] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

[140] Exhibit A, IRC, page 547.

[141] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[142] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield) (the "four-page letter").

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[143]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance."

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[144]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[145]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

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[143] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[144] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[145] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[146]

Each of the claimant's responses to the Controller's three findings supports the Commission's conclusion that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the four-page letter to reserve rights or to clarify issues,[147] the overall intention communicated in the letter is that the claimant intended to agree with and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the four-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated June 16, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

> June 16, 2010
>
> Mr. Jim L. Spano, Chief
> Mandated Costs Audits Bureau
> Division of Audits
> California State Controller's Office
> P.O. Box 942850
> Sacramento, CA 94250-5874
>
> Dear Mr. Spano:
>
> **HANDICAPPED AND DISABLED STUDENTS PROGRAM**
>
> **JULY 1, 2003 THROUGH JUNE 30, 2006**
>
> In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:

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[146] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[147] For example, the claimant purports, without citation to legal authority, to "reserve[] the right to claim these unallowed [assessment and treatment] costs in future fiscal year claims." (Exhibit A, IRC, page 560.) The claimant also purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provided additional information to support its claims. (Exhibit A, IRC, page 558.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs these sporadic, pro forma statements.

1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.

2. We designed and implemented the County's accounting system to ensure accurate and timely records.

3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines.

5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.

6. Excluding mandated program costs, the County did not recover indirect cost from any state or federal agency during the audit period.

7. We are not aware of any:

a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[148]

The admissions made by the claimant in the two-page letter contradict arguments now made by claimant in the instant IRC.

In its IRC, the claimant argues that it provided cost report data — not actual cost data — to the Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[149] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[150] "The inclusion of the Cost Report Method in the original parameters and guidelines and in all subsequent parameters and guidelines indicates that the intent of such a methodology was to provide a basis to reimburse counties for the costs of the State-mandated program based on an allocation formula *and not actual costs*," the IRC continues.[151]

However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[152]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[153] For example, the claimant now contends that "repeated attempts to develop a 'query' that would extract data from the County's Mental Health Management Information System (MHMIS) and Integrated System (IS) generated results that were unreliable"[154] and "[t]he source documentation, therefore, would be in each agency's internal records and these are the documents that the SCO should have used in conducting the audit."[155]

However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate

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[148] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010) (the "two-page letter").

[149] Exhibit A, IRC, pages 6-10.

[150] Exhibit A, IRC, page 9. (Emphasis in original.)

[151] Exhibit A, IRC, page 10. (Emphasis added.)

[152] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added).

[153] Exhibit A, IRC, pages 11-15, 17-18.

[154] Exhibit C, Claimant's Rebuttal, pages 3-4.

[155] Exhibit C, Claimant's Rebuttal, page 4.

financial records and data to support the mandated cost claims submitted to the SCO."[156] "We designed and implemented the County's accounting system to ensure accurate and timely records."[157] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[158] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[159]

In the IRC, the claimant argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[160]

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[161] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[162]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Therefore, the Commission denies this IRC.

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[156] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[157] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[158] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[159] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[160] Exhibit A, IRC, pages 15-17.

[161] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[162] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 20, 2016, I served the:

> **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
> *Handicapped and Disabled Students*, 13-4282-I-06
> Government Code Sections 7572 and 7572.5
> Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
> California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
> (Emergency regulations filed December 31, 1985, designated effective
> January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective
> July 12, 1986 [Register 86, No. 28])
> Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 20, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH
550 S. VERMONT AVE., LOS ANGELES, CA 90020 HTTP://DMH.LACOUNTY.GOV

ROBIN KAY, Ph.D.
Acting Director

DENNIS MURATA, M.S.W.
Acting Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

RECEIVED
June 10, 2016
Commission on
State Mandates

June 9, 2016

Exhibit C2

Heather Halsey, Executive Director
State of California Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

LOS ANGELES COUNTY COMMENTS ON PROPOSED DECISION
IRC NO. 13-4282-I-06
(Handicapped and Disabled Students Program)

On behalf of the County of Los Angeles, I am submitting the attached comments to the Proposed Decision on the County's Incorrect Reduction Claim (IRC) No. 13-4282-I-06 related to the disallowance of costs associated with the provision of mental health services to pupils under the above-referenced program.

We appreciate your consideration of this information.

Sincerely,

Robin Kay, Ph.D.

Robin Kay, Ph.D.
Acting Director

RK:lw

c: Lyn Wallensak

Los Angeles County IRC No. 13-4282-I-06
Handicapped and Disabled Students Program II
Fiscal Years 2003-04, 2004-05, and 2005-06
Comments on Proposed Decision Dated May 20, 2016

Introduction

The following is the County of Los Angeles' response to the Commission on State Mandates (CSM) Proposed Decision on the County's Incorrect Reduction Claim (IRC) contesting the disallowance of costs associated with the County's provision of State-mandated mental health services under the Handicapped and Disabled Students Program for the period of July 1, 2003, through June 30, 2006. Of the $26,924,935 in claimed costs for this three-year period, the State Controller's Office (SCO) disallowed $18,382,526.

The County seeks to have $18,180,829 reinstated, as follows:

- Fiscal Year 2003-04: $5,247,918
- Fiscal Year 2004-05: $6,396,075
- Fiscal Year 2005-06: $6,536,836

County's Response to Proposed Decision

The Proposed Decision is to deny the County's IRC based on CSM staff's conclusions that the IRC was not filed timely and that, even if the IRC was filed timely, the County waived its rights to appeal. Both statements are incorrect.

The IRC was Timely Filed

The Proposed Decision states that the County's IRC was not timely filed because it was not filed within three (3) years of the date of the SCO Final Audit Report. This claim is incorrect.

California Code of Regulations states:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final audit report, letter, remittance advice **or** other written notice of adjustment notifying the claimant of a reduction.

While the Final Audit Report was dated June 30, 2010, the SCO issued notices of the claim reductions to the County dated August 6, 2010. The County filed its IRC on August 2, 2013; therefore, it was timely.

The Proposed Decision states the County "tried to save its IRC" by identifying certain documents as the notices of claim reductions. However, it was not the County that so identified these documents but the SCO. In its letter to the County dated May 7, 2013, the SCO states:

> "An IRC must be filed within three years following the date we notified the County of a claim reduction. The State Controller's Office notified the County of a claim reduction on August 6, 2010, for the HDS Program audit and on June 12, 2010, for the HDS II Program Audit."

The Proposed Decision asserts that the SCO letter has no impact on the determination of timeliness. However, the SCO's actions and statements are relevant. The County requested the SCO enter into a reconsideration process on its final audit report on November 10, 2010. As described in the original IRC narrative, the SCO subsequently agreed to reconsider its original findings only to withdraw from the process and inform the County it must file an IRC on May 14, 2013 – mere weeks prior to the alleged deadline for the IRC and **2½ years** after the County approached the SCO about revising its audit reports.

The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.

If, as the proposed decision states, these notices do not meet the legal requirements of Government Code Section 17558.5 (c), then it is because the notices issued by the SCO were defective and, if so, then proper notice has never been given. Government Code Section 17558.5 (c) clearly states that the Controller's Office **shall** issue such notice and such notice **must** include the elements listed. A defective notice issued by the State agency responsible for issuing such notices should not affect the County's rights of appeal.

The Proposed Decision mistakenly relies on a common law practice regarding the statute of limitations running from the earliest time from which all essential elements were met. The use of **or** in the listing of events upon which the three-year time limit would begin clearly allows the calculation from any of the events. Further, the SCO led the County to believe for more than two years that it was reconsidering its findings and would re-issue the audit report. Had the SCO not done so, the County would have filed the IRC two years before it did.

The County Did Not Waive Its Right to File an IRC

Contrary to the claim within the Proposed Decision, the County did not waive its rights to file an IRC. The Proposed Decision in fact states that there is "clear and convincing evidence" that the County intended to waive its rights. Indeed, no such evidence exists because the County never intended to waive its rights. In fact, it intentionally preserved such rights.

In responding to the Audit Report, the County agreed with the SCO's **recommendations** regarding implementation of stronger policies and procedures but also stated explicitly that it expected the SCO would reconsider its findings and revise its audit report if the County provided additional documentation to support the costs: "We also recognize that if the County subsequently provides additional information to support its $18,382,526 in unallowable costs, or if there are any changes in the laws and regulations, the State will revise the final audit report to include such additional allowable costs."

Significantly, the SCO itself is not the one which made the waiver argument. Instead, the Proposed Decision infers the SCO wanted to raise the issue by statements related to the County's responses to the audit reports. Specifically, in footnote 134 the Proposed Decision states "While the Controller's raising of the waiver issue could have been made with more precision and details, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial procedure.")

It this is the standard that the Proposed Decision is applying, then it must be applied equally. Therefore, the same intent and lenient standard must be applied to the County's response to the audit report and its explicit statement that if additional information supporting the costs was discovered and brought forward, then the final audit report would be revised.

Conclusion

Therefore, the County requests that the Proposed Decision be rejected and the Commission consider the claims raised by the County in its IRC be addressed and the County's IRC be considered on its merits.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 10, 2016, I served the:

Claimant Comments on the Draft Proposed Decision
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
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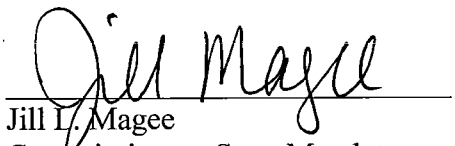
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 10, 2016 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit C3

July 6, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Proposed Decision**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The Proposed Decision for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

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.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2013\4282 (Handicapped and Disabled Students)\13-4282-I-06\Correspondence\PDtrans.docx

ITEM 5

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

Government Code Sections 7572 and 7572.5;
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);

California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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][1]

Handicapped and Disabled Students

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

13-4282-I-06

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $18,180,829.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

2. By clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, staff recommends that the Commission deny this IRC.

Procedural History

The claimant submitted its reimbursement claim for fiscal year 2003-2004, dated January 5, 2005.[2] The claimant submitted its 2004-2005 reimbursement claim dated January 10, 2006.[3] The claimant then submitted an amended reimbursement claim for fiscal year 2005-2006, dated April 5, 2007.[4]

The Controller sent a letter to the claimant, dated August 12, 2008, confirming the scheduling of the audit.[5]

The Controller issued the Draft Audit Report dated May 19, 2010.[6] The claimant sent a letter to the Controller dated June 16, 2010, in response to the Draft Audit Report, agreeing with the findings and accepting the recommendations.[7] The claimant sent a letter to the Controller, also dated June 16, 2010, with regard to the claims and audit procedure.[8] The Controller issued the Final Audit Report dated June 30, 2010.[9]

On August 2, 2013, the claimant filed this IRC.[10] On November 25, 2014, the Controller filed late comments on the IRC.[11] On December 23, 2014, the claimant filed a request for an

[2] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[3] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[4] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[5] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit… ." However, this assertion of fact is not accompanied by a declaration of a person with personal knowledge or any other evidence in the record to support it.

[6] Exhibit A, IRC, page 547.

[7] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[8] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[9] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[10] Exhibit A, IRC, pages 1, 3.

[11] Exhibit B, Controller's Late Comments on the IRC, page 1.

extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[12]

Commission staff issued the Draft Proposed Decision on May 20, 2016.[13] The Controller filed comments on the Draft Proposed Decision on June 6, 2016.[14] The claimant filed comments on the Draft Proposed Decision on June 10, 2016.[15]

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[16] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[17]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[18]

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[12] Exhibit C, Claimant's Rebuttal Comments, page 1.

[13] Exhibit D, Draft Proposed Decision, pages 1, 34.

[14] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[15] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[16] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[17] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[18] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [19] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[20]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated June 30, 2010. The Controller issued three documents, dated August 6, 2010, which summarized the Final Audit Report's findings and which set a payment deadline. On August 2, 2013, the claimant filed this IRC.	*Deny IRC as untimely* – The claimant must file an IRC within three years of "the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction." (Former Cal. Code Regs., title 2, § 1185(b), renumbered as § 1185(c) effective January 1, 2011.) Remittance advices and other communications which merely restate the findings of the Final Audit Report do not affect the running of the three-year limitations period.
Did the Controller's statements or actions suspend or reset the statute of limitations under the doctrine of equitable estoppel?	In a letter to the claimant dated May 7, 2013, the Controller incorrectly stated that the three-year period for filing an IRC started to run from the Controller's issuance of the three documents dated August 6, 2010. The claimant asserts that it relied upon this inaccurate statement.	*Deny IRC as untimely* – No estoppel occurs when both parties make a mistake of law; each party had the opportunity to research the law. Estoppel would negate the strong policy of enforcing statutes of limitation. The claimant also failed to establish that the

[19] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[20] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

	The claimant also asserts that the Controller reconsidered its claim and did not reject the claim until May 2013.	Controller acted with a degree of turpitude. The Controller stated in a letter to the claimant dated May 7, 2013 that the claimant's reconsideration request was denied.[21] A reconsideration that never occurred cannot affect the statute of limitations.
Did the claimant waive the objections it is now raising?	In two letters both dated June 16, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Staff Analysis

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[22]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated June 30, 2010.[23] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[24] Instead of filing this IRC by the deadline of Monday,

[21] Exhibit A, IRC, page 485.

[22] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was renumbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

[23] Exhibit A, IRC, page 547 (Final Audit Report).

[24] See California Code of Regulations, title 2, section 1183.18(a)(1); Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."); and Code of Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on

July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days later.[25]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents issued by the Controller, dated August 6, 2010, which claimant refers to as "Notices of Claim Adjustment."[26] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A-1)."[27]

The claimant's argument fails because: (1) the three documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the date of the three documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[28]

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a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[25] Exhibit A, IRC, page 1.

[26] Exhibit A, IRC, pages 21-27.

[27] Exhibit A, IRC, page 6. The Exhibit A-1 referred to in the quote is found at Exhibit A, IRC, pages 22-27.

[28] Compare Exhibit A, IRC, pages 21-27 with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this confusingly named rule, a right accrues — and the limitations period begins to run — from the *earliest* point in time when the claim could have been filed and maintained.[29] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[30]

Under these principles, the claimant's three-year limitations period began to run on the date of the Final Audit Report.[31] As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had (from its perspective) been harmed by a reduction.

Claimant also argues that the statements and actions of the Controller led the claimant to file late since the Controller in a letter dated May 7, 2013, stated that the claimant could file an IRC three years from the date of the letters dated August 6, 2010. The claimant was merely following the Controller's instruction, it argues.[32] Therefore, under principles of equitable estoppel, Claimant argues the IRC was timely filed.

Equitable estoppel does not affect the statute of limitations in this case. The Controller made a mistake of law when (in the letter dated May 7, 2013[33]) the Controller stated that the three-year IRC filing period started to run from the Controller's notice contained in the three documents dated August 6, 2010. As analyzed in the Proposed Decision, the three-year limitations period commenced to run from the date of the Final Audit Report.

The Commission should interpret the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. A situation in which a government agency and a third party both misinterpret the law does not create an estoppel against the government. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[34] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[35] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[36]

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[29] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[30] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[31] California Code of Regulations, title 2, section1185.1(c).

[32] Exhibit F, Claimant's Comments on Draft Proposed Decision, pages 2-3.

[33] Exhibit A, IRC, page 486.

[34] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[35] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[36] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

Furthermore, the Controller had, two years earlier, referred the claimant to the Commission's website for IRC information.[37] In addition, the record does not indicate that the Controller engaged in some quantum of turpitude — a requisite to a finding of equitable estoppel.[38] Separately and independently, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public; specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[39]

The claimant also argues that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[40] However, the Controller stated at the relevant time (May 2013) that it was not engaging in a reconsideration and that the claimant's reconsideration request was denied.[41] The claimant's argument should therefore be rejected, because a statute of limitations cannot be affected by a reconsideration which never occurred.

Accordingly, the IRC should be denied as untimely filed.

B. In the Alternative, the County Waived Its Right to File an IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[42] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the audit findings.[43]

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[37] Exhibit A, IRC, page 542 ("If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf.").

