



LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH  
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Medical Director

**RECEIVED**  
June 10, 2016  
*Commission on  
State Mandates*

June 9, 2016

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.  
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.4<sup>th</sup> 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);

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

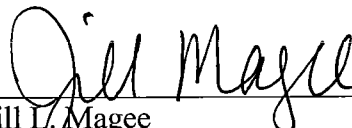
July 12, 1986 [Register 86, No. 28])

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 June 10, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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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

### 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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