[38] "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[39] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[40] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[41] Exhibit A, IRC, page 485 ("This letter confirms that we denied the county's reconsideration request . . . .").

[42] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[43] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[44] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[45] Waiver is a question of fact and is always based upon intent.[46] Waiver must be established by clear and convincing evidence.[47]

On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[48] In response to the Draft Audit Report, the claimant's Auditor-Controller issued a four-page letter dated June 16, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[49] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[50]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following three pages of the four-page letter contain further statements of agreement with each of the Controller's findings and recommendations.[51]

The claimant also filed a separate two-page letter dated June 16, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC. For example, in its IRC, the claimant argues that it provided cost report data — not actual cost data — to the Controller, which then erred by conducting an audit as if the claimant had provided actual cost

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[44] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[45] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[46] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[47] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[48] Exhibit A, IRC, page 547.

[49] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[50] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[51] Exhibit A, IRC, pages 559-561.

data.[52] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[53] However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[54]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[55] However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[56] "We designed and implemented the County's accounting system to ensure accurate and timely records."[57] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[58] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[59]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[60] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[61] "We are

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[52] Exhibit A, IRC, pages 6-10.

[53] Exhibit A, IRC, page 9. (Emphasis in original.)

[54] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4, emphasis added.)

[55] Exhibit A, IRC, pages 11-15, 17-18.

[56] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[57] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[58] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[59] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[60] Exhibit A, IRC, pages 15-17.

[61] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[62]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision denying the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

[62] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040 (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])[63] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *Handicapped and Disabled Students* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

[63] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[64] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts (which would then become subject to the program's reimbursement formula):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[65]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims, and that the IRC should be denied on that separate and independent basis.

Accordingly, the Commission denies this IRC.

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[64] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[65] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

I. Chronology

01/05/2005	Claimant dated the reimbursement claim for fiscal year 2003-2004.[66]
01/10/2006	Claimant dated the reimbursement claim for fiscal year 2004-2005.[67]
04/05/2007	Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[68]
08/12/2008	Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[69]
05/19/2010	Controller issued the Draft Audit Report dated May 19, 2010.[70]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[71]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010 with regard to the claims and audit procedure.[72]
06/30/2010	Controller issued the Final Audit Report dated June 30, 2010.[73]
08/02/2013	Claimant filed this IRC.[74]
11/25/2014	Controller filed late comments on the IRC.[75]
12/23/2014	Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

[66] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[67] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[68] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[69] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…." However, this assertion of fact is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

[70] Exhibit A, IRC, page 547.

[71] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[72] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[73] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[74] Exhibit A, IRC, pages 1, 3.

[75] Exhibit B, Controller's Late Comments on the IRC, page 1.

03/26/2015 Claimant filed rebuttal comments.[76]

05/20/2016 Commission staff issued the Draft Proposed Decision.[77]

06/06/2016 Controller filed comments on the Draft Proposed Decision.[78]

06/10/2016 Claimant filed comments on the Draft Proposed Decision.[79]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[80] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[81] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and guarantees 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.[82]

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[83] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[84] And, in 1985, the Legislature further amended chapter 26.5.[85]

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[76] Exhibit C, Claimant's Rebuttal Comments, page 1.

[77] Exhibit D, Draft Proposed Decision, pages 1, 34.

[78] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[79] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[80] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) [current version].

[81] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) [current version].

[82] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[83] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[84] Statutes 1984, chapter 1747.

[85] Statutes 1985, chapter 1274.

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[86]

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines, approving *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[87] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[88] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[89]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[90] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the

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[86] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[87] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[88] Former Welfare and Institutions Code sections 5600 et seq.

[89] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[90] Statutes 2004, chapter 493 (SB 1895).

offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.[91]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for providing mental health services under IDEA back to school districts, effective July 1, 2011.[92] On September 28, 2012, the Commission adopted an amendment to the Parameters and Guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[93]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[94] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[95]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .

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[91] In May 2005, the Commission also adopted a Statement of Decision on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), a test claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health. The period of reimbursement for *Handicapped and Disabled Students II* (02-TC-40/ 02-TC-49) began July 1, 2001.

[92] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[93] Exhibit A, IRC, page 547.

[94] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[95] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

> The County has agreed to the audit disallowances for Case Management Support Costs.[96]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[97]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[98]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[99] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[100]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[101]

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[96] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[97] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[98] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[99] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[100] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[101] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[102]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[103]
- "We are not aware of any . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[104]
- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[105]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[106]

On June 30, 2010, the Controller issued the Final Audit Report.[107] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[108]

On August 2, 2013, the claimant filed this IRC with the Commission.[109]

III. Positions of the Parties

A. County of Los Angeles

[102] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[103] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[104] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

[105] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[106] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[107] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[108] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[109] Exhibit A, IRC, pages 1, 3.

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[110]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[111]
3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[112]
4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[113]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[114]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated August 6, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the

[110] Exhibit A, IRC, pages 10-11.

[111] Exhibit A, IRC, pages 11-12.

[112] Exhibit A, IRC, pages 12-15, 17-18.

[113] Exhibit A, IRC, pages 15-17.

[114] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with refiling of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

notices upon which the County relied as the dates they notified the County of a claim reduction.[115]

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[116]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[117]
2. The documentation provided by the claimant did not verify the claimed costs.[118]
3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[119]
4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[120]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[121]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the

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[115] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

[116] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[117] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal Comments, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[118] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[119] Exhibit B, Controller's Late Comments on the IRC, page 29.

[120] Exhibit B, Controller's Late Comments on the IRC, page 28.

[121] Exhibit E, Controller's Comments on the Draft Proposed Decision.

Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[122] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[123]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[124] Under this standard, the courts have found:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[125]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[126] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by

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[122] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[123] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[124] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[125] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[126] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[127]

A. The IRC Was Untimely Filed.

The threshold issue is whether this IRC was timely filed.[128]

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[129]

Thus, the applicable limitations period is "three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction."[130]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated June 30, 2010.[131] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC

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[127] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[128] In its comments on the IRC (Exhibit B), the Controller did not raise the issue of whether the IRC was timely filed. However, the Commission's limitations period is jurisdictional, and, as such, the Commission is obligated to review the limitations issue sua sponte. (See *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132 [128 S. Ct. 750, 752].)

"The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[129] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[130] Former Code of California Regulations, title 2, section 1185(b).

[131] Exhibit A, IRC, page 547 (Final Audit Report).

moved to Monday, July 1, 2013.[132] Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days later.[133]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[134] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[135] The claimant further argues that the Commission should find that the IRC was timely filed based on statements made by the Controller's Office that an IRC could be filed three years from the August 6, 2010 notices.[136]

The claimant's argument fails because: (1) the three documents dated August 6, 2010, were not notices of claim adjustment; (2) the limitations period commences to run upon the earliest event in time which would have allowed the claimant to file a claim; and (3) the Controller's misstatement of law (specifically, the Controller's erroneous statement that the limitations period for filing an IRC began to run as of the three documents dated August 6, 2010) does not result in an equitable estoppel that makes the IRC timely.

1. The Three Documents Dated August 6, 2010, Are Not Notices of Adjustment.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment."

Government Code section 17558.5(c) reads in relevant part, "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment."

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[132] See California Code of Regulations, title 2, section 1183.18(a)(1); Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."); and Code of Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[133] Exhibit A, IRC, page 1.

[134] Exhibit A, IRC, pages 21-27.

[135] Exhibit A, IRC, page 6.

[136] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[137]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[138] The claimant asserts that, if the documents dated August 6, 2010, do not constitute notices of claim adjustment, then the Controller never provided notice.[139] The Final Audit Report provides abundant notice.

None of the three documents provides the claimant with notice of any new finding. The Final Audit Report informed the claimant of the dollar amounts which would not be reimbursed and the dollar amounts which the Controller contended that the claimant owed the State.[140] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not remitted.[141] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously unannounced adjustments.[142]

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[137] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment.").

[138] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[139] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[140] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

[141] Exhibit A, IRC, page 547.

[142] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Government Code section 17558.5(c) ("Remittance advices and other notices of payment action shall not constitute

For these reasons, the three documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[143] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[144]

Under a legal doctrine with the somewhat confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element"

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notice of adjustment from an audit or review."). Whatever term may accurately be used to characterize the three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

[143] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[144] Former Code of California Regulations, title 2, section 1185(b) (Regulation 1185), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

> accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[145]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][146]

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that date, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that date, the claimant had been (from its perspective) harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock. The limitations period starts to run from the earliest point in time when the claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of adjustment in the record.[147] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[148] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[149]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a

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[145] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[146] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[147] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[148] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[149] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

notice to the claimant of the adjustment that includes the reason for the adjustment."[150] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was sent after the Controller's Final Audit Report.[151] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[152] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[153]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[154]

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[155] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

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[150] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[151] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[152] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[153] Exhibit A, IRC, page 542.

[154] All that being said, an administrative agency's adjudications need not be consistent. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[155] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

3. The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated August 6, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[156]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[157] — but does not necessarily possess[158] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record

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[156] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486 from Jim Spano to Robin C. Kay, dated May 7, 2013.

[157] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[158] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[159]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[160] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[161]

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[162] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[163] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[164]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[165] In the federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[166]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

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[159] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[160] Evidence Code section 623.

[161] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

[162] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[163] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[164] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[165] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[166] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), Regulation 1185's three-year limitations period had been in effect and had been published since at least May 2007.[167] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the three documents dated August 6, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[168] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[169] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[170]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated June 30, 2010, the Controller summarized the audit findings and then stated, "If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[171] In other words, as of June or July 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[172]

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[167] California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

[168] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[169] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[170] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[171] Exhibit A, IRC, page 542.

[172] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[173] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[174] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[175] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request . . . ."[176] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence until a June 2012 delivery of documents,[177] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

B. In the Alternative, the County Waived Its Right to File an IRC.

Even if the claimant filed its IRC on time (which is not the case), the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on this separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[178] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[179]

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[173] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[174] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[175] Exhibit A, IRC, page 485.

[176] Exhibit A, IRC, page 485.

[177] Exhibit A, IRC, page 485.

[178] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[179] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding"). (In

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[180]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[181] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[182] Waiver is a question of fact and is always based upon intent.[183] Waiver must be established by clear and convincing evidence.[184]

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its Comments on the Draft Proposed Decision (Exhibit F, page 4), the claimant questions why this lenient standard is not also used to determine whether waiver occurred. The claimant is confusing the standard for determining whether an issue is raised and preserved at an administrative hearing (a lenient standard in which a few words in isolation may suffice) with the standard for determining whether waiver occurred (a strict standard which requires a weighing of all evidence in the record).)

[180] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

[181] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[182] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[183] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[184] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims. On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[185] The record contains no evidence of the claimant objecting to the draft audit report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings, and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a four-page letter dated June 16, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[186] The first page of this four-page letter[187] contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[188]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance." In the quoted passage, the claimant states unambiguously that it agreed with the Controller's "findings." The record therefore contradicts the claimant's argument, in comments on the Draft Proposed Decision, that it only agreed with the Controller's "recommendations."[189]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

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question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

[185] Exhibit A, IRC, page 547.

[186] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[187] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield) (the "four-page letter").

[188] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[189] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[190]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[191]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[192]

Each of the claimant's responses to the Controller's three findings supports the Commission's conclusion that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the four-page letter to reserve rights or to clarify issues,[193] the overall intention communicated in

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[190] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[191] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[192] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[193] For example, the claimant purports, without citation to legal authority, to "reserve[] the right to claim these unallowed [assessment and treatment] costs in future fiscal year claims." (Exhibit A, IRC, page 560.) The claimant also purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provided additional information to support its claims. (Exhibit A, IRC, page 558. See also Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs these statements lacking legal or factual foundation.

the letter is that the claimant intended to agree with and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the four-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated June 16, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

> June 16, 2010
>
> Mr. Jim L. Spano, Chief
> Mandated Costs Audits Bureau
> Division of Audits
> California State Controller's Office
> P.O. Box 942850
> Sacramento, CA 94250-5874
>
> Dear Mr. Spano:
>
> **HANDICAPPED AND DISABLED STUDENTS PROGRAM**
>
> **JULY 1, 2003 THROUGH JUNE 30, 2006**
>
> In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:
>
> 1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.
>
> 2. We designed and implemented the County's accounting system to ensure accurate and timely records.
>
> 3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students Program's parameters and guidelines.
>
> 4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines.
>
> 5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.
>
> 6. Excluding mandated program costs, the County did not recover indirect cost from any state or federal agency during the audit period.
>
> 7. We are not aware of any:
>
> > a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[194]

The admissions made by the claimant in the two-page letter contradict arguments now made by the claimant in the instant IRC.

In its IRC, the claimant argues that it provided cost report data — not actual cost data — to the Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[195] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[196] "The inclusion of the Cost Report Method in the original parameters and guidelines and in all subsequent parameters and guidelines indicates that the intent of such a methodology was to provide a basis to reimburse counties for the costs of the State-mandated program based on an allocation formula *and not actual costs*," the IRC continues.[197]

[194] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010) (the "two-page letter").

[195] Exhibit A, IRC, pages 6-10.

[196] Exhibit A, IRC, page 9. (Emphasis in original.)

[197] Exhibit A, IRC, page 10. (Emphasis added.)

However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[198]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[199] For example, the claimant now contends that "repeated attempts to develop a 'query' that would extract data from the County's Mental Health Management Information System (MHMIS) and Integrated System (IS) generated results that were unreliable"[200] and "[t]he source documentation, therefore, would be in each agency's internal records and these are the documents that the SCO should have used in conducting the audit."[201]

However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[202] "We designed and implemented the County's accounting system to ensure accurate and timely records."[203] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[204] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[205]

In the IRC, the claimant argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[206]

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[198] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added).

[199] Exhibit A, IRC, pages 11-15, 17-18.

[200] Exhibit C, Claimant's Rebuttal Comments, pages 3-4.

[201] Exhibit C, Claimant's Rebuttal Comments, page 4.

[202] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[203] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[204] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[205] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[206] Exhibit A, IRC, pages 15-17.

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[207] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[208]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Therefore, the Commission denies this IRC.

[207] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[208] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 6, 2016, I served the:

Proposed Decision
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 6, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/5/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit C4

July 27, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

On July 22, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040 (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])[1] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *Handicapped and Disabled Students* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*) (*Served July 27, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. Edward Jewik and Hasmik Yaghobyan appeared on behalf of the County of Los Angeles. Jim Spano and Chris Ryan appeared for the State Controller's Office.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny this IRC by a vote of 6-0 as follows:

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	Yes
Richard Chivaro, Representative of the State Controller	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[2] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts (which would then become subject to the program's reimbursement formula):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[3]

After a review of the record and the applicable law, the Commission found that the IRC was untimely filed.

Accordingly, the Commission denies this IRC.

I. Chronology

01/05/2005 Claimant dated the reimbursement claim for fiscal year 2003-2004.[4]

[2] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[3] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

[4] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

01/10/2006	Claimant dated the reimbursement claim for fiscal year 2004-2005.[5]
04/05/2007	Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[6]
08/12/2008	Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[7]
05/19/2010	Controller issued the Draft Audit Report dated May 19, 2010.[8]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[9]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010, with regard to the claims and audit procedure.[10]
06/30/2010	Controller issued the Final Audit Report dated June 30, 2010.[11]
08/02/2013	Claimant filed this IRC.[12]
11/25/2014	Controller filed late comments on the IRC.[13]
12/23/2014	Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.
03/26/2015	Claimant filed rebuttal comments.[14]
05/20/2016	Commission staff issued the Draft Proposed Decision.[15]

[5] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[6] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[7] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…." However, this assertion of fact is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

[8] Exhibit A, IRC, page 547.

[9] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[10] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[11] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[12] Exhibit A, IRC, pages 1, 3.

[13] Exhibit B, Controller's Late Comments on the IRC, page 1.

[14] Exhibit C, Claimant's Rebuttal Comments, page 1.

[15] Exhibit D, Draft Proposed Decision, pages 1, 34.

06/06/2016 Controller filed comments on the Draft Proposed Decision.[16]

06/10/2016 Claimant filed comments on the Draft Proposed Decision.[17]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[18] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[19] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and guarantees 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.[20]

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[21] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[22] And, in 1985, the Legislature further amended chapter 26.5.[23]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[24]

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[16] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[17] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[18] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) [current version].

[19] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) [current version].

[20] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[21] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[22] Statutes 1984, chapter 1747.

[23] Statutes 1985, chapter 1274.

[24] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines, approving *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[25] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[26] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[27]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[28] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.[29]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for

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providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[25] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[26] Former Welfare and Institutions Code sections 5600 et seq.

[27] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[28] Statutes 2004, chapter 493 (SB 1895).

[29] In May 2005, the Commission also adopted a Statement of Decision on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), a test claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health. The period of reimbursement for *Handicapped and Disabled Students II* (02-TC-40/ 02-TC-49) began July 1, 2001.

providing mental health services under IDEA back to school districts, effective July 1, 2011.[30] On September 28, 2012, the Commission adopted an amendment to the Parameters and Guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[31]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[32] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[33]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[34]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct

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[30] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[31] Exhibit A, IRC, page 547.

[32] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[33] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[34] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[35]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[36]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[37] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[38]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[39]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[40]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[41]
- "We are not aware of any . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[42]

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[35] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[36] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[37] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[38] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[39] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[40] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[41] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[42] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[43]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[44]

On June 30, 2010, the Controller issued the Final Audit Report.[45] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[46]

On August 2, 2013, the claimant filed this IRC with the Commission.[47]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[48]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of

[43] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[44] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[45] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[46] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[47] Exhibit A, IRC, pages 1, 3.

[48] Exhibit A, IRC, pages 10-11.

Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[49]

3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[50]

4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[51]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[52]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated August 6, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.[53]

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[54]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

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[49] Exhibit A, IRC, pages 11-12.

[50] Exhibit A, IRC, pages 12-15, 17-18.

[51] Exhibit A, IRC, pages 15-17.

[52] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with refiling of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

[53] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

[54] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[55]
2. The documentation provided by the claimant did not verify the claimed costs.[56]
3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[57]
4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[58]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[59]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[60] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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[55] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal Comments, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[56] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[57] Exhibit B, Controller's Late Comments on the IRC, page 29.

[58] Exhibit B, Controller's Late Comments on the IRC, page 28.

[59] Exhibit E, Controller's Comments on the Draft Proposed Decision.

[60] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[61]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[62] Under this standard, the courts have found:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[63]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[64] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[65]

A. The IRC Was Untimely Filed.

The threshold issue is whether this IRC was timely filed.[66]

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[61] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[62] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[63] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[64] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[65] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[66] In its comments on the IRC (Exhibit B), the Controller did not raise the issue of whether the IRC was timely filed. However, the Commission's limitations period is jurisdictional, and, as such, the Commission is obligated to review the limitations issue sua sponte. (See *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132 [128 S. Ct. 750, 752].)

"The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[67]

Thus, the applicable limitations period is "three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction."[68]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated June 30, 2010.[69] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[70] Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days later.[71]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[72]

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established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[67] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[68] Former Code of California Regulations, title 2, section 1185(b).

[69] Exhibit A, IRC, page 547 (Final Audit Report).

[70] See California Code of Regulations, title 2, section 1183.18(a)(1); Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."); and Code of Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[71] Exhibit A, IRC, page 1.

[72] Exhibit A, IRC, pages 21-27.

In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[73] The claimant further argues that the Commission should find that the IRC was timely filed based on statements made by the Controller's Office that an IRC could be filed three years from the August 6, 2010, notices.[74]

The claimant's argument fails because: (1) the three documents dated August 6, 2010, were not notices of claim adjustment; (2) the limitations period commences to run upon the earliest event in time which would have allowed the claimant to file a claim; and (3) the Controller's misstatement of law (specifically, the Controller's erroneous statement that the limitations period for filing an IRC began to run as of the three documents dated August 6, 2010) does not result in an equitable estoppel that makes the IRC timely.

1. The Three Documents Dated August 6, 2010, Are Not Notices of Adjustment.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment."

Government Code section 17558.5(c) reads in relevant part, "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment."

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[75]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final

[73] Exhibit A, IRC, page 6.

[74] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[75] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment.").

Audit Report.[76] The claimant asserts that, if the documents dated August 6, 2010, do not constitute notices of claim adjustment, then the Controller never provided notice.[77] The Final Audit Report provides abundant notice.

None of the three documents provides the claimant with notice of any new finding. The Final Audit Report informed the claimant of the dollar amounts which would not be reimbursed and the dollar amounts which the Controller contended that the claimant owed the State.[78] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not remitted.[79] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously unannounced adjustments.[80]

For these reasons, the three documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[81] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

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[76] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[77] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[78] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

[79] Exhibit A, IRC, page 547.

[80] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Government Code section 17558.5(c) ("Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."). Whatever term may accurately be used to characterize the three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

[81] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[82]

Under a legal doctrine with the somewhat confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[83]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][84]

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that date, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that date, the claimant had been (from its perspective) harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock. The limitations period starts to run from the earliest point in time when the

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[82] Former Code of California Regulations, title 2, section 1185(b) (Regulation 1185), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[83] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[84] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of adjustment in the record.[85] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[86] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[87]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[88] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was sent after the Controller's Final Audit Report.[89] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[90] In the instant IRC, by contrast, the

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[85] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[86] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[87] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

[88] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[89] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[90] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information

Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[91]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[92]

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[93] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

3. <u>The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated August 6, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.</u>

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In

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pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[91] Exhibit A, IRC, page 542.

[92] All that being said, an administrative agency's adjudications need not be consistent. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[93] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[94]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[95] — but does not necessarily possess[96] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[97]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[98] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[99]

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[94] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486 from Jim Spano to Robin C. Kay, dated May 7, 2013.

[95] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[96] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

[97] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[98] Evidence Code section 623.

[99] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[100] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[101] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[102]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[103] In the federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[104]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), Regulation 1185's three-year limitations period had been in effect and had been published since at least May 2007.[105] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the three documents dated August 6, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[106] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the

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[100] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[101] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[102] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[103] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[104] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

[105] California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

[106] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

absence of a confidential relationship, is not a basis for an estoppel."[107] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[108]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated June 30, 2010, the Controller summarized the audit findings and then stated, "If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[109] In other words, as of June or July 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[110]

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[111] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[112] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[113] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request . . . ."[114] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence

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[107] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[108] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[109] Exhibit A, IRC, page 542.

[110] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[111] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[112] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[113] Exhibit A, IRC, page 485.

[114] Exhibit A, IRC, page 485.

until a June 2012 delivery of documents,[115] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed.

Therefore, the Commission denies this IRC.

[115] Exhibit A, IRC, page 485.

RE: **Decision**

Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

On July 22, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Dated: July 27, 2016

Heather Halsey, Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 27, 2016, I served the:

Decision
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 27, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/5/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit D1

May 20, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60050,60030, 60040, 60045, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **June 10, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 8, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2012\0240 (Handicapped II)\12-0240-I-01\correspondence\draftPDtrans.docx

ITEM ___

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892);
Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Sections 60020, 60050, 60030, 60040, 60045, 60055, 60100, 60110, 60200[1]
(Emergency regulations effective July 1, 1998 [Register 98, No. 26]
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students II

Fiscal Years 2002-2003 and 2003-2004

12-0240-I-01

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $448,202.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and
2. By clear and convincing evidence, the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, staff recommends that the Commission deny this IRC.

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Procedural History

The claimant submitted its reimbursement claims, dated May 8, 2006, for fiscal years 2002-2003 and 2003-2004.[2]

The Controller sent a letter to claimant, dated August 12, 2008, confirming the start of the audit.[3]

The Controller issued the Draft Audit Report dated March 26, 2010.[4] The claimant sent a letter to the Controller, dated April 30, 2010, regarding the Draft Audit Report.[5] The Controller issued the Final Audit Report dated May 28, 2010.[6]

On June 11, 2013, the claimant filed this IRC.[7] On November 25, 2014, the Controller filed late comments on the Incorrect Reduction Claim.[8] On December 23, 2014, the claimant filed a request for extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[9]

Commission staff issued the Draft Proposed Decision on May 20, 2016.[10]

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

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[2] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[3] Exhibit B, Controller's Late Comments on the IRC, page 148-149, (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which assert "The SCO contacted the county by phone on July 28, 2008, to initiate the audit, and confirmed the entrance conference date with a start letter dated August 12, 2008 . . . ."

[4] Exhibit A, IRC, page 101.

[5] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[6] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Oct. 31, 2014, paragraph 7); Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[7] Exhibit A, IRC, pages 1, 3.

[8] Exhibit B, Controller's Late Comments on the IRC, page 1.

[9] Exhibit C, Claimant's Rebuttal Comments, page 1.

[10] Exhibit D, Draft Proposed Decision.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[11] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[12]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[13]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[14] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[15]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report, dated May 28, 2010. The Controller later sent two documents, dated June 12, 2010, summarizing the audit	*Deny IRC as untimely* – The claimant must file an IRC within three years of "the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment

[11] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[12] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[13] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[14] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[15] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

	findings and setting a deadline for payment. On June 11, 2013, the claimant filed this IRC.	notifying the claimant of a reduction." Former Cal. Code Regs., title 2, § 1185(b) (effective from May 8, 2007, to June 30, 2014). Letters, remittance advices, and other communications which merely re-state the findings of the Final Audit Report do not re-set the running of the three-year limitations period.
Did the claimant waive the objections it is now raising?	In two letters both dated April 30, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Staff Analysis

I. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[16]

The Controller's Final Audit Report and the cover letter to the Controller's Final Audit Report are both dated May 28, 2010.[17] Three years later was Tuesday, May 28, 2013.

Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days late.[18]

On its face, the IRC was untimely filed.

The claimant attempts to save its IRC by calculating the commencement of the limitations period from June 12, 2010, the date of two documents issued by the Controller, which the claimant dubs

[16] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was re-numbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

[17] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[18] Exhibit A, IRC, page 1.

a "Notice of Claim Adjustment."[19] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[20]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the Controller's issuance of the Final Audit Report and did not re-commence upon the issuance of the two documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of adjustment because none of the documents adjusts anything. The two documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[21]

The Commission's regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and its cover letter are both dated May 28, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from

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[19] Exhibit A, IRC, pages 13-17.

[20] Exhibit A, IRC, page 5.

[21] Compare Exhibit A, IRC, pages 13-17 with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

the earliest point in time when the claim could have been filed and maintained.[22] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[23]

Under these principles, the claimant's three-year limitations period began to run on May 28, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission.

Accordingly, the IRC should be denied as untimely filed.

II. In the Alternative, the County Waived Its Right To File An IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[24]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[25] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[26] Waiver is a question of fact and is always based upon intent.[27] Waiver must be established by clear and convincing evidence.[28]

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[29] In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter

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[22] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[23] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[24] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[25] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[26] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[27] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[28] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[29] Exhibit A, IRC, page 101.

dated April 30, 2010: a copy of which is reproduced in the Controller's Final Audit Report.[30] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[31]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following two pages of the three-page letter contain further statements of agreement with each of the Controller's findings and recommendations.[32]

The claimant also sent a separate two-page letter dated April 30, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

For example, in its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[33] However, neither claimant's four-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[34] "We designed and implemented the County's accounting system to ensure accurate and timely records."[35] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[36] "We are not aware of . . . . Relevant, material

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[30] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[31] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[32] Exhibit A, IRC, pages 108-109.

[33] Exhibit A, IRC, pages 6-7, 10-12.

[34] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[35] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[36] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[37]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[38] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[39] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[40]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision denying the IRC and authorize staff to make any technical, non-substantive changes following the hearing.

[37] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[38] Exhibit A, IRC, pages 8-10.

[39] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[40] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 16, 2010, paragraph 9).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572.55 and 7576; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Sections 60020, 60050, 60030, 60040, 60045, 60055, 60100, 60110, 60200[41] (Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33]) Fiscal Years 2002-2003 and 2003-2004 County of Los Angeles, Claimant	Case No.: 12-0240-I-01 *Handicapped and Disabled Students II* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

[41] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because it found the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues.[42] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts, which would then become subject to the Program's reimbursement formula:

FY2002-2003: $216,793

FY2003-2004: $231,409[43]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, the Commission denies this IRC.

I. Chronology

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2002-2003[44]

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2003-2004[45]

[42] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[43] Exhibit A, IRC, page 1.

[44] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[45] Exhibit A, IRC, page 113 (cover letter), page 254 (Form FAM-27).

08/12/2008 Controller dated a letter to claimant confirming the start of the audit.[46]

03/26/2010 Controller issued the Draft Audit Report, dated March 26, 2010.[47]

04/30/2010 Claimant sent a letter to Controller dated April 30, 2010, in response to the Draft Audit Report.[48]

05/28/2010 Controller issued the Final Audit Report dated May 28, 2010.[49]

06/11/2013 Claimant filed this IRC.[50]

11/25/2014 Controller filed late comments on the IRC.[51]

12/23/2014 Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

03/26/2015 Claimant filed rebuttal comments.[52]

05/20/2016 Commission staff issued the Draft Proposed Decision.[53]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act ("EHA") with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[54] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[55] The EHA was ultimately re-named the Individuals with Disability Education Act ("IDEA") and guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate

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[46] Exhibit B, Controller's Late Comments on the IRC, page 148-149 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which asserts "The SCO contacted the county by phone on July 28, 2008, to initiate the audit, and confirmed the entrance conference date with a start letter dated August 12, 2008 . . . ."

[47] Exhibit A, IRC, page 101.

[48] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[49] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[50] Exhibit A, IRC, pages 1, 3.

[51] Exhibit B, Controller's Late Comments on the IRC, page 1.

[52] Exhibit C, Claimant's Rebuttal Comments, page 1.

[53] Exhibit D, Draft Proposed Decision.

[54] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) (current version).

[55] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) (current version).

public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.[56]

The *Handicapped and Disabled Students* Mandate

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[57] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[58] And, in 1985, the Legislature further amended chapter 26.5.[59]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[60]

In 1990 and 1991, the Commission adopted the Statement of Decision and the Parameters and Guidelines approving the Test Claim *Handicapped and Disabled Students,* CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[61] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[62] Beginning July 1, 2001, however, the cost-sharing ratio for providing

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[56] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[57] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[58] Statutes of 1984, chapter 1747.

[59] Statutes of 1985, chapter 1274.

[60] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California,* May 2004, page 12.

[61] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[62] Former Welfare and Institutions Code sections 5600 et seq.

psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[63]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[64] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.

The *Handicapped and Disabled Students II* Mandate

In May 2005, the Commission also adopted the Statement of Decision on *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, a test claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health.[65]

The Controller's Audit and Reduction of Costs

The Controller issued a Draft Audit Report dated March 26, 2010, and provided a copy to the claimant for comment.[66]

The claimant sent two letters to the Controller, both dated April 30, 2010. In a three-page letter, the claimant responded directly to the Draft Audit Report, agreeing with the audit's findings and accepting its recommendations.[67] In a separate two-page letter, the claimant addressed the status of its reimbursement claims and its manner of compliance with the audit.[68]

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[63] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[64] Statutes 2004, chapter 493 (SB 1895).

[65] Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students* (4282, 04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) by transferring responsibility for providing mental health services under IDEA back to school districts, effective July 1, 2011. On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

[66] Exhibit A, IRC, page 101.

[67] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[68] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

The Controller issued the Final Audit Report, dated June 30, 2010.[69]

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010: a copy of which is reproduced in the Controller's Final Audit Report.[70] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[71]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[72]

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[73]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to

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[69] Exhibit B, Controller's Late Comments on the IRC, page 313 (Declaration of Jim L. Spano, dated Oct. 31, 2014, paragraph 7); Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[70] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[71] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[72] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[73] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[74]

In a separate two-page letter also dated April 30, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[75] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[76]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[77]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines."[78]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[79]
- "We are not aware of any . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[80]
- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[81]

[74] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[75] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[76] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[77] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[78] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 4).

[79] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[80] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[81] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

• "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[82]

On May 28, 2010, the Controller issued the Final Audit Report.[83] The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, (2) and overstated offsetting revenues.[84]

On June 11, 2013, the claimant filed this IRC with the Commission.[85]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to reductions totaling $448,202 to the claimant's reimbursement claims for fiscal years 2002-2003 and 2003-2004.

The claimant takes the following principal positions:

1. The Controller reviewed and utilized incomplete and inaccurate data and documentation when it conducted its audit.[86]
2. The claimant's claims were timely filed.[87]
3. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[88]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $448,202 in reductions to the claimant's fiscal year 2002-2003 and 2003-2004 reimbursement claims.

The Controller takes the following principal positions:

1. The claimant failed to provide support for its claims in a format which could be verified.[89]
2. The claimant agreed to the findings of the audit.[90]

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[82] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

[83] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[84] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[85] Exhibit A, IRC, pages 1, 3.

[86] Exhibit A, IRC, pages 6-8, 10-12.

[87] Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment" dated June 12, 2010, filed as a supplement to this IRC to establish alleged timeliness).

[88] Exhibit A, IRC, pages 8-10.

[89] Exhibit B, Controller's Late Comments on the IRC, pages 20-22.

[90] Exhibit B, Controller's Late Comments on the IRC, pages 19, 22.

3. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[91]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the Decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[92] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[93]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[94] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection

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[91] Exhibit B, Controller's Late Comments on the IRC, page 19, 21-22.

[92] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[93] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[94] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[95]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [96] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[97]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[98]

The Controller's Final Audit Report and its cover letter are both dated May 28, 2010.[99] Three years later was Tuesday, May 28, 2013.

Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days late.[100]

On its face, the IRC was untimely filed.[101]

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[95] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[96] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[97] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[98] Former Code of California Regulations, title 2, section 1185(b), which was re-numbered section 1185(c) as of January 1, 2011. Effective July 1, 2014, the regulation was amended to state as follows: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[99] Exhibit A, IRC, pages 96 (cover letter), 101 (Final Audit Report).

[100] Exhibit A, IRC, page 1.

[101] "The statute of limitations is an affirmative defense" (*Ladd. v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also

The claimant attempts to save its IRC by calculating the commencement of the limitations period from June 12, 2010, the date of two documents sent by the Controller which the claimant dubs a "Notice of Claim Adjustment."[102] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[103] Although the claimant reads the document dated June 12, 2010, as a single document, the Commission reads it as two documents — specifically, two letters each containing a separate "Dear Claimant" salutation, of which the main text of the second letter is reproduced twice.[104]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the claimant's receipt of the Final Audit Report and did not re-commence upon the receipt of the later two documents.

1. The Two Documents Dated June 12, 2010, Are Not Notices Of Claim Adjustment.

For purposes of state mandates law, the Legislature has enacted a statutory definition of what constitutes a notice of claim adjustment.

Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of claim adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the two documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates any reason for the adjustment.[105]

Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[102] See Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[103] Exhibit A, IRC, page 5.

[104] The two "Dear Claimant" salutations appear at Exhibit A, IRC, pages 13 and 15. The main text of Exhibit A, IRC, page 17, appears to be identical to the main text of Exhibit A, IRC, pages 15 and 16.

[105] Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of claim adjustment because neither of the documents adjusts anything. The two documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[106]

Neither of the two documents provides the claimant with notice of any new finding. The Final Audit Report contained the dollar amounts which would not be reimbursed.[107] The two later documents merely repeat information which was already contained in the Final Audit Report. The two documents do not provide notice of any new and material information or adjustments. Moreover, Government Code section 17558.5(c) provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Whatever term may accurately be used to characterize the two documents identified by the claimant, the two documents are not "notices of claim adjustment" under state mandate law.

The claimant might attempt to rely on a subsequent letter issued by the Controller dated May 7, 2013, which appears to state that the claimant was notified of the claim reductions on June 12, 2010, the date of the two documents. "An IRC must be filed within three years following the date that we notified the county of a claim reduction. The State Controller's Office notified the county of a claim reduction . . . on June 12, 2010, for the HDS III Program audit."[108]

However, the Controller's statement in the letter dated May 7, 2013, is not outcome-determinative for several reasons. First, the Controller's letter does not explicitly state that June 12, 2010, was the first or earliest date on which claimant was informed of the reductions. Second, to the extent that the Controller was stating its legal conclusion regarding the running of the limitations period, the Commission is not bound by the Controller's interpretation of state mandate law. Government Code section 17552 provides that the Commission has the "sole and exclusive" jurisdiction to determine such issues. Third, to the extent that the Controller was making a statement of fact, the relative vagueness of the statement in the letter dated May 7, 2013 which was sent more than two and a half years after the fact, is, on a preponderance of the evidence standard, outweighed by the evidence contained in the Final Audit Report and its cover letter.

Accordingly, the Commission finds that the two documents relied on by the claimant are not notices of claim adjustment which began or re-set the running of the limitations period.

2. <u>The Limitations Period to File This IRC Commenced on May 28, 2010, and Expired on Tuesday, May 28, 2013.</u>

When the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

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[106] Compare Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment") with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[107] The Final Audit Report and its cover letter are each dated May 28, 2010. (Exhibit A, IRC, pages 96, 101.)

[108] Exhibit A, IRC, page 21 (Letter from Jim L. Spano to Robin C. Kay, dated May 7, 2013).

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[109]

Per this regulation, the claimant's IRC was untimely filed.

The regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated May 28, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim can be filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[110]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][111]

Under these principles, the claimant's three-year limitations period began to run on May 28, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had been, from its perspective, harmed by a claim reduction, had received or been deemed to have received notice of the harm, and possessed the ability to file and maintain an IRC with the Commission. The

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[109] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, renumbered as 1185(c) effective January 1, 2011.

[110] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[111] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal. 4th 809, 815.

claimant could have filed its IRC one day, one month, or even three years after May 28, 2010; instead, the claimant filed its IRC three years and 14 days after — which is 14 days late.

This finding is consistent with three recent Commission Decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* Program IRC decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of claim adjustment in the record.[112] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated May 28, 2010, and the two letters dated June 12, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[113] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[114]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[115] In the instant IRC, the limitations period therefore began to run when the claimant received the Final Audit Report, i.e., the notice which informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* Program IRC decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was issued after the Controller's Final Audit Report.[116] The Decision is distinguishable because the Controller's cover letter accompanying the audit report to the claimant in that case requested additional information and

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[112] Decision, *Collective Bargaining*, Commission Case No. 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[113] Decision, *Collective Bargaining*, Commission Case No. 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[114] Decision, *Collective Bargaining*, Commission Case No. 05-4425-I-11 (adopted December 5, 2014), page 21.

[115] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01 (adopted March 25, 2016), page 16.

[116] Decision, *Handicapped and Disabled Students*, Commission Case No. 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

implied that the attached audit report was not final.[117] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[118]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[119]

Consequently, the limitations period to file this instant IRC commenced on May 28, 2010, and expired on May 28, 2013.

The IRC is denied as untimely filed.

B. In the Alternative, the County Waived Its Right To File An IRC.

Even if the claimant filed its IRC on time, which is not the case, the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on that separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[120] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[121]

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[117] Decision, *Handicapped and Disabled Students*, Commission Case No. 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[118] Exhibit A, IRC, page 96.

[119] All that being said, an administrative agency's adjudications need not be consistent so long as they are not arbitrary. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[120] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[121] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's April 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[122]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[123] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[124] Waiver is a question of fact and is always based upon intent.[125] Waiver must be established by clear and convincing evidence.[126]

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administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

[122] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

[123] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[124] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[125] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[126] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in April 2010 was to accept the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[127] The record contains no evidence of the claimant objecting to the Draft Audit Report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010: a copy of which is reproduced in the Controller's Final Audit Report.[128] The first page of this three-page letter[129] contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[130]

The claimant's written response to the Draft Audit Report — the exact moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance."

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

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convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

[127] Exhibit A, IRC, page 101.

[128] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[129] This three-page letter (which is in the record at Exhibit A, IRC, pages 107-109) will be referred to herein as the "three-page letter" to distinguish it from a separate two-page letter sent by the same author on the same date of April 30, 2010 (which is in the record at Exhibit B, Controller's Late Comments on the IRC, pages 152-153). The two-page letter is referred to herein as the "two-page letter."

[130] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[131]

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[132]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[133]

Each of the claimant's responses to the Controller's three findings supports the Commission's finding that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the three-page letter to reserve rights or to clarify issues,[134] the overall intention communicated in the letter is that the claimant intended to accept and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the three-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.[135]

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[131] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[132] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[133] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[134] For example, the claimant purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provides additional information to support its claims. (Exhibit A, IRC, page 107.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs these sporadic, pro forma statements.

[135] In addition, the claimant waited more than two years after the issuance of the Final Audit Report to provide information to the Controller regarding a purported reconsideration request. Exhibit B, Controller's Late Comments on the IRC, page 19 ("The county provided information regarding its reconsideration request in June and August 2012 . . . .").

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated April 10, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

> April 30, 2010
>
> Mr. Jim L. Spano, Chief
> Mandated Costs Audits Bureau
> Division of Audits
> California State Controller's Office
> P.O. Box 942850
> Sacramento, CA 94250-5874
>
> Dear Mr. Spano:
>
> **Handicapped and Disabled Students Program II**
>
> **July 1, 2002, through June 30, 2004**
>
> In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:
>
> 1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.
>
> 2. We designed and implemented the County's accounting system to ensure accurate and timely records.
>
> 3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students II Program's parameters and guidelines.
>
> 4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines.
>
> 5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.
>
> 6. Excluding mandated program costs, the County did not recover indirect cost from any State or federal agency during the audit period.
>
> 7. We are not aware of any:
>
> > a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.
> >
> > b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[136]

The admissions made by the claimant in the two-page letter contradict arguments now made by claimant in the instant IRC.

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[137] For example, the claimant now contends, "It was this fourth generation data set that became the basis for the audit report. . . . . However, upon further review, this fourth generation data run actually excluded many of the units of service that had been properly used to calculate the costs of the claim."[138]

However, neither claimant's three-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[139] "We designed and implemented the County's accounting system to ensure accurate and timely

[136] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[137] Exhibit A, IRC, pages 6-7.

[138] Exhibit A, IRC, page 6.

[139] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

records."[140] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[141] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[142]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under a right of equitable setoff.[143]

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[144] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[145]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

On this separate and independent ground, the Commission denies the IRC.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

The Commission therefore denies this IRC.

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[140] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[141] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[142] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[143] Exhibit A, IRC, pages 8-10.

[144] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 10, 2010, paragraph 8).

[145] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 20, 2016, I served the:

> **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
> *Handicapped and Disabled Students II*, 12-0240-I-01
> Government Code Sections 7572.55 and 7576
> Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
> California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60050,60030, 60040, 60045, 60055, 60100, 60110, 60200
> (Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
> Fiscal Years: 2002-2003 and 2003-2004
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 20, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH
550 S. VERMONT AVE., LOS ANGELES, CA 90020 HTTP://DMH.LACOUNTY.GOV

ROBIN KAY, Ph.D.
Acting Director

DENNIS MURATA, M.S.W.
Acting Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

RECEIVED
June 10, 2016
Commission on
State Mandates

June 9, 2016

Exhibit D2

Heather Halsey, Executive Director
State of California Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

LOS ANGELES COUNTY COMMENTS ON PROPOSED DECISION
IRC NO. 12-0240-I-01
(Handicapped and Disabled Students Program II)

On behalf of the County of Los Angeles, I am submitting the attached comments to the Proposed Decision on the County's Incorrect Reduction Claim (IRC) No. 12-0240-I-01 related to the disallowance of costs associated with the provision of mental health services to pupils under the above-referenced program.

We appreciate your consideration of this information.

Sincerely,

Robin Kay, Ph.D.

Robin Kay, Ph.D.
Acting Director

RK:lw

c: Lyn Wallensak

Los Angeles County IRC No. 12-0240-I-01
Handicapped and Disabled Students Program II
Fiscal Years 2002-03 and 2003-04
Comments on Proposed Decision Dated May 20, 2016

Introduction

The following is the County of Los Angeles' response to the Commission on State Mandates (CSM) Proposed Decision on the County's Incorrect Reduction Claim (IRC) contesting the disallowance of costs associated with the County's provision of State-mandated mental health services under the Handicapped and Disabled Students Program II for the period of July 1, 2002, through June 30, 2004. Of the $3,276,316 in claimed costs during this two-year period, the State Controller's Office (SCO) disallowed $717,879.

The County seeks to have $448,202 reinstated, as follows:

- Fiscal Year 2002-03: $216,793
- Fiscal Year 2003-04: $231,409

County's Response to Proposed Decision

The Proposed Decision is to deny the County's IRC based on CSM staff's conclusions that the IRC was not filed timely and that, even if the IRC was filed timely, the County waived its rights to appeal. Both statements are incorrect.

The IRC was Timely Filed

The Proposed Decision states that the County's IRC was not timely filed because it was not filed within three (3) years of the date of the SCO Final Audit Report. This claim is incorrect.

California Code of Regulations states:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final audit report, letter, remittance advice **or** other written notice of adjustment notifying the claimant of a reduction.

While the Final Audit Report was dated May 28, 2010, the SCO issued notices of the claim reductions to the County dated June 12, 2010. The County filed its IRC on June 11, 2013; therefore, it was timely.

The Proposed Decision states the County "tried to save" its IRC by identifying certain documents as the notices of claim reductions. However, it was not the County that so identified these documents but the SCO. In its letter to the County dated May 7, 2013, the SCO states:

> "An IRC must be filed within three years following the date we notified the County of a claim reduction. The State Controller's Office notified the County of a claim reduction on August 6, 2010, for the HDS Program audit and on June 12, 2010, for the HDS II Program Audit."

The Proposed Decision asserts that the SCO letter has no impact on the determination of timeliness. However, the SCO's actions and statements are relevant. The County requested the SCO enter into a reconsideration process on its final audit report on November 10, 2010. As described in the original IRC narrative, the SCO subsequently agreed to reconsider its original findings only to withdraw from the process and inform the County it must file an IRC on May 14, 2013 – mere weeks prior to the alleged deadline for the IRC and **2½ years** after the County approached the SCO about revising its audit reports.

The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.

If, as the proposed decision states, these notices do not meet the legal requirements of Government Code Section 17558.5 (c), then it is because the notices issued by the SCO were defective and, if so, then proper notice has never been given. Government Code Section 17558.5 (c) clearly states that the Controller's Office **shall** issue such notice and such notice **must** include the elements listed. A defective notice issued by the State agency responsible for issuing such notices should not affect the County's rights of appeal.

The Proposed Decision mistakenly relies on a common law practice regarding the statute of limitations running from the earliest time from which all essential elements were met. The use of **or** in the listing of events upon which the three-year time limit would begin clearly allows the calculation from any of the events. Further, the SCO led the County to believe for more than two years that it was reconsidering its findings and would re-issue the audit report. Had the SCO not done so, the County would have filed the IRC two years before it did.

The County Did Not Waive Its Right to File an IRC

Contrary to the claim within the Proposed Decision, the County did not waive its rights to file an IRC. The Proposed Decision in fact states that there is "clear and convincing evidence" that the County intended to waive its rights. Indeed, no such evidence exists because the County never intended to waive its rights. In fact, it intentionally preserved such rights.

In responding to the Audit Report, the County agreed with the SCO's **recommendations** regarding implementation of stronger policies and procedures but also stated explicitly that it expected the SCO would reconsider its findings and revise its audit report if the County provided additional documentation to support the costs: "We also recognize that if the County subsequently provides additional information to support its $717,879 in unallowable costs the State will revise the final audit report to include such additional allowable costs."

Significantly, the SCO itself is not the one which made the waiver argument. Instead, the Proposed Decision infers the SCO wanted to raise the issue by statements related to the County's responses to the audit reports. Specifically, in footnote 121 the Proposed Decision states "While the Controller's raising of the waiver issue could have been made with more precision and details, the Controller's statements regarding the claimant's April 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial procedure.")"

It this is the standard that the Proposed Decision is applying, then it must be applied equally. Therefore, the same intent and lenient standard must be applied to the County's response to the audit report and its explicit statement that if additional information supporting the costs was discovered and brought forward, then the final audit report would be revised.

Conclusion

Therefore, the County requests that the Proposed Decision be rejected and the Commission consider the claims raised by the County in its IRC be addressed and the County's IRC be considered on its merits.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 10, 2016, I served the:

Claimant Comments on the Draft Proposed Decision
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60050,60030, 60040, 60045, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 6, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

July 7, 2016

Exhibit D3

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Proposed Decision**
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The Proposed Decision for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

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.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2012\0240 (Handicapped II)\12-0240-I-01\correspondence\PDtrans.docx

ITEM 6

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892);
Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200[1]
(Emergency regulations effective July 1, 1998 [Register 98, No. 26]
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students II

Fiscal Years 2002-2003 and 2003-2004

12-0240-I-01

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $448,202.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and
2. By clear and convincing evidence, the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Accordingly, staff recommends that the Commission deny this IRC.

Procedural History

The claimant submitted its reimbursement claims, dated May 8, 2006, for fiscal years 2002-2003 and 2003-2004.[2]

The Controller sent a letter to claimant, dated August 12, 2008, confirming the start of the audit.[3]

The Controller issued the Draft Audit Report dated March 26, 2010.[4] The claimant sent a letter to the Controller, dated April 30, 2010, regarding the Draft Audit Report.[5] The Controller issued the Final Audit Report dated May 28, 2010.[6]

On June 11, 2013, the claimant filed this IRC.[7] On November 25, 2014, the Controller filed late comments on the Incorrect Reduction Claim.[8] On December 23, 2014, the claimant filed a request for extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[9]

On May 20, 2016, Commission staff issued the Draft Proposed Decision.[10] On June 6, 2016, the Controller filed comments on the Draft Proposed Decision.[11] On June 10, 2016, the claimant filed comments on the Draft Proposed Decision.[12]

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

---

[2] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[3] Exhibit B, Controller's Late Comments on the IRC, page 148-149, (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which assert "The SCO contacted the county by phone on July 28, 2008, to initiate the audit, and confirmed the entrance conference date with a start letter dated August 12, 2008 . . . ."

[4] Exhibit A, IRC, page 101.

[5] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[6] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Oct. 31, 2014, paragraph 7); Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[7] Exhibit A, IRC, pages 1, 3.

[8] Exhibit B, Controller's Late Comments on the IRC, page 1.

[9] Exhibit C, Claimant's Rebuttal Comments, page 1.

[10] Exhibit D, Draft Proposed Decision.

[11] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[12] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[13] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[15]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[16] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[17]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[14] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[15] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[16] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[17] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated May 28, 2010. The Controller issued two documents, dated June 12, 2010, which summarized the Final Audit Report's findings and which set a deadline for payment. On June 11, 2013, the claimant filed this IRC.	*Deny IRC as untimely* – The claimant must file an IRC within three years of "the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction." Former Cal. Code Regs., title 2, § 1185(b) (effective from May 8, 2007, to June 30, 2014). Remittance advices and other communications which merely re-state the findings of the Final Audit Report do not affect the running of the three-year limitations period.
Did the Controller's statements or actions suspend or reset the statute of limitations (under the doctrine of equitable estoppel)?	In a letter to the claimant dated May 7, 2013, the Controller incorrectly stated that the three-year period for filing an IRC started to run from the Controller's issuance of the two documents dated June 12, 2010. The claimant asserts that it relied upon this inaccurate statement. The claimant also asserts that the Controller reconsidered its claim and did not reject the claim until May 2013.	*Deny IRC as untimely* – No estoppel occurs when both parties make a mistake of law; each party had the opportunity to research the law. Estoppel would negate the strong policy of enforcing statutes of limitation. The claimant also failed to establish that the Controller acted with a degree of turpitude. The Controller stated in a letter to the claimant dated May 7, 2013, that the claimant's reconsideration request was denied. A reconsideration that never occurred cannot affect the statute of limitations.
Did the claimant waive the objections it is now raising?	In two letters both dated April 30, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object

		to the audit or to add additional claims.

Staff Analysis

I. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[18]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated May 28, 2010.[19] Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later.[20]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of two documents issued by the Controller, dated June 12, 2010, which the claimant refers to as a "Notice of Claim Adjustment."[21] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[22]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the issuance of the two documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

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[18] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was re-numbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

[19] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[20] Exhibit A, IRC, page 1.

[21] Exhibit A, IRC, pages 13-17.

[22] Exhibit A, IRC, page 5.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of adjustment because none of the documents adjusts anything. The two documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[23]

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this confusingly named rule, a right accrues — and the limitations period begins to run — from the *earliest* point in time when the claim could have been filed and maintained.[24] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[25]

Under these principles, the claimant's three-year limitations period began to run on May 28, 2010, the date of the Final Audit Report. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had (from its perspective) been harmed by a reduction.

Claimant also argues that the statements and actions of the Controller led the claimant to file late since the Controller in a letter dated May 7, 2013, stated that the claimant could file an IRC three years from the date of the documents dated June 12, 2010. The claimant was merely following the Controller's instruction, it argues.[26] Therefore, under principles of equitable estoppel, Claimant argues the IRC was timely filed.

Equitable estoppel does not affect the statute of limitations in this case. The Controller made a mistake of law when (in the letter dated May 7, 2013[27]) the Controller stated that the three-year IRC filing period started to run from the Controller's notice contained in the two documents dated June 12, 2010. As analyzed in this Proposed Decision, the three-year limitations period commenced to run from the date of the Final Audit Report.

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[23] Compare Exhibit A, IRC, pages 13-17 with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[24] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[25] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[26] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[27] Exhibit A, IRC, page 21.

The Commission should interpret the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. A situation in which a government agency and a third party both misinterpret the law does not create an estoppel against the government. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[28] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[29] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[30]

Furthermore, the Controller had, two years earlier, referred the claimant to the Commission's website for IRC information.[31] In addition, the record does not indicate that the Controller engaged in some quantum of turpitude — a requisite to a finding of equitable estoppel.[32] Separately and independently, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public; specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[33]

The claimant also argues that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[34] However, the Controller stated at the relevant time (May 2013) that it was not engaging in a reconsideration and that the claimant's reconsideration request was denied.[35] The claimant's argument should therefore be rejected, because a statute of limitations cannot be affected by a reconsideration which never occurred.

Accordingly, the IRC should be denied as untimely filed.

II. In the Alternative, the County Waived Its Right To File An IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results.

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[28] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[29] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[30] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[31] Exhibit A, IRC, page 96 ("If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf.").

[32] "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[33] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[34] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[35] Exhibit A, IRC, page 20 ("This letter confirms that we denied the county's reconsideration request . . . .").

Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[36]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[37] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[38] Waiver is a question of fact and is always based upon intent.[39] Waiver must be established by clear and convincing evidence.[40]

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[41] In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[42] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[43]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following two pages of the three-page letter

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[36] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[37] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[38] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[39] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[40] *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd. (1994)* , 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[41] Exhibit A, IRC, page 101.

[42] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[43] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

contain further statements of agreement with each of the Controller's findings and recommendations.[44]

The claimant also sent a separate two-page letter dated April 30, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

For example, in its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[45] However, neither claimant's four-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[46] "We designed and implemented the County's accounting system to ensure accurate and timely records."[47] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[48] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[49]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[50] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[51] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[52]

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[44] Exhibit A, IRC, pages 108-109.

[45] Exhibit A, IRC, pages 6-7, 10-12.

[46] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[47] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[48] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[49] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[50] Exhibit A, IRC, pages 8-10.

[51] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[52] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 16, 2010, paragraph 9).

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision denying the IRC and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572.55 and 7576; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200[53] (Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33]) Fiscal Years 2002-2003 and 2003-2004 County of Los Angeles, Claimant	Case No.: 12-0240-I-01 *Handicapped and Disabled Students II* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

[53] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because it found the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues.[54] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts, which would then become subject to the Program's reimbursement formula:

FY2002-2003: $216,793

FY2003-2004: $231,409[55]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, the Commission denies this IRC.

I. Chronology

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2002-2003.[56]

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2003-2004.[57]

[54] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[55] Exhibit A, IRC, page 1.

[56] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[57] Exhibit A, IRC, page 113 (cover letter), page 254 (Form FAM-27).

08/12/2008 Controller dated a letter to claimant confirming the start of the audit.[58]

03/26/2010 Controller issued the Draft Audit Report, dated March 26, 2010.[59]

04/30/2010 Claimant sent a letter to Controller dated April 30, 2010, in response to the Draft Audit Report.[60]

05/28/2010 Controller issued the Final Audit Report dated May 28, 2010.[61]

06/11/2013 Claimant filed this IRC.[62]

11/25/2014 Controller filed late comments on the IRC.[63]

12/23/2014 Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

03/26/2015 Claimant filed rebuttal comments.[64]

05/20/2016 Commission staff issued the Draft Proposed Decision.[65]

06/06/2016 Controller filed comments on the Draft Proposed Decision.[66]

06/10/2016 Claimant filed comments on the Draft Proposed Decision.[67]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[68] Among other things, the EHA authorized the payment of

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[58] Exhibit B, Controller's Late Comments on the IRC, page 148-149 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which asserts "The SCO contacted the county by phone on July 28, 2008, to initiate the audit . . . ." However, this assertion is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

[59] Exhibit A, IRC, page 101.

[60] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[61] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[62] Exhibit A, IRC, pages 1, 3.

[63] Exhibit B, Controller's Late Comments on the IRC, page 1.

[64] Exhibit C, Claimant's Rebuttal Comments, page 1.

[65] Exhibit D, Draft Proposed Decision.

[66] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[67] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[68] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) (current version).

federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[69] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and guarantees 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.[70]

The *Handicapped and Disabled Students* Mandate

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[71] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[72] And, in 1985, the Legislature further amended chapter 26.5.[73]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[74]

In 1990 and 1991, the Commission adopted the Statement of Decision and the Parameters and Guidelines approving the Test Claim *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[75] The Commission found that the activities of providing

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[69] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) (current version).

[70] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[71] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[72] Statutes of 1984, chapter 1747.

[73] Statutes of 1985, chapter 1274.

[74] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[75] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

mental health assessments; participation in the individualized education plan (IEP) process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[76] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[77]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[78] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.

The *Handicapped and Disabled Students II* Mandate

In May 2005, the Commission also adopted the Statement of Decision on *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, a Test Claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health.[79]

The Controller's Audit and Reduction of Costs

The Controller issued a Draft Audit Report dated March 26, 2010, and provided a copy to the claimant for comment.[80]

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[76] Former Welfare and Institutions Code sections 5600 et seq.

[77] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[78] Statutes 2004, chapter 493 (SB 1895).

[79] Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students* (4282, 04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) by transferring responsibility for providing mental health services under IDEA back to school districts, effective July 1, 2011. On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

[80] Exhibit A, IRC, page 101.

In a three-page letter dated April 30, 2016, the claimant responded to the Draft Audit Report, agreeing with the audit's findings and accepting its recommendations.[81] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[82]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[83]

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[84]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[85]

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[81] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[82] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[83] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[84] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[85] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

In a separate two-page letter also dated April 30, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[86] Material statements in the two-page letter include:

> • "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[87]
>
> • "We designed and implemented the County's accounting system to ensure accurate and timely records."[88]
>
> • "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines."[89]
>
> • "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[90]
>
> • "We are not aware of any . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[91]
>
> • "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[92]
>
> • "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[93]

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[86] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[87] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[88] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[89] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 4).

[90] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[91] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[92] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[93] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

On May 28, 2010, the Controller issued the Final Audit Report.[94] The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, (2) and overstated offsetting revenues.[95]

On June 11, 2013, the claimant filed this IRC with the Commission.[96]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to reductions totaling $448,202 to the claimant's reimbursement claims for fiscal years 2002-2003 and 2003-2004.

The claimant takes the following principal positions:

1. The Controller reviewed and utilized incomplete and inaccurate data and documentation when it conducted its audit.[97]
2. The claimant's claims were timely filed.[98]
3. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[99]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated June 12, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.[100]

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[94] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[95] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[96] Exhibit A, IRC, pages 1, 3.

[97] Exhibit A, IRC, pages 6-8, 10-12.

[98] Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment" dated June 12, 2010, filed as a supplement to this IRC to establish alleged timeliness).

[99] Exhibit A, IRC, pages 8-10.

[100] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[101]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $448,202 in reductions to the claimant's fiscal year 2002-2003 and 2003-2004 reimbursement claims.

The Controller takes the following principal positions:

1. The claimant failed to provide support for its claims in a format which could be verified.[102]
2. The claimant agreed to the findings of the audit.[103]
3. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[104]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[105]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[106] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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[101] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[102] Exhibit B, Controller's Late Comments on the IRC, pages 20-22.

[103] Exhibit B, Controller's Late Comments on the IRC, pages 19, 22.

[104] Exhibit B, Controller's Late Comments on the IRC, page 19, 21-22.

[105] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[106] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[107]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[108] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[109]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[110] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[111]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state

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[107] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[108] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[109] *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[110] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[111] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

> audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[112]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated May 28, 2010.[113] Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later.[114]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from June 12, 2010, the date of two documents sent by the Controller which the claimant dubs a "Notice of Claim Adjustment."[115] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[116] Although the claimant reads the document dated June 12, 2010, as a single document, the Commission reads it as two documents — specifically, two letters each containing a separate "Dear Claimant" salutation, of which the main text of the second letter is reproduced twice.[117]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the receipt of the later two documents.

1. <u>The Two Documents Dated June 12, 2010, Are Not Notices of Claim Adjustment.</u>

For purposes of state mandates law, the Legislature has enacted a statutory definition of what constitutes a notice of claim adjustment.

Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the

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[112] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) as of January 1, 2011. Effective July 1, 2014, the regulation was amended to state as follows: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[113] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[114] Exhibit A, IRC, page 1.

[115] See Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[116] Exhibit A, IRC, page 5.

[117] The two "Dear Claimant" salutations appear at Exhibit A, IRC, pages 13 and 15. The main text of Exhibit A, IRC, page 17, appears to be identical to the main text of Exhibit A, IRC, pages 15 and 16.

overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of claim adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the two documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates any reason for the adjustment.[118]

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of claim adjustment because neither of the documents adjusts anything. The two documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[119] The claimant asserts that if the documents dated August 6, 2010 do not constitute notices of claim adjustment, then the Controller never provided notice.[120] The Final Audit Report provides abundant notice.

Neither of the two documents provides the claimant with notice of any new finding. The Final Audit Report contained the dollar amounts which would not be reimbursed.[121] The two later documents merely repeat information which was already contained in the Final Audit Report. The two documents do not provide any new and material information nor do they contain any previously unannounced adjustments.[122]

For these reasons, the two documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. <u>The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.</u>

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation

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[118] Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[119] Compare Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment") with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[120] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[121] The Final Audit Report is dated May 28, 2010. (Exhibit A, IRC, pages 96, 101.)

[122] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. (Government Code section 17558.5(c) ["Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."].) Whatever term may accurately be used to characterize the two documents identified by the claimant, the two documents are not "notices of claim adjustment" under state mandate law.

lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[123] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[124]

Under a legal doctrine with the potentially confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a complete claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim can be filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[125]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][126]

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[123] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[124] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, renumbered as 1185(c) effective January 1, 2011.

[125] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[126] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal. 4th 809, 815.

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had been, from its perspective, harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock; the limitations period starts to run from the earliest point in time when the claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* Program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of claim adjustment in the record.[127] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated May 28, 2010, and the two letters dated June 12, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[128] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[129]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[130] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* Program IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was issued after the Controller's Final Audit Report.[131] The Decision is distinguishable because the Controller's cover letter accompanying the audit report to the claimant in that case requested additional information and

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[127] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[128] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[129] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

[130] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[131] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

implied that the attached audit report was not final.[132] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[133]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[134]

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[135] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

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[132] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[133] Exhibit A, IRC, page 96.

[134] All that being said, an administrative agency's adjudications need not be consistent so long as they are not arbitrary. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[135] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

3. The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated June 12, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[136]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[137] — but does not necessarily possess[138] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[139]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[140] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the

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[136] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 20-21 from Jim Spano to Robin C. Kay, dated May 7, 2013.

[137] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[138] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

[139] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[140] Evidence Code section 623.

facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[141]

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[142] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[143] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[144]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[145] In the federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[146]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), the three-year limitations period had been in effect and had been published since at least May 2007.[147] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the two documents dated June 12, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel

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[141] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

[142] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[143] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[144] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[145] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[146] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

[147] Title 2, California Code of Regulations section 1185; California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

had an equal opportunity to discover the law."[148] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[149] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[150]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated May 28, 2010, the Controller summarized the audit findings and then stated, "If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[151] In other words, as of May or June 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission's website. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[152]

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[153] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[154] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[155] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request

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[148] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[149] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[150] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[151] Exhibit A, IRC, page 96.

[152] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[153] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[154] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[155] Exhibit A, IRC, page 20.

. . . ."[156] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence until a June 2012 delivery of documents,[157] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

B. In the Alternative, the County Waived Its Right to File an IRC.

Even if the claimant filed its IRC on time (which is not the case), the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on that separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[158] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[159]

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and

[156] Exhibit A, IRC, page 20.

[157] Exhibit A, IRC, page 20.

[158] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[159] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's April 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding"). (In its Comments on the Draft Proposed Decision (Exhibit F, page 4), the claimant questions why this lenient standard is not also used to determine whether waiver occurred. The claimant is confusing the standard for determining whether an issue is raised and preserved at an administrative hearing (a lenient standard in which a few words in isolation may suffice) with the standard for determining whether waiver occurred (a strict standard which requires a weighing of all evidence in the record).)

> depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[160]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[161] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[162] Waiver is a question of fact and is always based upon intent.[163] Waiver must be established by clear and convincing evidence.[164]

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in April 2010 was to accept the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

---

[160] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

[161] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[162] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[163] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[164] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[165] The record contains no evidence of the claimant objecting to the Draft Audit Report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[166] The first page of this three-page letter[167] contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[168]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance." In the quoted passage, the claimant states unambiguously that it agreed with the Controller's "findings." The record therefore contradicts the claimant's argument, in comments on the Draft Proposed Decision that it only agreed with the Controller's "recommendations."[169]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[170]

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[165] Exhibit A, IRC, page 101.

[166] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[167] This three-page letter (which is in the record at Exhibit A, IRC, pages 107-109) will be referred to herein as the "three-page letter" to distinguish it from a separate two-page letter sent by the same author on the same date of April 30, 2010 (which is in the record at Exhibit B, Controller's Late Comments on the IRC, pages 152-153). The two-page letter is referred to herein as the "two-page letter."

[168] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[169] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.

[170] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[171]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[172]

Each of the claimant's responses to the Controller's three findings supports the Commission's finding that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the three-page letter to reserve rights or to clarify issues,[173] the overall intention communicated in the letter is that the claimant intended to accept and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the three-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.[174]

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated April 10, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

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[171] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[172] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[173] For example, the claimant purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provides additional information to support its claims. (Exhibit A, IRC, page 107. See also Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs statements lacking legal or factual foundation.

[174] In addition, the claimant waited more than two years after the issuance of the Final Audit Report to provide information to the Controller regarding a purported reconsideration request. Exhibit B, Controller's Late Comments on the IRC, page 19 ("The county provided information regarding its reconsideration request in June and August 2012 . . . .").

April 30, 2010

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

Dear Mr. Spano:

Handicapped and Disabled Students Program II

July 1, 2002, through June 30, 2004

In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:

1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.

2. We designed and implemented the County's accounting system to ensure accurate and timely records.

3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students II Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines.

5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.

6. Excluding mandated program costs, the County did not recover indirect cost from any State or federal agency during the audit period.

7. We are not aware of any:

   a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

   b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

   c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

   d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[175]

The admissions made by the claimant in the two-page letter contradict arguments now made by claimant in the instant IRC.

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[176] For example, the claimant now contends, "It was this fourth generation data set that became the basis for the audit report. . . . . However, upon further review, this fourth generation data run actually excluded many of the units of service that had been properly used to calculate the costs of the claim."[177]

However, neither claimant's three-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[178] "We designed and implemented the County's accounting system to ensure accurate and timely records."[179] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[180] "We are not aware of . . . . Relevant,

[175] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[176] Exhibit A, IRC, pages 6-7.

[177] Exhibit A, IRC, page 6.

[178] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[179] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[180] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[181]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under a right of equitable setoff.[182]

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[183] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[184]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

On this separate and independent ground, the Commission denies the IRC.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

The Commission therefore denies this IRC.

[181] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[182] Exhibit A, IRC, pages 8-10.

[183] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 10, 2010, paragraph 8).

[184] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 7, 2016, I served the:

Proposed Decision
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 7, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/5/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

July 27, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

Exhibit D4

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

On July 22, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2012\0240 (Handicapped II)\12-0240-I-01\correspondence\Decisiontrans.docx

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572.55 and 7576; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200[1] (Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33]) Fiscal Years 2002-2003 and 2003-2004 County of Los Angeles, Claimant	Case No.: 12-0240-I-01 *Handicapped and Disabled Students II* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*) (*Served July 27, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. Edward Jewik and Hasmik Yaghobyan appeared on behalf of County of Los Angeles. Jim Spano and Chris Ryan appeared for the State Controller's Office.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny this IRC by a vote of 6-0 as follows:

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	Yes
Richard Chivaro, Representative of the State Controller	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because it found the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues.[2] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts, which would then become subject to the Program's reimbursement formula:

FY2002-2003: $216,793

FY2003-2004: $231,409[3]

After a review of the record and the applicable law, the Commission finds that the IRC was untimely filed. Accordingly, the Commission denies this IRC.

I. Chronology

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2002-2003.[4]

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2003-2004.[5]

08/12/2008 Controller dated a letter to claimant confirming the start of the audit.[6]

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[2] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[3] Exhibit A, IRC, page 1.

[4] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[5] Exhibit A, IRC, page 113 (cover letter), page 254 (Form FAM-27).

[6] Exhibit B, Controller's Late Comments on the IRC, page 148-149 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which asserts "The SCO contacted the county by phone on July 28, 2008, to initiate the audit . . . ." However, this assertion is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

03/26/2010	Controller issued the Draft Audit Report, dated March 26, 2010.[7]
04/30/2010	Claimant sent a letter to Controller dated April 30, 2010, in response to the Draft Audit Report.[8]
05/28/2010	Controller issued the Final Audit Report dated May 28, 2010.[9]
06/11/2013	Claimant filed this IRC.[10]
11/25/2014	Controller filed late comments on the IRC.[11]
12/23/2014	Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.
03/26/2015	Claimant filed rebuttal comments.[12]
05/20/2016	Commission staff issued the Draft Proposed Decision.[13]
06/06/2016	Controller filed comments on the Draft Proposed Decision.[14]
06/10/2016	Claimant filed comments on the Draft Proposed Decision.[15]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[16] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[17] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public

[7] Exhibit A, IRC, page 101.

[8] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[9] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[10] Exhibit A, IRC, pages 1, 3.

[11] Exhibit B, Controller's Late Comments on the IRC, page 1.

[12] Exhibit C, Claimant's Rebuttal Comments, page 1.

[13] Exhibit D, Draft Proposed Decision.

[14] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[15] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[16] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) (current version).

[17] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) (current version).

education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.[18]

The *Handicapped and Disabled Students* Mandate

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[19] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[20] And, in 1985, the Legislature further amended chapter 26.5.[21]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[22]

In 1990 and 1991, the Commission adopted the Statement of Decision and the Parameters and Guidelines approving the Test Claim *Handicapped and Disabled Students,* CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[23] The Commission found that the activities of providing mental health assessments; participation in the individualized education plan (IEP) process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[24] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and

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[18] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[19] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[20] Statutes of 1984, chapter 1747.

[21] Statutes of 1985, chapter 1274.

[22] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[23] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[24] Former Welfare and Institutions Code sections 5600 et seq.

counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[25]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[26] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.

The *Handicapped and Disabled Students II* Mandate

In May 2005, the Commission also adopted the Statement of Decision on *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, a Test Claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health.[27]

The Controller's Audit and Reduction of Costs

The Controller issued a Draft Audit Report dated March 26, 2010, and provided a copy to the claimant for comment.[28]

In a three-page letter dated April 30, 2016, the claimant responded to the Draft Audit Report, agreeing with the audit's findings and accepting its recommendations.[29] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and

[25] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[26] Statutes 2004, chapter 493 (SB 1895).

[27] Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students* (4282, 04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) by transferring responsibility for providing mental health services under IDEA back to school districts, effective July 1, 2011. On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

[28] Exhibit A, IRC, page 101.

[29] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

> procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[30]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[31]

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[32]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[33]

In a separate two-page letter also dated April 30, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[34] Material statements in the two-page letter include:

> • "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[35]

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[30] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[31] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[32] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[33] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[34] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[35] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

• "We designed and implemented the County's accounting system to ensure accurate and timely records."[36]

• "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines."[37]

• "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[38]

• "We are not aware of any . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[39]

• "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[40]

• "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[41]

On May 28, 2010, the Controller issued the Final Audit Report.[42] The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, (2) and overstated offsetting revenues.[43]

On June 11, 2013, the claimant filed this IRC with the Commission.[44]

III. Positions of the Parties

A. County of Los Angeles

[36] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[37] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 4).

[38] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[39] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[40] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[41] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

[42] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[43] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[44] Exhibit A, IRC, pages 1, 3.

The claimant objects to reductions totaling $448,202 to the claimant's reimbursement claims for fiscal years 2002-2003 and 2003-2004.

The claimant takes the following principal positions:

1. The Controller reviewed and utilized incomplete and inaccurate data and documentation when it conducted its audit.[45]
2. The claimant's claims were timely filed.[46]
3. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[47]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated June 12, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.[48]

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[49]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $448,202 in reductions to the claimant's fiscal year 2002-2003 and 2003-2004 reimbursement claims.

The Controller takes the following principal positions:

1. The claimant failed to provide support for its claims in a format which could be verified.[50]
2. The claimant agreed to the findings of the audit.[51]

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[45] Exhibit A, IRC, pages 6-8, 10-12.

[46] Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment" dated June 12, 2010, filed as a supplement to this IRC to establish alleged timeliness).

[47] Exhibit A, IRC, pages 8-10.

[48] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

[49] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[50] Exhibit B, Controller's Late Comments on the IRC, pages 20-22.

[51] Exhibit B, Controller's Late Comments on the IRC, pages 19, 22.

3. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[52]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[53]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[54] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[55]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[56] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately

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[52] Exhibit B, Controller's Late Comments on the IRC, page 19, 21-22.

[53] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[54] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[55] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[56] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

> considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[57]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[58] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[59]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[60]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated May 28, 2010.[61] Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later.[62]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from June 12, 2010, the date of two documents sent by the Controller which the claimant dubs a "Notice of Claim Adjustment."[63] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice

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[57] *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[58] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[59] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[60] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) as of January 1, 2011. Effective July 1, 2014, the regulation was amended to state as follows: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[61] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[62] Exhibit A, IRC, page 1.

[63] See Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

of Claim Adjustment dated June 12, 2010."[64] Although the claimant reads the document dated June 12, 2010, as a single document, the Commission reads it as two documents — specifically, two letters each containing a separate "Dear Claimant" salutation, of which the main text of the second letter is reproduced twice.[65]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the receipt of the later two documents.

1. The Two Documents Dated June 12, 2010, Are Not Notices of Claim Adjustment.

For purposes of state mandates law, the Legislature has enacted a statutory definition of what constitutes a notice of claim adjustment.

Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of claim adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the two documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates any reason for the adjustment.[66]

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of claim adjustment because neither of the documents adjusts anything. The two documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[67] The claimant asserts that if the documents dated August 6, 2010 do not

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[64] Exhibit A, IRC, page 5.

[65] The two "Dear Claimant" salutations appear at Exhibit A, IRC, pages 13 and 15. The main text of Exhibit A, IRC, page 17, appears to be identical to the main text of Exhibit A, IRC, pages 15 and 16.

[66] Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[67] Compare Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment") with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

constitute notices of claim adjustment, then the Controller never provided notice.[68] The Final Audit Report provides abundant notice.

Neither of the two documents provides the claimant with notice of any new finding. The Final Audit Report contained the dollar amounts which would not be reimbursed.[69] The two later documents merely repeat information which was already contained in the Final Audit Report. The two documents do not provide any new and material information nor do they contain any previously unannounced adjustments.[70]

For these reasons, the two documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[71] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[72]

Under a legal doctrine with the potentially confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a

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[68] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[69] The Final Audit Report is dated May 28, 2010. (Exhibit A, IRC, pages 96, 101.)

[70] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. (Government Code section 17558.5(c) ["Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."].) Whatever term may accurately be used to characterize the two documents identified by the claimant, the two documents are not "notices of claim adjustment" under state mandate law.

[71] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[72] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, renumbered as 1185(c) effective January 1, 2011.

complete claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim can be filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[73]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][74]

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had been, from its perspective, harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock; the limitations period starts to run from the earliest point in time when the claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* Program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of claim adjustment in the record.[75] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated May 28, 2010, and the two letters dated June 12, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[76] "Accordingly, the claimant cannot

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[73] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[74] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal. 4th 809, 815.

[75] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[76] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[77]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[78] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* Program IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was issued after the Controller's Final Audit Report.[79] The Decision is distinguishable because the Controller's cover letter accompanying the audit report to the claimant in that case requested additional information and implied that the attached audit report was not final.[80] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[81]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[82]

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[77] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

[78] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[79] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[80] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[81] Exhibit A, IRC, page 96.

[82] All that being said, an administrative agency's adjudications need not be consistent so long as they are not arbitrary. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[83] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

3. The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated June 12, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[84]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then

("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[83] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[84] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 20-21 from Jim Spano to Robin C. Kay, dated May 7, 2013.

the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[85] — but does not necessarily possess[86] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[87]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[88] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[89]

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[90] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[91] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[92]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[93] In the

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[85] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[86] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

[87] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[88] Evidence Code section 623.

[89] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

[90] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[91] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[92] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[93] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[94]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), the three-year limitations period had been in effect and had been published since at least May 2007.[95] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the two documents dated June 12, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[96] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[97] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[98]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated May 28, 2010, the Controller summarized the audit findings and then stated, "If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[99] In other words, as of May or June 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission's website. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

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[94] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

[95] Title 2, California Code of Regulations section 1185; California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

[96] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[97] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[98] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[99] Exhibit A, IRC, page 96.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[100]

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[101] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[102] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[103] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request . . . ."[104] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence until a June 2012 delivery of documents,[105] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed. The Commission therefore denies this IRC.

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[100] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[101] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[102] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[103] Exhibit A, IRC, page 20.

[104] Exhibit A, IRC, page 20.

[105] Exhibit A, IRC, page 20.

RE: **Decision**

Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

On July 22, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Dated: July 27, 2016

Heather Halsey, Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 27, 2016, I served the:

Decision
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 27, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/5/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, July 22, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

KEN ALEX
Director
Office of Planning & Research

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 13)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 12)

ERIC FELLER
Senior Commission Counsel
(Item 3)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

PAUL KARL LUKACS
Senior Commission Counsel
(Items 5 and 6)

KERRY ORTMAN
Program Analyst
(Item 11)

PUBLIC TESTIMONY

Appearing Re Item 3:

For State Controller's Office:

JAY LAL
Manager, Local Reimbursements Section
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816

GWENDOLYN CARLOS
Division of Accounting and Reporting
State Controller's Office
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Appearing Re Items 5 and 6:

For Claimant County of Los Angeles:

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 5 and 6: *continued*

For Claimant County of Los Angeles:

ED JEWIK
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For State Controller's Office:

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CHRISTOPHER B. RYAN
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ERRATA SHEET

Page	Line	Correction
6		Replace May 27, 2016 with May 26, 2016
7		Replace Requestor with Requester
8		Delete , Appointment of Commission Legislative
		Subcommittee Members

I N D E X

Proceedings **Page**

I N D E X

I N D E X

BE IT REMEMBERED that on Friday, July 22, 2016, commencing at the hour of 10:16 a.m., thereof, at the State Capitol, Room 447, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

CHAIR ORTEGA: Good morning, everyone.

I'd like to call to order the July 22nd meeting of the Commission on State Mandates.

If you could call the roll, please.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Here.

MS. HALSEY: Mr. Chivaro?

(No response.)

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Here.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Here.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Here.

MS. HALSEY: Mr. Saylor notified us that he will not be at today's hearing; but we should see him next hearing, in September.

MEMBER RAMIREZ: I didn't hear it.

Yes, aye.

MS. HALSEY: Thank you.

CHAIR ORTEGA: Okay, Item 3, the staff recommendation is adopted unanimously. Thank you.

MS. HALSEY: Item 4 was postponed to the September 23rd Commission hearing.

Senior Commission Counsel Paul Karl Lukacs will present Item 5, an incorrect reduction claim on *Handicapped and Disabled Students.*

MR. LUKACS: Good morning.

Staff recommends that the IRC be denied on two independent grounds. After a review of the record and the applicable law, staff finds that, one, the IRC was untimely filed; and two, by clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, staff recommends that the Commission adopt the proposed decision to deny this IRC.

Would the parties and witnesses please state your names for the record?

MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of the County of Los Angeles, the claimant.

MR. JEWIK: Ed Jewik on behalf of Los Angeles County.

MR. SPANO: Jim Spano, State Controller's Office.

MR. RYAN: Chris Ryan, State Controller's Office.

CHAIR ORTEGA: Okay. Go ahead, Ms. Yaghobyan.

Could you pull that microphone in closer? I was having a hard time hearing you.

MS. YAGHOBYAN: Yes, sure.

CHAIR ORTEGA: Thank you.

Go ahead.

MS. YAGHOBYAN: Good morning. Thank you.

Thank you, staff, for their analysis; but however, respectfully we have to disagree for two reasons:

One of them, the analysis says that we have -- our IRC wasn't filed timely. But if you look at the plain language of the code itself, the code -- this is what the code says: An incorrect reduction claim shall be filed with the Commission no later than three years following the date of the Office of the Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to reimbursement claim.

What happened was that after the audit was finalized, we got three notices for three different programs from the State Controller's Office, dated June 12, 2010.

And the State Controller's Office, in their subsequent communications with us, they kept referring to that date; that the clock is going to start ticking, for the purpose of IRC, from that date. So, therefore, we relied on that date correctly.

And the second result is correctly stated, that they said we could file our IRCs, which we did.

For example, with the *Handicapped and Disabled Students* program, the notice was dated June 10th -- June 12th, 2010. Our IRC was filed June 11th, 2015, in accordance with the exact language of the code. But it seems that the staff forgets the second part of the code, which says "or written letter, notice of adjustment of the reimbursement claim." So the only notice we received from the State Controller's Office were those notices dated June 12th, 2010.

The staff also goes ahead and then admits, even though the notice might not be proper, but the notice is deficient. For example, it doesn't say the amount of interest to be charged. But the point is, actually, that argument has to be addressed to the State Controller's Office, not to us, even though if the notice was deficient, we accepted their notice. And from our past practices, the State Controller's Office, they never charged us the interest of any audit findings. So if

the staff would like to recommend that to the State Controller's Office for the future, they're welcome to; but for our case, that it is not relevant.

So, therefore, based on the exact language, plain language of the code, our IRC was filed between the time that ran -- three years after the first notice we got from the State Controller's Office regarding the adjustment.

But it would have been even nicer if the State Controller's Office, instead of concurring with the staff's recommendation, would have supported our decision, and saying, "Yes, that's the rule; and that's what they complied with, and that's what they have been doing forever," since -- I know for the past 17 years.

And also, the staff says, "We were mistaken." So even if the State Controller's Office says, "This is the date," they were mistaken; and we were mistaken, too. See, so both parties were mistaken. Then, "Oh, we have to deny their IRC."

But that's also, I think, the mistaken party is the staff, because they don't read the plain language of the code, that says any letter, that it initiates the adjustment.

So neither us, nor the State Controller's Office, were mistaken, because we went by the code and the law.

Since we have been doing that, we have never had any problems. Therefore, our IRCs was filed timely.

The second argument the staff is making, since we come to find their comments because of the -- based on the State Controller's office's, thereafter, audit report, we conspicuously, clearly, knowingly, we waived our rights.

In contrary, this is what we specifically say, that this is what has been the case with the State Controller's Office -- and if they want to, they can confirm it, this has been our practice. We always make sure that, in the future, if any -- there is any change in the law, we find any documentation -- and the State Controller's Office, actually they have been good with us, too.

For example, we had an issue with the *POBOR* almost a year or two after the audit was finalized, Jim Venneman called me, and he said there was an issue that came up and it would affect our audit findings. They can look at our audit again; and actually, we ended up getting a million dollars more.

So this is what we specifically said. So if the commissioners would agree with me, if anybody can interpret this paragraph as "we are willingly, knowingly, conspicuously giving up any right for any further

challenging the audit report," I believe they're mistaken.

This is what we said: The County's attached response indicates agreement with all the findings and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible mandate-related and supported. We also recognize that this is the main issue -- we also recognize that if the County subsequently provides additional information to support over $18 million of unallowable costs, or if there are any changes in the laws and regulations, the State will revise the final audit report to include such additional allowable costs.

How could anybody interpret this that we waived all of our rights to challenge anything that the State relates to those audits, first?

Secondly, going back to the code section, again, the code section doesn't say the statute starts only from the date of the notice or letter, unless the party waives its rights. So, again, I don't think that the staff's arguments are valid, and they're meritless. And I would request that our IRCs to be granted.

Thank you. And if you have any questions…

CHAIR ORTEGA: Mr. Jewik, anything else?

MR. JEWIK: No. No additional comments.

CHAIR ORTEGA: Okay, Mr. Spano?

Mr. Ryan?

MR. RYAN: The State Controller's Office agrees -- or supports the proposed decision.

CHAIR ORTEGA: Thank you.

For me, I would like for staff to -- the issue of whether it was timely issued, I think we've wrestled with this issue several times now, so I don't feel like I need any more information on that question about subsequent documents, and what they do or do not mean. But the issue of whether the agreement that the County stated in the letter, the agreement with the audit findings. And if you could say a little more about that, responding to the issue that they did not give up their right to file the IRC.

MR. LUKACS: Yes, Commissioner.

I believe the two letters in the record, both of which are dated June 16th, 2010, and both of which were signed by Wendy Watanabe, the Auditor-Controller of the County, need to be read together.

When you look at the first page of the first letter, which is page 558 in your record, as the witness has stated, the first sentence is very clear, "The County's attached response indicates agreement with the audit findings."

Then when you go through the remainder of that letter for the Controller's audit finding -- Findings 1, 2, and 3 -- each one of the County's responses begins with "We agree with the recommendation." "We agree with the recommendation."

And then when you go to the letter dated June -- the other, second letter dated June 16, which appears at page 1492 in the record, this is a statement of facts, the facts upon which the IRC is based on contradictory arguments.

In this letter, Ms. Watanabe signs off on the fact that all of the proper documents were maintained, all of the proper documents were given to the Controller. And, at the end, Number 8, there are no unasserted claims or assessments.

And now, in this IRC, the County is taking multiple positions, factual and legal, which, in staff's opinion, is directly contrary to the statements of facts and positions that Ms. Watanabe signed off on this in this letter of page 1492 of the record.

CHAIR ORTEGA: Thank you.

Go ahead, Ms. Olsen.

MEMBER OLSEN: You may not need to go back through the dates, but I do.

CHAIR ORTEGA: Okay. Please.

MEMBER OLSEN: So what I -- and I'm just wondering where the disagreement on the dates is.

So what we have in our record is that on June 16th of 2010, Wendy Watanabe of L.A. County sent a letter, okay, responding to the initial findings of the State Controller.

And on June 30th, 2010, the State Controller's Office, after receiving that letter, issued its final audit.

Do we all agree on that so far?

MR. LUKACS: Yes.

MR. SPANO: Yes.

MEMBER OLSEN: Okay. So then on August 2nd, 2013, the claimant filed the IRC.

Do we agree on that?

MS. YAGHOBYAN: No. That's the next one, Item 6. This is Item 5.

MS. SHELTON: No, that's correct.

MEMBER OLSEN: No, I'm on Item 5. I'm on Item 5 right now.

MS. YAGHOBYAN: You're on Item 5?

MEMBER OLSEN: I'm on Item 5, page 2.

MS. YAGHOBYAN: But I thought we were -- the date, we filed that June 11th.

MEMBER ALEX: I've got the same as you.

MS. YAGHOBYAN: I thought we filed this one, *HDS*, on June 11th, 2013.

MS. SHELTON: We've got the record here. Let us just look.

We have it on our chronology as August 2nd, 2014.

MEMBER ALEX: Correct.

MS. SHELTON: It's right there.

MEMBER OLSEN: Because if August 2nd is the date --

MR. LUKACS: Right, for both of them.

MS. HALSEY: It's August 2nd. That's the date stamp on it, received by the Commission. We have it in the record as Exhibit A.

MS. YAGHOBYAN: However, the notice was August 6th for that one, if you're referring to that one? The notice was August 6th.

MS. HALSEY: What notice?

MEMBER OLSEN: Okay, so here's -- I'm reading a sentence from the staff recommendation -- this is why I'm stuck, because this doesn't -- what you've been saying doesn't seem to agree with the dates that we have before us. And I just want to make sure where this issue is.

On August 2nd, 2013, the claimant filed this IRC -- we're referring to Item 5 here --

MS. HALSEY: Yes.

MEMBER OLSEN: That's all I'm trying to figure out. Is that --

MR. SPANO: I think I can clarify it.

MEMBER OLSEN: Okay.

MR. SPANO: Let me help clarify it.

Where the confusion is, is that there's two IRCs: There's a first one and a second one. Right now, it's Item 5 and Item 6.

MS. YAGHOBYAN: There is Item 6, too.

MR. SPANO: Item 5, the final report, was filed June 30th, 2010. The IRC was filed August 2nd, 2013.

On Item 6, the audit report was issued May 28th, 2010. The IRC was filed June 11th, 2013. So that the June 11th relates to Item 6, not Item 5.

MS. HALSEY: No, that's incorrect.

MS. SHELTON: That's right -- he said it correctly.

MS. YAGHOBYAN: I think there's a mistake in the dates because --

MR. JEWIK: There were two IRCs filed: One was June 11th, and one was August 2nd.

MR. SPANO: Yes, and so what happened, I think that in either case, it was beyond three years in both individual cases.

MEMBER OLSEN: Okay, but let's talk of Item 5 right now.

So if this one was filed on August 2nd, then it is clearly outside the three-year time limit?

MS. YAGHOBYAN: We disagree. We disagree.

MEMBER OLSEN: Okay.

MS. YAGHOBYAN: But -- may I?

MEMBER OLSEN: Yes.

MS. YAGHOBYAN: Jim, if you're saying we were late, are you just retracting your letter that you told us what were the dates for us to file an IRC? So are you saying you were wrong?

CHAIR ORTEGA: That's addressed in the --

MS. HALSEY: No, we're looking at the IRC in the record right now.

CHAIR ORTEGA: -- in the staff recommendation.

So I think we can ask staff to comment on that rather than Mr. Spano.

MR. SPANO: Okay.

MR. LUKACS: Yes, the witness appears to be referring to the letter from Jim L. Spano to Robin Kay, dated May 7, 2013. It appears in the record on page 485.

On the second page of that letter, Mr. Spano wrote -- Mr. Spano linked the statute of limitations to these computer-created notices that were dated August 6. We believe that that was an incorrect opinion of law stated by Mr. Spano.

And while staff has sympathy for the claimants, people who are doing business with the State have an independent obligation to ascertain what the laws are. The laws are fairly clear on that. Otherwise, any sort of misstatement by a State employee could potentially bind the state or government.

And that can't be the rule -- and is not the rule.

MR. JEWIK: Our position is that we filed the IRC within three years of the notice of adjustment. That is what we are referring to.

CHAIR ORTEGA: Right.

And I guess, Ms. Olsen, when I'm saying we had discussed this issue before, that's the issue that we have discussed a few times in a row now.

MEMBER OLSEN: Right.

CHAIR ORTEGA: That these notices that come after the final audit do not start the clock -- the initial.

MEMBER OLSEN: Right.

CHAIR ORTEGA: Which is, so the audit date goes back to the June 30th.

MEMBER OLSEN: Right. I just was wanting to make sure that everybody concurred that August 2nd was the date on which they filed their IRC. And I believe there is concurrence on that.

CHAIR ORTEGA: Yes.

MEMBER OLSEN: Yes.

CHAIR ORTEGA: Any other questions?

MEMBER ALEX: Okay, I have a question on the second part of this. I suspect we're not going to get to your second finding. But I'm wondering if the staff's view is that once -- whether there is some sort of administrative estoppel by the County, saying that they have no issue with the claim, does that preclude them from later -- if they had timely filed it, does that preclude them from raising issues later because they had sent a letter, stating that there were no issues?

MR. LUKACS: I hope this does not sound like an overall legalistic distinction, but --

MEMBER ALEX: That's okay, I'm a lawyer.

MR. LUKACS: But I just note that you used the word "estoppel." And what we're talking about here is not estoppel, which is about how two people's statements interact. Here, we're simply talking about waiver, which is unilateral: Did the County at that time intend to waive its rights, and do you find evidence of that by clear and convincing evidence?

And it would be my advice that if Your Honors believe that there is clear and convincing evidence of waiver in the record, then the answer to your question will be yes. Once you waive something, it is waived.

MEMBER ALEX: Okay, I actually -- I think we -- for me, I think the statute-of-limitations issue is definitive. But at some point, we may revisit this because I'm not sure that's a legal waiver. But, okay.

MEMBER CHIVARO: I'll move staff recommendation.

CHAIR ORTEGA: We have a motion by Mr. Chivaro; but Ms. Ramirez has a question.

MEMBER RAMIREZ: I want to ask staff about waiver.

So once -- what if, just hypothetically, a party erroneously, because they haven't checked something, puts in writing they're waiving all objections, what would be your take on that?

MR. LUKACS: Without seeing the record, what I would point to is that the waiver is a matter of the intent of the person at the time of the waiver.

Your Honor is discussing what appears to be a unilateral mistake of fact, which I would need to double-check. But the point is, if there is an intent to waive, let's say perhaps it's based on bad advice, then it would seem that the waiver --

MEMBER RAMIREZ: It'd be withdrawn?

MR. LUKACS: -- applies -- applies; and then any recourse is to the person -- by the person giving bad advice -- against the person who gave bad advice.

MEMBER OLSEN: So now I have a question.

MEMBER RAMIREZ: My head is spinning.

MEMBER OLSEN: Because based on what you said before, it sounds like there is a difference in the application of the standard on this issue -- which isn't compelling in this case because I think the dates of the IRC are compelling.

But what you're saying is, the State can't be held to a misstatement by one of its employees or a statement that becomes a misstatement later; but that the local government can be held to that. And I find that a disturbing standard.

MR. LUKACS: I think that it would really depend on what the facts are, and whether or not you have either unilateral mistakes or bilateral mistakes, and whether those are mistakes of fact or those mistakes are of law.

I mean, the law that we had cited in the staff analysis says that, "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel." And what we have in the record here is a situation which appears that Mr. Spano and the people in the County both made a mutual mistake of law as to the filing date.

CHAIR ORTEGA: Camille?

MS. SHELTON: Let me just say a couple things:

One, you don't have to adopt the finding on the

waiver to resolve this matter. So your motion may just be on the grounds of the first issue.

But, two, I was looking at this issue yesterday for another matter. And one of our cases in the binder, Carmel Valley Special District case, versus the State, the very first 1987 *Carmel Valley* case. In that case, it was dealing with the regulations on firefighter protection services. In that case, the Court of Appeal found that the State actually waived their right to challenge the Board of Control decision. And it went through the waiver elements that we have indicated here, but also, bolstered the argument by indicating that the State filed their complaint beyond the statute of limitations. So they did it hand in hand.

So that if, you know, the State at that point said, "Well, we may have not argued that before the Board of Control but we're arguing that now; we've thought about it a little bit more, and now it's a question of law, and we believe that it's a wrong decision."

The Court said, "Sorry, you know, you did not affirmatively make your arguments before the Board of Control. You've waited too long past the statute of limitations to even file your complaint, and your allegations are dismissed."

The case went on to proceed, though, with respect to

the special districts challenge.

So there were -- that is a holding from the Second District Court of Appeal, where they did bolster the waiver argument with the statute of limitations.

MS. HALSEY: Found against the State.

MEMBER ALEX: Of course, the waiver was whether the argument was raised in an administrative tribunal, which is not the same as a letter to the Controller.

MS. SHELTON: Yes. You're right. Absolutely. That's exactly right, yes.

CHAIR ORTEGA: So we ended -- did you want to…?

MEMBER OLSEN: Well, I will second the motion. Let's get back to that.

MS. SHELTON: So what's the motion?

CHAIR ORTEGA: So, let's clarify if the motion is on the complete staff recommendation or on the issue of the timeliness of the filing.

I'll ask the maker of the motion to clarify.

MEMBER CHIVARO: It was on the issue of the timeliness.

MS. SHELTON: Could I restate that?

CHAIR ORTEGA: Yes.

MS. SHELTON: The motion then would be to adopt the proposed decision through section IV.A, and to delete section IV.B.

CHAIR ORTEGA: Okay, Ms. Olsen, is that what your second was?

MEMBER OLSEN: I'm comfortable with that, yes. That's fine.

CHAIR ORTEGA: Okay, are there any other comments that anyone -- no?

MS. YAGHOBYAN: I don't think it's going to make any difference.

CHAIR ORTEGA: Okay, thank you.

Any other public comment on this item?

(No response)

CHAIR ORTEGA: Okay, please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Thank you.

CHAIR ORTEGA: Okay, that item is adopted.

We'll move on to Item Number 6.

MS. HALSEY: Senior Commission Counsel Paul Karl Lukacs will present Item 6, an incorrect reduction claim on *Handicapped and Disabled Students II.*

MR. LUKACS: Item No. 6 is similar to Item No. 5. And staff recommends that the IRC be denied on two independent grounds.

After review of the record and the applicable law, staff finds that, one, the IRC was untimely filed; and two, by clear and convincing evidence, the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to additional claims.

Accordingly, staff recommends that the Commission adopt the proposed decision to deny this IRC.

Would the parties and witnesses please state your names for the record?

MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of the County of Los Angeles.

MR. JEWIK: Ed Jewik on behalf of Los Angeles County.

MR. SPANO: Jim Spano, State Controller's Office.

MR. RYAN: Chris Ryan, State Controller's Office.

CHAIR ORTEGA: Ms. Yaghobyan?

MS. YAGHOBYAN: Well, as we stated earlier, we still hold the same position that the staff's recommendation is wrong, it is the misapplication of the clear and convincing code section, which clearly says the date the statute starts -- the clock starts ticking from the date of the written notice, which in this case, I believe it was August 6th -- or whatever the date was, I'm not sure. But we did file the day before the deadline; and I still believe that we complied with the rule.

And although we relied on the State Controller's Office's letter, which actually I'm going to recite that because it's like -- I discussed with Jim -- Mr. Spano, he gave us the notice, saying, "In reference to your question on that due process, the State Controller's Office does not have an internal audit due process. Appeals are filed with the Commission on State Mandates through an incorrect reduction claim. An IRC must be filed within three years following the date we notified the County of the claimed reduction," which is the date we went by.

"The State Controller's Office notified the County of the claim." These are the dates. "The State Controller's Office notified the County of a claimed reduction on August 6th, 2010, for *HDS* program audit; and on June 12th, 2010, for the *HDS II* audit. Information

related to…IRC will be found" on such-and-such a Web site.

He goes further and says, "I discussed your request with my supervisor, Jeffrey V. Brownfield, Chief, Division of Audits. Mr. Brownfield concurred that the proper venue to resolve your issue is through the Commission on State Mandates."

Is it our fault? What did we do wrong? Why should we be blamed for their mistake, which now they turn around and say, "We are concurring with the staff's recommendation"?

So where is our remedy?

CHAIR ORTEGA: Thank you.

Anything else, Mr. Spano?

MR. SPANO: No further comment.

The Commission was quite clear that the statute of limitation relates to the agency of the final report. So based on the analysis, we concur with the Commission.

CHAIR ORTEGA: Any questions from commissioners?

Ms. Ramirez?

MEMBER RAMIREZ: Could we have the staff review?

CHAIR ORTEGA: Sure.

MR. LUKACS: I'm sorry?

MEMBER RAMIREZ: Would you review the -- just respond to the --

CHAIR ORTEGA: Just review the staff --

MR. LUKACS: Based on the prior argumentation on the previous item number, the commissioners are probably interested in the fact that on this particular record, the final audit report was issued May 28th, 2010. The IRC was filed June 11th, 2013. Those are on page 1 and page 96 of the record. So we believe it's untimely on its face.

And that the -- as has been discussed in the previous decisions, which we mentioned in the staff report, it's from the first element which occurs, in this case, the issuance of the final audit report.

MS. SHELTON: Can I also just mention that we had that up in the record, page 96 of the final audit report. The cover letter to that does clearly state that from the audit report, you may file an IRC three years from the date of this audit report. So it does state that in the record.

CHAIR ORTEGA: Mr. Jewik?

MR. JEWIK: I just want to state what the code actually says.

"All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, written remittance advice" -- the

key word here is "or other written notice of adjustment to a reimbursement claim."

It does not end with the "final audit report." It also includes any notice of adjustment. We filed our IRC within the date of the notice of adjustment.

CHAIR ORTEGA: So, Ms. Shelton, maybe you can address that issue since we've considered this question several times.

MS. SHELTON: We've had a lot of these issues; and what you have -- this is a regulation that you're reading.

The statute requires that the audit be completed with a report that has four elements: One, it has to identify the amount reduced; it has to identify the reasons for the reduction; it has to identify any interest that is charged; and one other element. Under the law of statute of limitations, a date cannot keep moving. You are required -- it is triggered when you are first notified of an ill against your county.

And in this case, you were first notified with the issuance of the final report.

The two subsequent letters do not even meet the definition of a notice of adjustment pursuant to Government Code section 17558.5, because it doesn't adjust anything. It's just a repeat of the information

on a computerized-generated form from the final audit report. So the triggering date for the statute of limitations is your first -- the final audit report, which complies with Government Code section 17558.5.

MS. HALSEY: Or other specified document that gives the reason for adjustment.

MS. YAGHOBYAN: Well, with respect to your comment, actually, the staff is telling us what the State Controller's has been giving us all these years, it was wrong.

So the point is, this is all we get. So like I said earlier, if you have any problem with their notices, their notices are deficient, then that's not our issue, that's their issue.

We still accepted their deficient notice because that has been the custom, that's how we've been working with them, and that's what they've been giving us; and we accept that.

So now you're saying, we should not have accepted it?

MS. SHELTON: Let me just make it clear.

I'm not suggesting --

MS. YAGHOBYAN: Okay, whose fault is it?

MS. SHELTON: I'm not suggesting that their notices are deficient. But you received three --

MS. YAGHOBYAN: Right.

MS. SHELTON: -- I think three notices.

MS. YAGHOBYAN: Because that's what they used to give us, and that's what we always got.

So now you're saying, they should have given us something different. Then you should address that to them, not to us.

MS. SHELTON: Facts in other cases are not before the Commission for this particular item.

But in this item --

MS. YAGHOBYAN: You have copies of the notices in front of you for both.

MS. SHELTON: You have a --

MS. YAGHOBYAN: And you're looking at those notices and analyzing them.

CHAIR ORTEGA: Ms. Yaghobyan, let's have one at a time.

Ms. Shelton?

MS. SHELTON: You do have a final audit report that was issued first that complies with Government Code section 17558.5.

After that, they provided computerized-generated notices that talk about the money owed or money to be paid back -- I don't have it in front of me -- but they were just computerized-generated notices of the amounts.

It doesn't do anything different than the final audit report.

MS. YAGHOBYAN: Okay, so are you saying the second part of the code section, which says, "or other written notice of adjustment of reimbursement claim" is bogus?

CHAIR ORTEGA: I think the issue here is that those other notices didn't adjust anything.

MS. SHELTON: That's correct.

MS. YAGHOBYAN: Yes, they did.

MS. SHELTON: They do nothing different.

MS. YAGHOBYAN: No, they did. There is a negative $315,000, for example, on this one that I am looking.

And it says also, "We have reviewed your 2002-03 fiscal year reimbursement claim for the mandated costs program and the result of our review are as follows:" Amount claimed this much, and adjustment to claim $315,464. Total adjustment: negative 315,464.

So what is this?

CHAIR ORTEGA: They don't revise the audit; right? And that's the issue.

MS. SHELTON: Your first notice of adjustment was with the final audit report. And the way the statute of limitations work, is --

MS. YAGHOBYAN: Well, we disagree.

MS. SHELTON: -- when you first receive notice.

CHAIR ORTEGA: We understand your position.

Mr. Jewik?

MS. HALSEY: Can I ask, can you point us to the pages when you're telling us in the record so everyone can follow?

And also, are you asserting that there is an additional reduction with this later letter or --

MS. YAGHOBYAN: No, this was the only letter we got. And accordingly, they did offset our payments against all the programs. They did take the money.

What I'm trying to say, this is how they have been doing this, and this is how the practice and custom has been. So now that we have an issue with the IRC, you, out of nowhere, come and say, "This notice is deficient." So even if it's deficient, we give credit to this notice; and if you're in disagreement, I think you have to address your argument to them, not to us. We didn't issue this letter; they did. And the letter complies with the regulation, and we relied on it.

And you somehow touched upon an order about, you know, justifiable reliance. Even if they were wrong, we justifiably relied on their opinion because that's how we work with them. We always, you know, actually work together very well, too.

However, there was no reason for us to doubt their

comments and all their paperwork, that's how we've been working.

So now that there's a complaint or there is an issue, you're saying, "This is not right. This is not sufficient," then maybe you can create something new going forward. But you cannot go backward.

CHAIR ORTEGA: Thank you.

Anything else, Mr. Spano?

MR. SPANO: No. I think the Commission was clear that it's the first notification which takes effect. The first notification is actually the audit report, not the subsequent adjustment letters.

CHAIR ORTEGA: Okay, anything else from commissioners?

Ms. Ramirez?

MEMBER RAMIREZ: I just have a question -- a general question about this.

Is this a common misunderstanding that we're seeing from other entities?

MS. SHELTON: We've adopted several decisions on this very same issue, yes. It is definitely, you know, an issue.

A lot of times, we have a final audit report, and then we have a lot of different types of subsequent documents, not just the computer-generated ones.

The issue on Item 2 that's being postponed, is actually a subsequent revised audit report. There is a lot of actions that seem to be taking place after sometimes the final audit report. So it has been an issue.

And so for the first time with these incorrect reduction claims, we've had to interpret what the Government Code requires. And the Government Code requires that the Controller complete the audit within a certain period of time; and that the completion of the audit is when they provide notice under 17558.5(c), and the notice has to contain those four elements. So it has to be the amount adjusted; the reason for the adjustment; the interest charged; and the fourth, which I cannot remember.

And so the final audit report will satisfy that because it contains all of that information.

And then the computer-generated notices usually are just -- you know, just "We took this amount" because they're allowed to move the money around from different programs, and it identifies how they moved the money around. But they're not -- they're just implementing the final audit report.

MEMBER RAMIREZ: It just seems to me, because of the potential confusion continuing, it could be ripe for some

sort of fix, going forward in the future.

MS. HALSEY: This record is slightly different, though, from some of the others, because it did have the statement in the later letter that the three-year statute of limitations, that could lead to confusion. It was a misstatement of law, so that had not come up in prior decisions.

MEMBER OLSEN: Okay. So I think one of my concerns here is, you know, language matters. And I'm not a lawyer; and some of the people who are dealing with these things are not lawyers. So what it says should be what it means.

Is there something that we, as the Commission, can do, in our regulations, to clarify that would help with this?

MS. SHELTON: You already have an item in your -- and you've already adopted the item on your agenda today that did clarify -- it inserts some clarifying language that says it's the first notice of adjustment that complies with Government Code section 17558.5(c).

MEMBER OLSEN: And then my question -- I'm not even sure if this is the right arena in which to ask the question, so shut me down if it's not the right arena -- but I think this is a question for the State Controller's Office; and that is, is part of this problem happening

because of the three-year time limit on your final audit? And so in order to get the final audit out, there are issues that are straggling to catch up with that final audit, and that's what the real issue is here?

I'm just trying to figure out why does this keep happening.

CHAIR ORTEGA: Mr. Spano or Mr. Ryan, do you have any response?

MR. SPANO: I don't think we're going to have this issue on a go-forward basis because of these issues, because we're considering our final report as being final. You know, I think we've been trying to be very responsive and cooperative. But the fact of the matter is, during the audit process, sometimes it takes up to two years to finish them, and we give agencies a lot of time and effort to come up with the documentation; and then later on, they say "We want to give you more later," and it never closes right now.

So we actually -- our report actually clarifies now, too, that the final report is our final. There's no -- you know, it is the final document. The statute of limitation applies to this final report here on a move-forward basis right now. So we're not -- I think that early on in the process, we were trying to be, you know, I guess, nice guys here. But I think at the

point in time is, we did close out the report as a final report. And we don't -- anything beyond the final report had to go through the Commission, because we need closure in this process.

MEMBER OLSEN: Thank you. I appreciate that.

MS. SHELTON: And I was just going to say, the difficulty with these cases is that they really are fact-intensive, and each file presents a little bit different facts.

CHAIR ORTEGA: Okay, thank you.

Any other comments from commissioners?

(No response)

CHAIR ORTEGA: Is there a motion on this item?

MEMBER RAMIREZ: I'll move the recommended action.

CHAIR ORTEGA: Okay, are we going to have the same -- do you want to --

MS. SHELTON: Is your motion to adopt the proposed decision through section IV.A, and to delete IV.B?

MEMBER RAMIREZ: Yes.

CHAIR ORTEGA: Thank you.

MEMBER CHIVARO: Second.

CHAIR ORTEGA: Moved by Ms. Ramirez, second by Mr. Chivaro.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

CHAIR ORTEGA: Okay, thank you.

Moving on to Item 11.

MS. HALSEY: Item 8 was reserved for county applications for a finding of significant financial distress or SB 1033 applications. No SB 1033 applications have been filed.

Program Analyst Kerry Ortman will present Item 11, the Legislative Update.

MS. ORTMAN: Good morning.

On June 27th, the Governor adopted SB 826, the 2016-17 Budget Act, which adds a one-time $1.28 billion increase in Prop. 98 funds to K-12 school districts and a one-time $105.5 million increase to community-college districts to reimburse for state-mandated programs.

receive advice from legal counsel regarding potential litigation; and pursuant to Government Code section 11126(a)(1), to confer on personnel matters.

If there is no further business before the Commission, the meeting will be adjourned.

(The Commission meeting concluded at 11:16 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 28th day of July 2016.

Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter