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November 25, 2014  
*Commission on  
State Mandates*

**JOHN CHIANG**  
California State Controller

November 24, 2014

**LATE FILING**

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

Re: **Incorrect Reduction Claim (IRC)**  
*Handicapped and Disabled Students*, 13-4282-I-06  
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274  
Fiscal Years 2003-2004, 2004-05, and 2005-2006  
Los Angeles County, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-entitled IRC.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano".

JIM L. SPANO, Chief  
Mandated Cost Audits Bureau  
Division of Audits

JLS/sk

14705

**RESPONSE BY THE STATE CONTROLLER'S OFFICE  
TO THE INCORRECT REDUCTION CLAIM (IRC) BY  
LOS ANGELES COUNTY**

**Handicapped and Disabled Students Program**

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Note: References to Exhibits related to county's IRC filed August 2, 2013 as follows:

- Exhibit A – PDF page 23
- Exhibit B – PDF page 489
- Exhibit C – PDF page 542
- Exhibit D – PDF page 565

**Tab 1**

1 **OFFICE OF THE STATE CONTROLLER**

2 300 Capitol Mall, Suite 1850  
3 Sacramento, CA 94250  
4 Telephone No.: (916) 445-6854

5 **BEFORE THE**  
6 **COMMISSION ON STATE MANDATES**  
7 **STATE OF CALIFORNIA**

8  
9  
10 **INCORRECT REDUCTION CLAIM ON:**

11 **Handicapped and Disabled Students Program**

12 **Chapter 1747, Statutes of 1984**  
13 **Chapter 1274, Statutes of 1985**

14 **LOS ANGELES COUNTY, Claimant**  
15

No.: CSM 13-4282-I-06

**AFFIDAVIT OF BUREAU CHIEF**

16 I, Jim L. Spano, make the following declarations:

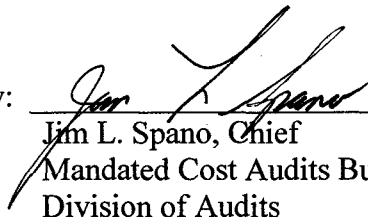
- 17 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18  
18 years.
- 19 2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000.  
20 Before that, I was employed as an audit manager for two years and three months.
- 21 3) I am a California Certified Public Accountant.
- 22 4) I reviewed the work performed by the SCO auditor.
- 23 5) Any attached copies of records are true copies of records, as provided by the Los  
24 Angeles County or retained at our place of business.
- 25 6) The records include claims for reimbursement, along with any attached supporting  
documentation, explanatory letters, or other documents relating to the above-entitled  
Incorrect Reduction Claim.

1 7) A review of the claims for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 was  
2 completed on June 30, 2010.

3 I do declare that the above declarations are made under penalty of perjury and are true and  
4 correct to the best of my knowledge, and that such knowledge is based on personal  
5 observation, information, or belief.

6 Date: November 17, 2014

7 OFFICE OF THE STATE CONTROLLER

8  
9 By:   
10 Jim L. Spano, Chief  
11 Mandated Cost Audits Bureau  
12 Division of Audits  
13 State Controller's Office  
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**Tab 2**

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE  
TO THE INCORRECT REDUCTION CLAIM BY  
LOS ANGELES COUNTY  
For Fiscal Year (FY) 2003-04, FY 2004-05, FY 2005-06**

**Handicapped and Disabled Students Program  
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985**

**SUMMARY**

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that Los Angeles County filed on August 2, 2013. The SCO audited the county's claims for costs of the legislatively mandated Handicapped and Disabled Students (HDS) Program for the period of July 1, 2003, through June 30, 2006. The SCO issued its final report on June 30, 2010 (**Exhibit C**).

The county submitted reimbursement claims totaling \$26,924,935—\$4,293,621 for fiscal year (FY) 2003-04 (**Tab 3**), \$10,143,346 (\$10,144,346 less \$1,000 late claim penalty) for FY 2004-05 (**Tab 4**), \$12,487,968 for FY 2005-06 (**Tab 5**). Subsequently, the SCO audited the claims and determined that \$8,542,409 is allowable and \$18,382,526 is unallowable. The costs are unallowable because the county claimed ineligible, unsupported, and duplicate services; overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and overstated offsetting revenues by using inaccurate Medi-Cal units, applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-06, including unsupported revenues, and applying revenue to ineligible direct and indirect costs.

The following table summarizes the audit results:

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2003, through June 30, 2004</u>			
Assessment/case management costs	\$ 5,929,138	\$ 5,787,859	\$ (141,279)
Administrative costs	805,396	353,303	(452,093)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(1,270,666)	(1,514,027)	(243,361)
State categorical funds (EPSDT)	—	(1,139,639)	(1,139,639)
State categorical funds (IDEA)	(3,546,463)	(3,546,463)	—
Other	—	(400,621)	(400,621)
State general/realignment funds	—	—	—
40% board and care	—	—	—
Net assessment/case management costs	<u>1,917,405</u>	<u>(459,588)</u>	<u>(2,376,993)</u>
Treatment costs	22,783,049	16,106,240	(6,676,809)
Administrative costs	1,865,725	697,215	(1,168,510)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(6,494,214)	(4,380,033)	2,114,181
State categorical funds (EPSDT)	—	(3,296,940)	(3,296,940)
State categorical funds (IDEA)	—	(9,621,191)	(9,621,191)
Other	<u>(15,778,344)</u>	<u>—</u>	<u>15,778,344</u>
Net treatment costs	<u>2,376,216</u>	<u>(494,709)</u>	<u>(2,870,925)</u>
Subtotal	4,293,621	(954,297)	(5,247,918)
Adjustment to eliminate negative balance	—	954,297	954,297
Less late claim penalty	—	—	—
Total program costs	<u>\$ 4,293,621</u>	<u>—</u>	<u>\$ (4,293,621)</u>
Less amount paid by the State <sup>1</sup>	—	—	—
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	



<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2004, through June 30, 2005</u>			
Assessment/case management costs	\$ 19,680,965	\$ 17,224,873	\$ (2,456,092)
Administrative costs	553,202	105,740	(477,462)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(192,927)	(459,581)	(266,654)
State categorical funds (EPSDT)	—	(393,026)	(393,026)
State categorical funds (IDEA)	(1,099,786)	(1,099,786)	—
Other	(14,230,658)	(523,883)	13,706,775
State general/realignment funds	—	(5,929,000)	(5,929,000)
40% board and care	—	(5,951,419)	(5,951,419)
Net assessment/case management costs	<u>4,710,796</u>	<u>2,973,918</u>	<u>(1,736,878)</u>
Treatment costs	28,544,988	19,964,556	(8,580,432)
Administrative costs	2,746,638	1,176,638	(1,570,000)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(6,569,210)	(4,466,386)	2,102,824
State categorical funds (EPSDT)	—	(3,819,581)	(3,819,581)
State categorical funds (IDEA)	—	(12,732,788)	(12,732,788)
Other	<u>(19,288,866)</u>	<u>—</u>	<u>19,288,866</u>
Net treatment costs	<u>5,433,550</u>	<u>122,439</u>	<u>(5,311,111)</u>
Subtotal	10,144,346	3,096,357	(7,047,989)
Adjustment to eliminate negative balance	—	—	—
Less late claim penalty	<u>(1,000)</u>	<u>(1,000)</u>	<u>—</u>
Total program costs	<u>\$ 10,143,346</u>	3,095,357	<u>\$ (7,047,989)</u>
Less amount paid by the State <sup>1</sup>		<u>(8,061,754)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (4,966,397)</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Assessment/case management costs	\$ 21,153,500	\$ 17,453,855	\$ (3,699,645)
Administrative costs	685,226	79,844	(605,382)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(423,898)	(546,639)	(122,741)
State categorical funds (EPSDT)	—	(469,235)	(469,235)
State categorical funds (IDEA)	—	(1,449,671)	(1,449,671)
Other	(17,512,485)	(568,041)	16,944,444
State general/realignment funds	—	(5,929,000)	(5,929,000)
40% board and care	—	(6,041,974)	(6,041,974)
Net assessment/case management costs	<u>3,902,343</u>	<u>2,529,139</u>	<u>(1,373,204)</u>
Treatment costs	24,382,255	18,513,247	(5,869,008)
Administrative costs	2,138,697	1,007,135	(1,131,562)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(4,702,850)	(4,017,603)	685,247
State categorical funds (EPSDT)	—	(3,448,710)	(3,448,710)
State categorical funds (IDEA)	—	(9,136,156)	(9,136,156)
Other	<u>(13,232,477)</u>	<u>—</u>	<u>13,232,477</u>
Net treatment costs	<u>8,585,216</u>	<u>2,917,913</u>	<u>(5,667,712)</u>
Subtotal	12,487,968	5,447,052	(7,040,916)
Adjustment to eliminate negative balance	—	—	—
Less late claim penalty	—	—	—
Total program costs	<u>\$ 12,487,968</u>	5,447,052	<u>\$ (7,040,916)</u>
Less amount paid by the State <sup>1</sup>		<u>(12,487,968)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (7,040,916)</u>	

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>Summary: July 1, 2003, through June 30, 2006</u>			
Assessment/case management costs	\$ 46,763,603	\$ 40,466,587	\$ (6,297,016)
Administrative costs	2,043,824	538,887	(1,504,937)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(1,887,491)	(2,520,247)	(632,756)
State categorical funds (EPSDT)	—	(2,001,900)	(2,001,900)
State categorical funds (IDEA)	(4,646,249)	(6,095,920)	(1,449,671)
Other	(31,743,143)	(1,492,545)	30,250,598
State general/realignment funds	—	(11,858,000)	(11,858,000)
40% board and care	—	(11,993,393)	(11,993,393)
Net assessment/case management costs	<u>10,530,544</u>	<u>5,043,469</u>	<u>(5,487,075)</u>
Treatment costs	75,710,292	54,584,043	(21,126,249)
Administrative costs	6,751,060	2,880,988	(3,870,072)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(17,766,274)	(12,864,022)	4,902,252
State categorical funds (EPSDT)	—	(10,565,231)	(10,565,231)
State categorical funds (IDEA)	—	(31,490,135)	(31,490,135)
Other	<u>(48,299,687)</u>	<u>—</u>	<u>48,299,687</u>
Net treatment costs	<u>16,395,391</u>	<u>2,545,643</u>	<u>(13,849,748)</u>
Subtotal	26,925,935	7,589,112	(19,336,823)
Adjustment to eliminate negative balance	—	954,297	954,297
Less late claim penalty	<u>(1,000)</u>	<u>(1,000)</u>	<u>—</u>
Total program costs	<u>\$ 26,924,935</u>	8,542,409	<u>\$ (18,382,526)</u>
Less amount paid by the State <sup>1</sup>		<u>(20,549,722)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (12,007,313)</u>	

<sup>1</sup> Payment information as of July 25, 2014.

The county contends that the SCO incorrectly reduced the county's claims by erroneously conducting the audit as if the county used the actual increased cost method instead of the cost report method, in that it is not required to identify actual costs. The county also asserts that the data set used by the SCO to determine allowable costs was incorrect and did not accurately capture the actual costs of services rendered. In addition, the county is contesting only the mental health related service costs, excluding audit adjustments for residential placements. The county contests \$18,180,918 for the audit period—\$5,247,918 for FY 2003-04, \$6,396,075 for FY 2004-05 and \$6,536,836 for FY 2004-05.

## **I. SCO REBUTTAL TO STATEMENT OF DISPUTE – CLARIFICATION OF REIMBURSABLE ACTIVITIES, CLAIM CRITERIA, AND DOCUMENTATION REQUIREMENTS**

### **Parameters and Guidelines**

On April 26, 1990, the Commission on State Mandates (Commission) determined that Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1984 imposed a state mandate reimbursable under Government Code section 17561 (**Tab 6**). The Commission adopted the program's parameters and guidelines on August 22, 1991, amended it on August 29, 1996 (**Tab 7**), and corrected it on January 26, 2006 (**Tab 9**). These parameters and guidelines apply to fiscal years including June 30, 2004.

Chapter 493, Statutes of 2004, directed the Commission to reconsider the 1990 statement of decision and the parameters and guidelines for this program. On May 26, 2005, the Commission adopted the statement of decision for the reconsidered state mandate program (**Tab 8**). The Commission adopted the reconsidered program's parameters and guidelines on October 26, 2006 (**Tab 10**), corrected it on July 21, 2006 (**Tab 11**), and amended it on October 26, 2006 (**Tab 12**). On July 21, 2006, the Commission corrected the parameters and guidelines to include the Cost Report Method as a means for identifying costs for the mandate. These parameters and guidelines apply to fiscal years beginning July 1, 2004.

Beginning in FY 2006-07, the program becomes part of the consolidated parameters and guidelines that is made up of the HDS, HDS II, and Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services (SEDP) Programs.

Following are excerpts from the HDS Program's parameters and guidelines that are applicable to the county-filed claim for FY 2003-04 (**Tab 9**).

Section I, Summary of Mandate, provides a summary of the mandate. It states:

**I. SUMMARY OF MANDATE**

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

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

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

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

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

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

Section IV, Period of Reimbursement, identified the period of reimbursement for activities. It states:

#### **IV. PERIOD OF REIMBURSEMENT**

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

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

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

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

Section V, Reimbursable Costs, identifies the reimbursable activities. It states:

#### **V. REIMBURSABLE COSTS**

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

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

Section V, Claim Preparation, identifies the two methods of submitting claims for reimbursement. It states:

#### **VI. CLAIM PREPARATION**

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

- A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:
  - 1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.
  - 2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

- a. One hundred (100) percent of any direct administrative costs related to IEP Participation, Assessment, and Case Management.
  - b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.
4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
- a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

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

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

B. Cost Report Method. Under this claiming method the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with the claiming instructions. A complete copy of the annual cost report including all supporting schedules attached to the cost report as filed with DMH must also be filed with the claim forms submitted to the State Controller.

1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
  - a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

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

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

Section VII, Supporting Data, describes supporting documentation. It states:

#### **VII. SUPPORTING DATA**

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

Section VIII, Offsetting Savings and Other Reimbursements, identifies applicable offset requirements. It states:

#### **VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS**

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

Following are excerpts from the HDS Program's parameters and guidelines that are applicable to the county-filed claims for FY 2004-05 and FY 2005-06 (**Tab 12**).

Section I, Summary of Mandate, provides a summary of the mandate. It states:

#### **I. SUMMARY OF MANDATE**

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

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

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

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

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

Section III, Period of Reimbursement, identified the period of reimbursement for activities. It states:

### **III. PERIOD OF REIMBURSEMENT**

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

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

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

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

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

Section IV, Reimbursable Activities, identifies the reimbursable activities and specifies required supporting documentation. It states:

### **IV. REIMBURSABLE ACTIVITIES**

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

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



The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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

- A. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
  1. Renew the interagency agreement every three years, and revise if necessary.
  2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
- B. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, §60040)
  1. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
  2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
  3. If necessary, interview the pupil and family, and conduct collateral interviews.
  4. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
  5. Assess the pupil within the time required by Education Code section 56344.
  6. If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
  7. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.

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

E. Issue payments to providers of out-of-home residential care for the residential and noneducational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and noneducational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

*Beginning July 19, 2005, Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.*

2. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

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

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

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

Section V, Claim Preparation and Submission, identifies the two methods of submitting claims for reimbursement. It states:

## **V. CLAIM PREPARATION AND SUBMISSION**

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

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

### **Direct Cost Reporting Method**

#### **A. Direct Cost Reporting**

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

##### **1. Salaries and Benefits**

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

##### **2. Materials and Supplies**

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

##### **3. Contracted Services**

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

##### **4. Fixed Assets and Equipment**

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

#### **B. Indirect Cost Rates**

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead

costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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

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

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

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

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

### **Cost Report Method**

#### **A. Cost Report Method**

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

#### **B. Indirect Cost Rates**

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

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

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

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

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

Section VII, Offsetting Revenues and Other Reimbursements, identifies applicable offset requirements. It states:

#### **VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS**

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

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), and the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10) and the \$69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).
3. Funds received and applied to this program from the appropriation by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated \$120 million for costs claimed for fiscal years 2004-05 and 2005-06 for the *Handicapped and Disabled Students* program (CSM 4282) and for *Seriously Emotionally Disturbed (SED)*

*Pupils: Out-of-State Mental Health Services (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)*

4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

*Except as expressly provided in section IV(E)(1) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493 § 6 (SB 1895).)*

### **SCO Claiming Instructions**

In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs in order to assist local agencies and school districts in claiming reimbursable costs. The SCO issued revised claiming instructions for Chapter 1747, Statutes 1984, and Chapter 1274, Statutes 1985 in September 2003 (**Exhibit B**). The county used this version to file its reimbursement claims (**Tabs 3, 4 and 5**).

## **II. COUNTY OVERSTATED COSTS BY CLAIMING UNSUPPORTED ASSESSMENT AND TREATMENT COSTS, MISCALCULATING INDIRECT COSTS AND OFFSETTING REIMBURSEMENTS**

### **Issue**

The county's IRC challenges a portion of Findings 1, 2, and 3 in the SCO's final audit report issued June 30, 2010, related to assessment and treatment costs, and the related indirect costs and offsetting revenues, totaling \$18,180,829.

The SCO concluded that the county claimed unsupported and duplicate costs, and miscalculated the associated indirect costs and offsetting revenues.

The county would like the SCO to reconsider audit adjustments in light of information identified by the county subsequent to the issuance of the final audit report.

### **SCO Analysis**

The county claimed \$18,382,526 in unallowable costs resulting from the claiming of unsupported and duplicate costs, and miscalculating its related indirect costs and offsetting revenues.

As noted in the SCO's final audit report, the county initially did not provide support for its claims when the audit was initiated in a testable format that we could verify. At that time, the county did not provide detailed information regarding the services provided, including the client receiving service, type of service, date of service, duration of service, etc. County staff asserted that the identifiers set up in its system were unreliable, and suggested that the county query its own database to identify detail of services provided.

The county's methodology was to identify all related services of clients that received an assessment at one of the three county-run facilities dedicated to assessing AB 3632 client eligibility. The county ran three different database queries; each query failed to support costs claimed and contained errors. The errors included clients that were not in the program, clients that were not eligible for the program, duplicate transactions, and partial/incomplete transactions. The county did not provide the SCO with the parameters it used for the three initial queries.

We worked with the county to develop its query parameters for a fourth query report. We suggested clarifying the parameters of the query to identify eligible clients, such as by establishing an age limit so that the query would not identify clients over 22 years old as part of the program. The county ran the fourth query and presented the results as support for its claims. The detailed unit-of-services report provided did not support claimed costs.

The program's parameters and guidelines, Section VII, Supporting Data, applicable to FY 2003-04 specify that only actual costs may be claimed. Further, all costs claimed must be traceable to source documents that show validity of such costs (**Tab 9**). It states:

#### **VII. SUPPORTING DATA**

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

The parameters and guidelines, Section IV, Reimbursable Activities, applicable to FY 2004-05 and FY 2005-06 specify that only actual costs may be claimed. Further, actual costs must be traceable and supported by source documents that show the validity of such costs (**Tab 12**). It states:

#### **IV. REIMBURSABLE ACTIVITIES**

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

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

The county contends that the SCO erroneously conducted the audit as if the county had submitted its claims using the Actual Increased Cost Method instead of the Cost Report Method. The county believes that the Cost Report Method is not based on actual costs and the SCO had no authority to conduct the audit. The county also asserts that the claim information and support it provided in the



course of the audit is erroneous or incomplete. The county believes that the SCO should reconsider its audit adjustments based on the new information.

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 (**Tab 13**). The SCO issued the final report on June 30, 2010 (**Exhibit C**). 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**). The county provided information regarding its reconsideration request in June and August 2012 (**Exhibit A-13**).

Government Code section 17558.5 requires that an audit by the SCO shall be completed not later than two years after the date that the audit is commenced. Government Code section 17568 specifies that in no case shall a reimbursement claim be paid that is submitted more than one year after the filing deadline specified in Section 17560. Government Code section 17561, subdivision (d)(3), specifies that initial claims are not subject to payment if submitted more than one year after the filing deadline in the Controller's claiming instructions.

Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Government Code section 8314, subdivision (a), provides that it is unlawful for any elected state officer to use public resources for purposes that are not authorized by law. The California Constitution article 16, section 6, specifies that the Legislature shall have no power to make a gift of public funds.

The SCO completed the audit and issued the final audit report within the two-year statutory period. In June 2012 and August 2012, the county requested that the SCO consider costs based on information that was not provided in the course of the audit. The deadline to file an amended claim for FY 2003-04 was August 2007 and for FY 2004-05 and FY 2005-06 was May 2008.

Consequently, the county is requesting that the SCO consider costs not previously provided after the statutory period to file an amended claim, which is approximately five years after the filing deadline for the FY 2003-04 claim, and four years after the filing deadline for the FY 2004-05 and FY 2005-06 claim. The county's request for the SCO to consider such costs is also two years after the statutory period for the SCO to issue the final audit report.

The SCO is prohibited from making a gift of public funds. Therefore, the SCO has no authority to consider costs based on information that was not provided during the course of the audit, the statutory period to file an amended claim, or the statutory period for the SCO to issue the final report.

### **County's Response**

The County contends that the SCO incorrectly reduced the County's claim because the SCO erroneously conducted the audit as if the County had submitted its claim under the Actual Increased Cost Method instead of the Cost Report Method, which was the actual methodology used by the County.

Therefore, this IRC seeks to have \$18,180,829 disallowed by the SCO reinstated:

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

### SCO's Comment

Our objective was to determine whether the costs of the county-filed claims are reimbursable under the program's parameters and guidelines adopted by the Commission. This includes tracing costs of county-filed claims to source documentation to ascertain the validity and accuracy of the costs.

The county's IRC submission contains an incomplete filing and other issues we will address in our response to the county's arguments.

The county's filing does not include the reimbursement claims filed with the SCO. The exhibit includes the claims prepared by the county's mental health department that were submitted to its auditor-controller (**Exhibit D**). We have included the actual claim forms filed with the SCO as part of our response (**Tabs 3, 4 and 5**). These forms were signed by the county's auditor-controller and submitted to the SCO for reimbursement of state-mandated program costs.

In reference to the county's FY 2003-04 claim, the county is seeking reinstatement of costs in excess of amounts claimed. The county seeks reinstatement of the original claimed amount plus the amount of excess Individuals with Disabilities Education Act (IDEA) funds. In the course of the audit, the county was concerned about our determination of an excess of IDEA revenue in the HDS Program audit report. We discussed the issue with county representatives and they agreed to move the revenue to the SEDP Program (**Tab 15**). The movement of excess IDEA revenue from the HDS program to the SEDP program eliminated the excess of reported revenue in the HDS audit report. However, we believe the county is only entitled to the amount it claimed in accordance with Government Code section 17568 (**Tab 3**).

In reference to the county's FY 2004-05 and FY 2005-06 claims, the county asserts that the SCO erroneously added the initial and amended claims, causing the errors noted in the audit findings. The county filed its initial claims and subsequently amended them to include residential placement costs. The county combined the costs of its initial and amended claims, and filed them with the SCO (**Tabs 4 and 5**).

Concerning the challenged costs, the county did not identify its proposed adjustments to a specific category. The county seeks reinstatement of a total amount without identifying the portion related to direct and indirect costs, and offsetting reimbursements. Further, the support for the proposed adjustments does not reconcile to the amount contested. In its IRC, the county is contesting \$18,180,829 and the proposed adjustments in the supporting exhibits total to \$18,456,446 (**Exhibits A-10 through A-12**). The proposed adjustments also appear incomplete because they do not include any related indirect costs and offsetting reimbursements (**Exhibits A-10 through A-12**). There are other inconsistencies as well; the county's proposed adjustments are greater than the SCO audit adjustments in FY 2003-04 and FY 2004-05, and less than the SCO audit adjustments for FY 2005-06. For FY 2005-06, the county's total proposed adjustment (\$5,229,547) is less than the contested amount (\$7,040,916), yet the county is seeking full reinstatement of the contested amount. Overall, the county's intention for providing the information in the exhibits and the relation to the contested amounts is not clear.

A comparison of the SCO audit adjustments, the county's IRC contested amounts, and the county's IRC proposed adjustments from the exhibits are shown in the following table:

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
SCO's audit adjustments <sup>1</sup>	\$ 4,293,621	\$ 7,047,989	\$ 7,040,916	\$ 18,382,526
County's IRC contested amounts	\$ 5,247,918	\$ 6,396,075	\$ 6,536,836	\$ 18,180,829
County's proposed adjustments <sup>2</sup>				
Omitted providers <sup>2</sup>	\$ 3,003,675	\$ 4,669,518	\$ 898,049	\$ 8,571,242
Variance (4th query and Form 1909/1912) <sup>2</sup>	2,143,885	1,875,541	3,319,935	7,339,361
Mode 60 costs <sup>2</sup>	852,627	681,653	1,011,563	2,545,843
Indirect costs <sup>3</sup>	-	-	-	-
Offsetting reimbursements <sup>3</sup>	-	-	-	-
Total proposed adjustments	\$ 6,000,187	\$ 7,226,712	\$ 5,229,547	\$ 18,456,446

<sup>1</sup>SCO audit report dated June 30, 2010 (Exhibit C).

<sup>2</sup>Data from the county's IRC (Exhibits A-10 through A-12).

<sup>3</sup>No indirect costs or offsetting reimbursements are identified in the county's IRC (Exhibits A-10 through A-12).

A summary of the county's arguments are presented in bold below and our response follows:

- 1. The SCO's disallowance is incorrect because the county used the Cost Report Method. The SCO had no legal authority to audit the county's claims because they were not based on the Actual Increased Cost Method. Even if the SCO had authority to review the records, it was required to conduct the audit based on the use of the Cost Report Method and audit to the supporting documentation utilized for that method.**

We disagree. Both the Cost Report Method and the Actual Increased Cost Method are acceptable methods to claim actual costs. In the Actual Increased Cost Method, claimants are to identify the actual expenses incurred as a result of the mandate. For example, the salaries and benefits of county staff that provided the services. While in the Cost Report Method, claimants utilize the unit rates for mandated services based on cost allocations in the cost report submitted to the California Department of Mental Health (CDMH). For this method, claimants identify the mandate-related units of service, and then, multiply the units by the applicable unit rates to determine the claimed costs. The units of service and unit rates are also used to compute certain offsetting reimbursements, (i.e., Medi-Cal and EPSDT).

However, the cost reports submitted to the CDMH include all units of service provided, in which, the reported units combine services provided to children, youth and adults. For the mandate, the county must identify the mandate-related units of service for the services provided to pupils in special education receiving mental health services in accordance with an Individualized Education Plan (IEP).

In its system, the county has identifiers set up to track and capture mandate-related units of service; these include unique service function codes and plan identification codes (Tab 16). County staff informed the SCO that identifiers in its system were unreliable due to inconsistencies in use (Tabs 17 and 18). For example, client services of the state-mandated program were coded as services of other programs and client services of other programs were identified as the state-mandate program. In its review of the third query, county staff suggests that the inconsistent coding of services in its system is likely due to confusion and inadequate training (Tab 18).

As in the prior audit, the county proposed using a database query to identify the mandated-related units of service; the query would identify clients that went through the assessment process and identify all of their related units of service (Tab 17). The county went through three sets of query parameters and results, each version did not support claimed costs and identified a number of concerns. The first and second queries did not support claimed costs and contained partial transactions (Tab 17); partial transactions are unfinalized transactions that are in various stages of completion, the county information technology staff termed these transactions as invalid or incomplete. The results of the third query did not include information regarding Medi-Cal clients and all of fiscal years were commingled together in one file (Tab 19). The county performed a limited, non-statistical review of the third query results. The third query included services for clients that were ineligible and who were part of other programs; county staff believed that the identifiers were used inconsistently (Tab 18). For the three prior queries, the county did not provide the query parameters for our review. Therefore, the SCO cannot comment on the design of the queries; we can only address the results. We continued to work with the county to identify its costs and related revenues. The county presented the fourth query results as the support for its claims. We reviewed the query parameters and corresponding results and determined them to be reasonable; we then computed costs and the associated offsetting revenues.

As noted above, the audit was initiated with a telephone contact on July 28, 2008, and the final audit report was issued on June 30, 2010. In June 2012 and August 2012, four years after audit initiation date and over two years after the final audit report was issued, the county asserts that the information it provided in support of its claims did not identify all eligible costs and that it presented incomplete or erroneous information to the SCO. In essence, the county argues that the results of the fourth query did not capture all eligible costs.

The regulations for the reimbursement of state-mandated costs do not provide for the consideration of claims outside of the statutory period. Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Therefore, the SCO has no authority to consider claims made outside of the statutory period and is prohibited from making a gift of public funds.

If the SCO is directed by the Commission to consider the new costs and associated revenues, additional testing and review would need to be performed. The new costs were not included in the support provided by the county in the course of the audit, and therefore, were not considered in the scope of audit work performed. The county has not provided in its IRC the query parameters or underlying basis for the identification of the new costs. In its proposed new costs, the county has not provided any corresponding information concerning the associated indirect costs and offsetting revenues. Further analysis and testing would need to be performed to validate the new costs, and identify the corresponding indirect costs and associated offsetting reimbursements. The new costs also raise other concerns, in that the county is asserting that services related to other programs should be considered. It also is not clear to what extent the county has validated the information provided—that is, the steps it performed to ensure that costs result from services provided to children and youth that are in special education receiving mental health services pursuant to an IEP. As noted above, we do not believe it is appropriate to revisit new costs.

**2. The auditors should have based the review on the correct supporting documentation.**

As previously stated, the county did not provide support for its claims when the audit was initiated in a format that could be verified. As such, the county could not identify detail of the individual services that make up the total units of services reported on its claims and on MH 1909/1912 forms submitted to the CDMH. In addition, the county's MH 1909/1912 forms do not reconcile to claims filed by the county because the forms present different information. For

example, the CDMH form captures estimated revenue information and includes all related funding used to support costs. The state-mandated cost claims are used claim reimbursement of actual costs incurred and report related offsetting revenues. The mandated cost claims also include costs that are not reported on the cost report forms submitted to CDMH. For example, residential placement board-and-care costs incurred by the county's social services department for the mandate and associated revenues are not included in the mental health cost reports submitted to CDMH. Nevertheless, the SCO worked with the county to identify its costs and related revenues. The county identified the fourth query results as the support for its claims. The SCO computed costs and the associated offsetting revenues based on the county's support provided in the course of the audit. 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).

**3. The SCO's audit findings do not represent the actual amount of mandated costs incurred in providing services. Based on the reconsideration proposal, the county requests reinstatement of direct and indirect costs, and offsetting reimbursements. In its discussion the county references omitted services, disallowed rehabilitation and mode 60 services, and the miscalculation of offsetting reimbursements**

As previously stated, the county did not provide support for its claims when the audit was initiated in a format that could be verified. The SCO worked with the county to identify its costs and related revenues. The county identified the fourth query results as the support for its claims. The SCO computed costs and the associated offsetting revenues based on the county's support provided in the course of the audit. The support provided by the county did not identify any units of service as Healthy Families, an enhancement of Medi-Cal. Further, the county did not identify a portion of the Medi-Cal units as Medi-Cal only, meaning some clients were full-scope Medi-Cal and should not have had EPSDT revenues applied. 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). The SCO's offsetting revenues calculations are based on the information provided by the county in support of its claims.

In reference to its discussion regarding rehabilitation and mode 60 services, the county has not presented any evidence in support of its arguments. The county also has not addressed issues noted in the SCO's audit report concerning these services. In its IRC the county asserts that some of the rehabilitation services may actually be other eligible services; no evidence is presented as to which services are miscoded. For mode 60 services, the county does not address the SCO's observations in the audit report and presents no evidence in support of its arguments. In our audit report we identified a number of issues concerning mode 60 services including the eligibility of pre- and post-IEP services within the parameters and guidelines, the claiming duplicate services, and the lack of supporting documentation to identify clients served and the time for each contact.

Again, the regulations for the reimbursement of state-mandated costs do not provide for the consideration of claims outside of the statutory period. Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Therefore, the SCO has no authority to consider claims made outside of the statutory period and is prohibited from making a gift of public funds. As noted previously, we do not believe it is appropriate to revisit the new costs.

### III. CONCLUSION

The SCO audited Los Angeles County's claims for costs of the legislatively mandated HDS Program (Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) for the period of July 1, 2003, through June 30, 2006. The county claimed \$24,924,935 for the mandated program. Our audit disclosed that \$8,542,409 is allowable and \$18,382,526 is unallowable. The costs are unallowable because the county claimed ineligible, unsupported, and duplicate services; overstated indirect costs by applying indirect costs toward ineligible direct costs; and overstated offsetting revenues by using inaccurate Medi-Cal units, applying incorrect funding percentages for EPSDT for FY 2005-06, including unsupported revenues, and applying revenue to ineligible direct and indirect costs.

The county is challenging the SCO's adjustment totaling \$18,180,829, because it believes that the SCO erroneously conducted the audit as if the county had submitted its claim under the Actual Increased Cost Method instead of the Cost Report Method, which was the actual methodology used by the county. The county also believes that the SCO relied on incorrect information and assumptions for its adjustments impacting claimed direct and indirect costs, and offsetting reimbursements.

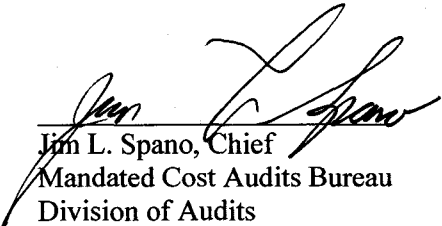
The SCO completed the audit within the two-year statutory requirement, based on supporting documentation the county provided in the course of the audit. The county is not eligible to receive reimbursement for the reconsidered amounts. The underlying regulations prevent the SCO from considering costs claimed outside of the statutory period. To do so would violate the Government Code and California Constitutional provisions prohibiting the gift of public funds.

In conclusion, the Commission should find that: (1) the SCO correctly reduced the county's FY 2003-04 claim by \$4,293,621; (2) the SCO correctly reduced the county's FY 2004-05 claim by \$7,047,989; and (3) the SCO correctly reduced the county's FY 2005-06 claim by \$7,040,916.

### IV. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on November 17, 2014, at Sacramento, California, by:

  
Jim L. Spano, Chief  
Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office

**Tab 3**

<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>SERVICES TO HANDICAPPED STUDENTS</b>	(19) Program Number 00111 (20) Date Filed (21) LRS <b>JAN 18 2005</b> <b>JAN 13</b>
------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------

L A B E L  H E R E	(01) Claimant Identification Number		9919		Reimbursement Claim Data	
	(02) Claimant Name Auditor-Controller				(22) HDS-1, (03)(a)	0
	County of Location County of Los Angeles				(23) HDS-1, (03)(b)	0
	Street Address or P.O. Box 500 West Temple Street, Room 603		Suite		(24) HDS-1, (03)(c)	0
	City Los Angeles		State CA	Zip Code 90012	(25) HDS-1, (04)(1)(d)	0
	Type of Claim		Estimated Claim	Reimbursement Claim	(26) HDS-1, (04)(2)(d)	0
			(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) HDS-1, (04)(3)(d)	0
			(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) HDS-1, (04)(4)(d)	0
			(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) HDS-1, (04)(5)(d)	0
	Fiscal Year of Cost		(06) 2004/2005	(12) 2003/2004	(30) HDS-1, (06)	0
Total Claimed Amount		(07) 4,558,467	(13) 4,293,621	(31) HDS-3, (05)	1,270,666	
Less: 10% Late Penalty, not to exceed \$1,000			(14)	(32) HDS-3,(06)	0	
Less: Prior Claim Payment Received			(15)	(33) HDS-3,(07)	3,546,463	
Net Claimed Amount			(16) 4,293,621	(34) HDS-3, (09)	24,648,774	
Due from State		(08) 4,558,467	(17) 4,293,621	(35) HDS-3, (10)	0	
Due to State			(18)	(36)		

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer: John Naimo FOR  
 Date: 1/12/05

J. Tyler McCauley  
 Auditor-Controller

Type or Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

(38) Name of Contact Person for Claim: Leonard Kaye  
 Telephone Number: (213) 974-8564 Ext. N/A  
 E-Mail Address: lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 09/03)

Note: 1) Please note that costs for LAC-DMH Medication Monitoring (\$3,074,878), LAC-DMH Crisis Intervention (\$3,960,974), LAC-DCFS In-State Placement (\$9,115,367), and Tri-City Medication Monitoring (\$4,428) have not been included in FY 2003/04 Reimbursement Claim at this time pending action before the Commission on State Mandates that would make these costs eligible for claiming under SB 90 Chapter 1747.

2) The Estimated Claim for FY 2004-05 does not include an amount for Tri-City.



Program <b>111</b>		MANDATED COSTS SERVICES TO HANDICAPPED STUDENTS CLAIM SUMMARY		FORM HDS - 3
(01) Claimant: <b>Los Angeles County/Consolidated</b>	(02) Type of Claim Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>			Fiscal Year: <b>2003/2004</b>
(03) Reimbursable Components				
<b>Assessment of Individuals With Exceptional Needs</b>				
(a) Assessment: Interviews, Review of Records, Observations, Testing, etc.	<u>1</u>			5,929,138
(b) Residential Placement: IEP Reviews, Case Management, and Expanded IEP				0
(c) Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.				0
(d) Due Process Proceedings				0
(e) Administrative Costs <i>[From HDS-6 line (07)]</i>	<u>2</u>			805,396
<b>Mental Health Treatment</b>				
(f) Treatment Services: Short-Doyle Program	<u>3</u>			22,783,049
(g) Administrative Costs <i>[From HDS-6 line (07)]</i>	<u>4</u>			1,865,725
(04) Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]	<u>5</u>			6,734,534
(05) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only)	<u>6</u>			1,270,666
(06) Less: Amount Received from State Categorical Funding				0
(07) Less: Amount Received from Other (Identify) - Federal IDEA Funds ( <i>Attachment 7h</i> )	<u>7</u>			3,546,463
(08) Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]	<u>8</u>			1,917,405
(09) Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]	<u>9</u>			24,648,774
(10) Less: Non-Categorical State General/Realignment Funds				0
(11) Less: Amount Received from State Categorical Funding				0
(12) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only)	<u>10</u>			6,494,214
(13) Less: Amount Received from Other (Identify)	<u>11</u>			
- Federal Financial Participation share of Admin Cost ( <i>Attachment 7a</i> )				732,858
- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost ( <i>Attachment 7b</i> )				4,783,284
- Federal SAMHSA Grant and share of Admin Cost ( <i>Attachment 7d</i> )				15,678
- Other State and Local Funds and share of Admin Cost ( <i>Attachment 7e</i> )				124,804
- Third Party Revenues and share of Admin Cost ( <i>Attachment 7f</i> )				45,489
- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 ( <i>Attachment 7g</i> )				455,040
- Federal IDEA Funds ( <i>Attachment 7h</i> )				9,621,191
(14) Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]				2,376,216
(15) Total Claimed Amount [Sum of line (08) and line (14)]				4,293,621

Revised 09/03

See footnotes 1-11 on following page.

**Tab 4**

<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>SERVICES TO HANDICAPPED STUDENTS</b>	For State Controller Use Only (19) Program Number <u>0011</u> (20) Date Filed <u>MAY 01</u> (21) LRS Input <u>  /  /  </u>
------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------

(01) Claimant Identification Number 9919	<b>Reimbursement Claim Data</b>	
(02) Claimant Name <b>Auditor-Controller</b>	(22) FORM-1, (04)(A)(g)	
County of Location <b>County of Los Angeles</b>	(23) FORM-1, (04)(B)(g)	2,076,865
Street Address or P.O. Box 500 West Temple Street, Room 603	(24) FORM-1, (04)(C)(g)	
City State Zip Code Los Angeles CA 90012	(25) FORM-1, (04)(D)(g)	
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement [A] <input checked="" type="checkbox"/>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>
(06) Fiscal Year of Cost	(12)	2004/2005
(07) Total Claimed Amount	(13)	\$10,144,346
Less: 10% Late Penalty, but not to exceed \$1,000	(14)	
Less: Estimated Claim Payment Received	(15)	\$6,494,303
(16) Net Claimed Amount	(16)	\$3,650,043
(08) Due from State	(17)	\$3,650,043
(18) Due to State	(18)	

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program.

All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date

*John Naimo FOR*

4/27/07

J. Tyler McCauley

Auditor-Controller

Type or Print Name

Title

(38) Name of Contact Person for Claim

Telephone Number (213) 974-8564 Ext.

Leonard Kaye

E-mail Address lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 9/03)

[A] See Schedule 1(a) for derivation of sum in Box (13). See Schedule 1(b) for sums in Boxes (22-31)



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 603  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8321 FAX: (213) 617-8106

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

April 27, 2007

Ms. Ginny Brummels  
Local Reimbursement Section  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 94250-5872

Dear Ms. Brummels:

Los Angeles County Claim – Fiscal Year 2004-05  
Handicapped and Disabled Students Program Number 111  
Claim Instruction Number 2006—32, Issued January 2, 2007

We herein submit the attached [subject] reimbursement claim in the amount of \$10,144,346 for payment. Under guidance provided by your office to Leonard Kaye, of my staff, on April 24, 2007, we have combined all Program Number 111 claims for 2004-05 into one claim as detailed on the attached schedule.

Leonard Kaye is available at (213) 974-8564 to answer any questions you or your staff may have in this matter. Thank you.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

*John Naimo* FOR  
Connie Yee, Chief  
Accounting Division

CY:LK  
Enclosures

**SCHEDULE 1(a)**  
**County of Los Angeles Consolidated Claim**  
**Handicapped and Disabled Students Program # 111**  
**Claim Instruction No. 2006-32, Issued January 2, 2007**  
**Fiscal Year 2004-05**

<u>Consolidated</u> <u>Program #</u>	<u>Consolidated Program Name</u>	<u>Fiscal Year</u>	/----- Los Angeles Co. Depts. -----/		<u>Totals</u>
			<u>MH</u>	<u>DCFS</u>	
111 (a)	Handicapped & Disabled (old)	2004-05	\$6,494,303	\$0	6,494,303
111(b)	Handicapped & Disabled (New)	2004-05	262,702 [c]	3,387,341	3,650,043
	Total [Program 111 for 2004-05]		6,757,005	3,387,341	10,144,346

**Footnotes**

- (a) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued September, 2000. These instructions excluded in-State Room and Board. See Tab "Original 2004-05" claim for supporting detail for \$6,494,303 claimed on 1/11/06.
- (b) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued January 2, 2007. These instructions included in-State Room and Board.
- (c) As filed on 4/27/07, this is for new allowable and reimbursable "initial assessment of pupil" activities under Program 111(new) instructions issued 1/2/07.

## SCHEDULE 1(b)

State Controller's Office

Mandated Cost Manual

<b>MANDATED COSTS HANDICAPPED AND DISABLED STUDENTS CLAIM SUMMARY</b>	<b>FORM 1</b>
-------------------------------------------------------------------------------	-------------------

(01) Claimant:  <p style="text-align: center;"><b>County of Los Angeles / Consolidated</b></p>	(02) Type of Claim Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year  <p style="text-align: center;"><b>2004/2005</b></p>
------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------

(03) Department							
<b>Direct Costs</b>	<b>Object Accounts</b>						
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)	(g)
	Salaries	Benefits	Materials and Supplies	Contract Services	Fixed Assets	Travel	Total
A. Renew Interagency Agreement							
B. Initial Assessment of Pupil	2,076,865						2,076,865
C. Participation in IEP Team							
D. Lead Case Manager							
E. Out-of-Home Residential Care	15,527,235						15,527,235
F. Due Process Hearings							
(05) Total Direct Costs	17,604,100						17,604,100

<b>Indirect Costs</b>	
(06) Indirect Cost Rate	<i>See attached FY 2004/2005 Indirect Cost Rate Schedule (Attachment I)</i>
	1.5712%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x {line (05)(a) + line (05)(b)}]
	<b>276,601</b>
(08) Total Direct and Indirect Costs	[Line (05)(g) + line (07)]
	<b>17,880,701</b>

<b>Cost Reduction</b>	
(09) Less: Offsetting Savings	
(10) Less: Other Reimburse <i>See DCFS, "In-State Expense, Summary" 2005-06</i>	14,230,658
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))] <b>See Attachment 1</b>
	<b>3,650,043</b>

	<b>MANDATED COSTS</b> <b>HANDICAPPED AND DISABLED STUDENTS</b> <b>ACTIVITY COST DETAIL</b>	<b>FORM</b>  <b>2</b>
--	--------------------------------------------------------------------------------------------------	-----------------------------

(01)	Claimant <b>County of Los Angeles / Consolidated</b>	(02)	Fiscal Year <b>2004/2005</b>
------	---------------------------------------------------------	------	---------------------------------

(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

- |                                                       |                                     |                             |
|-------------------------------------------------------|-------------------------------------|-----------------------------|
| <input type="checkbox"/> Review Interagency Agreement | <input checked="" type="checkbox"/> | Initial Assessment of Pupil |
| <input type="checkbox"/> Participation in IEP Team    | <input type="checkbox"/>            | Lead Case Manager           |
| <input type="checkbox"/> Out-of-Home Residential Care | <input type="checkbox"/>            | Due Process Hearings        |

(04) Description of Expenses			Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel
The claimed units of service are based on the AB3632/SEP Plan identified in the LAC-DMH Integrated System (IS). The cost report process determines the cost per unit of service in a generic sense, not on an individual clinician basis. This data is detailed on Attachment 4. Direct service cost details have been completed on Attachment 5 and is based on the cost report method.					2,076,865			

(05) Total <input checked="" type="checkbox"/>	Subtotal <input type="text"/>	Page: <u>1</u> of <u>1</u>			2,076,865			
------------------------------------------------	-------------------------------	----------------------------	--	--	-----------	--	--	--

	<b>MANDATED COSTS</b> <b>HANDICAPPED AND DISABLED STUDENTS</b> <b>ACTIVITY COST DETAIL</b>	<b>FORM</b>  <b>2</b>
--	--------------------------------------------------------------------------------------------------	-----------------------------

(01)	Claimant County of Los Angeles / Consolidated	(02)	Fiscal Year 2004/2005
------	--------------------------------------------------	------	--------------------------

(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<input type="checkbox"/> Review Interagency Agreement	<input type="checkbox"/> Initial Assessment of Pupil
<input type="checkbox"/> Participation in IEP Team	<input type="checkbox"/> Lead Case Manager
<input checked="" type="checkbox"/> Out-of-Home Residential Care	<input type="checkbox"/> Due Process Hearings

(04) Description of Expenses			Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel
Payment for Board & Care Expenses to in-state contractors by DCFS.  <p style="text-align: center;"><b>See Attachment 1 for detail</b></p>						15,527,235		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> Page: <u>1</u> of <u>1</u>						15,527,235		



<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>SERVICES TO HANDICAPPED STUDENTS</b>	(19) Program Number 00111 (20) Date Filed <b>JAN 17 2006</b> (21) LRS Input / /
------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------

L A B E L  H E R E	(01) Claimant Identification Number <b>9919</b>	<b>Reimbursement Claim Data</b>		
	(02) Claimant Name <b>Department of Mental Health</b>	(22) HDS-1, (03)(a)		
	County of Location <b>County of Los Angeles</b>	(23) HDS-1, (03)(b)		
	Street Address or P.O. Box <b>550 South Vermont Ave., 11th Floor</b>	Suite	(24) HDS-1, (03)(c)	
	City <b>Los Angeles</b>	State <b>CA</b>	Zip Code <b>90020</b>	(25) HDS-1, (04)(1)(d)
	<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(26) HDS-1, (04)(2)(d)
		(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) HDS-1, (04)(3)(d)
		(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) HDS-1, (04)(4)(d)
		(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) HDS-1, (04)(5)(d)
	<b>Fiscal Year of Cost</b>	(06) <b>2005/2006</b>	(12) <b>2004/2005</b>	(30) HDS-1, (06)
<b>Total Claimed Amount</b>	(07) <b>\$7,143,733</b> ✓	(13) <b>\$6,494,303</b> ✓	(31) HDS-3, (05) <b>192,927</b>	
<b>Less: 10% Late Penalty, not to exceed \$1,000</b>		(14)	(32) HDS-3, (06)	
<b>Less: Prior Claim Payment Received</b>		(15) <b>\$3,326,365</b>	(33) HDS-3, (07) <b>1,099,786</b>	
<b>Net Claimed Amount</b>		(16) <b>\$3,167,938</b>	(34) HDS-3, (09) <b>31,291,626</b>	
<b>Due from State</b>	(08) <b>\$7,143,733</b>	(17) <b>\$3,167,938</b>	(35) HDS-3, (10)	
<b>Due to State</b>		(18)	(36)	

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer: *John Naimo FOR* Date: 1/11/06

J. Tyler McCauley Auditor-Controller  
 Type or Print Name Title  
 (38) Name of Contact Person for Claim Telephone Number (213) 738-4665 Ext. \_\_\_\_\_  
 Leonard Kaye E-mail Address \_\_\_\_\_

**COUNTY OF LOS ANGELES**

**FISCAL YEAR (FY) 2004-05 SB 90 CHAPTER 1747/84 -  
SERVICES TO HANDICAPPED STUDENTS REIMBURSEMENT CLAIM**

**TABLE OF CONTENTS**

<b>ATTACHMENT 2</b>	HDS-3 Claim Summary
<b>ATTACHMENT 3</b>	HDS-4 Component/Activity Cost Detail
	HDS-5 Component/Activity Cost Detail
	(Omitted - no claimable costs for Due Process Proceedings)
	HDS-6 Component/Activity Cost Detail
<b>ATTACHMENT 4</b>	Supplemental Cost Report Data For Special Education Program (FY 2004-05 Cost Report Form MH1912)
<b>ATTACHMENT 5</b>	FY 2004-05 Final Allocation Worksheet
<b>ATTACHMENT 6</b>	Supporting Worksheet For Cost Report Form MH1912
<b>ATTACHMENT 7</b>	Offsetting Revenue Worksheets
<b>ATTACHMENT 8</b>	FY 2004-05 Indirect Cost Proposal (ICP)
<b>ATTACHMENT 9</b>	FY 2004-05 Year End Indirect Cost Rates by Program
<b>ATTACHMENT 10</b>	FY 2004-05 MH 1966 Cost Report Forms

<b>MANDATED COSTS                      SERVICES TO HANDICAPPED STUDENTS                      CLAIM SUMMARY</b>			<b>FORM                      HDS - 3</b>
(01) Claimant:  <b>Los Angeles County</b>	(02) Type of Claim Reimbursement Estimated	<input checked="" type="checkbox"/>	Fiscal Year:  <b>2004/2005</b>
(03) Reimbursable Components <b>Assessment of Individuals with Exceptional Needs</b>			
(a) Assessment: Interviews, Review of Records, Observations, Testing, etc.			2,076,865
(b) Residential Placement: IEP Reviews, Case Management, and Expanded IEP			0
(c) Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.			0
(d) Due Process Proceedings			0
(e) Administrative Costs <i>[From HDS-6 line (07)]</i>			276,601
<b>Mental Health Treatment</b>			
(f) Treatment Services: Short-Doyle Program			28,544,988
(g) Administrative Costs <i>[From HDS-6 line (07)]</i>			2,746,638
(04) Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]			2,353,466
(05) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) <i>(Attachment 7a)</i>			192,927
(06) Less: Amount Received from State Categorical Funding			0
(07) Less: Amount Received from Other (Identify) - Federal IDEA Funds <i>(Attachment 7f)</i>			1,099,786
(08) Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]			1,060,753
(09) Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]			31,291,626
(10) Less: Non-Categorical State General/Realignment Funds			0
(11) Less: Amount Received from State Categorical Funding			0
(12) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) <i>(Attachment 7a)</i>			6,569,210
(13) Less: Amount Received from Other (Identify)			
- Federal Financial Participation share of Admin. Cost <i>(Attachment 7a)</i>			746,101
- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost <i>(Attachment 7b)</i>			5,209,972
- Third Party Revenues and share of Admin. Cost <i>(Attachment 7d)</i>			6,350
- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 <i>(Attachment 7e)</i>			593,655
- Federal Individuals with Disabilities Education Act (IDEA) Funds <i>(Attachment 7f)</i>			12,732,788
(14) Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]			5,433,550
(15) Total Claimed Amount [Sum of line (08) and line (14)]			6,494,303

**Tab 5**

CLAIM FOR PAYMENT			For State Controller Use Only	
Pursuant to Government Code Section 17561 <b>SERVICES TO HANDICAPPED STUDENTS</b>			(19) Program Number 0011	<b>MAY 01 2007</b>
			(20) Date Filed	
			(21) LRS Input	
(01) Claimant Identification Number 9919			Reimbursement Claim Data	
(02) Claimant Name <b>Auditor-Controller</b>			(22) FORM-1, (04)(A)(g)	
County of Location <b>County of Los Angeles</b>			(23) FORM-1, (04)(B)(g)	2,824,466
Street Address or P.O. Box 500 West Temple Street, Room 603			(24) FORM-1, (04)(C)(g)	
City State Zip Code Los Angeles CA 90012			(25) FORM-1, (04)(D)(g)	
Type of Claim	Estimated Claim	Reimbursement Claim	(26) FORM-1, (04)(E)(g)	15,504,568
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement [A] <input checked="" type="checkbox"/>	(27) FORM-1, (04)(F)(g)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) FORM-1, (06)	2
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(29) FORM-1, (07)	342,613
Fiscal Year of Cost	(06)	(12) 2005/2006	(30) FORM-1, (09)	
Total Claimed Amount	(07)	(13) \$12,487,968	(31) FORM-1, (10)	15,033,605
Less: 10% Late Penalty, but not to exceed \$1,000		(14)	(32)	
Less: Estimated Claim Payment Received		(15) \$9,010,351	(33)	
Net Claimed Amount		(16) \$3,477,617	(34)	
Due from State	(08) \$0	(17) \$3,477,617	(35)	
Due to State	<input type="checkbox"/>	(18) \$3,477,617	(36)	
<b>(37) CERTIFICATION OF CLAIM</b>				
<p>In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>				
Signature of Authorized Officer			Date	
<i>John Naimo FOR</i>			4/27/07	
J. Tyler McCauley			Auditor-Controller	
Type or Print Name			Title	
(38) Name of Contact Person for Claim Leonard Kaye			Telephone Number	(213) 974-8564 Ext.
			E-mail Address	lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 9/03)

[A] See Schedule 1(a) for derivation of sum in Box (13). See schedule 1(b) for sums in Boxes (22-31)



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 603  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8321 FAX: (213) 617-8106

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

April 27, 2007

Ms. Ginny Brummels  
Local Reimbursement Section  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 94250-5872

Dear Ms. Brummels:

Los Angeles County Claim – Fiscal Year 2005-06  
Handicapped and Disabled Students Program Number 111  
Claim Instruction Number 2006—32, Issued January 2, 2007

We herein submit the subject reimbursement claim in the amount of \$12,487,968 for payment. Under guidance provided by your office to Leonard Kaye, of my staff, on April 24, 2007, we have combined all Program Number 111 claims for 2005-06 into one claim as detailed on the attached schedule.

Leonard Kaye is available at (213) 974-8564 to answer any questions you or your staff may have in this matter. Thank you.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

*John Naimo FOR*  
Connie Yee, Chief  
Accounting Division

CY:LK  
Enclosures

**SCHEDULE 1(a)**  
**County of Los Angeles Consolidated Claim**  
**Handicapped and Disabled Students Program # 111**  
**Claim Instruction No. 2006-32, Issued January 2, 2007**  
**Fiscal Year 2005-06**

<b>Consolidated Program #</b>	<b>Consolidated Program Name</b>	<b>Fiscal Year</b>	<b>/----- Los Angeles Co. Depts. -----/</b>		<b>Totals</b>
			<b>MH</b>	<b>DCFS</b>	
111 (a)	Handicapped & Disabled (old)	2005-06	\$8,849,926 (c)	\$0	8,849,926
111(b)	Handicapped & Disabled (New)	2005-06	264,301 (d)	3,373,741	3,638,042
	<b>Total [Program 111 for 2005-06]</b>		<b>9,114,227</b>	<b>3,373,741</b>	<b>12,487,968</b>

**Footnotes**

- (a) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued September, 2000. These instructions excluded in-State Room and Board. See Tab "Amended 2005-06" for detailed amended claim information supporting \$8,849,926 claimed.
- (b) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued January 2, 2007. These instructions included in-State Room and Board.
- (c) Reflects a reduction, filed as an amendment on 4/27/07, to correct the LAC-DMH Mode 60 Code [unit cost] from \$120.93 to \$106.76 which resulted in a reduction of \$160,425 from the original amount claimed of \$9,010,351 on January 12, 2007 to the \$8,849,926 claimed on 4/27/07.
- (d) As filed on 4/27/07, this is for new and allowable reimbursable "initial assessment of pupil" activities under Program 111(new) instructions issued 1/2/07.

**SCHEDULE 1(a)**

<p><b>MANDATED COSTS HANDICAPPED AND DISABLED STUDENTS CLAIM SUMMARY</b></p>	<p><b>FORM 1</b></p>
--------------------------------------------------------------------------------------	--------------------------

<p>(01) Claimant:  <b>County of Los Angeles / Consolidated</b></p>	<p>(02) Type of Claim                  Reimbursement <input checked="" type="checkbox"/>                  Estimated <input type="checkbox"/> </p>	<p>Fiscal Year <b>2005/2006</b></p>
----------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------

(03) Department

Direct Costs	Object Accounts						
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Renew Interagency Agreement							
B. Initial Assessment of Pupil	2,824,466						2,824,466
C. Participation in IEP Team							
D. Lead Case Manager							
E. Out-of-Home Residential Care	15,504,568						15,504,568
F. Due Process Hearings							
<b>(05) Total Direct Costs</b>	<b>18,329,034</b>						<b>18,329,034</b>

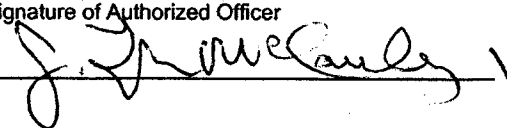
**Indirect Costs**

(06) Indirect Cost Rate	<i>See attached FY 2004/2005 Indirect Cost Rate Schedule (Attachment I)</i>	1.8692%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x (line (05)(a) + line (05)(b))]	342,613
(08) Total Direct and Indirect Costs	[Line (05)(g) + line (07)]	18,671,647

**Cost Reduction**

(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements	<i>See detail on Attachment 1, page 1</i>	15,033,605
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]	<b>3,638,042</b>



CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERVICES TO HANDICAPPED STUDENTS			For State Controller Use Only	Program																			
			(19) Program Number 00111																				
			(20) Date Filed <b>JAN 17 2007</b>																				
			(21) LRS Input																				
(01) Claimant Identification Number 9919			Reimbursement Claim Data																				
L	(02) Claimant Name <b>Auditor-Controller</b>		(22) HDS-1, (03)(a)																				
A	County of Location <b>County of Los Angeles</b>		(23) HDS-1, (03)(b)																				
B	Street Address or P.O. Box 500 West Temple Street, Room 603		(24) HDS-1, (03)(c)																				
E	City Los Angeles	State CA	Zip Code 90012	(25) HDS-1, (04)(1)(d)																			
L	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Type of Claim</th> <th style="width: 25%;">Estimated Claim</th> <th style="width: 25%;">Reimbursement Claim</th> <th style="width: 25%;"></th> </tr> </thead> <tbody> <tr> <td></td> <td>(03) Estimated <input checked="" type="checkbox"/></td> <td>(09) Reimbursement <input checked="" type="checkbox"/></td> <td>(26) HDS-1, (04)(2)(d)</td> </tr> <tr> <td></td> <td>(04) Combined <input type="checkbox"/></td> <td>(10) Combined <input type="checkbox"/></td> <td>(27) HDS-1, (04)(3)(d)</td> </tr> <tr> <td></td> <td>(05) Amended <input type="checkbox"/></td> <td>(11) Amended <input type="checkbox"/></td> <td>(28) HDS-1, (04)(4)(d)</td> </tr> <tr> <td></td> <td></td> <td></td> <td>(29) HDS-1, (04)(5)(d)</td> </tr> </tbody> </table>		Type of Claim	Estimated Claim	Reimbursement Claim			(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(26) HDS-1, (04)(2)(d)		(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27) HDS-1, (04)(3)(d)		(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28) HDS-1, (04)(4)(d)				(29) HDS-1, (04)(5)(d)	
Type of Claim			Estimated Claim	Reimbursement Claim																			
			(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(26) HDS-1, (04)(2)(d)																		
			(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27) HDS-1, (04)(3)(d)																		
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28) HDS-1, (04)(4)(d)																				
			(29) HDS-1, (04)(5)(d)																				
H	Fiscal Year of Cost 2006/2007	(06)	(12) 2005/2006	(30) HDS-1, (06)																			
E	Total Claimed Amount \$9,911,386	(07)	(13) \$9,010,351	(31) HDS-3, (05) 392,269																			
R	Less: 10% Late Penalty, but not to exceed \$1,000	(14)	(32) HDS-3, (06)																				
	Less: Estimated Claim Payment Received	(15)	(33) HDS-3, (07) \$4,967,402	1,583,547																			
	Net Claimed Amount \$9,911,386	(16)	(34) HDS-3, (09) \$4,042,949	26,536,393																			
	Due from State \$9,911,386	(08)	(17) \$4,042,949	(35) HDS-3, (10)																			
	Due to State	(18)	(36)																				
(37) CERTIFICATION OF CLAIM																							
<p>In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any any of the provisions of Government Code Sections 1090 to 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>																							
Signature of Authorized Officer			Date																				
			<u>1/12/07</u>																				
Type or Print Name			Title																				
J. Tyler McCauley			Auditor-Controller																				
(38) Name of Contact Person for Claim			Telephone Number																				
Leonard Kaye			(213) 974-8564 Ext.																				
			E-mail Address																				
			lkaye@auditor.ca.gov																				

**COUNTY OF LOS ANGELES**

**FISCAL YEAR (FY) 2005-06 SB 90 CHAPTER 1747/84  
SERVICES TO HANDICAPPED STUDENTS REIMBURSEMENT CLAIM**

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MANDATED COSTS SERVICES TO HANDICAPPED STUDENTS CLAIM SUMMARY		FORM HDS - 3
(01) Claimant:  <b>Los Angeles County</b>	(02) Type of Claim Reimbursement <div style="border: 1px solid black; text-align: center; width: 50px; margin: 2px;">X</div> Estimated <div style="border: 1px solid black; width: 50px; margin: 2px;"></div>	Fiscal Year:  <b>2005/2006</b>
(03) Reimbursable Components		
<b>Assessment of Individuals with Exceptional Needs</b>		
(a) Assessment: Interviews, Review of Records, Observations, Testing, etc.		2,958,020
(b) Residential Placement: IEP Reviews, Case Management, and Expanded IEP		0
(c) Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.		0
(d) Due Process Proceedings		0
(e) Administrative Costs <i>[From HDS-6 line (07)]</i>		361,162
<b>Mental Health Treatment</b>		
(f) Treatment Services: Short-Doyle Program		24,379,654
(g) Administrative Costs <i>[From HDS-6 line (07)]</i>		2,156,739
(04) Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]		3,319,182
(05) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) <i>(Attachment 7a)</i>		392,269
(06) Less: Amount Received from State Categorical Funding		0
(07) Less: Amount Received from Other (Identify) - Federal IDEA Funds <i>(Attachment 7f)</i>		1,583,547
(08) Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]		1,343,366
(09) Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]		26,536,393
(10) Less: Non-Categorical State General/Realignment Funds		0
(11) Less: Amount Received from State Categorical Funding		0
(12) Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) <i>(Attachment 7a)</i>		4,733,002
(13) Less: Amount Received from Other (Identify)		
- Federal Financial Participation share of Admin. Cost <i>(Attachment 7a)</i>		604,736
- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost <i>(Attachment 7b)</i>		3,890,785
- Third Party Revenues and share of Admin. Cost <i>(Attachment 7d)</i>		1,208
- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 <i>(Attachment 7e)</i>		637,397
- Federal Individuals with Disabilities Education Act (IDEA) Funds <i>(Attachment 7f)</i>		9,002,280
(14) Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]		7,666,985
(15) Total Claimed Amount [Sum of line (08) and line (14)]		9,010,351

**Tab 6**

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

	)	
	)	No. CSM-4282
Claim of:	)	Chapter 1747, Statutes of 1984
	)	Chapter 1274, Statutes of 1985
County of Santa Clara,	)	Title 2, Div. 9, Sections 60000
	)	through 60200, California Code
Claimant	)	of Regulations
	)	<u>Handicapped and Disabled</u>
	)	<u>Students</u>
	)	

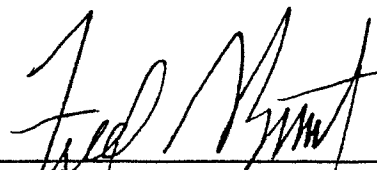
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DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on April 26, 1990.

IT IS SO ORDERED April 26, 1990.


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 Fred R. Buenrostro,  
 Vice-Chairperson  
 Commission on State Mandates

WP0363h



I. ISSUES

Do the provisions of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, Division 9, sections 60000 through 60200, of the California Code of Regulations, require counties to implement a new program or provide a higher level of service in an existing program within the meaning of Government Code section 17514 and section 6, article XIII B of the California Constitution? If so, are the counties entitled to reimbursement under the provisions of section 6, article XIII B of the California Constitution?

II. FACTS

A. Background

The County of Santa Clara filed a Test Claim with the Commission under the provisions of the Government Code commencing with section 17500. Santa Clara County alleges that Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985, and Title 2, Division 9, sections 60000 through 60200, of the California Code of Regulations, relating to the provision of certain mental health services for handicapped and disabled students, impose a reimbursable state mandated program on the County within the meaning of section 6, Article XIII B of the California Constitution and Government Code section 17514.

On January 28, 1988, this matter was referred to the Office of Administrative Hearings by the Commission for a hearing.

After a prehearing conference, the parties, at the suggestion of the Administrative Law Judge, arrived at a "Joint Statement of Facts", by which the matter was submitted.

The following facts are based upon the "Joint Statement of Facts" to extent that they are pertinent in the Commission's determination of a reimbursable state mandated program.

The fundamental component of federal law prohibiting discrimination against handicapped individuals in any program receiving federal funds was enacted by Congress in 1973 as Public Law 93-112, Title V, section 504 (codified at Title 29 U.S. Code, section 794). "Section 504" requires the promulgation of regulations by each agency of the federal government as may be necessary to carry out the provisions of section 504 and other laws providing protection to the handicapped. At least 23 federal agencies and departments have promulgated "504 regulations."

In 1976, the "**Education for All Handicapped Children Act**", 20 U.S.C. section 1400 et seq. ("**EHA**") was enacted. Shortly thereafter, "**504 regulations**" were enacted (now **recodified** as 34 Code of Federal Regulations, Part 104) which require that recipients of federal funding which operate a public or elementary or secondary education program "...**provide** a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the persons handicap." 34 C.F.R. Part 104.33. The EHA and its implementing regulations, 34 C.F.R. section 300.1 et **seq.**, establish procedural and substantive standards for educating handicapped students. The EHA also incorporates by reference state substantive and procedural standards concerning the education of handicapped students. 20 U.S.C. section **1401(18)**; 34 C.F.R. section 300.4. In order to receive federal funds, a state must adopt a plan specifying how it will comply with federal requirements. 20 U.S.C. sections 1412 and 1414(a).

Under the EHA, handicapped children are guaranteed the right to receive a free appropriate public education which emphasizes special education, and related services designed to meet their unique educational needs. 20 U.S.C. sections **1400(c)** and 1412.

"**Special education**" means specially designated instruction to meet the unique needs of a handicapped child, including classroom instruction and instruction in physical education, as well as home instruction and instruction in hospitals and institutions. 20 U.S.C. section **1401(a)(16)**.

"**Related services**" are defined by statute to include transportation and such developmental, corrective, and other supportive supplemental services as may be required to assist a handicapped child to benefit from special education. 20 U.S.C. section **1401(a)(17)**. Supportive services include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services, and limited medical services. Related services are to be provided at no cost to parents or children. If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 C.F.R. section 300.302.

"**Handicapped children**" are defined as children who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or health impaired, or children with specific learning disabilities, who by reason thereof require special education and related services. 20 U.S.C. section **1401(1)**.



The EHA provides a specific mechanism for insuring that handicapped children receive a free appropriate public education: the Individualized Education Program ("**IEP**"). The IEP is a written statement for a handicapped child that is developed and implemented in accordance with federal IEP regulations. 34 C.F.R. section 300.340; 34 C.F.R. section 300.346. The state educational agency of a state receiving federal funding must insure that each public agency develops and implements an IEP for each of its handicapped children. 34 C.F.R. section 300.341.

The IEP process begins when a child is identified as possibly being handicapped. He or she must be evaluated in all areas of suspected handicaps by a multidisciplinary team, which includes a teacher or specialist with knowledge in the area of suspected disability. Parents also have the right to obtain an independent assessment of their child by a qualified professional. School districts are required to consider the independent assessment as part of their educational planning for the pupil.

If it is determined that the child is handicapped within the meaning of EHA, an IEP meeting must take place. Participants in the IEP meeting (the "**IEP team**") include a representative of the local educational agency ("**LEA**"), the child's teacher, one or both of the child's parents, the child if appropriate, and other individuals, at the discretion of the parent or agency. 34 C.F.R. section 300.344.

The written IEP is an educational prescription which includes statements of the child's present levels of educational performance, annual goals (including short term instructional objectives), and specific special education and related services to be provided to the child and the setting in which the services will be provided, along with the projected dates for initiation of services and the anticipated duration of the services. It also includes appropriate objective criteria, evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. 20 U.S.C. section 1414(a) (5); 34 C.F.R. sections 300.340-349. This document serves as a commitment of resources necessary to enable a handicapped child to receive needed special education and related services, and becomes -- a management tool, a compliance and monitoring document, and an evaluation device to determine the extent of the child's progress.

Each public agency must have an IEP in effect at the beginning of each school year for every handicapped child who is receiving special education from that agency. The IEP must be in effect before special education and related services are

provided, and special education and related services set out in a child's IEP must be provided as soon as possible after the IEP is finalized. 34 C.F.R. section 300.342. Meetings must be conducted at least once a year to review and, if necessary, to revise each handicapped child's IEP. More frequent meetings may take place if needed.

In response to the EHA, California adopted a state plan and enacted a series of statutes and regulations designed to comply with federal law. Education Code section 56000 et seq.; Government Code section 7570 et seq.; Title 2, California: Code of Regulations section 60000 et seq.; and Title 5 California Code of Regulations section 3000 et seq.

The responsibility for supervising education and related services for handicapped children was delegated to the Superintendent of Public Education. Government Code section 7561; Education Code section 56135.

In California, public education services are directly delivered through LEAs throughout the state. The legislation that is the subject of this Test Claim shifted certain IEP responsibilities from LEAs to county mental health programs.

Chapter 797 of the Statutes of 1980 added Part 30 (commencing with section 56000) to Division 4 of Title 2 of the Education Code to set forth the basic California IEP process for identifying special education children and providing special education and related services necessary for an "individual with exceptional needs" to benefit from a free appropriate public education.

An "individual with exceptional needs" is defined in Education Code section 56026 and includes those individuals in need of mental health services.

Before July 1, 1986, LEAs, i.e., school districts and county offices of education, were responsible for the education of special education students, including the provision of related services necessary for the individual to benefit from education. These responsibilities for identifying and assessing individuals with suspected handicaps, as well as the responsibility for providing related services, includes mental health services required in individual IEPs. LEAs were financially responsible for the provision of mental health services required in the IEP.

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B. Legislation That Is The Subject To This Test Claim and Other Relevant Statutes

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government Code and amended section 11401 of the Welfare and Institutions Code, relating to minors.

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Government Code, amended sections 5651, 10950, and 11401 and added Chapter 6, commencing with section 18350, to Part 6 of Division 9 of the Welfare and Institutions Code, relating to minors, and made an appropriation therefor.

Government Code section 7571 requires the Secretary of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572.

Government Code section 7576 provides that any community mental health service designated by the State Department of Mental Health shall be responsible for the provision of psychotherapy or other mental health services, as defined by Division 9, Title 2, California Code of Regulations, when required in an individual's IEP.

Section 60040, Title 2, California Code of Regulations, implements Government Code section 7572 and states that a responsible LEA preparing an initial assessment plan in accordance with section 56320 et seq. of the Education Code **may**, with parental consent, refer the person suspected of being an **"individual with exceptional needs"** to the local mental health program to determine the need for mental **health services** when certain conditions have been satisfied. Following that referral, the local mental health program shall be responsible for reviewing the educational information, observing, if necessary, the individual in the school environment, and determining if mental health assessments are needed. The local mental health program shall provide to the IEP team a written **assessment** report in accordance with Education Code section 56327.

If the written assessment report in accordance with Education Code section 56327 indicates that mental health services are to be provided in an individual's IEP, section 60050, Title 2, Code of California Regulations, requires that the following shall be included in the individual's IEP: a description of

the mental health services to be provided: the goals and objectives of the mental health services, with appropriate objective criteria and evaluation procedures to determine whether objectives are being achieved: and initiation, frequency, and duration of the mental health services to be provided to the individual.

If the written assessment report in accordance with Education Code section 56327 indicates that the "**individual** with exceptional **needs**" is classified as "**seriously** emotionally **disturbed**" and any member of the IEP team recommends residential placement based on relevant assessment information, Government Code section 7572.5, subdivision (a), requires the expansion of the IEP team to include a representative of the county mental health department.

The expanded IEP team, pursuant to Government Code section 7572.5, subdivision (b), requires the expanded IEP team to review the mental health assessment and determine whether the individual's needs can be reasonably met through any combination of nonresidential services, and whether residential services will enable the individual to benefit from educational services, and whether residential services are available which will address the individual's needs and ameliorate the conditions leading to the "**seriously** emotionally disturbed" designation. The provisions of Government Code section 7572.5, subdivisions (a) and (b), required, for the first time, the expansion of the IEP team to include county personnel as a member.

Section 60100, Title 2, California Code of Regulations, implements Government Code section 7572.5, subdivisions (a) and (b).

Government Code section 7572.5, subdivision (c)(1), provides that if the IEP requires residential placement, the county mental health department shall be designated as the lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the county mental health department. However, the county mental health department shall retain financial responsibility for provision of case management services. The provisions of Government Code section 7572.5, subdivision (c)(2), require the IEP to include provisions for review of case progress, of the continuing need for residential placement, of the compliance with the IEP, of the progress toward ameliorating the "**seriously** emotionally disturbed" condition, and identification of an appropriate residential facility for placement. There must be a review by the full IEP team every six months. The provisions of Government Code section 7572.5, subdivision (c)(1), required

the county personnel department, for the first time, to assume a lead case management role in the IEP process when it is determined that the "**individual** with exceptional needs" is "seriously emotionally disturbed" and requires residential placement.

Section 60110, Title 2, California Code of Regulations, implements section 7572.5, subdivision (c), of the Government Code.

The law pertaining to the funding, organization, and operation of community mental health services in California, known as the "**Short-Doyle Act**", is contained almost exclusively in Part 2 (commencing with section 5600) of Division 5 of the Welfare and Institutions Code. The Short-Doyle Act was enacted in 1979 to organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. Before that time, state hospitals played a large role in the provision of mental health services. The Short-Doyle Act was a step in the de-institutionalization of the mentally ill.

The Short-Doyle Act was intended to efficiently utilize state and local resources, to integrate state-operated and community programs into a unified mental health system, to ensure appropriate utilization of all mental health professions, to provide a means for local government participation in determining the need for and allocation of mental health resources, to establish a uniform ratio of local and state government responsibility for financing mental health services, and to provide a means for allocating state mental health funds according to community needs.

The goals of Short-Doyle community mental health programs are threefold: to assist persons who are institutionalized because of mental disorder, or who have a high risk of becoming so, to lead lives which are as normal and independent as possible; to assist persons who experience temporary psychological problems which disrupt normal living to return as quickly as possible to a level of functioning which enables them to cope with their problems; and to prevent serious mental disorders and psychological problems. Welfare and Institutions Code section 5600.

Short-Doyle services are to be provided through community mental health services covering an entire county, or counties, established by the Board of Supervisors of each county. Welfare and Institutions Code section 5602. In most counties, the community mental health service area is the county, and the local mental health agency is an agency of the county.

Generally, each county is required under the Short-Doyle Act to develop and adopt a mental health plan annually specifying services to be provided in county facilities, in state hospitals, and through private agencies. Welfare and Institutions Code section 5650.

Welfare and Institutions Code section 5651 requires a programmatic description of each of the services to be provided in a **county's** annual Short-Doyle plan. Welfare and **Institutions** Code section 5651, subdivision (g), requires the county Short-Doyle annual plan to include a description of the services required by Government Code sections 7571 and 7576, including the cost of those services.

Welfare and Institutions Code section 5705 states that the net cost of all services specified in the approved county Short-Doyle plan shall be financed under the Short-Doyle program on the basis of ninety (90) percent state funds and ten (10) percent county funds, and the cost of the services shall be the actual cost or a negotiated net amount or rates approved by the Director of the Department of Mental Health.

The Budget Act of 1986 allocated \$2,000,000 to the State Department of Mental Health for assessments, treatment, and case management services, and made available for transfer from the State Department of Education to the State Department of Mental Health an additional **\$2,700,000** for assessments and mental health treatment services for IEP individuals. Item 4440-131-001, Chapter 186, section 2.00, Statutes of 1986; Chapter 1133, section 3, Statutes 1986.

Additional amounts were to be transferred from the State Department of Education to the State Department of Mental Health if reports of **LEAs** indicated higher costs during Fiscal Year 1985-86 for services that are the subject of this Test Claim. Relatively low figures were reported initially. The Auditor General's Report showed wide discrepancies among school districts in the manner in which they reported their costs, and it was determined by the State Auditor General that the figures submitted were unreliable. (Report by the Office of the Auditor General, April 1987, P-640)

County of Santa Clara alleged that it has incurred costs in excess-of **\$200.00** as a result of the legislation that is the subject of this Test Claim.

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### III. FINDINGS

Based upon the above facts and evidence both oral and documentary having been introduced, in order to determine whether the legislation that is the subject of this Test Claim imposes costs mandated by the state as defined by Government Code section 17514 and are subject to the reimbursement requirements of section 6, article XIII B, of the California Constitution, the Commission finds the following:

It was found that the legislation that is the subject of this test claim shifted certain IEP responsibilities, which were previously performed by LEAs, to local mental health programs.

It was found that section 60040, Title 2, California Code of Regulations, requires, for the first time, that the local mental health programs shall provide to the IEP team a written mental health assessment report, in accordance with Education Code section 56327, on the need for mental health services. The local mental health program is required to provide such report whenever an LEA refers an individual suspected of being an **"individual with exceptional needs"** to the local mental health department.

It was found that Government Code section 7572.5, subdivisions (a) and (b), requires, for the first time, that the IEP team be expanded to include mandatory participation by county personnel. This mandatory participation by county personnel is required when the written mental health assessment report provided by the local mental health program determines that an **"individual with exceptional needs"** is **"seriously emotionally disturbed"**, and **any** member of the IEP team recommends residential placement based upon relevant assessment information.

It was found that Government Code section 7572.5, subdivision (c), designates, for the first time, that the local mental health program shall act as the lead case manager when the IEP prescribes residential placement for an **"individual with exceptional needs"** who is **"seriously emotionally disturbed"**?

It was found that the following requirements of a local mental health program are not subject to the provisions of the Short-Doyle Act, Welfare and Institution Code section 5600 et seq.:

- (i) the preparation of a written mental health assessment report pursuant to section 60040, Title 2, Code of California Regulations,

- (ii) the participation on the expanded IEP team pursuant to Government Code section 7572.5, subdivisions (a) and **(b) , and**
- (iii) the role as lead case manager, pursuant to Government Code section 7572.5, subdivision (c), when residential placement is prescribed for an **"individual** with exceptional needs" who is **"seriously** emotionally disturbed/

Government Code section 7571 requires the Secretary of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572.

Government Code section 7576 provides that the [county] community mental health service shall be responsible for the provision of psychotherapy or other mental health services as defined by Title 2, California Code of Regulations, commencing with section 60000, when required in an individual's IEP. It was found that such individuals are "individuals with exceptional needs," including those designated as **"seriously emotionally disturbed."**

Welfare and Institutions Code section 5651 requires a programmatic description of each of the services to be provided in a county's Short-Doyle annual plan. Welfare and Institutions Code section 5651, subdivision (g), requires, for the first time, the county Short-Doyle annual plan to include a description of the county mental health services required by Government Code sections 7571 and 7576, including the cost of those services. It was found that the provisions of Government Code sections 7571 and 7576 and their implementing regulations are mental health services provided pursuant to the county's Short-Doyle annual plan.

Welfare and Institutions Code section 5705 states that the net cost of all services specified in the approved county Short-Doyle annual plan shall be financed under the Short-Doyle program on the basis of ninety (90) percent state funds and ten (10) percent county funds, and the cost of the services shall be the actual cost or a negotiated net amount or rates approved by the Director of the Department of Mental Health. It was found that the mental health services provided, pursuant to Government Code sections 7571 and 7576, must be included in the county's Short-Doyle annual plan in accordance with Welfare and Institutions Code section 5651, subdivision **(g)**. Therefore, such mental health services are subject to the financial provisions of the Short-Doyle Act.

The legislation that is the subject of this Test Claim does not implement a federal mandate contained in section 504 of the Rehabilitation Act of 1973. The provisions of section 504 of



the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 U.S.C. 794), together with the implementing regulations, prohibits discrimination against handicapped individuals in any program receiving federal funds. The section 504 regulation requirement that recipients of federal funding who operate educational programs ". . . provide a free appropriate public education to each qualified handicapped person . . ." does not apply to counties which do not operate a public or elementary or secondary education program. The responsibility of providing public education and related services is on educational agencies and not **the counties.**

The legislation that is the subject of this Test Claim is not state legislation implementing a federal mandate contained in The Education for All Handicapped Children Act of 1975 (EHA). Under the EHA, handicapped children are guaranteed the right to receive a free appropriate public education which emphasizes special education, and related services designed to meet their unique educational needs. The EHA does not apply to counties which do not operate a public or elementary or secondary education program. The responsibility of providing public education and related services is on educational agencies and not on the counties.

The legislation that is the subject of this Test Claim does not merely affirm for the State that which had been declared existing law by actions of the court. No court decisions impose on counties the responsibility of providing services which relate to the provision of educational services.

It was found that none of the requisites for denying a claim specified in Government Code section 17556 were applicable.

IV. APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17551, subdivision (a) provides:

**"The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."**

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Government Code section 17514 provides:

**"'Costs** mandated by the state' means **any** increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing **any** statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California **Constitution.**"

Section 6, article XIII B of the California Constitution reads:

Whenever the Legislature or **any** state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected:
- (b) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

#### V. CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code section 17551, subdivision (a).

The Commission concludes that, to the extent that the provisions of Government Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for **"individuals with exceptional needs,"** such legislation and regulations impose a new program or higher level of service upon a county.

Moreover, the Commission concludes that **any** related participation on the expanded IEP team and case management services for **"individuals with exceptional needs"** who are designated as **"seriously emotionally disturbed,"** pursuant to subdivisions (a), (b), and (c) of Government Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county. Furthermore, the Commission concludes that the aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, commencing with Welfare and Institutions Code section 5600. Accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIII B of the California Constitution.

The Commission concludes that the provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Government Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. In addition, such services includes psychotherapy and other mental health services provided to **"individuals with exceptional needs,"** including those designated as **"seriously emotionally disturbed,"** and required in such individual's IEP. However, such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIII B of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of providing those mental health services set forth in Government Code sections 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

The claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations section 1183.1, to the Commission for its consideration.

The foregoing determinations are subject to the following conditions:

The determination of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and

guidelines for reimbursement of the mandated program: approval of a statewide cost estimate: a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement: and subsequent review of the claim by the State Controller's Office.

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim Of:

County of San Bernardino

Claimant

No. CSM-4282

Title 2, Cal. Code Regs., Div. 9,

Sections 60000-60200

Chapter 1747, Statutes of 1984

Chapter 1274, Statutes of 1985

*Handicapped and Disabled Students*

PARAMETERS AND GUIDELINES

The attached *amended* Parameters and Guidelines of the Commission on State Mandates are hereby adopted by the Commission on State Mandates in the above entitled matter.

IT IS SO ORDERED August 29, 1996.



Kirk G. Stewart, Executive Director  
Commission on State Mandates

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**FILE COPY**

Hearing Date: August 29, 1996  
File Number: CSM-4282  
Commission Staff: Lucila Ledesma  
LL\4282\RevP&G.Amd

Original Adopted: 8/22/9 1  
Revised: 8/29/96

## **PARAMETERS AND GUIDELINES**

Sections 60000-60200  
Title 2, California Code of Regulations, Division 9  
Chapter 1747, Statutes of 1984  
Chapter 1274, Statutes of 1985  
*Handicapped and Disabled Students*

### I. SUMMARY OF MANDATE

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

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

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

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

The provisions of Welfare and Institutions Code section 565 1, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 757 1 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIII B of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 757 1 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

## II. COMMISSION ON STATE MANDATES' DECISION

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

## III. ELIGIBLE CLAIMANTS

All counties

## IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, are reimbursable.

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

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.



## V. REIMBURSABLE COSTS

### A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:

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

the claimant's mental health professional on that individual's expanded IEP team.

f. When the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed,' claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572.5).

g. Required participation in due process procedures, including but not limited to due process hearings.

3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.

B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act :

1. The scope of the mandate is ten (10) percent reimbursement.

2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):

a. Individual therapy,

b. Collateral therapy and contacts,

c. Group therapy,

d. Day treatment, and

e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.

3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

## VI. CLAIM PREPARATION

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

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

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

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

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

B. Cost Report Method. Under this claiming method the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with the claiming instructions. A complete copy of the annual cost report including all supporting schedules attached to the cost report as filed with DMH must also be filed with the claim forms submitted to the State Controller.

1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions :

a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

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

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

## VII. SUPPORTING DATA

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

## VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

## IX. REQUIRED CERTIFICATION

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

**Tab 8**

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

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

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

Effective September 13, 2004.

Case No.: 04-RL-4282-10

*Handicapped & Disabled Students*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION  
17500 ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on May 26, 2005)*

**STATEMENT OF DECISION**

The attached Statement of Decision of the Commission on State Mandates is hereby  
adopted in the above-entitled matter.

\_\_\_\_\_  
PAULA HIGASHI, Executive Director

\_\_\_\_\_  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

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

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

Effective September 13, 2004.

Case No.: 04-RL-4282-10

*Handicapped & Disabled Students*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on May 26, 2005)*

**STATEMENT OF DECISION**

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2005. Leonard Kaye and Paul McIver appeared on behalf of the County of Los Angeles. Pam Stone represented and appeared on behalf of the County of Stanislaus. Linda Downs appeared on behalf of the County of Stanislaus. John Polich appeared on behalf of the County of Ventura. Patricia Ryan appeared on behalf of the California Mental Health Directors' Association. Jeannie Oropeza and Dan Troy appeared on behalf of the Department of Finance.

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 staff analysis at the hearing by a vote of 4-0.

**BACKGROUND**

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

Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with



Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

### Commission Decisions

The Commission adopted the Statement of Decision on the *Handicapped and Disabled Students* program in 1990 (CSM 4282). Generally, the test claim legislation implements federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.<sup>1</sup> The mechanism for providing special education services under federal law is the individualized education program, or IEP. An IEP is a written statement developed after an evaluation of the pupil in all areas of suspected disability and may provide for related services including mental health and psychological services.<sup>2</sup>

Before the enactment of the test claim legislation, the state adopted a plan to comply with federal law. The responsibility for supervising special education and related services was delegated to the Superintendent of Public Instruction. Local educational agencies (LEAs) were financially responsible for the provision of mental health services required by a pupil's IEP.<sup>3</sup>

The test claim legislation, which became effective on July 1, 1986, shifted the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments.

The Commission approved the test claim and found that the activities of providing mental health assessments, participation in the IEP process, psychotherapy, and other mental health services were reimbursable under article XIII B, section 6 of the California Constitution. Activities related to assessments and IEP responsibilities were found to be 100% reimbursable. Psychotherapy and other mental health treatment services were found to be 10% reimbursable due to the funding methodology in existence under the Short-Doyle Act for local mental health services.

The parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282) were adopted in August 1991, and amended in 1996, and have a reimbursement period beginning July 1, 1986. The parameters and guidelines authorize reimbursement for the following activities:

- A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:
  1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing

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<sup>1</sup> See federal Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

<sup>2</sup> Title 20 United States Code sections 1400 et seq.

<sup>3</sup> Education Code sections 56000 et seq.

Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, § 7572, subd. (d)(1)):
  - a. Whenever an LEA refers an individual suspected of being an “individual with exceptional needs” to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
    - i. interview with the child and family,
    - ii. collateral interviews, as necessary,
    - iii. review of the records,
    - iv. observation of the child at school, and
    - v. psychological testing and/or psychiatric assessment, as necessary.
  - b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Gov. Code, § 7572, subd. (d)(1).)
  - c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Gov. Code, § 7572, subd. (d)(1).)
  - d. Review by claimant’s mental health professional of any independent assessment(s) submitted by the IEP team. (Gov. Code, § 7572, subd. (d)(2).)
  - e. When the written mental health assessment report provided by the local mental health program determines that an “individual with special needs” is “seriously emotionally disturbed,” and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant’s mental health professional on that individual’s expanded IEP team.
  - f. When the IEP prescribes residential placement for an “individual with exceptional needs” who is “seriously emotionally disturbed,” claimant’s mental health personnel’s identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Gov. Code, § 7572.5.)
  - g. Required participation in due process hearings, including but not limited to due process hearings.

3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.
- B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act:
1. The scope of the mandate is ten (10) percent reimbursement.
  2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):
    - a. Individual therapy,
    - b. Collateral therapy and contacts,
    - c. Group therapy,
    - d. Day treatment, and
    - e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
  3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. Commission on State Mandates*, issued an unpublished decision that upheld the Commission's decision, including the percentage of reimbursements, on the *Handicapped and Disabled Students* program.<sup>4</sup>

In May 2000, the Commission approved a second test claim relating to the test claim legislation, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (CSM 97-TC-05). The test claim on *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) was filed on Government Code section 7576, as amended by Statutes 1996, chapter 654, the corresponding regulations, and on a Department of Mental Health Information Notice Number 86-29. The test claim in *Seriously Emotionally Disturbed Pupils* addressed only the counties' responsibilities for *out-of-state* residential placements for seriously emotionally disturbed pupils, and has a reimbursement period beginning January 1, 1997.

In addition, there are two other matters currently pending with the Commission relating to the test claim legislation. In 2001, the Counties of Los Angeles and Stanislaus filed requests to amend the parameters and guidelines on the original test claim decision, *Handicapped and Disabled Students* (CSM 4282). The counties request that the parameters and guidelines be amended to delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services; to add

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<sup>4</sup> *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993.

an activity to provide reimbursement for room and board for in-state placement of pupils in residential facilities; and to amend the language regarding the reimbursement of indirect costs. The request to amend the parameters and guidelines was scheduled on the Commission's March 2002 hearing calendar. But at the request of the counties, the item was taken off calendar, and is still pending. If the Commission approves the Counties' requests on this matter, the reimbursement period for the new amended portions of the parameters and guidelines would begin on July 1, 2000.<sup>5</sup>

The second matter currently pending with the Commission is a consolidated test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), filed by the Counties of Los Angeles and Stanislaus on all of the amendments to the original test claim legislation from 1986 to the present. The test claims in *Handicapped and Disabled Students II* were filed in June 2003 and, if approved by the Commission, will have a reimbursement period beginning July 1, 2001.

#### Documented Problems with the Test Claim Legislation

There have been funding and implementation problems with this program, which have been well documented. In 2002, the Legislative Analyst's Office issued a budget analysis that described "significant controversy" regarding the program. The report states in relevant part the following:

Over the last two years, the State Controller's Office (SCO) has audited county AB 3632 mandate reimbursement claims dating back to 1997 (three years of claims for each audited county). Based on information provided by counties and professional mandate claim preparers, we understand that SCO auditors have found that many counties are claiming reimbursements for 100 percent of the cost of providing mental health treatment services to special education pupils, rather than the 10 percent specified under the terms of this mandate. In addition, some counties are not reporting revenues that auditors indicate should be included as mandate cost "offsets." The magnitude of these auditing concerns is unknown, but could total as much as \$100 million statewide for the three-year period.<sup>6</sup>

Before the audits could be completed, Statutes 2002, chapter 1167, section 41 (Assem. Bill No. 2851) was enacted directing the State Controller's Office to not dispute the percentage of reimbursement claimed for mental health services provided by counties prior to and through fiscal years 2000-2001. According to the State Controller's Office, however, audits continue for this program to identify unallowable costs. To date,

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<sup>5</sup> California Code of Regulations, title 2, section 1183.2.

<sup>6</sup> Report by Legislative Analyst's Office, *2002 Budget Analysis: Health and Social Services, Department of Mental Health (4440)*, dated February 20, 2002. The *Handicapped and Disabled Students* program is often referred to as the "AB 3632" program.

seventeen audits have been completed, three final reports are in the process, and five audits are in the fieldwork stage.<sup>7</sup>

In addition, the legislative history of SB 1895 refers to a report issued by Stanford Law School in May 2004 on the program that describes the history of the test claim legislation, and addresses the policy and funding issues.<sup>8</sup> According to legislative history, SB 1895 was an attempt to address the issues and recommendations raised in the report.<sup>9</sup>

Accordingly, this reconsideration presents the following issues:

- What is the scope of the Commission's jurisdiction directed by SB 1895?
- Does the test claim legislation constitute a state-mandated new program or higher level of service?
- Does the test claim legislation impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

### **Discussion**

The courts have found that article XIII B, section 6 of the California Constitution<sup>10</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>11</sup> "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>12</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school

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<sup>7</sup> E-mail from State Controller's Office dated January 19, 2005.

<sup>8</sup> The report is entitled "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004.

<sup>9</sup> Assembly Committee on Education, analysis of SB 1895 as introduced on March 3, 2004, dated June 23, 2004.

<sup>10</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>11</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>12</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

district to engage in an activity or task.<sup>13</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>14</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>15</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>16</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>17</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>18</sup>

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.<sup>19</sup> 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.”<sup>20</sup>

#### **I. What is the scope of the Commission’s jurisdiction directed by SB 1895?**

Statutes 2004, chapter 493, section 7 (Sen. Bill No. 1895, eff. Sept. 13, 2004), requires the Commission on State Mandates, on or before December 31, 2005, “notwithstanding

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<sup>13</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>14</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>15</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>16</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>17</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>18</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>19</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>20</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

any other law” to “reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.”

As described in the Background, the Commission has issued two decisions relating to Chapter 26.5 of the Government Code. The first decision, *Handicapped and Disabled Students* (CSM 4282), was adopted on April 26, 1990. The test claim on *Handicapped and Disabled Students* (CSM 4282) was filed on Government Code section 7570 and following, as added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter 1274, and on California Administrative Code, title 2, division 9, sections 60000-60610 (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)).

The second decision, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), was adopted on May 25, 2000. The test claim on *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) was filed on Government Code section 7576, as amended by Statutes 1996, chapter 654, the corresponding regulations, and on a Department of Mental Health Information Notice Number 86-29. The test claim in *Seriously Emotionally Disturbed Pupils* addressed only the counties’ responsibilities for *out-of-state* residential placements for seriously emotionally disturbed pupils. This test claim did not address the mental health services provided by counties to pupils in the state of California.

A third test claim is pending with the Commission, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and has been filed by the Counties of Los Angeles and Stanislaus on all of the amendments to the statutes in Chapter 26.5 of the Government Code and to their corresponding regulations from 1986 up to the current date. The test claims in *Handicapped and Disabled Students II* were filed in June 2003 and, if approved by the Commission, will have a reimbursement period beginning July 1, 2001.

For purposes of this reconsideration, the Counties of Los Angeles and Stanislaus contend that SB 1895 requires the Commission to reconsider not only the Commission’s original decision in *Handicapped and Disabled Students* (CSM 4282), but also on *all* the subsequent amendments to the statutes and regulations up to the current date that were pled in *Handicapped and Disabled II*. In this regard, the County of Stanislaus argues that “to reconsider the prior test claim only, without examining that which has amended the program since its original inception in 1984, overlooks 20 years of subsequent legislation and which has lead to the substantial filings which are before the Commission on State Mandates.”<sup>21</sup> The Counties further contend that SB 1895 requires the Commission to reconsider the Commission’s decision in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), adopted on May 25, 2000.

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<sup>21</sup> Comments filed by County of Stanislaus on December 15, 2004.

Although the Counties' arguments to analyze Chapter 26.5 of the Government Code in its entirety up to the current date for purposes of reimbursement may have surface appeal, neither the law, nor the plain language of SB 1895 supports that position. For the reasons provided below, the Commission finds that SB 1895 gives the Commission the jurisdiction to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282). The Commission does not have the jurisdiction in this case to reconsider *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), or the jurisdiction to address the statutory and regulatory amendments made to the program since 1985 that have been pled in *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49). The Commission further finds, based on the language of SB 1895, that the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004.

**A. SB 1895 directs the Commission to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282)**

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.<sup>22</sup>

Since the Commission was created by the Legislature (Gov. Code, §§ 17500 et seq.), its powers are limited to those authorized by statute. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.

Thus, the Government Code gives the Commission jurisdiction only over those statutes and/or executive orders pled by the claimant in the test claim. The Commission does not have the authority to consider a claim for reimbursement on statutes or executive orders that have not been pled by the claimant.

In addition, if the Commission approves the test claim, the period of reimbursement is calculated based on the date the test claim is filed by the claimant. Government Code section 17557, subdivision (e), states "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Thus, if a test claim is filed on June 30, 2004, and is approved by the Commission, the reimbursement period would begin in fiscal year 2002-2003. Reimbursement is not based on the effective and operative date of the particular statute or executive order pled in the test claim, unless the effective and operative date falls after the period of reimbursement.

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<sup>22</sup> *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.



Furthermore, Government Code section 17559 grants the Commission the authority to reconsider prior final decisions only within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on SB 1895. Absent SB 1895, the Commission would have no jurisdiction to reconsider any of its decisions relating to Chapter 26.5 of the Government Code since the two decisions on those statutes and regulations were adopted and issued well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by SB 1895, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.<sup>23</sup> Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of SB 1895.

Under the rules of statutory construction, when the statutory language is plain the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]<sup>24</sup>

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.<sup>25</sup> To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.<sup>26</sup>

SB 1895 states the following:

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

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<sup>23</sup> *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

<sup>24</sup> *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

<sup>25</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

<sup>26</sup> *Estate of Griswald, supra*, 25 Cal.4th at page 911.

First, the Commission does not have the jurisdiction to “reconsider” the statutory and regulatory amendments enacted after 1985 to the Handicapped and Disabled program that were pled in *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49) since the Commission has not yet adopted a decision on that claim. Pursuant to Government Code section 17557, subdivision (e), *Handicapped and Disabled Students II* will have a reimbursement period beginning July 1, 2001, if the Commission finds that the statutory and regulatory amendments pled in the claim constitute a reimbursable state-mandated program.

Second, the Commission finds that the Commission does not have the jurisdiction to reconsider the Commission’s decision in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). The express language enacted by the Legislature in SB 1895 refers to one decision with the use of the singular word “decision.” According to the analysis on the bill prepared by the Senate Rules Committee dated August 25, 2004, SB 1895 “[d]irects the Commission on State Mandates (CSM), on or before December 31, 2005, to reconsider its decision relating to administrative and travel costs for AB 3632 (Brown), Chapter 1747, Statutes of 1984 and its parameters and guidelines for calculating state reimbursement costs.” The legislative history cites only to the author and one of the statutes pled in the original *Handicapped and Disabled Students* (CSM 4282) test claim. Although, as argued by the Counties, the statutes pled in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) are included in Chapter 26.5 of the Government Code, there is no indication in the plain language of SB 1895 or in the Senate Rules Committee analysis that the Legislature intended to give the Commission jurisdiction to reconsider *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). The SEDs test claim was filed on a 1996 statute (Assem. Bill 2726), introduced by another author who is not identified in SB 1895 or in the legislative history.<sup>27</sup>

Therefore, the Commission finds that the Commission has jurisdiction to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282).

Finally, SB 1895 directs the Commission to reconsider its decision relating to “included services and administrative and travel costs” associated with services provided pursuant to Chapter 26.5 of the Government Code. The phrase “included services” is broad and does not limit the scope of this reconsideration to any particular service required by the statutes or regulations pled in *Handicapped and Disabled Students*. Therefore, the Commission finds that SB 1895 requires the Commission to reconsider the entire test claim in *Handicapped and Disabled Students*.

**B. The period of reimbursement for the Commission’s decision on reconsideration begins July 1, 2004**

SB 1895, enacted as a 2004 statute, directs the Commission to reconsider its 1990 Statement of Decision on the *Handicapped and Disabled Students* program. The parameters and guidelines for this program were originally adopted in 1991, with a reimbursement period beginning July 1, 1986. Over the last 14 years, reimbursement

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<sup>27</sup> Statutes 1996, chapter 654 was introduced by Assembly Member Woods.

claims have been filed with the State Controller's Office for payment on this program, payments have been made by the state, and audits have occurred.

SB 1895, however, does not specify the period of reimbursement for the Commission's decision on reconsideration.<sup>28</sup> The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of July 1, 1986 (i.e., to reimbursement claims that have already been filed and have been audited and/or paid), or to prospective claims filed in the current and future budget years. If the Commission's decision on reconsideration is applied retroactively, the decision may impose new liability on the state that did not otherwise exist or change the legal consequences of these past events.

For the reasons below, the Commission finds the Legislature intended that the Commission's decision on reconsideration apply prospectively, to current and future budget years only.

The California Supreme Court has recently upheld its conclusion that there is a strong presumption against retroactive legislation. Statutes generally operate prospectively only. A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."<sup>29</sup> The court explained its conclusion as follows:

"Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly ... For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]

This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance*, a *policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and

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<sup>28</sup> In this respect, SB 1895 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, directs the Commission to reconsider Board of Control test claims relating to regional housing. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004."

<sup>29</sup> *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

inflexible import of the terms, and the manifest intention of the legislature.” [Citation omitted.] “*A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.*” [Citation omitted.] (Emphasis added.)<sup>30</sup>

There is nothing in the plain language of SB 1895 or its legislative history to suggest that the Legislature intended to apply the Commission’s decision on reconsideration retroactively. Section 10 of SB 1895 states that the act was necessary to implement the Budget Act of 2004 and, thus, supports the conclusion that the statute was intended to apply prospectively to the current and future budget years. Similarly, the legislative history contained in the analysis of the Senate Rules Committee supports the conclusion that the statute applies to current and future budget years only. Page seven of the analysis states that “[t]his bill proposes to provide clarification and accountability regarding the funds provided in the 2004-05 Budget Act for mental health services for individuals with special needs.” (Emphasis added.)

Moreover, had the Legislature intended to apply the Commission’s decision on reconsideration retroactively, it would have included retroactive language in the bill similar to the language in other statutes relating to this program. For example, Statutes 2002, chapter 1167, addressed the funding and reimbursement for the Handicapped and Disabled program. The effective and operative date of the statute was September 30, 2002. However, the plain language in section 38 of the bill contains retroactive language that the terms of the statute applied to reimbursement claims for services delivered beginning in fiscal year 2001-2002. Section 41 of the bill also states that county reimbursement claims already submitted to the Controller for reimbursement for mental health treatment services in fiscal years up to and including fiscal year 2000-2001 were not subject to a dispute by the Controller’s Office regarding the percentage of reimbursement claimed by the county.

Based on the case law cited above and the plain language of SB 1895, the Commission finds that the period of reimbursement for the Commission’s decision on reconsideration begins July 1, 2004. Thus, to the extent there are new activities included in the program that are now reimbursable, reimbursement would begin July 1, 2004.

**II. Does the test claim legislation constitute a state-mandated new program or higher level of service?**

At the hearing, the Department of Finance argued that the state has chosen to make mental health services related to IEPs the responsibility of the counties and that current federal law allows the state to choose the agency or agencies responsible for service. Thus, the Department of Finance contends that the activities performed by counties under the Handicapped and Disabled Students program are federally mandated and not mandated by the state within the meaning of article XIII B, section 6 of the California Constitution. The Commission disagrees with the Department of Finance.

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<sup>30</sup> *Ibid.*

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. State of California*, issued an unpublished decision in the present case upholding the Commission's decision that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution.<sup>31</sup> Once a court has ruled on a question of law in its review of an agency's action, the agency cannot act inconsistently with the court's order. Instead, absent "unusual circumstances," or an intervening change in the law, the decision of the reviewing court establishes the law of the case and binds the agency and the parties to the action in all further proceedings addressing the particular claim.<sup>32</sup>

Although there have been subsequent amendments to the original test claim legislation that have provided more specificity in the activities performed by counties and that have modified financial responsibilities for the Handicapped and Disabled program, these amendments do not create an "unusual circumstance" or constitute an "intervening change in the law" that would support a finding on reconsideration that the test claim should be denied.<sup>33</sup>

Although the Commission finds that the activities identified in the original Statement of Decision and the financial responsibilities for the program should be further clarified on reconsideration, the decision in *County of Santa Clara* that the test claim legislation is a reimbursable state-mandated program, is binding on the Commission and the parties for purposes of this reconsideration.

Moreover, other case law interpreting article XIII B, section 6, which is described below, further supports the conclusion that the test claim legislation mandates a new program or higher level of service on counties.

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<sup>31</sup> *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993. The court stated the following:

The intent of section 6 was to preclude the state from shifting to local government the financial responsibility for providing services in light of the restrictions imposed by Proposition 13 on the taxing and spending powers of local government. (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836.) Here it is undisputed that the provision of psychotherapy and other mental health services to special education students resulted in a higher level of service within County's Short-Doyle program.

<sup>32</sup> *George Arakelian Farms, Inc. v. Agricultural Labor Relations Board* (1989) 49 Cal.3d 1279, 1291.

<sup>33</sup> The amendments addressing financial responsibilities for this program are included in this analysis. The amendments enacted after 1985 that modify the activities performed by counties, however, are addressed in the *Handicapped and Disabled Students II* test claim filed by the Counties of Los Angeles and Stanislaus (02-TC-40 and 02-TC-49).

**A. Case law supports the conclusion that the test claim legislation mandates a new program or higher level of service**

The test claim legislation implements federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.

In 1988, the California Supreme Court held that education of handicapped children is "clearly" a governmental function providing a service to the public.<sup>34</sup> Thus, the test claim legislation qualifies as a program that is subject to article XIII B, section 6 of the California Constitution.

In 1992, the Third District Court of Appeal, in *Hayes v. Commission on State Mandates*, determined that the federal law at issue in the present case imposes a federal mandate on the states.<sup>35</sup> The *Hayes* case involved test claim legislation requiring school districts to provide special education services to disabled pupils. The school districts in the *Hayes* case alleged that the activities mandated by the state that exceeded federal law were reimbursable under article XIII B, section 6 of the California Constitution.

The court in *Hayes* determined that the state's "alternatives [with respect to federal law] were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event."<sup>36</sup> The court concluded that the state had no "true choice" but to participate in the federal program and, thus, there was a federal mandate on the state.<sup>37</sup>

Although the court concluded that the federal law was a mandate on the states, the court remanded the case to the Commission for further findings to determine if the state's response to the federal mandate constituted a state-mandated new program or higher level of service on the school districts.<sup>38</sup> The court held as follows:

In our view the determination whether certain costs were imposed upon the local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.<sup>39</sup>

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<sup>34</sup> *Lucia Mar Unified School District, supra*, 44 Cal.3d at page 835.

<sup>35</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1592.

<sup>36</sup> *Hayes, supra*, 11 Cal.App.4th at page 1591.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Id.* at pages 1593-1594.

The court described its conclusion as follows:

The Education of the Handicapped Act [renamed IDEA] is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in the state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. §§ 1412, 1413.) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.<sup>40</sup>

The federal law relevant to this case is summarized on pages 1582-1594 of the *Hayes* decision, and its requirements that existed at the time the test claim legislation was enacted are described below.

1. Pursuant to the court's ruling in *Hayes*, federal special education law imposes a federal mandate on the state

Before the mid-1970s, a series of landmark court cases established the right to an equal educational opportunity for children with disabilities. The federal courts determined that children with disabilities were entitled to a free public program of education and training appropriate to the child's capacity and that the children and their parents were entitled to a due process hearing when dissatisfied with placement decisions.<sup>41</sup>

In 1973, Congress responded with the Rehabilitation Act of 1973, section 504. Section 504 of the Rehabilitation Act of 1973 imposes an obligation on local school districts to accommodate the needs of children with disabilities. Section 504 provides that "[n]o otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." (29 U.S.C. 794.) "Since federal assistance to education is pervasive, . . . section 504 was applicable to virtually all public educational programs in this and other states."<sup>42</sup> Section 504 gives school districts "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped

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<sup>40</sup> *Id.* at page 1594.

<sup>41</sup> *Id.* at pages 1582-1584.

<sup>42</sup> *Id.* at page 1584.

child, constitutes discrimination against that child and a failure to provide an appropriate, free public education for the handicapped child.”<sup>43</sup>

In 1974, Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of children with disabilities. Thus, in 1975, Congress enacted the Education for All Handicapped Children Act. In 1990, the Education for All Handicapped Act was renamed the Individuals with Disabilities Education Act (IDEA).<sup>44</sup>

Since 1975, the IDEA has guaranteed to disabled children the right to receive a free appropriate public education that emphasizes special education and related services designed to meet the child’s individual needs. The IDEA further guarantees that the rights of disabled children and their parents are protected.<sup>45</sup> States are eligible for “substantial federal financial assistance” under the IDEA when the state agrees to adhere to the substantive and procedural terms of the act and submits a plan specifying how it will comply with federal requirements.<sup>46</sup> At the time the test claim legislation was enacted, the requirements of the IDEA applied to each state and each political subdivision of the state “involved in the education of handicapped children.”<sup>47</sup>

Special education is defined under the IDEA as “specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.”<sup>48</sup> To be eligible for services under the IDEA, a child must be between the ages of three and twenty-one and have a qualifying disability.<sup>49</sup> If it is suspected that a pupil has a qualifying disability, the Individual Education Program, or IEP, process begins. The IEP is a written statement for a handicapped child that is developed and implemented in accordance with federal IEP regulations.<sup>50</sup> Pursuant to federal regulations on the IEP process, the child must be evaluated in all areas of suspected handicaps by a multidisciplinary team. Parents also have the right to obtain an independent assessment of the child by a qualified professional. Local educational

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<sup>43</sup> *Id.* at pages 1584-1585.

<sup>44</sup> Public Law 101-476 (Oct. 30, 1990), 104 Stat.1143.

<sup>45</sup> 20 United States Code section 1400(c).

<sup>46</sup> *Hayes, supra*, 11 Cal.App.4th at page 1588; 20 United States Code sections 1411, 1412.

<sup>47</sup> Title 34 Code of Federal Regulations, sections 300.2 and 300.11. These regulations defined “public agency” to mean “all political subdivisions of the State *that are involved in the education of handicapped children.*”

<sup>48</sup> Former Title 20 United States Code section 1401(a)(16). The definition can now be found in Title 20 United States Code section 1401(25).

<sup>49</sup> Title 20 United States Code section 1412.

<sup>50</sup> Title 20 United States Code section 1401; Title 34 Code of Federal Regulations section 300.340 et seq.



agencies are required to consider the independent assessment as part of their educational planning for the child.<sup>51</sup>

If it is determined that the child is handicapped within the meaning of IDEA, an IEP meeting must take place. Participants at the IEP meeting include a representative of the local educational agency, the child's teacher, one or both of the parents, the child if appropriate, other individuals at the discretion of the parent or agency, and evaluation personnel for children evaluated for the first time.<sup>52</sup> The local educational agency must take steps to insure that one or both of the parents are present at each meeting or are afforded the opportunity to participate, including giving the parents adequate and timely notice of the meeting, scheduling the meeting at a mutually convenient time, using other methods to insure parent participation if neither parent can attend, and taking whatever steps are necessary to insure that the parent understands the proceedings.<sup>53</sup> The IEP document must include the following information:

- a statement of the child's present levels of educational performance;
- a statement of annual goals, including short term instructional objectives;
- a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- the projected dates for initiation of services and the anticipated duration of the services; and
- appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.<sup>54</sup>

Each public agency must provide special education and related services to a handicapped child in accordance with the IEP.<sup>55</sup> In addition, each public agency must have an IEP in effect at the beginning of each school year for every handicapped child who is receiving special education from that agency. The IEP must be in effect before special education and related services are provided, and special education and related services set out in a child's IEP must be provided as soon as possible after the IEP is finalized.<sup>56</sup> Each public agency shall initiate and conduct IEP meetings to periodically review each child's IEP

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<sup>51</sup> Former Title 34 Code of Federal Regulations section 300.503. The requirement is now at Title 34 Code of Federal Regulation section 300.502.

<sup>52</sup> Title 34 Code of Federal Regulations section 300.344.

<sup>53</sup> Title 34 Code of Federal Regulations section 300.345.

<sup>54</sup> Former Title 34 Code of Federal Regulations section 300.346. The IEP requirements are now found in Title 34 Code of Federal Regulations section 300.347.

<sup>55</sup> Former Title 34 Code of Federal Regulations section 300.349. The requirement is now found in Title 34 Code of Federal Regulations section 300.343.

<sup>56</sup> Title 34 Code of Federal Regulations section 300.342.

and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.<sup>57</sup>

A child that is assessed during the IEP process as “seriously emotionally disturbed” has a qualifying disability under the IDEA.<sup>58</sup> “Seriously emotionally disturbed” children are children who have an inability to learn which cannot be explained by intellectual, sensory, or health factors; who are unable to build or maintain satisfactory interpersonal relationships with peers and teachers; who exhibit inappropriate types of behavior or feelings under normal circumstances; who have a general pervasive mood of unhappiness or depression; and/or who have a tendency to develop physical symptoms or fears associated with personal or school problems. One or more of these characteristics must be exhibited over a long period of time and to a marked degree, and must adversely affect educational performance in order for a child to be classified as “seriously emotionally disturbed.” Schizophrenic children are included in the “seriously emotionally disturbed” category. Children who are socially maladjusted are not included unless they are otherwise determined to be emotionally disturbed.<sup>59</sup>

Related services designed to assist the handicapped child to benefit from special education are defined to include “transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.”<sup>60</sup> Federal regulations define “psychological services” to include the following:

- administering psychological and educational tests, and other assessment procedures;
- interpreting assessment results;
- obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

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<sup>57</sup> Title 34 Code of Federal Regulations section 300.343.

<sup>58</sup> Former Title 20 United States Code section 1401(a)(1). The phrase “serious emotionally disturbed” has been changed to “serious emotional disturbance.” (See, 20 U.S.C. § 1401(3)(A)(i).)

<sup>59</sup> Former Title 34 Code of Federal Regulations section 300.5, subdivision (b)(8). “Serious emotional disturbance” is now defined in Title 34 Code of Federal Regulations section 300.7(c)(3).

<sup>60</sup> Title 20 United States Code section 1401; former Title 34 Code of Federal Regulations section 300.13 (the definition of “related services” can now be found in 34 C.F.R. § 300.24.)

- consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
- planning and managing a program of psychological services, including psychological counseling for children and parents.<sup>61</sup>

The comments to section 300.13 of the federal regulations further state that “[t]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services . . . if they are required to assist a handicapped child to benefit from special education.”

Furthermore, if placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents or child.<sup>62</sup>

The IDEA also requires states and local educational agencies to establish and maintain due process procedures to assure that handicapped children and their parents are guaranteed procedural safeguards. The procedures must include an opportunity for the parents to examine all relevant records and to obtain an independent educational evaluation; procedures to protect the rights of children who do not have parents or guardians to assert their rights, including procedures for appointment of a surrogate for the parents; prior written notice to the parents whenever the educational agency proposes to initiate, change, or refuse to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child; procedures designed to assure that the required notice fully informs the parents in the parents’ native language of all the procedures available; and an opportunity to present complaints. There must also be impartial due process hearing procedures that include the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; the right to present evidence; the right to confront, cross-examine, and compel the attendance of witnesses; the right to a written or electronic verbatim record of the hearing; the right to written findings of fact and decisions; the right to appeal the determination of the due process hearing officer; and the right to bring a civil action in court. The court in its discretion may award attorney’s fees and costs in certain circumstances.<sup>63</sup>

Finally, the state is ultimately responsible for insuring the requirements of the IDEA. For example, the state educational agency is responsible for assuring that all education and related services required for a handicapped child will be under the general supervision of persons responsible for educational programs for handicapped children in the state educational agency and shall meet the education standards of the state educational

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<sup>61</sup> *Ibid.*

<sup>62</sup> Title 20 United States Code section 1412; Title 34 Code of Federal Regulations section 300.302.

<sup>63</sup> Title 20 United States Code 1415.

agency.<sup>64</sup> The state educational agency is responsible for insuring that each public agency develops and implements an IEP for each handicapped child.<sup>65</sup> Furthermore, the state educational agency must provide services directly if no other agency provides them.<sup>66</sup> The comments to section 300.600 of the federal regulations describe the purpose of making the states ultimately responsible for providing special education and related services:

The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children with each State. With respect to State educational agency responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency . . . .

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Sen. Rep. 94-168, p. 24 (1975)).

There have been several amendments to the IDEA since the test claim legislation was originally enacted in 1984. Congress' 1997 amendment to the IDEA is relevant for purposes of this action. In 1997, Congress amended the IDEA to "strengthen the requirements on ensuring provisions of services by non-educational agencies ..." (Sen. Rep. 105-17, dated May 9, 1997.) The amendment clarified that the state or local educational agency responsible for developing a child's IEP could look to non-educational agencies to pay for or provide those services the educational agencies are otherwise responsible for. The amendment further clarified that if a non-educational agency failed to provide or pay for the special education and related services, the state or local educational agency responsible for developing the IEP remain ultimately responsible for ensuring that children receive all the services described in their IEPs in a

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<sup>64</sup> Former Title 20 United States Code section 1412(6). The requirement is now in Title 20 United States Code section 1412(a)(11).

<sup>65</sup> Title 34 Code of Federal Regulations section 300.341.

<sup>66</sup> Former Title 34 Code of Federal Regulation section 300.600. The requirement is now in Title 34 Code of Federal Regulations section 300.142.

timely fashion and the state or local educational agency shall provide or pay for the services.<sup>67</sup> Federal law does not require states to use non-educational agencies to pay for or provide services. A states' decision regarding how to implement of the IDEA is still within the discretion of the state.

2. The state "freely chose" to mandate a new program or higher level of service on counties to implement the federal law

The court in *Hayes* held that if the state freely chose to impose the costs upon the local agency as a means of implementing a federally mandated program, regardless of whether the costs were imposed on the state by the federal government, then the costs are the result of a reimbursable state mandate pursuant to article XIII B, section 6.<sup>68</sup>

As more fully described below, the Commission finds that the state, with the enactment of the test claim legislation, freely chose to mandate a new program or higher level of service on counties.

The federal IDEA includes certain substantive and procedural requirements that must be included in the state's plan for implementation. But, as outlined above, federal law leaves the primary responsibility for implementation to the state.

Before the enactment of the test claim legislation, the state enacted comprehensive legislation (Ed. Code, §§ 56000 et seq.) to comply with federal law that required local educational agencies to provide special education services, including mental health and residential care services, to special education students.<sup>69</sup> Education Code section 56000 required that students receive public education and related services through the Master Plan for Special Education. Under the master plan, special education local plan areas (SELPA), which consist of school districts and county offices of education, were responsible for developing and implementing a plan consistent with federal law to provide an appropriate education for individuals with special needs.<sup>70</sup> Each district, SELPA, or county office of education was required to establish IEP teams to develop, review, and revise education programs for each student with special needs.<sup>71</sup> The IEP team may determine that mental health or residential treatment services were required to support the student's special education needs.<sup>72</sup> The following mental health services were identified in statute: counseling and guidance; psychological services, other than assessment and development of the IEP; parent counseling and training; health and

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<sup>67</sup> Title 20 United States Code sections 1412 (a)(12)(A), (B), and (C), and 1401 (8); Title 34 Code of Federal Regulations section 300.142. (See also, Letters from the Department of Education dated July 28, 1998 and August 2, 2004, to all SELPAs, COEs, and LEAs on the requirements of 34 C.F.R. 300.142; and *Tri-County Special Education Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 578.)

<sup>68</sup> *Hayes, supra*, 11 Cal.App.4th at pages 1593-1594.

<sup>69</sup> Statutes 1980, chapter 1218.

<sup>70</sup> Education Code sections 56140 and 56200.

<sup>71</sup> Education Code sections 56340 and 56341.

<sup>72</sup> Education Code sections 56363 and 56365.

nursing services; and social worker services.<sup>73</sup> In such cases, the school districts and county offices of education were solely responsible for providing special education services, including mental health and residential care services, for special education students under the state's statutory scheme.<sup>74</sup> The state Superintendent of Public Instruction was, and still is, responsible for supervising education and related services for handicapped children pursuant to the IDEA.<sup>75</sup>

In 1984 and 1985, the Legislature enacted the test claim legislation, which added Chapter 26.5 to the Government Code to shift the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments. Generally, the test claim legislation requires counties to:

- renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement;
- perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team;
- participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary;
- act as the lead case manager, as specified in statute and regulations, if the IEP calls for residential placement of a seriously emotionally disturbed pupil;
- issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils;
- provide psychotherapy or other mental health services, as defined in regulations, when required by the IEP; and
- participate in due process hearings relating to issues involving mental health assessments or services.

The purpose of the test claim legislation was recently described in the report prepared by Stanford Law School as follows:

With the passage of AB 3632, 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 to acquire qualified staff to handle

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<sup>73</sup> Education Code section 56363.

<sup>74</sup> Education Code section 56363; see also, Report by the Office of the Auditor General, dated April 1987, entitled "A Review of the Costs of Providing Noneducational Services to Special Education Students." The report states that in fiscal year 1985-86, the year immediately before the effective date of the test claim legislation, local education agencies provided psychotherapy and other mental health services to 941 students and residential services to 225 students.

<sup>75</sup> Education Code section 56135 and Government Code section 7570.

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. Moreover, it was believed at the time that such mental health services would be most cost-efficiently provided by CMH agencies.<sup>76</sup>

Federal law does not require the state to impose any requirements relating to special education and related services on counties. At the time the test claim legislation was enacted, the requirements under federal law were imposed only on states and local educational agencies.<sup>77</sup> Today, federal law authorizes, but does not require, states to shift some of the special education requirements to non-educational agencies, such as county mental health departments.<sup>78</sup> But, if a county does not provide the service, federal law requires the state educational agency to be ultimately responsible for providing the services directly.<sup>79</sup> Thus, the decision to shift the mental health services for special education pupils from schools to counties was a policy decision of the state.

Moreover, the mental health services required by the test claim legislation for special education pupils were new to counties. At the time the test claim legislation was enacted, the counties had the existing responsibility under the Short-Doyle Act to provide mental health services to eligible children and adults. (Welf. & Inst. Code, §§ 5600 et seq.) But as outlined in a 1997 report prepared by the Department of Mental Health and the Department of Education, the requirements of the test claim legislation are different than the requirements under the Short-Doyle program. For example, mental health services under the Short-Doyle program for children are provided until the age of 18, are provided year round, and the clients must pay the costs of the services based on the ability to pay. Under the special education requirements, mental health services may be provided until the pupil is 22 years of age, are generally provided during the school year, and must be provided at no cost to the parent. Furthermore, the definition of “serious emotional disturbance” as a disability requiring special education and related services focuses on the pupil’s functioning in school, a standard that is different than the standard provided under the Short-Doyle program.<sup>80</sup> Thus, with the enactment of the test claim legislation,

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<sup>76</sup> “Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California,” Youth and Education Law Clinic, Stanford Law School, May 2004, page 12.

<sup>77</sup> Title 34 Code of Federal Regulations section 300.2.

<sup>78</sup> Title 20 United States Code section 1412(a)(12).

<sup>79</sup> Title 20 United States Code sections 1412(a)(12)(A), (B), and (C), and 1401(8); Title 34 Code of Federal Regulations section 300.142.

<sup>80</sup> “Mental Health Services for Special Education Pupils, A Report to the State Department of Mental Health and the California Department of Education,” dated March 1997. The construction of statutes by the officials charged with its administration is entitled to great weight. (*Whitcomb, supra*, 24 Cal.2d at pp. 756-757.)

counties are now required to perform mental health activities under two separate and distinct provisions of law: the Government Code (the test claim legislation) and the Welfare and Institutions Code.

Since article XIII B, section 6 “was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of restrictions on the taxing and spending power of the local entities,”<sup>81</sup> the Commission finds that the shift of mental health services for special education pupils to counties constitutes a new program or higher level of service.

Accordingly, the Commission finds that the Commission’s conclusion adopted in the 1990 Statement of Decision, that the test claim legislation mandates a new program or higher level of service, was correctly decided. The new activities mandated by the state are described below.

**B. Activities expressly required by the test claim legislation that constitute a state-mandated new program or higher level of service on counties**

The findings and conclusion in the Commission’s 1990 Statement of Decision generally identify the following state-mandated activities: assessment, participation on the expanded IEP team, case management services for seriously emotionally disturbed pupils, and providing psychotherapy and other mental health services required by the pupil’s IEP. The 1990 Statement of Decision states:

The Commission concludes that, to the extent that the provisions of Government Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for “individuals with exceptional needs,” such legislation and regulations impose a new program or higher level of service upon a county.

Moreover, the Commission concludes that any related participation on the expanded IEP team and case management services for “individuals with exceptional needs” who are designated as “seriously emotionally disturbed,” pursuant to subdivisions (a), (b), and (c) of Government Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county. ...

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

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<sup>81</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at page 876.



As described below, the Commission finds that the 1990 Statement of Decision does not fully identify all of the activities mandated by the test claim legislation.

1. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal Code Regs., tit. 2, §§ 60030, 60100)<sup>82</sup>

Government Code section 7571 requires the Secretary of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572. To implement this requirement, section 60030 of the joint regulations adopted by the Department of Mental Health and the Department of Education (Cal. Code Regs., tit. 2, §§ 60000 et seq.) require the local mental health director to appoint a liaison person for the local mental health program to ensure that an interagency agreement is developed before July 1, 1986, with the county superintendent of schools.<sup>83</sup> The requirement to develop the initial interagency agreement before July 1, 1986 is not reimbursable because the original reimbursement period for this claim began on or after July 1, 1986, and the reimbursement period for purposes of this reconsideration is July 1, 2004.

But the regulations require that the interagency agreement be renewed every three years, and revised if necessary. The interagency agreement “shall include, but not be limited to, a delineation of the process and procedure for” the following:

- Interagency referrals of pupils, which minimize time line delays. This may include written parental consent on the receiving agency’s forms.
- Timely exchange of pupil information in accordance with applicable procedures ensuring confidentiality.

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<sup>82</sup> The regulations pled in the original test claim were enacted by the Departments of Mental Health and Education as emergency regulations (Cal. Code Regs., tit. 2, §§ 60000 through 60610, 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)). These regulations were repealed and were superceded by new regulations, effective July 1, 1998. The 1998 regulations are the subject of *Handicapped and Disabled Students II* (02-TC-40, 02-TC-49). Most of the activities required by the original regulations remain the law. However, as indicated in this decision, several activities have been deleted in the 1998 regulations. Since the reimbursement period of this reconsideration begins July 1, 2004, those activities deleted by the 1998 regulations no longer constitute a state-mandated new program or higher level of service for purposes of the original test claim. The analysis of activities that have been modified by the 1998 regulations is provided in the staff analysis for *Handicapped and Disabled Students II* (02-TC-40, 02-TC-49).

<sup>83</sup> The local mental health program is the county community mental health program established in accordance with the Short-Doyle Act (Welf. & Inst. Code, §§ 5600 et seq.) or the county welfare agency when designated pursuant to Government Code section 7572.5. (Cal. Code of Regs., tit. 2, § 60020, subd. (d)).

- Participation of mental health professionals, including those contracted to provide services, at IEP team meetings pursuant to Government Code sections 7572 and 7576.
- Developing or amending the mental health related service goals and objectives, and the frequency and duration of such services indicated on the pupil's IEP.
- Transportation of individuals with exceptional needs to and from the mental health service site when such service is not provided at the school.
- Provision by the school of an assigned, appropriate space for delivery of mental health services or a combination of education and mental health services to be provided at the school.
- Continuation of mental health services during periods of school vacation when required by the IEP.
- Identification of existing public and state-certified nonpublic educational programs, treatment modalities, and location of appropriate residential placements which may be used for placement by the expanded IEP program team.
- Out-of-home placement of seriously emotionally disturbed pupils in accordance with the educational and treatment goals on the IEP.<sup>84</sup>

In addition, section 60100, subdivision (a), of the regulations requires the local mental health program and the special education local plan area liaison person to define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

Accordingly, the Commission finds that Government Code section 7571, and sections 60030 and 60100 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Renew the interagency agreement every three years, and revise if necessary.
  - Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
2. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)

Government Code section 7572, subdivision (a), provides that “a child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child’s need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the area of, ... psychotherapy, and other mental health assessments.” Government Code section 7572, subdivision (c), states that psychotherapy and other mental health assessments shall be conducted by qualified mental health

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<sup>84</sup> California Code of Regulations, title 2, section 60030, subdivision (b).

professionals as specified in regulations developed by the Department of Mental Health and the Department of Education.

Section 60040 of the regulations governs the referral to and the initial assessment by the county. Section 60040, subdivision (a), states that a local education agency may refer a pupil suspected of needing mental health services to the county mental health program when a review of the assessment data documents that the behavioral characteristics of the pupil adversely affect the pupil's educational performance. The pupil's educational performance is measured by standardized achievement tests, teacher observations, work samples, and grade reports reflecting classroom functioning, or other measures determined to be appropriate by the IEP team; the behavioral characteristics of the pupil cannot be defined solely as a behavior disorder or a temporary adjustment problem, or cannot be resolved with short-term counseling; the age of onset was from 30 months to 21 years and has been observed for at least six months; the behavioral characteristics of the pupil are present in several settings, including the school, the community, and the home; and the adverse behavioral characteristics of the pupil are severe, as indicated by their rate of occurrence and intensity.

Section 60040, subdivision (c), states that when a local education agency refers a pupil to the county, the local education agency shall obtain written parental consent to forward educational information to the county and to allow the county mental health professional to observe the pupil during school. The educational information includes a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, and a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.

Section 60040, subdivision (d), states that "[t]he local mental health program shall be responsible for reviewing the educational information [identified in the paragraph above], observing *if necessary*, the pupil in the school environment, and determining if mental health assessments are needed." (Emphasis added.) Subdivision (d)(1) provides that "[i]f mental health assessments are deemed necessary by a mental health professional, a mental health assessment plan shall be developed and the parent's written consent obtained ..." (Emphasis added.) This regulation includes language that implies that the observation of the pupil and the preparation of the mental health assessment plan are activities within the discretion of the county. The Commission finds, however, that these activities are mandated by the state when necessary to provide the pupil with a free and appropriate education under federal law. Under the rules of statutory construction, section 60040, subdivision (d), must be interpreted in the context of the entire statutory scheme so that the statutory scheme may be harmonized and have effect.<sup>85</sup> In addition, it is presumed that the administrative agency, like the Departments of Mental Health and Education, did not adopt a regulation that alters the terms of a legislative enactment.<sup>86</sup>

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<sup>85</sup> *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

<sup>86</sup> *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

Federal law, through the IDEA, requires the state to *identify*, locate, and evaluate *all* children with disabilities, including children attending private schools, who are in need of special education and related services.<sup>87</sup> The state is also required by federal law to conduct a full and individual initial evaluation to determine whether a child is a child with a qualifying disability and the educational needs of the child.<sup>88</sup> Government Code section 7572, subdivision (a), is consistent with federal law and requires that a child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service. In cases where the pupil is suspected of needing mental health services, the state has delegated to the counties the activity of determining the need for service. Accordingly, the Commission finds that the following activities, identified in section 60040, subdivision (d) and (d)(1), are new activities mandated by the state:

- Review the following educational information of a pupil referred to the county by a local education agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
- If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
- If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.

The county is then required by section 60040, subdivision (d)(2), to complete the assessment within the time required by Education Code section 56344 (except as expressly provided, the IEP shall be developed within a total time not to exceed 50 days from the date of receipt of the parent's written consent for assessment.) If a mental health assessment cannot be completed within the time limits, the county mental health program shall notify the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.

Section 60040, subdivision (e), requires the county to provide to the IEP team a written assessment report in accordance with Education Code section 56327. Education Code section 56327 requires that the report include the following information:

- Whether the pupil may need special education and related services.
- The basis for making the determination.
- The relevant behavior noted during the observation of the pupil in the appropriate setting.

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<sup>87</sup> 20 United States Code section 1412, subdivision (a)(3).

<sup>88</sup> 20 United States Code section 1414, subdivision (a).

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

After the assessment by the county is completed, Government Code section 7572, subdivision (d)(1), requires that the recommendation of the person who conducted the assessment be reviewed and discussed with the parent and the appropriate members of the IEP team before the IEP team meeting. When the proposed recommendation has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person from the county who conducted the assessment to attend the IEP team meeting. Government Code section 7572, subdivision (d)(1), states that "the person who conducted the assessment shall attend the individualized education program team meeting if requested."

Government Code section 7572, subdivision (e), requires the local education agency to invite the county to meet with the IEP team to determine the need for the related service and to participate in developing the IEP. The Commission finds, however, that the county's attendance at the IEP meeting at the request of the local education agency is not mandated by the state for the following reasons. Government Code section 7572, subdivision (e), states that *if* the county representative cannot meet with the IEP team, then the representative is required to provide the local education agency written information concerning the need for the service. The Commission finds that the assessment report required by section 60040, subdivision (e), of the regulations satisfies the written information requirement of Government Code section 7572, subdivision (e), and that Government Code section 7572, subdivision (e), does not impose any further requirement on the county to prepare additional written reports. The conclusion that the county is not required by the state to attend the IEP team meeting at the request of the local education agency is further supported by the sentence added to subdivision (e) by Statutes 1985, chapter 1274. That sentence provides the following: "If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code."<sup>89</sup> There is no requirement in the law that the qualified substitute has to be a county representative.

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<sup>89</sup> Education Code section 56341, subdivision (e), stated the following when the test claim legislation was enacted (as amended by Stats. 1982, ch. 1201): "If a team is developing, reviewing, or revising the individualized education program of an individual

In addition, Government Code section 7572, subdivision (e), imposes a requirement on the county to provide a copy of the written information to the parent or any adult for whom no guardian or conservator has been appointed.

Finally, Government Code section 7572, subdivision (d)(2), provides that if a parent obtains an independent assessment regarding psychotherapy or other mental health services, and the independent assessment is submitted to the IEP team, the county is required to review the independent assessment. The county's recommendation shall be reviewed and discussed with the parent and with the IEP team before the meeting of the IEP team. The county shall attend the IEP team meeting if requested.

Accordingly, the Commission finds that Government Code section 7572 and section 60040 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Review the following educational information of a pupil referred to the county by a local education agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
- If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
- If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
- Assess the pupil within the time required by Education Code section 56344.<sup>90</sup>

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with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement."

<sup>90</sup> The existing parameters and guidelines allow reimbursement for mental health assessments and include within that activity the interview with the child and the family, and collateral interviews, as necessary. These activities are not expressly required by the test claim legislation. However, when reconsidering the parameters and guidelines for this program, the Commission has the jurisdiction to consider "a description of the most reasonable methods of complying with the mandate." (Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(1)(A)(4).)

- If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
  - Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.
  - Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
  - In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
  - Review independent assessments of a pupil obtained by the parent.
  - Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
  - In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.
3. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subs. (a) and (b); Cal. Code Regs., tit. 2, § 60100)

Government Code section 7572.5, subdivision (a), and section 60100, subdivision (b), of the regulations provide that when an assessment determines that a child is seriously emotionally disturbed as defined in section 300.5 of the Code of Federal Regulations, and any member of the IEP team recommends residential placement based on relevant assessment information, the IEP team shall be expanded to include a representative of the county. Government Code section 7572.5, subdivision (b), requires the expanded IEP team to review the assessment and determine whether (1) the child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care; (2) residential care is necessary for the child to benefit from educational services; and (3) residential services are available, which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation. Section 60100, subdivision (d), similarly states that the expanded IEP team shall consider all possible alternatives to out-of-home placement.

Section 60100, subdivision (c), states that if the county determines that additional mental health assessments are needed, the county is required to assess or re-assess the pupil in accordance with section 60040.

Section 60100, subdivision (e), states that when residential placement is the final decision of the expanded IEP team, the team shall develop a written statement documenting the pupil's educational and mental health treatment needs that support the recommendation for the placement.

Section 60100, subdivision (f), requires the expanded IEP team to identify one or more appropriate, least restrictive and least costly residential placement alternatives, as specified in the regulation.

Finally, section 60100, subdivision (g), requires the county representative on the expanded IEP team to notify the Local Mental Health Director or designee of the team's decision within one working day of the IEP team meeting. However, effective July 1, 1998, section 60100 of the regulations was amended and this activity is no longer required. Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of notifying the local mental health director of the decision is not a state-mandated new program or higher level of service.

Accordingly, the Commission finds that Government Code section 7572.5, subdivisions (a) and (b), and section 60100 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
  - Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
4. Act as the lead case manager, as specified in statute and regulations, if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, §§ 7572.5, subd. (c)(1), 7579; Cal. Code Regs., tit. 2, § 60110)

Government Code section 7572.5, subdivision (c)(1), provides that if the review of the expanded IEP team calls for residential placement of the seriously emotionally disturbed pupil, the county shall act as the lead case manager. That statute further states that "the mental health department shall retain financial responsibility for provision of case management services."

Section 60110, subdivision (a), requires the Local Mental Health Director or the designee to designate a lead case manager to finalize the pupil placement plan with the approval of the parent and the IEP team within 15 days from the decision to place the pupil in a residential facility. Subdivision (c) defines case management duties to include the following activities:

- Convening parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.



- Verifying with the educational administrator or designee the approval of the local governing board of the district, special education service region, or county office pursuant to Education Code section 56342.<sup>91</sup>
- Completing the local mental health program payment authorization in order to initiate out of home care payments.
- Coordinating the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
- Coordinating the completion of the residential placement as soon as possible.
- Developing the plan for and assisting the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
- Facilitating the enrollment of the pupil in the residential facility.
- Conducting quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
- Notifying the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
- Coordinating the six-month expanded IEP team meeting with the local education agency administrator or designee.

As of July 1, 1998, however, the activity of verifying with the educational administrator or designee the approval of the local governing board pursuant to Education Code section 56342 is no longer required by section 60100 of the regulations. In addition, the activity of coordinating the six-month expanded IEP team meeting with the local education agency administrator or designee was repealed as of July 1, 1998. Since the

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<sup>91</sup> Education Code section 56342 states in relevant part the following:

Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing board of the district and special education local plan area for review and recommendation regarding the cost of placement.

The local governing board shall complete its review and make its recommendations, if any, at the next regular meeting of the board. A parent or representative shall have the right to appear before the board and submit written and oral evidence regarding the need for nonpublic school placement for his or her child. Any recommendations of the board shall be considered at an individualized education program team meeting, to be held within five days of the board's review.

reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that these two activities are not a state-mandated new program or higher level of service.

Moreover, on April 30, 1986, the Department of Mental Health issued DMH Letter No. 86-12 to all local mental health directors, program chiefs, and administrators, and to county administrative officers regarding the implementation of the test claim legislation. (p. 1513.) On page 1521 of the record, the Department lists the case management duties for seriously emotionally disturbed pupils placed in a residential facility and includes "coordinating the pupil's transportation needs" as a case management duty of the county. This letter issued by the Department of Mental Health was not identified or pled as an executive order in the original test claim, and the activity of "coordinating the pupil's transportation needs" is not expressly required by the test claim statutes or regulations. Moreover, section 60110 was amended on July 1, 1998, to include as a case management activity "coordinating the transportation of the pupil to the facility if needed." Section 60110, as amended on July 1, 1998, is the subject of a pending test claim, *Handicapped and Disabled II* (02-TC-40 and 02-TC-49). Therefore, the Commission finds that "coordinating the pupil's transportation needs" is not mandated by the test claim legislation before the Commission in this reconsideration.

Finally, Government Code section 7579, subdivision (a), requires courts, regional centers for the developmentally disabled, or other non-educational public agencies that engage in referring children to, or placing children in, residential facilities, to notify the administrator of the special education local plan area (SELPA) in which the residential facility is located before the pupil is placed in an out-of-home residential facility. The intent of the legislation, as stated in subdivision (c), is to "encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies." Government Code section 7579, subdivision (a), however, does not apply to county mental health departments. The duty imposed by section 7579 to notify the SELPA before the pupil is placed in a residential facility is a duty imposed on a placing agency, like a court or a regional center for the developmentally disabled. This test claim was filed on behalf of county mental health departments.<sup>92</sup> Thus, the Commission finds that Government Code section 7579 does not impose a state-mandated new program or higher level of service on county mental health departments.

Accordingly, the Commission finds that Government Code sections 7572.5, subdivision (c)(1), and section 60110 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:
  1. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.

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<sup>92</sup> Test claim (CSM 4282) filed by County of Santa Clara.

2. Complete the local mental health program payment authorization in order to initiate out of home care payments.
  3. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
  4. Coordinate the completion of the residential placement as soon as possible.
  5. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
  6. Facilitate the enrollment of the pupil in the residential facility.
  7. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
  8. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
5. Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

Government Code section 7581 requires the county to be financially responsible for the residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility. Section 7581 states the following:

The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent [if the parent places the child].

Consistent with Government Code section 7581, section 60200, subdivision (e), of the regulations requires the county welfare department to issue the payments to providers of out-of-home facilities in accordance with Welfare and Institutions Code section 18351, upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The authorization documents are required to include information sufficient to demonstrate that the child meets all eligibility criteria established in the regulations for this program. (Welf. & Inst. Code, § 18351.) The Department of Social Services is required to determine the rates to be paid to the residential providers in accordance with Welfare and Institutions Code section 18350. (Cal. Code Regs., tit. 2, § 60200, subd. (d).)

Thus, the test claim regulations require that payments to providers of 24-hour out-of-home care be made in accordance with Welfare and Institutions Code sections 18350 and

18351. Welfare and Institutions Code sections 18350 and following govern the payments to 24-hour out-of-home care providers for seriously emotionally disturbed pupils, and were added by the 1985 test claim statute. Welfare and Institutions Code sections 18350 and following were not pled in the original *Handicapped and Disabled Students* test claim. However, since Welfare and Institutions Code sections 18350 and 18351 were identified in the regulations that were pled in the test claim, and sections 18350 and 18351 define the scope of the activity and the costs at issue in this case, the Commission finds that the Commission may properly consider sections 18350 and 18351 on reconsideration of this claim.

Welfare and Institutions Code section 18351, subdivision (a), requires the county welfare department located in the same county as the county mental health agency designated to provide case management services to issue payments to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. Subdivision (a) further states that “[a]uthorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.”

Welfare and Institutions Code section 18350, subdivision (c), states that “[p]ayments shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers’ actual allowable costs.” At the time the test claim legislation was enacted, Welfare and Institutions Code section 11462, subdivision (b), defined “allowable costs” as follows:

As used in this section, “allowable costs” means: (A) the reasonable cost of, and the cost of providing food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation; (B) reasonable cost of administration and operation necessary to provide the items described in paragraph (A); and (C) reasonable activities performed by social workers employed by group home providers which are not otherwise allowable as daily supervision or as the costs of administration.

Welfare and Institutions Code section 11462 was repealed and replaced in 1989, before the Commission adopted the 1990 Statement of Decision in this case.<sup>93</sup> A similar definition of allowable costs for care and supervision of the pupil in the residential facility remains the law, however, and can now be found in Welfare and Institutions Code section 11460, subdivision (b).<sup>94</sup> Since Government Code section 7581 requires counties to be responsible for the residential and *non-educational* costs of the pupil only, the

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<sup>93</sup> Statutes 1989, chapter 1294.

<sup>94</sup> Welfare and Institutions Code section 11460 was added by Statutes 1989, chapter 1294.

Commission finds that the cost for school supplies are not required to be paid to residential care providers by the counties.

In addition, effective July 1, 1998, the regulations were amended to provide a definition of "care and supervision." The definition does not include issuing payments for the reasonable cost of administration and operation, and the reasonable activities performed by social workers employed by group home providers, which are not otherwise allowable as daily supervision or as the costs of administration.<sup>95</sup> Therefore, since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of issuing payments for the reasonable cost of administration and operation, and the reasonable activities performed by social workers employed by group home providers which are not otherwise allowable as daily supervision or as the costs of administration, do not constitute a state-mandated new program or higher level of service.

Thus, the Commission finds that the requirement to issue payments to providers of 24-hour out-of-home facilities for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation, constitutes a state-mandated new program or higher level of service.

Welfare and Institutions Code section 18351, subdivision (b), further requires the county welfare department to submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

Accordingly, the Commission finds that Government Code section 7581 and section 60200, subdivision (e), of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.
  - Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.
6. Provide psychotherapy or other mental health services, as defined in regulations, when required by the IEP (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60020, subd. (a), 60200, subds. (a) and (b))

Government Code section 7576 requires the State Department of Mental Health, or any designated community mental health service (i.e., the county), to provide psychotherapy or other mental health services when required by a pupil's IEP. Psychotherapy or other mental health services may be provided directly or by contracting with another public

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<sup>95</sup> See California Code of Regulations, title 2, section 60025, subdivision (a), (eff. July 1, 1998).

agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

Section 60020, subdivision (a), defines “psychotherapy and other mental health services” as “those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code [Department of Mental Health regulations], and provided by a local mental health program directly or by contract.” Section 542 of the Department of Mental Health regulations governs the definition of “day services”: services that are designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services. Day services include day care intensive services, day care habilitative services, vocational services and socialization services. These services are defined in section 542 of the regulations as follows:

- Day care intensive services are “services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization for patients who need active psychiatric treatment for acute mental, emotional, or behavioral disorders and who are expected, after receiving these services, to be referred to a lower level of treatment, or maintain the ability to live independently or in a supervised residential facility.”
- Day care habilitative services are “services designed and staffed to provide counseling and rehabilitation to maintain or restore personal independence at the best possible functional level for the patient with chronic psychiatric impairments who may live independently, semi-independently, or in a supervised residential facility which does not provide this service.”<sup>96</sup>
- Vocational services are “services designed to encourage and facilitate individual motivation and focus upon realistic and obtainable vocational goals. To the extent possible, the intent is to maximize individual client involvement in skill seeking and skill enhancement, with the ultimate goal of meaningful productive work.”

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<sup>96</sup> In comments to the draft staff analysis, the County of Los Angeles asserts that “rehabilitation” should be specifically defined to include the activities identified in section 1810.243 of the regulations adopted by the Department of Mental Health under the Medi-Cal Specialty Mental Health Services Consolidation program. (Cal. Code Regs., tit. 9, § 1810.243.) These activities include “assistance in improving, maintaining, or restoring a beneficiary’s or group of beneficiaries’ functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education.”

The Commission disagrees with the County’s request. The plain language of test claim regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.) does not require or mandate counties to perform the activities defined by section 1810.243 of the Department’s title 9 regulations. In addition, the test claim regulations do not reference section 1810.243 of the Department’s title 9 regulations for any definition relevant to the program at issue in this case.

- Socialization services are “services designed to provide life-enrichment and social skill development for individuals who would otherwise remain withdrawn and isolated. Activities should be gauged for multiple age groups, be culturally relevant, and focus upon normalization.”

Section 543 of the Department of Mental Health regulations defines “outpatient services,” which are defined as “services designed to provide short-term or sustained therapeutic intervention for individuals experiencing acute or ongoing psychiatric distress.” Outpatient services include the following:

- Collateral services, which are “sessions with significant persons in the life of the patient, necessary to serve the mental health needs of the patient.”
- Assessment, which is defined as “services designed to provide formal documented evaluation or analysis of the cause or nature of the patient’s mental, emotional, or behavioral disorder. Assessment services are limited to an intake examination, mental health evaluation, physical examination, and laboratory testing necessary for the evaluation and treatment of the patient’s mental health needs.”
- Individual therapy, which is defined as “services designed to provide a goal directed therapeutic intervention with the patient which focuses on the mental health needs of the patient.”
- Group therapy, which are “services designed to provide a goal directed, face-to-face therapeutic intervention with the patient and one or more other patients who are treated at the same time, and which focuses on the mental health needs of the patient.”
- Medication, which is defined to include “the prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process. This service shall include the evaluation of side effects and results of medication.”
- Crisis intervention, which means “immediate therapeutic response which must include a face-to-face contact with a patient exhibiting acute psychiatric symptoms to alleviate problems which, if untreated, present an imminent threat to the patient or others.”

The County of Los Angeles, in comments to the draft staff analysis, argues that all of the activities listed above should be identified as reimbursable state-mandated activities. However, as of July 1, 1998, the activities of providing vocational services, socialization services, and crisis intervention to pupils are no longer required by section 60020 of the regulations. The final statement of reasons for the 1998 adoption of section 60020 of the regulations by the Departments of Mental Health and Education provides the following reason for the deletion of these activities:

The provision of vocational services is assigned to the State Department of Rehabilitation by Government Code section 7577.

Crisis service provision is delegated to be “from other public programs or private providers, as appropriate” by these proposed regulations in

Section 60040(e) because crisis services are a medical as opposed to educational service. They are, therefore, excluded under both the Tatro and Clovis decisions. These precedents apply because “medical” specialists must deliver the services. A mental health crisis team involves specialized professionals. Because of the cost of these professional services, providing these services would be a financial burden that neither the schools nor the local mental health services are intended to address in this program.

The hospital costs of crisis service provision are explicitly excluded from this program in the Clovis decision for the same reasons.

Additionally, the IEP process is one that responds slowly due to the problems inherent in convening the team. It is, therefore, a poor avenue for the provision of crisis services. While the need for crisis services can be a predictable requirement over time, the particular medical requirements of the service are better delivered through the usual local mechanisms established specifically for this purpose.<sup>97</sup>

Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activities of providing vocational services, socialization services, and crisis intervention to pupils do not constitute a state-mandated new program or higher level of service.

In addition, the County of Los Angeles specifically requests reimbursement for “medication monitoring.” The phrase “medication monitoring” was not included in the original test claim legislation. “Medication monitoring” was added to the regulations for this program in 1998 (Cal. Code Regs. tit. 2, § 60020.) “Medication monitoring” is part of the new, and current, definition of “mental health services” that was adopted by the Departments of Mental Health and Education in 1998. The current definition of “mental health services” and “medication monitoring” is the subject of the pending test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and will not be specifically analyzed here. But, as of 1998, “dispensing of medications necessary to maintain individual psychiatric stability during the treatment process” was deleted from the definition of “mental health services.” Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of “dispensing of medications necessary to maintain individual psychiatric stability during the treatment process” does not constitute a state-mandated new program or higher level of service.

Finally, section 60200, subdivisions (a) and (b), of the regulations clarifies that counties are financially responsible for providing the mental health services identified in the IEP of a seriously emotionally disturbed pupil placed in an out-of-home residential facility located within the State of California. Mental health services provided to a seriously emotionally disturbed pupil shall be provided either directly or by contract.

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<sup>97</sup> Final Statement of Reasons, pages 55-56.



Accordingly, the Commission finds that Government Code section 7576, and sections 60020 and 60200 of the regulations constitute a state-mandated new program or higher level of service for the following activity:

- Providing psychotherapy or other mental health services identified in a pupil's IEP, as defined in sections 542 and 543 of the Department of Mental Health regulations. However, the activities of providing vocational services, socialization services, and crisis intervention to pupils, and dispensing medications necessary to maintain individual psychiatric stability during the treatment process, do *not* constitute a state-mandated new program or higher level of service.

7. Participate in due process hearings relating to issues involving mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550)

Government Code section 7586, subdivision (a), addresses the due process procedures when disputes regarding special education and related services arise. That section requires all state departments and their designated local agencies to be governed by the procedural safeguards required by federal law. The designated local agency is the county mental health program established in accordance with the Short-Doyle Act.<sup>98</sup>

Government Code section 7586, subdivision (a), states the following:

All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.<sup>99</sup>

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

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<sup>98</sup> Government Code section 7571; California Code of Regulations, title 2, section 60020, subdivision (d).

<sup>99</sup> Section 60550 of the regulations contains similar language and provides that “[d]ue process hearing procedures apply to the resolution of disagreements between parents and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil.”

process hearing rights include the right to a mediation conference pursuant to Education Code section 56500.3 at any point during the hearing process; the right to examine pupil records; and the right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Education Code section 56505.

Education Code section 56505, subdivision (e), further affords the parties the right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities; the right to present evidence, written arguments, and oral arguments; the right to confront, cross-examine, and compel the attendance of witnesses; the right to written findings of fact and decision; the right to be informed by the other parties to the hearing of the issues in dispute; and the right to receive a copy of all documents and a list of witnesses from the opposing party.

The Commission finds that the county's participation in the due process hearings relating to issues involving mental health assessments or services constitutes a state-mandated new program or higher level of service. Although federal law mandates the due process hearing procedures (20 U.S.C. § 1415), it is state law, rather than federal law, that requires counties to participate in due process hearings involving mental health assessment or service issues.

This finding is consistent with the Supreme Court's decision in the recent case of *San Diego Unified School District v. Commission on State Mandates*.<sup>100</sup> In the *San Diego Unified School District* case, the Supreme Court held that all due process hearing costs with respect to a mandatory expulsion of a student (those designed to satisfy the minimum requirements of federal due process, and those due process requirements enacted by the state that may have exceeded federal law) were reimbursable pursuant to article XIII B, section 6 since it was state law that required school districts to incur the hearing costs.<sup>101</sup>

Accordingly, the Commission finds that Government Code section 7586 and section 60550 of the regulations constitute a state-mandated new program or higher level of service for the following activity:

- Participation in due process hearings relating to issues involving mental health assessments or services.

**III. Does the test claim legislation impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?**

In order for the activities listed above to impose a reimbursable, state-mandated program under article XIII B, section 6 of the California Constitution, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant

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<sup>100</sup> *San Diego Unified School District, supra*, 33 Cal.4th 859.

<sup>101</sup> *Id.* at pages 881-882.

to Government Code section 17514.<sup>102</sup> Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency or school district is required to incur as a result of a statute that mandates a new program or higher level of service.

Government Code section 17556 states that the Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
- (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
- (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
- (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.
- (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for

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<sup>102</sup> See also, *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835

that portion of the statute relating directly to the enforcement of the crime or infraction.

Except for Government Code section 17556, subdivision (e), the Commission finds that the exceptions listed in section 17556 are not relevant to this claim, and do not apply here. Since the Legislature has appropriated funds for this program in the 2004 Budget Bill, however, Government Code section 17556, subdivision (e), is relevant and is analyzed below.

**A. Government Code section 17556, subdivision (e), does not apply to deny this claim**

Government Code section 17556, subdivision (e), states the Commission shall not find costs mandated by the state if the Commission finds that:

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, *or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.* (Emphasis added.)

The Budget Acts of 2003 and 2004 contain appropriations “considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e).” The Budget Act of 2003 appropriated \$69 million from the federal special education fund to counties to be used exclusively to support mental health services identified in a pupil’s IEP and provided during the 2003-04 fiscal year by county mental health agencies pursuant to the test claim legislation. (Stats. 2003, ch. 157, item 6110-161-0890, provision 17.) The bill further states in relevant part that the funding shall be considered offsetting revenue pursuant to Government Code section 17556, subdivision (e):

This funding shall be considered offsetting revenues within the meaning of subdivision (e) of section 17556 of the Government Code for any reimbursable mandated cost claim for provision of these mental health services provided in 2003-04.

The Budget Act of 2004 similarly appropriated \$69 million to counties from the federal special education fund to be used exclusively to support mental health services provided during the 2004-05 fiscal year pursuant to the test claim legislation. (Stats. 2004, ch. 208, item 6110-161-0890, provision 10.) The appropriation was made as follows:

Pursuant to legislation enacted in the 2003-04 Regular Session, of the funds appropriated in Schedule (4) of this item, \$69,000,000 shall be used exclusively to support mental health services provided during the 2004-05 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code and that are included within an individualized education program pursuant to the Federal Individuals with Disabilities Education Act (IDEA).

The Budget Act of 2004 does not expressly identify the \$69 million as “offsetting revenues within the meaning of Government Code section 17556, subdivision (e).” But

the statute does contain language that the appropriation was made "Pursuant to legislation enacted in the 2003-04 Regular Session." As indicated above, it is the 2003-04 Budget Bill that contains the language regarding the Legislature's intent that the \$69 million is considered offsetting revenue within the meaning of Government Code section 17556, subdivision (e).

In order for Government Code section 17556, subdivision (e), to apply to deny this claim for fiscal year 2004-05, the plain language of the statute requires that two elements be satisfied. First, the statute must include additional revenue that was specifically intended to fund the costs of the state mandate. Second, the appropriation must be in an amount sufficient to fund the cost of the state mandate.

The Commission finds that the Legislature intended to fund the costs of this state-mandated program for fiscal year 2004-05 based on the language used by the Legislature that the funds "shall be considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." Under the rules of statutory construction, it is presumed that the Legislature is aware of existing laws and that it enacts new laws in light of the existing law.<sup>103</sup> In this case, the Legislature specifically referred to Government Code section 17556, subdivision (e), when appropriating the \$69 million. Thus, it must be presumed that the Legislature was aware of the plain language of Government Code section 17556, subdivision (e), and that its application results in a denial of a test claim.

But, based on public records, the second element under Government Code section 17556, subdivision (e), requiring that the appropriation must be *in an amount sufficient* to fund the cost of the state mandate, has not been satisfied. According to the State Controller's Deficiency Report issued on May 2, 2005, the amounts appropriated for this program in fiscal years 2003-04 and 2004-05 are not sufficient to pay the claims received by the State Controller's Office. Unpaid claims for fiscal year 2003-04 total \$66,915,606. The unpaid claims for fiscal year 2004-05 total \$68,958,263.<sup>104</sup>

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<sup>103</sup> *Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 624.

<sup>104</sup> The State Controller's Deficiency Report is prepared pursuant to Government Code section 17567. Government Code section 17567 requires that in the event the amount appropriated for reimbursement of a state-mandated program is not sufficient to pay all of the claims approved by the Controller, the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time of proration. The Controller shall then issue a report of the action to the Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature that considers appropriations. The Deficiency Report is, thus, an official record of a state agency and is properly subject to judicial notice by the court. (*Munoz v. State* (1995) 33 Cal.App.4th 1767, 1773, fn. 2; *Chas L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 85-87.)

The Deficiency Report lists the total unpaid claims for this program as follows:

1999 and prior Local Government Claims Bills	\$ 8,646
2001-02	124,940,258

This finding is further supported by the 2004 report published by Stanford Law School, which indicates that “\$69 million represented only approximately half of the total funding necessary to maintain AB 3632 services.”<sup>105</sup>

Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny this claim for fiscal year 2004-05. Eligible claimants are, however, required to identify the funds received from the \$69 million appropriation as an offset to be deducted from the costs claimed.<sup>106</sup>

Based on the program costs identified by the State Controller’s Office, the Commission further finds that counties do incur increased costs mandated by the state pursuant to Government Code section 17514 for this program. However, as more fully discussed below, the state has established cost-sharing mechanisms for some of the mandated activities that affect the total costs incurred by a county.

**B. Increased costs mandated by the state for providing psychotherapy or other mental health treatment services, and for the residential and non-educational costs of a pupil placed in an out-of-home residential facility**

In the Commission’s 1990 Statement of Decision, the Commission concluded that the costs incurred for providing psychotherapy or other mental health treatment services were subject to the Short-Doyle Act. Under the Short-Doyle Act, the state paid 90 percent of the total costs of mental health treatment services and the counties paid the remaining 10 percent. Thus, the Commission concluded that counties incurred increased costs mandated by the state in an amount that equaled 10 percent of the total psychotherapy or other mental health treatment costs. The Commission further concluded that conducting assessments, participation on an expanded IEP team, and case management services for seriously emotionally disturbed pupils placed in residential facilities were not subject to the Short-Doyle Act and, thus, were 100 percent reimbursable. The Statement of Decision contains no findings regarding the activity of issuing and paying providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils.

Since the Statement of Decision was issued, the law with respect to the funding of psychotherapy or other mental health treatment services has changed. In addition, the Commission finds that the original Statement of Decision does not reflect the cost sharing ratio established by the Legislature in Welfare and Institutions Code section 18355 with respect to the residential care of seriously emotionally disturbed pupils. These issues are addressed below.

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2002-03	124,871,698
2003-04	66,915,606
2004-05	68,958,263

<sup>105</sup> “Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California,” Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

<sup>106</sup> Government Code section 17514; California Code of Regulations, title 2, section 1183.1.

1. The costs for providing psychotherapy or other mental health treatment services

The test claim legislation (Stats. 1985, ch. 1274) amended Welfare and Institutions Code section 5651 to require that the annual Short-Doyle plan for each county include a description of the services required by Government Code sections 7571 and 7576 (psychotherapy or other mental health treatment services), including the cost of the services. Section 60200 of the regulations required the county to be financially responsible for the provision of mental health treatment services and that reimbursement to the provider of the services shall be based on a negotiated net amount or rate approved by the Director of Mental Health as provided in Welfare and Institutions Code section 5705.2, or the provider's reasonable actual cost. Welfare and Institutions Code section 5705.2 imposed a cost-sharing ratio for mental health treatment services between the state and the counties, with the state paying 90 percent and the counties paying 10 percent of the total costs.

In 1993, the Sixth District Court of Appeal in the *County of Santa Clara* case upheld the Commission's finding that psychotherapy or other mental health treatment services were to be funded as part of the Short-Doyle Act and, thus, only 10 percent of the total costs for treatment were reimbursable under article XIII B, section 6. The court interpreted the test claim legislation as follows:

County entered into an NNA [negotiated net amount] contract with the state in lieu of the Short-Doyle plan and budget. (Welf. & Inst. Code, § 5705.2.) The NNA contract covers mental health services in the contracting county. The amount of money the state provides is the same whether the county signs a NNA contract or adopts a Short-Doyle plan.... By adding subdivision (g) to Welfare and Institutions Code section 5651, the legislature designated that the mental health services provided pursuant to Government Code section 7570 et seq. were to be funded as part of the Short-Doyle program. County's NNA contract was consistent with this intent. Accordingly, the fact that County entered into an NNA contract rather than a Short-Doyle plan and budget is not relevant.

Based on these findings, the court concluded that only 10 percent of the costs were "costs mandated by the state" and, thus, reimbursable under article XIII B, section 6. The court held as follows:

By placing these services within Short-Doyle, however, the legislature limited the extent of its mandate for these services to the funds provided through the Short-Doyle program. A Short-Doyle agreement or NNA contract sets the maximum obligation incurred by a county for providing the services listed in the agreement or contract. "Counties may elect to appropriate more than their 10 per cent share, but in no event can they be required to do so." (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 450.) Since the services were subject to the Short-Doyle formula under which the state provided 90 per cent of the funds and the county 10 per cent, that 10 per cent was reimbursable under

section 6, article XIII B of the California Constitution. (Emphasis in original.)

There have been “intervening changes in the law” with respect to the costs for psychotherapy or other mental health treatment services, however. Thus, the decision in the *County of Santa Clara* case with respect to the inclusion of mental health treatment services for special education pupils in the Short-Doyle plan no longer applies and is not binding on the Commission for purposes of this reconsideration.<sup>107</sup>

In 1991, the Legislature enacted realignment legislation that repealed the Short-Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89, §§ 63 and 173.) The realignment legislation became effective on June 30, 1991. The parties have disputed whether the Bronzan-McCorquodale Act keeps the cost-sharing ratio, with the state paying 90 percent and the counties paying 10 percent, for the cost of psychotherapy or other mental health treatment services for special education pupils.

The Commission finds, however, that the dispute does not need to be resolved for purposes of this reconsideration. Section 38 of Statutes 2002, chapter 1167 (Assem. Bill 2781) prohibits the funding provisions of the Bronzan-McCorquodale Act from affecting the responsibility of the state to fund psychotherapy and other mental health treatment services for handicapped and disabled pupils and requires the state to provide reimbursement to counties for those services for all allowable costs incurred. Section 38 also states the following:

*For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund [i.e. realignment funds].*  
(Emphasis added.)

In addition, SB 1895 (Stats. 2004, ch. 493, § 6) provides that realignment funds used by counties for this program “are eligible for reimbursement from the state *for all allowable costs* to fund assessments, psychotherapy, and other mental health services . . . ,” and that the finding by the Legislature is “declaratory of existing law.” (Emphasis added.)

Therefore, beginning July 1, 2001, the 90 percent-10 percent cost-sharing ratio for the costs incurred for psychotherapy and other mental health treatment services no longer applies. Since the period of reimbursement for purposes of this reconsideration begins July 1, 2004, and section 38 of Statutes 2002, chapter 1167 is still in effect, all of the county costs for psychotherapy or other mental health treatment services are reimbursable, less any applicable offsets that are identified below.

2. The residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility

Government Code section 7581 requires the county to be financially responsible for the residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility. As described above, the residential and non-

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<sup>107</sup> *George Arakelian Farms, Inc., supra*, 49 Cal.3d 1279, 1291.



educational costs include the costs for food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

Welfare and Institutions Code section 18355 describes a cost-sharing formula for the payment of these costs. That section states in relevant part the following:

Notwithstanding any other provision of law, 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24-hour out-of-home care payment and local administrative costs. Reimbursement for 24-hour out-of-home payment costs shall be from that appropriation, *subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200*, and available funds... (Emphasis added.)

Since 1991, Welfare and Institutions Code section 15200, subdivision (c)(1), has provided that for counties that meet the performance standards or outcome measures in Welfare and Institutions Code section 11215, the state shall appropriate 40 percent of the sum necessary for the adequate care of each child. Thus, for those counties meeting the performance measures, their increased cost mandated by the state would equal 60 percent of the total cost of care for each special education child placed in an out-of-home residential facility, less any applicable offset.

When a county does not meet the performance standards or outcome measures in Welfare and Institutions Code section 11215, state funding for the program decreases and the counties are liable for the decreased cost.<sup>108</sup> The Commission finds that a county's cost incurred for the decrease in the state's share of the costs as a result of the county's failure to meet the performance standards, are not costs mandated by the state and are not reimbursable. Counties are mandated by the state to meet the performance standards for residential facilities.<sup>109</sup>

Therefore, the Commission finds that counties incur increased costs mandated by the state in an amount that equals 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

### **C. Identification of offsets**

Reimbursement under article XIII B, section 6 and Government Code section 17514 is required only for the increased costs mandated by the state. As determined by the California Supreme Court, the intent behind section 6 was to prevent the state from

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<sup>108</sup> Welfare and Institutions Code sections 15200, subdivision (c)(2), and 11215, subdivision (b)(5).

<sup>109</sup> *Ibid.*

forcing new programs on local governments that require an increased expenditure by local government of their limited tax revenues.<sup>110</sup>

The 1990 Statement of Decision does not identify any offsetting revenues. The parameters and guidelines for this program lists the following reimbursements that must be deducted from the costs claimed:

- Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and
- Any other reimbursements for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

The Commission agrees with the identification of any direct payments or categorical funds appropriated by the Legislature specifically for this program as an offset to be deducted from the costs claimed. In the past, categorical funding has been provided by the state for this program in the amount of \$12.3 million.<sup>111</sup> The categorical funding was eliminated, however, in the Budget Acts of 2002 through 2004.

If, however, funds are appropriated in the Budget Act for this program, such as the \$69 million appropriation in the 2004-05 Budget Act, such funds are required to be identified as an offset.

The Commission disagrees with the language in the existing parameters and guidelines that excludes private insurance payments as offsetting revenue. Federal law authorizes public agencies to access private insurance proceeds for services provided under the IDEA if the parent consents.<sup>112</sup> Thus, to the extent counties obtain private insurance proceeds with the consent of a parent for purposes of this program, such proceeds must be identified as an offset and deducted from the costs claimed. This finding is consistent with the California Supreme Court's decision in *County of Fresno v. State of California*. In the *County of Fresno* case, the court clarified that article XIII B, section 6 requires reimbursement by the state only for those expenses that are recoverable from tax revenues. Reimbursable costs under article XIII B, section 6, do not include reimbursement received from other non-tax sources.<sup>113</sup>

The Commission further disagrees with the language in the existing parameters and guidelines that excludes Medi-Cal payments as offsetting revenue. Federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.<sup>114</sup> Federal law limits this authority as follows:

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<sup>110</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of San Diego, supra*, 15 Cal.4th at page 81.

<sup>111</sup> Budget Acts of 1994-2001, Item 4440-131-0001.

<sup>112</sup> 34 Code of Federal Regulations section 300.142, subdivision (f).

<sup>113</sup> *County of Fresno, supra*, 53 Cal.3d at page 487.

<sup>114</sup> 34 Code of Federal Regulations section 300.142, subdivision (e).

(2) With regard to services required to provide FAPE [free appropriate public education] to an eligible child under this part, the public agency-

- (i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
- (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent would be required to pay;
- (iii) May not use a child's benefits under a public insurance program if that use would
  - (A) Decrease available lifetime coverage or any other insured benefit;
  - (B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
  - (C) Increase premiums or lead to the discrimination of insurance; or
  - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.<sup>115</sup>

According to the 2004 report published by Stanford Law School, 51.8 percent of the students receiving services under the test claim legislation are Medi-Cal eligible.<sup>116</sup> Thus, the Commission finds to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal government for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed.

In addition, Government Code section 7576.5 describes offsetting revenue to counties transferred from local educational agencies for this program as follows:

If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce

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<sup>115</sup> 34 Code of Federal Regulations section 300.142, subdivision (e)(2)

<sup>116</sup> "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

the local costs of providing these services. These funds shall be used exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

Government Code section 7576.5 was added by the Legislature in 2003 (Stats. 2003, ch. 227) and became operative and effective on August 11, 2003. Thus, the Commission finds money received by counties pursuant to Government Code section 7576.5 shall be identified as an offset and deducted from the costs claimed.

Finally, the existing parameters and guidelines do not require eligible claimants to offset any Short-Doyle funding, and specifically excludes such funding as an offset. As indicated above, the Short-Doyle Act was repealed and replaced with the realignment legislation of the Bronzan-McCorquodale Act. Based on the plain language of SB 1895 (Stats. 2004, ch. 493, § 6), realignment funds used by a county for this mandated program are not required to be deducted from the costs claimed. Section 6 of SB 1895 adds, as part of the Bronzan-McCorquodale Act, section 5701.6 to the Welfare and Institutions Code. Section 5701.6 states in relevant part the following:

Counties may utilize money received from the Local Revenue Fund [realignment] ...to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. *If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations [IDEA] and required by Chapter 26.5 ... of the Government Code. (Emphasis added.)*

Thus, the Commission finds that realignment funds used by a county for this mandated program are not required to be identified as an offset and deducted from the costs claimed.

Accordingly, the Commission finds that the following revenue and/or proceeds must be identified as offsets and be deducted from the costs claimed:

- Funds received by a county pursuant to Government Code section 7576.5.
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes funds received by a county pursuant to the \$69 million appropriation to counties for purposes of this mandated program in the Budget Act of 2004 ((Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
- Private insurance proceeds obtained with the consent of a parent for purposes of this program.

- Medi-Cal proceeds obtained from the state or federal government that pay a portion of the county services provided to a pupil under this mandated program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source.<sup>117</sup>

## CONCLUSION

The Commission concludes that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the *increased costs* in performing the following activities:

1. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
  - Renew the interagency agreement every three years, and revise if necessary.
  - Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
2. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)
  - Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided “specialized” counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
  - If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
  - If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent’s written informed consent for the assessment.
  - Assess the pupil within the time required by Education Code section 56344.
  - If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
  - Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report

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<sup>117</sup> *County of Fresno, supra*, 53 Cal.3d at page 487; California Code of Regulations, title 2, section 1183.1, subdivision (a)(8).

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

- Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
  - In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
  - Review independent assessments of a pupil obtained by the parent.
  - Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
  - In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.
3. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subs. (a) and (b); Cal. Code Regs., tit. 2, § 60100)
- Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
  - Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
4. Act as the lead case manager if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, § 60110)
- Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:
    1. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
    2. Complete the local mental health program payment authorization in order to initiate out of home care payments.

3. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
  4. Coordinate the completion of the residential placement as soon as possible.
  5. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
  6. Facilitate the enrollment of the pupil in the residential facility.
  7. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
  8. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
5. Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))
- Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.
  - Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.
6. Provide psychotherapy or other mental health services, as defined in regulations, when required by the IEP (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60020, subd. (a), 60200, subds. (a) and (b))
- Provide psychotherapy or other mental health services identified in a pupil's IEP, as defined in sections 542 and 543 of the Department of Mental Health regulations. However, the activities of providing vocational services, socialization services, and crisis intervention to pupils, and dispensing medications necessary to maintain individual psychiatric stability during the treatment process, do *not* constitute a state-mandated new program or higher level of service.
7. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550)

The Commission further concludes that the following revenue and/or proceeds must be identified as offsets and be deducted from the costs claimed:

- Funds received by a county pursuant to Government Code section 7576.5
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes funds received by a county pursuant to the \$69 million appropriation to counties for purposes of this mandated program in the Budget Act of 2004 ((Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
- Private insurance proceeds obtained with the consent of a parent for purposes of this program.
- Medi-Cal proceeds obtained from the state or federal government that pay a portion of the county services provided to a pupil under this mandated program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source

The period of reimbursement for this decision begins July 1, 2004.

Finally, any statutes and/or regulations that were pled in *Handicapped and Disabled Students* (CSM 4282) that are not identified above do not constitute a reimbursable state-mandated program.



**Tab 9**

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

## AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);  
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

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

### *Handicapped and Disabled Students (CSM 4282)*

#### I. SUMMARY OF MANDATE

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

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

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

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

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with

exceptional needs,” including those designated as “seriously emotionally disturbed,” and required in such individual’s IEP.

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

## **II. COMMISSION ON STATE MANDATES’ DECISIONS**

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

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

## **III. ELIGIBLE CLAIMANTS**

All counties

## **IV. PERIOD OF REIMBURSEMENT**

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

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

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

If the total costs for a given fiscal year do not exceed \$200<sup>1</sup>, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

## **V. REIMBURSABLE COSTS**

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

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

emotionally disturbed', and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.

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

## **VI. CLAIM PREPARATION**

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

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

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

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

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

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

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

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

## **VII. SUPPORTING DATA**

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

## **VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS**

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

## **IX. REQUIRED CERTIFICATION**

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

**Tab 10**



Adopted January 26, 2006

## PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588

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

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

California Code of Regulations, Title 2, Sections 60000-60610

(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])

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

### I. SUMMARY OF THE MANDATE

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

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

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

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

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

### II. ELIGIBLE CLAIMANTS

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

### III. PERIOD OF REIMBURSEMENT

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

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

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

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

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

#### **IV. REIMBURSABLE ACTIVITIES**

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

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

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

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

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

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

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

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

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

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

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

## V. CLAIM PREPARATION AND SUBMISSION

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

### A. Direct Cost Reporting

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

#### 1. Salaries and Benefits

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

#### 2. Materials and Supplies

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

#### 3. Contracted Services

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

#### 4. Fixed Assets and Equipment

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

#### 5. Travel

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

#### B. Indirect Cost Rates

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

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

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

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

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

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

costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

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

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

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



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

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

### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

### **IX. REMEDIES BEFORE THE COMMISSION**

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

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

### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

**Tab 11**

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

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

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

Effective September 13, 2004.

Case No.: 04-RL-4282-10

*Handicapped & Disabled Students*

ADOPTION OF PARAMETERS AND  
GUIDELINES PURSUANT TO  
GOVERNMENT CODE SECTION 17557  
AND STATUTES 2004, CHAPTER 493,  
SECTION 7 (Sen. Bill No. 1895)

*(Adopted January 26, 2006; Corrected on  
July 21, 2006)*

**CORRECTED PARAMETERS AND GUIDELINES**

On January 26, 2006, the Commission on State Mandates adopted the parameters and guidelines for this program and authorized staff to make technical corrections to the parameters and guidelines following the hearing.

On May 26, 2006, the State Controller's Office filed a letter with the Commission requesting a technical correction to the parameters and guidelines to identify and add to the parameters and guidelines language allowing eligible claimants to claim costs using the cost report method. The cost report method was included in the parameters and guidelines for the original *Handicapped and Disabled Students* program (CSM 4282) and inadvertently omitted from the parameters and guidelines on reconsideration. The State Controller's Office states the following:

The majority of claimants use this method to claim costs for the mental health portion of their claims. The resulting costs represent actual costs consistent with the cost accounting methodology used to report overall mental health costs to the State Department of Mental Health. The method is also consistent with how counties contract with mental health service vendors to provide services.

The following language is added to Section V, Claim Preparation and Submission:

**Cost Report Method**

**A. Cost Report Method**

**Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of**

the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

#### B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed by the Department of Mental Health from categorical funding sources, they may be claimed under this method.

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

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

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

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

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

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

In addition, technical corrections have been made to Section X, Legal and Factual Basis for the Parameters and Guidelines, to clarify that the Statement of Decision in this case refers to the Statement of Decision on reconsideration. Section X is amended as follows:

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Paula Higashi, Executive Director

**CORRECTED  
PARAMETERS AND GUIDELINES**

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

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

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

**I. SUMMARY OF THE MANDATE**

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

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

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

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

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

**II. ELIGIBLE CLAIMANTS**

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

### **III. PERIOD OF REIMBURSEMENT**

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

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

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

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

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

### **IV. REIMBURSABLE ACTIVITIES**

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

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

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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

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



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

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

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

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

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

## **V. CLAIM PREPARATION AND SUBMISSION**

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

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

### **Direct Cost Reporting Method**

#### **A. Direct Cost Reporting**

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

##### **1. Salaries and Benefits**

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

##### **2. Materials and Supplies**

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

##### **3. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that

were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets and Equipment

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

#### 5. Travel

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

### B. Indirect Cost Rates

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

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

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

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

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates.

The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

### **Cost Report Method**

#### **A. Cost Report Method**

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

#### **B. Indirect Cost Rates**

To the extent that reimbursable indirect costs have not already been reimbursed by the Department of Mental Health from categorical funding sources, they may be claimed under this method.

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

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

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

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

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

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

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

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

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10), and the \$69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).
3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office,

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

which appropriated \$120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students program* (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)

4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

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

#### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

#### **IX. REMEDIES BEFORE THE COMMISSION**

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

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

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

**Tab 12**



Amendment Adopted: October 26, 2006  
Corrected: July 21, 2006  
Adopted January 26, 2006

## **AMENDED PARAMETERS AND GUIDELINES**

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

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

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

### **EFFECTIVE FOR REIMBURSEMENT CLAIMS FILED FOR COSTS INCURRED THROUGH THE 2005-2006 FISCAL YEAR**

#### **I. SUMMARY OF THE MANDATE**

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

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

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

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

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program. These parameters and guidelines are effective for reimbursement claims filed through the 2005-2006 fiscal year. Commencing with the 2006-2007 fiscal year, reimbursement claims shall be filed through the consolidated parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

## **II. ELIGIBLE CLAIMANTS**

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

## **III. PERIOD OF REIMBURSEMENT**

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

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

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

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

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

## **IV. REIMBURSABLE ACTIVITIES**

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

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

reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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

- A. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
  1. Renew the interagency agreement every three years, and revise if necessary.
  2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
- B. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)
  1. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
  2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
  3. If necessary, interview the pupil and family, and conduct collateral interviews.
  4. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
  5. Assess the pupil within the time required by Education Code section 56344.
  6. If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.

7. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.
  8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
  9. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
  10. Review independent assessments of a pupil obtained by the parent.
  11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
  12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.
- C. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subs. (a) and (b); Cal. Code Regs., tit. 2, § 60100)
1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
  2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
- D. Act as the lead case manager if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, § 60110)
1. Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:
    - a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
    - b. Complete the local mental health program payment authorization in order to initiate out of home care payments.
    - c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.

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

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

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

## V. CLAIM PREPARATION AND SUBMISSION

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

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

### **Direct Cost Reporting Method**

#### A. Direct Cost Reporting

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

##### 1. Salaries and Benefits

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

##### 2. Materials and Supplies

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

### 3. Contracted Services

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

### 4. Fixed Assets and Equipment

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

### 5. Travel

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

## B. Indirect Cost Rates

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

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

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

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

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

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

### **Cost Report Method**

#### **A. Cost Report Method**

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

#### **B. Indirect Cost Rates**

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

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

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



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

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

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS**

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

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10), and the \$69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).

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

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

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

#### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

#### **IX. REMEDIES BEFORE THE COMMISSION**

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

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

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision on reconsideration is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual

findings is found in the administrative record for the test claim and the reconsideration. The administrative record, including the Statement of Decision, is on file with the Commission.

**Tab 13**



**JOHN CHIANG**  
**California State Controller**

August 12, 2008

Wendy L. Watanabe, Acting Auditor-Controller  
County of Los Angeles  
500 West Temple Street, Room 525  
Los Angeles, CA 90012

Re: Audit of Mandated Cost Claims for Handicapped and Disabled Students Program  
For the Period of July 1, 2003, through June 30, 2006 and Audit of Mandated Cost Claims  
for Handicapped and Disabled Students II Program for period of July 1, 2002, through  
June 30, 2004

Dear Ms. Watanabe:

This letter confirms that Anna Pilipyuk has scheduled an audit of the County of Los Angeles' legislatively mandated Handicapped and Disabled Students Program cost claims filed for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 and Handicapped and Disabled Students II Program cost claims filed for FY 2002-03 and FY 2003-04. Government Code sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Monday, September 22, 2008, at 11:00 a.m. We will begin audit fieldwork after the entrance conference.

Please furnish working accommodations for and provide the necessary records (listed on the Attachment) to the audit staff. If you have any questions, please call me at (916) 327-0696.

Sincerely,

A handwritten signature in cursive script that reads "Christopher B. Ryan".

CHRISTOPHER RYAN, Audit Manager  
Mandated Cost Audits Bureau  
Division of Audits

6954

CR/sk

Attachment

Wendy L. Watanabe  
August 12, 2008  
Page 2

cc: Leonard Kaye, ESQ  
Certified Public Accountant  
County of Los Angeles  
Jim L. Spano, Chief  
Mandated Cost Audits Bureau  
Division of Audits, State Controller's Office  
Ginny Brummels, Manager  
Division of Accounting and Reporting  
State Controller's Office  
Anna Pilipyuk, Auditor-in-Charge  
Division of Audits, State Controller's Office

**COUNTY OF LOS ANGELES**  
**Records Request for Mandated Cost Program**  
**Handicapped and Disabled Students**  
**FY 2003-04, FY 2004-05, and FY 2005-06**  
**and Handicapped and Disabled Students II**  
**FY 2002-03 and FY 2003-04**

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1. Copy of claims filed for the mandated cost program and all related supporting documentations.
2. Copy of external and internal audit reports performed on the mandated cost program.
3. Copy of the single audit report performed during the period and the primary contact for the CPA firm.
4. Organization charts for the county effective during the audit period and currently, showing employee names and position titles.
5. Organization charts for the department or unit handling the mandated cost program, effective during the audit period and currently, showing employee names and position titles.
6. Chart of accounts applicable to the period under review, including service function and provider identification codes.
7. Access to cost reports submitted to the Department of Mental Health, general ledger accounts, and financial reports used to support the claims.
8. Access to supporting documentation for units charged and applicable rates, vendor invoices and payments, and client files.
9. Sample of supporting documents for units of service charged, documenting the billing process (attending mental health professional billing slips, progress notes in client file, billing logs, or summaries by providers, etc.).
10. Support for costs used to compute the indirect cost rate proposal (ICRP).
11. Support of offsetting revenues identified in the claim.

**Tab 14**





**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-3873  
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE  
AUDITOR-CONTROLLER

MARIA M. OMS  
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS  
JOHN NAIMO  
JUDI E. THOMAS

June 16, 2010

Mr. Jim L. Spano, Chief  
Mandated Cost 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:

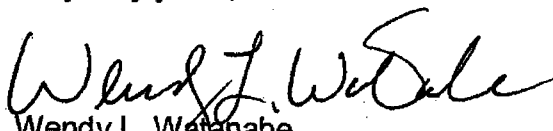
1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.
2. We designed and implemented the County's accounting system to ensure accurate and timely records.
3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled 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.

Mr. Jim L. Spano, Chief  
June 16, 2010  
Page 2

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](mailto:hyaghobyan@auditor.lacounty.gov)

Very truly yours,

  
Wendy L. Watanabe  
Auditor-Controller

WLW:MMO:JN:CY:hy

H:\SB90\QSTClaim Submission\Ch1747\Audit Mgmt. Letter 6-15-10.doc

**Tab 15**

## Ryan, Christopher

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**From:** Yaghobyan, Hasmik <HYAGHOBYAN@auditor.lacounty.gov>  
**Sent:** Tuesday, April 13, 2010 10:52 AM  
**To:** Pilipyuk, Anna  
**Cc:** Ryan, Christopher; Johnson, John E.; Spano, Jim  
**Subject:** RE: SEDP (FYs 2003-06)

Hi Anna,

We agree with your proposal and would like to move the excess IDEA funding (954,297) revenue offset from HDS to the SED program.

Let me know if you have any questions.

**Hasmik Yaghobyan**  
**SB90 Administrator**  
**Dept. of Auditor Controller-Accounting Division**  
**Tel: (213) 893-0792**  
**Fax: (213) 617-8106**  
**Email: [hyaghobyan@auditor.lacounty.gov](mailto:hyaghobyan@auditor.lacounty.gov)**

---

**From:** [APilipyuk@sco.ca.gov](mailto:APilipyuk@sco.ca.gov) [mailto:[APilipyuk@sco.ca.gov](mailto:APilipyuk@sco.ca.gov)]  
**Sent:** Tuesday, April 13, 2010 9:48 AM  
**To:** Yaghobyan, Hasmik  
**Cc:** [cryan@sco.ca.gov](mailto:cryan@sco.ca.gov); [jejohnson@sco.ca.gov](mailto:jejohnson@sco.ca.gov); [jspano@sco.ca.gov](mailto:jspano@sco.ca.gov)  
**Subject:** FW: SEDP (FYs 2003-06)  
**Importance:** High

Hasmik,

I just wanted to follow up with you regarding the changes to the overstated offsetting revenue finding (Finding #4) for SED Pupils: Out-of-State Mental Health Services (SEDP) Program audit. I have not heard from you on how the county would like to handle the changes. As we suggested during the HDS exit conference (March 30, 2010), you can just e-mail me any comments and concerns that the county has in regard to the changes. If the county concurs with changes, please e-mail your confirmation, authorizing the SCO to issue the final SEDP report.

Attached are summaries of findings for the SEDP audit for FYs 2003-06.

If you have any further questions you can contact either John or me.

Thank you,

-Anna

**Anna Pilipyuk**  
Auditor  
State Controller's Office  
Division of Audits - Mandated Cost  
(916) 323-4206 - phone  
(916) 324-7223 - fax  
[apilipyuk@sco.ca.gov](mailto:apilipyuk@sco.ca.gov)

---

**From:** Pilipyuk, Anna  
**Sent:** Tuesday, April 06, 2010 04:05 PM  
**To:** 'Yaghobyan, Hasmik'  
**Cc:** Ryan, Christopher; Johnson, John E.; Spano, Jim  
**Subject:** SEDP (FYs 2003-06)  
**Importance:** High

Hasmik,

During our exit conference for Handicapped and Disabled Students Program on March 30, 2010, we also discussed changes to the overstated offsetting revenue finding (Finding #4) for SED Pupils: Out-of-State Mental Health Services (SEDP) Program audit. Subsequent to the issuance of the draft report and the county's response to the SEDP Program audit, we finalized the Handicapped and Disabled Students (HDS) Program audit. Our HDS audit disclosed that the county over applied Individuals with Disabilities Education Act (IDEA) funds by \$954,297 for FY 2003-04. So, we proposed moving the excess of IDEA revenues from the HDS to the SEDP Program for FY 2003-04.

During the conference we provided the county with revised audit findings (Funding #4) and schedules for SEDP Program audit. Further, at the meeting we discussed issuing the final report for the SEDP Program incorporating the IDEA adjustment. Since the county has already responded to the initial draft, we discussed the county providing an e-mail agreeing to the revised SEDP Program report.

So, before we issue the final report with revised audit findings (Funding #4) and schedules, please e-mail me any comments and concerns that the county has in regard to the changes. If the county concurs with changes, please e-mail your confirmation, authorizing the SCO to issue the final SEDP report.

Attached are summaries of findings for the SEDP audit for FYs 2003-06.

If you have any further questions you can contact either John or me.

Thank you,

-Anna

***Anna Pilipyuk***

Auditor

State Controller's Office

Division of Audits - Mandated Cost

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**Tab 16**

9/23/08

Paul McIver

A GUIDE TO  
 COMMUNITY MENTAL HEALTH REHABILITATION SERVICE  
 ACTIVITY CODES  
 FOR  
 CLINIC SERVICE PROVIDERS



County of Los Angeles – Department of Mental Health

**Marvin J. Southard, D.S.W.**  
 Director of Mental Health  
 March 2002

Prepared by: *[Signature]*  
 Date: 9/23/08  
 Date: 1/15/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**TARGETED CASE MANAGEMENT SERVICES (MODE 15)**

**TARGETED CASE MANAGEMENT – CLIENT OR COLLATERAL CONTACT**

Activity assisting one or more clients to access needed medical, educational, social, prevocational, vocational, rehabilitative and other community services; or providing assistance with securing appropriate living arrangements; or consulting with the client or others in an effort to determine the need for, or access to, any of these services. It also may include the supportive activities related to linkage and consultation such as making telephone calls, completing forms, as well as developing a case management plan. Client or collateral must be present. *Inclusive of travel, plan development and documentation time.*

**Example:** Staff person discusses housing situation with client/parent who reports lack of cooperation from landlord to correct significant defects with apartment, e.g., rat infestation that poses health and safety issues to client and family. Staff person contacts by phone the City Health Department, reports the landlord and facilitates linkage for client/parent with the city ombudsman.

Site Location	SFC	Activity Code	Activity (An indicator for <u>family/significant other</u> involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			TCM, SEP Targeted Case Management Client or Collateral Contact, RS		All except #9
	04	300	TCM, Targeted Case Management Client or Collateral Contact, RS	M/C GF	
		9090	TCM, SAMHSA/ADP Targeted Case Management Client or Collateral Contact, RS (DMH Only)	SAMHSA	
		9110	TCM, CalWORKS/GROW Targeted Case Management Client or Collateral Contact	DPSS	
	05	9070	TCM, PATH Homeless Targeted Case Management Client or Collateral Contact	PATH	
	06	8080	TCM, FP Targeted Case Management Client or Collateral Contact, RS	Family Pres	
	08	1710	TCM, AB1733/2994 Targeted Case Management Client or Collateral Contact, RS	AB1733/ 2994	

**Notes:**

- If services are provided to, or on behalf of, more than one client at the same time, record and report the number of client's represented at the contact so the MIS (automatically) can appropriately pro-rate staff time to each client.

W/P Section  
 Prepared by: SP Date: 9/23/08  
 Reviewed by: OT Date: 1/5/10



**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**TARGETED CASE MANAGEMENT – CASE ACTIVITY (NO CLIENT OR COLLATERAL CONTACT)**

A Targeted Case Management activity provided on behalf of a client in the absence of the client or collateral, such as completing forms, preparing reports, or intra/inter-agency consultations or conferences related to linking a client to services. **Includes re-authorization of FFS clients if a case is open.** To be used only in reference to a targeted case management activity. Refer to MHS, Individual Rehabilitation (not psychotherapy) for activities that are not related to linking client to services.

**Example:** In the example on previous page, the phone call to the City Health Department is made at a later time, not in the presence of the client/parent.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	09	332	TCM, SEP Targeted Case Management Case Activity, RS	SEP	All except #9
	04	305	TCM, Targeted Case Management Case Activity, RS	M/C GF	
		9111	TCM, CalWORKS/GROW Targeted Case Management Case Activity	DPSS	
	05	9072	TCM, PATH Homeless Targeted Case Management Case Activity	PATH	
	06	8082	TCM, FP Targeted Case Management Case Activity, RS	Family Pres	
	08	1711	TCM, AB1733/2994 Targeted Case Management Case Activity, RS	AB1733/ 2994	

**Notes:**

- Case Management is NOT skill development, assistance in daily living or training clients to access services by themselves, which are mental health services.
- Services within an activity code on the same day may be summarized in one note and claimed collectively, i.e., 5 phone calls related to one client on the same day can be summarized in one note to support a single claim.

W/P Section 114-3 Page 10/10  
 Prepared by: AP Date: 9/23/08  
 Reviewed by: OR Date: 11/5/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MHS, PSYCHOLOGICAL TESTING/DIAGNOSTIC SERVICES, CASE ACTIVITY NO CLIENT OR COLLATERAL CONTACT**

Activities related to psychodiagnostic assessment such as scoring and interpreting tests, and writing psychological testing reports in the absence of a face-to-face or phone contact. *Inclusive of travel and documentation time.*

**Example:** Interpreting test results and writing psychological testing reports for submission to courts, DPSS or DCFS.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	32		MHS, SEP Psychological Testing/Diagnostic Services, Case Activity No Contact, RS		#2
	34	043	MHS, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	M/C GF	
	36	9005	MHS, PATH Homeless, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	PATH	
	37	8037	MHS, FP, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	Family Pres	
	39	1704	MHS, AB1733/2994 Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	AB1733/ 2994	
	34	9127	MHS, CalWORKS/GROW Psychological Testing/Diagnostic Services, Case Activity No Contact	DPSS	

Note:

- See Medi-Cal Lockouts on Page 26.

W/P Section  
 Prepared by: APP Date: 7/23/08  
 Reviewed by: UR Date: 1/5/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MHS, PSYCHOLOGICAL TESTING/DIAGNOSTIC SERVICES**

Established testing for the psychodiagnostic assessment of personality, development assessment and cognitive functioning. Requires face-to-face contact. For children, referrals are made to clarify symptomology, rule out diagnoses and help delineate emotional from learning disabilities. *Inclusive of travel and plan development time.*

**Example:** Child's behavior is aggressive and marked by uncontrolled outbursts of profane language; he is beginning to have facial tics and is also below grade level in reading. Referral for testing is made to determine diagnosis and rule out learning disorder.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <sup>+</sup> <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	33		MHS, SEP Psychological Testing/Diagnostic Services, RS		#2 <sup>+</sup>
	34	034	MHS, Psychological Testing/Diagnostic Services, RS	Medicare <sup>+</sup> M/C GF	
		9126	MHS, CalWORKS/GROW Psychological Testing/Diagnostic Services	DPSS	
	36	9002	MHS, PATH Homeless, Psychological Testing/Diagnostic, Services, RS	PATH	
	37	8035	MHS, FP, Psychological Testing/Diagnostic Services, RS	Family Pres	
	39	1717	MHS, AB1733/2994 Psychological Testing/Diagnostic Services, RS	AB1733/ 2994	

**Note:**

- See Medi-Cal Lockouts on Page 26.

<sup>+</sup> Medicare reimburses only for qualified services provided in the Office to Medicare recipients by licensed psychologist.

W/P Section 44-3 Page 12/10  
 Prepared by: AP Date: 9/23/08  
 Reviewed by: CR Date: 11/5/10

3/25/02

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MENTAL HEALTH SERVICES (MODE 15)**

**MHS, INDIVIDUAL THERAPY**

Therapeutic interventions for an individual client by an appropriately trained clinician consistent with the client's goals/desired results identified in the Service Plan. Focuses primarily on symptom reductions as a means to improve functional impairments. Can include family therapy (as long as only 1 client is represented in the contact) and substance abuse treatment (for EPSDT only). Clinical interventions must be included in the progress note. *Inclusive of travel, plan development and documentation time.*

**Example:** Clinician encourages client to consider the obstacles to constructive work relationships, assists client with understanding his/her feelings and invites client to react differently. Chart note includes problem behavior, therapeutic intervention and outcome.

Site Location	SFC	Activity Code	Activity (An indicator for <u>family/significant other involvement in the contact</u> will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office + <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			MHS, SEP Individual Therapy, RS		Trained Clinician + #1 - #5.
	42	040	MHS, Individual Therapy, RS	Medicare+ M/C GF	
		085	MHS, Individual Family Therapy, RS		
		1319	MHS, Individual Therapy w Medical Evaluation and Management, RS (inactive until notified)	Medicare+	
		9113	MHS, CalWORKS/GROW Individual Therapy	DPSS	
		9092	MHS, SAMHSA/ADP Individual Therapy, RS (DMH Only)	SAMHSA	
	45	1718	MHS, AB1733/2994 Individual Therapy, RS	AB1733/ 2994	
47	8000	MHS, FP Individual Therapy, RS	Family Pres		

**Notes:**

- If more than one staff provides service, each must be identified in the note indicating the time expended by each, and the specific interventions performed by each during the time noted.
- See Medi-Cal Lockouts on Page 26.

+ Medicare reimburses only for qualified services provided in the Office to Medicare recipients by licensed clinicians #1-#5.

W/P Section  
 Prepared by: *AP* Date: *9/23/08*  
 Reviewed by: *UC* Date: *11/10*

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MHS, CASE CONSULTATION**

Includes time spent with inter/intra-agency (includes Board and Care) staff to discuss clinical and/or other information to enhance a specific client's diagnosis and treatment plan. Client may be present. Supervision is not reimbursable. *Inclusive of travel, plan development and documentation time.*

**Example:** Clinician presents case history at clinical case conference and requests feedback on differential diagnosis and treatment strategies.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			MHS, SEP Case Consultation, RS	SEP	All except #9
	42	1220	MHS, Case Consultation, RS	M/C GF	
		9114	MHS, CalWORKS/GROW Case Consultation	DPSS	
	45	1721	MHS, AB1733/2994 Case Consultation, RS	AB1733/ 2994	
	47	8040	MHS, FP Case Consultation, RS	Family Pres	

**Note:**

- Clinician receiving the consultation generally makes the chart note. The note must state the name of clinician(s) providing the consultation, participants, specific contributions of each and recommendations. The clinician(s) providing the consultation does not also chart.
- See Medi-Cal Lockouts on Page 26.

W/P Section 74-3 Page 1440  
 Prepared by: JP Date: 9/23/08  
 Reviewed by: CE Date: 1/5/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
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**MHS, INDIVIDUAL REHABILITATION (NOT PSYCHOTHERAPY)**

Assistance in restoring or maintaining a client's functional skills, ADL skills, social skills, medication compliance and support resources; counseling of the client or family; training in leisure activities consistent with client's goals/desired results; medication education; writing of client letters, SSI forms. Substance abuse intervention to meet mental health goals and case management activities beyond facilitating access to services fit in this category. *Inclusive of travel, plan development and documentation time.*

**Example:** Staff assists client in achieving any of the goals set out in treatment or service plan in any fashion not including psychotherapy.

Site Location	SFC	Activity Code	Activity (An indicator for <u>family/significant other</u> involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			MHS, SEP Individual Rehabilitation (not psychotherapy), RS		All except #9.
	42	062	MHS, Individual Rehabilitation (not psychotherapy), RS	M/C GF	
		9113	MHS, CalWORKS/GROW Individual Rehabilitation (not psychotherapy)	DPSS	
		9092	MHS, SAMHSA/ADP Individual Rehabilitation (not psychotherapy), RS (DMH Only)	SAMHSA	
	45	1718	MHS, AB1733/2994 Individual Rehabilitation (not psychotherapy), RS	AB1733/ 2994	
	47	8000	MHS, FP Individual Rehabilitation (not psychotherapy), RS	Family Pres	

**Note:**

- See Medi-Cal Lockouts on Page 26.

W/P Section 114-3 Page 16/40  
 Prepared by: AP Date: 9/23/08  
 Reviewed by: UK Date: 11/3/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MHS, GROUP REHABILITATION (NOT PSYCHOTHERAPY)**

May include any and all of the following skills: assistance in restoring or maintaining a client's functional skills, ADL skills, medication compliance and support resources; counseling of the client or family (which includes significant support persons as long as more than 1 client is represented); training in leisure activities consistent with client's goals/desired results; medication education.

**Example:** Case manager leads a group of 10 clients on Lieberman module to develop conversational skills.

Site Location	SFC	Activity Code	Activity (An indicator for <u>family/significant other</u> involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	52	105	MHS, Group Rehabilitation (not psychotherapy), RS	M/C GF	All except #9.
		9115	MHS, CalWORKS/GROW Group Rehabilitation (not psychotherapy)	DPSS	
		9093	MHS, SAMHSA/ADP Group Rehabilitation (not psychotherapy), RS (DMH Only)	SAMHSA	
	53	1723	MHS, AB1733/2994 Group Rehabilitation (not psychotherapy), RS	AB1733/ 2994	
	5		MHS, SEP Group Rehabilitation (not psychotherapy), RS	SEP/	
	57	8004	MHS, FP Group Rehabilitation (not psychotherapy), RS	Family Pres	

**Notes:**

- Co-therapist time must be documented in the progress note with justification.
- See Medi-Cal Lockouts on Page 26.

W/P Section 44-3 Page 16 of 10  
 Prepared by: SP Date: 9/23/08  
 Reviewed by: CE Date: 11/11/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**MEDICATION SUPPORT (MODE 15)**

**MEDICATION SUPPORT**

Services include prescribing, administering, dispensing, and monitoring of psychiatric medication(s) or biologicals necessary to alleviate the symptoms of mental illness which are provided by a staff person within the scope of practice of his/her profession. Activities also include evaluation of the need for medication and the effects of the medication prescribed, obtaining informed consent, medication education. *Inclusive of travel, plan development and documentation time.*

**Example:** A client exhibiting major depressive symptoms is referred to a psychiatrist for evaluation and treatment. Once informed consent is obtained and medication is prescribed, a nurse explains the medication regimen and possible side effects to his/her significant other. A follow-up session is scheduled.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <sup>+</sup> <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	60	1727	MED, AB1733/2994 Medication Support, RS.	AB1733/2994	#1 <sup>+</sup> , #5, #6, #7, and #9
	61	0116	MED, SEP Medication Support, RS	SEP	
	62	035	MED, Medication Support, RS	Medicare M/C GF	
		9116	MED, CalWORKS/GROW Medication Support	DPSS	
		9094	MED, SAMHSA/ADP Medication Support, RS (DMH Only)	SAMHSA	
	65	9008	MED, PATH Homeless Grant Medication Support, RS	PATH	
	67	8011	MED, FP Medication Support, RS	Family Pres	

**Notes:**

- When a physician and a nurse provide Medication Support services to a client, the time of both staff should be claimed. If one note is written covering both staff, one claim is made; if 2 notes are written, 2 claims are made. In the unusual circumstance where the client or significant other is not present, plan documentation is reimbursable without a direct contact. If a staff person ineligible to claim Medication Support participates in the contact, then a separate note must be written documenting service time as either TCM or MHS.
- Medication Support services is reimbursable up to a maximum of 4 hours a day per client.

<sup>+</sup> Medicare reimburses only for medication support services provided in the Office to Medicare recipients by a physician.

W/P Section  
 Prepared by: SP Date: 2/23/02  
 Reviewed by: OK Date: 1/5/02



**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**CRISIS INTERVENTION (MODE 15)**

**CRISIS INTERVENTION**

Crisis Intervention means a service, lasting less than 24 hours, provided to or on behalf of a client for a condition that requires more timely response than a regularly scheduled visit. Service activities may include but are not limited to assessment, collateral and therapy. Crisis intervention is distinguished from crisis stabilization by who delivers the service and where. Crisis stabilization can only be delivered by eligible providers at a site certified by the State to provide the service. *Inclusive of travel, plan development and documentation time.*

**Example:** A walk-in client states her mother who was her sole support system has just died. She is hysterical, crying and unable to make short-term plans for herself. Client is assisted to set priorities, focus on discrete, very short term and limited goals. A follow-up session is scheduled.

If any portion of the service a qualified staff provides is Medication Support, the time spent providing that service should be claimed to Medication Support.

Site Location	SFC	Activity Code	Activity (An indicator for <u>family/significant other</u> involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail		<del>75</del> <del>1745</del>	CI, SEP Crisis Intervention, RS	S AB	All except #9.
	75	1745	CI, AB1733/2994 Crisis Intervention, RS	AB1733/ 2994	
	76	8032	CI, FP Crisis Intervention, RS	Family Pres	
	77	141	CI, Crisis Intervention, RS	M/C GF	
		9117	CI, CalWORKS/GROW Crisis Intervention	DPSS	

**Note:**

- See Medi-Cal Lockouts on Page 26.

W/P Section \_\_\_\_\_ Page 18/40  
 Prepared by: AP Date: 9/23/08  
 Reviewed by: OP Date: 1/15/10

Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers

**DAY SERVICES (MODE 10)**

**DAY TREATMENT INTENSIVE, HALF DAY**

An organized and structured multi-disciplinary treatment program designed as: 1) an alternative to hospitalization or placement in a more restrictive setting or 2) to maintain the client in a community setting or out-of-home placement. Services are provided to a distinct group of clients as part of a packaged program available for more than 3 but no more than 4 hours a day each day that the program is open. The program focuses on symptom reduction of severely impaired and low functioning clients. Activities may include assessment, therapy, crisis intervention, Service Plan development, rehabilitation, collateral and charting. Medication services are not included.

For SED children, this service focuses on social and functional skills necessary for appropriate development and social integration. It may be integrated with an educational program. Contact with families of these clients is expected.

**Example:** Client is just released from hospital, continues to respond to internal stimuli even while on medication, has trouble focusing on daily living skills and needs to be seen 5 days a week if possible. Approach is to enroll client in program for a limited short-term course of treatment with the goal of reducing symptomology and transitioning client to a less intensive mental health service.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			Day, SEP Day Treatment Intensive, Half Day, RS	AB3632	All except #9, but only #1 - #8 count as part of the staffing ratio.
	82	430	Day Treatment Intensive, Half Day, RS	M/C GF	Note: an LPHA must be included in the staffing.

**Notes:**

- Staff to client ratio is 1:8. An LPHA (see Page III) must be included in the staffing. When clients exceed 12, staff must be from at least 2 disciplines.
- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.

W/P Section  
 Prepared by: [Signature]  
 Date: 9/23/08  
 Reviewed by: [Signature]  
 Date: 11/11/08

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
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Clinic Service Providers**

**DAY TREATMENT INTENSIVE, FULL DAY**

Same as *Day Treatment Intensive, Half Day*, but the length of the program exceeds 4 hours each day.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	85	435	Day Treatment Intensive, Full Day, RS	M/C GF	All except #9, but only #1-#8 count as part of the staff ratio.
		846	Day, SEP Day Treatment Intensive, Full Day, RS	SEP/	Note: an LPHA must be included in the staffing.

**Notes:**

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:8. An LPHA (see Page III) must be included in the staffing. When clients exceed 12, staff must be from at least 2 disciplines.

W/P Section 44-3 Page 20/114  
 Prepared by: AP Date: 9/23/08  
 Reviewed by: AC Date: 1/2/10

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**DAY REHABILITATIVE, HALF DAY**

An organized, structured program providing evaluation, rehabilitation and therapy to restore or maintain personal independence and functioning consistent with requirements for learning and development. Services are provided to a distinct group of clients as part of a packaged program for at least 3 but no more than 4 hours each day that the program is open. Activities may include assessment, therapy, crisis intervention, Service Plan development, rehabilitation, collateral and charting. Medication services are not included.

For SED children, this service focuses on maintaining them in their community and schools consistent with their requirements for learning, development and enhanced self-sufficiency. It may be integrated with an educational program Contact with families of these clients is expected.

**Example:** Patient is anxious, is unable to relate to peers, stays isolated, and has difficulty with daily living activities. Attends program 3 days a week with goal of decreasing anxiety and increasing ability to interact with others and ability to perform skills of daily living.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office <input type="checkbox"/> Field <input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail	92	429	Day Rehabilitative, Half Day, RS	M/C GF	All except #9, but only #1 - #8 count as part of the staff ratio.
		9121	Day, CalWORKS/GROW Day Rehabilitative, Half Day	DPSS	
	94	840	Day, SEP Day Rehabilitative, Half Day, RS	AB5052	

**Notes:**

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:10.

W/P Section  
 Prepared by: SP Date: 9/23/03  
 Reviewed by: DR Date: 11/9/02

**Guide To Community Mental Health Rehabilitation Service Activity Codes  
for  
Clinic Service Providers**

**DAY REHABILITATIVE, FULL DAY**

Same as *Day Rehabilitative, Half Day*, but the length of the program exceeds 4 hours each day.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
<input type="checkbox"/> Office	98	434	Day Rehabilitative, Full Day, RS	M/C GF	All except #9, but only #1 - #8 count as part of the staff ratio.
<input type="checkbox"/> Field		9122	Day, CalWORKS/GROW Day Rehabilitative, Full Day	DPSS	
<input type="checkbox"/> Tel. <input type="checkbox"/> Inpt. <input type="checkbox"/> Jail			Day, SEP Day Rehabilitative, Full Day, RS	EP/	

**Notes:**

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:10.

9/29/08  
Winnie Suen

### Plan Summary



Options	Plan ID	Name	Start Date	End Date	Staff
Return	1000	CGF	7/1/2002	12/31/2010	
	1001	MCF	7/1/2002	12/31/2010	
Add Plan	2002	DCFS - AB1733/2994	7/1/2002	12/31/2010	Sam Chan
	2003	AB34/2034	7/1/2002	7/1/2008	Maria Funk
	2004	AB3632-SEP	7/1/2002	12/31/2010	Paul McIver
	2006	CalWORKs	7/1/2002	12/31/2010	Doloresé Daniel
	2007	Cromio (MIOCR1)	7/1/2002	6/30/2004	Maria Funk
	2008	CSOC	7/1/2002	1/11/2005	Sam Chan
	2009	D Rate Foster Care	7/1/2002	12/31/2010	Paul McIver
	2010	Dual Diagnosis Program	7/1/2002	12/31/2010	Sam Sheehe
Filter By:	2011	DCFS-Family Preservation	7/1/2002	12/31/2010	Sam Chan
Plan Name	2013	GRÖW	7/1/2002	12/31/2010	Doloresé Daniel
For:	2014	HIV/AIDS Program	7/1/2002	12/31/2010	Fernando Escarcega
	2015	HUD	7/1/2002	12/31/2010	Maria Funk
	2021	MIOCR II ( For Mom)	7/1/2002	6/30/2004	Judy Hao
	2023	PATH	7/1/2002	12/31/2010	Maria Funk

Search

1 2 3 4 5

Confidential patient information, see California Welfare and Institutions Code Section 5328

W/P Section 4A-3 Page 23/40  
Prepared by: [Signature] Date: 9/29/08  
Reviewed by: [Signature] Date: 11/5/10

**Tab 17**

## Ryan, Christopher

---

**From:** Paul McIver <PMcIver@dmh.lacounty.gov>  
**Sent:** Monday, October 06, 2008 5:36 PM  
**To:** Ryan, Christopher; Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen  
**Cc:** Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie  
**Subject:** RE: HDS and HDSII

The previous audit was before the advent of the IS, ( Plans) so we were still in the MIS ( Activity Codes) The basis for the inquiry was my own suspicion and also of the auditor, that some contractors and directly operated clinics were sometimes confused about the proper coding of claims. We took a small sample and found enough mistakes in the sample to warrant looking at about 1500 cases.

The key then, as it would still be now, is that all AB 3632 students are deemed eligible through the assessment process. All assessments to establish eligibility are conducted in just two reporting units: 1939 or 7437. So in the review of episode overview screens, we threw out any claims that did not link to an episode of assessment in 1939 or 7437.

---

**From:** Ryan, Christopher [mailto:cryan@sco.ca.gov]  
**Sent:** Monday, October 06, 2008 5:14 PM  
**To:** Paul McIver; Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen  
**Cc:** Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie  
**Subject:** RE: HDS and HDSII

Paul,

In the previous case when you printed 1,500 client episode screens, was this due to a lack of a unique identifier for AB 3632?

Basically, what we are trying to get from the county is the population of clients and their units that support the units claimed. Initially, we were told that the county uses AB 3632 plan as the identifier. The AB 3632 identifier only supports a portion of the claimed units (roughly 20%-30%). Subsequently, it appears that the contractor units are commingled in EPSDT/SDMC plan identifier. Again, we need the county to identify the client population and their units of service that support the claim in order to select a sample of client files to test.

If tomorrow doesn't work maybe Wednesday would be better.

*Christopher B. Ryan, CIA*  
*Audit Manager*  
*Mandated Costs Bureau*  
*Division of Audits*  
*State Controller's Office*  
*(916) 327-0696*

---

**From:** Paul McIver [mailto:PMcIver@dmh.lacounty.gov]  
**Sent:** Monday, October 06, 2008 04:40 PM  
**To:** Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen  
**Cc:** Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie  
**Subject:** RE: HDS and HDSII

I am only available for a conference call tomorrow after 4:00pm.



Also, during the previous audit of this program, there were similar questions about which claims were attributable to AB 3632 students. Ultimately, we printed about 1,500 client episode overview screens, which I personally reviewed one by one, and eliminated about 15% of the claims as ineligible ( miscoded) for AB 3632. We may have to do that again.

---

**From:** Pilipyuk, Anna [mailto:APilipyuk@sco.ca.gov]  
**Sent:** Monday, October 06, 2008 4:12 PM  
**To:** Yaghobyan, Hasmik; Winnie Suen  
**Cc:** Paul McIver; Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie  
**Subject:** RE: HDS and HDSII

Winnie,

We understand that the CD that you had provided to us on 10/24/2008 includes the AB3632 units unidentified by AB 3632 Plan (Plan ID Code 2004). But the CD's units only partially support the Los Angeles claims since many of contract providers used MC/EPSTDT Funding Source Plan instead of AB 3632 Funding Source Plan. Contract providers failed to identify AB 3632 population with AB 3632 Funding Source Plan. Instead, contract providers commingled AB 3632 and non-AB 3632 clients under the MC/EPSTDT Funding Source Plan. Los Angeles County noted that discrepancy and required contract providers to prepare supplemental detail to MH 1901 schedule B to identify AB 3632. We received supplemental detail to MH 1901 schedule B for each contract provider for FY 2003-04, FY 2004-05, and FY 2005-06. But we still do not know how contract providers identify the AB 3632 units. You stated that "*Contract providers need to provide the back up documentation with the AB 3632 Client Name/Client Identification Number in order for us to extract the eligible AB3632 units in the MC/EPSTDT plan*". Do you mean that County MH employees manually go over each client file to verify his/her eligibility?

I would like to schedule the conference call for tomorrow (10/7/08) afternoon (any time in afternoon that is suitable to Los Angeles County) so we could discuss all the outstanding issues. I also would like if Paul McIver and Hasmik Yaghobyan would be present during the conference call. My supervisor number is 916-327-0696. Please let me know if the date and time are suitable for you.

We would prepare the document request from information we had been provided so far and e-mail it to you tomorrow.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

-Anna

*Anna Pilipyuk*  
Auditor, Division of Audits  
State Controller's Office  
(916) 323-4206 - phone  
(916)324-7223 - fax  
apilipyuk@sco.ca.gov

---

**From:** Yaghobyan, Hasmik [mailto:HYAGHOBYAN@auditor.lacounty.gov]  
**Sent:** Monday, October 06, 2008 02:43 PM  
**To:** Winnie Suen; Pilipyuk, Anna

**Cc:** Paul McIver; Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie  
**Subject:** RE: HDS and HDSII

Thanks Winnie.

---

**From:** Winnie Suen [mailto:WSuen@dmh.lacounty.gov]  
**Sent:** Monday, October 06, 2008 1:59 PM  
**To:** Pilipyuk, Anna  
**Cc:** Yaghobyan, Hasmik; Paul McIver; Ryan, Christopher; jeJohnson@sco.ca.gov; Michael Boyle; Genciana Macalalad  
**Subject:** RE: HDS and HDSII

Hi Anna,

You can get the AB3632 reporting units from the CD that we provided to you as follows:

**(1) FY 2004-05 and 2005-06**

Data from the Integrated System (IS) - Filter the AB3632 Plan (Plan ID Code 2004), you will get the reporting units for the AB3632 services.

One of our contract providers, Pacific Clinics, was still using the MHMIS in FY 2004-05 and partial year in FY 2005-06. Their AB3632 units of service will be based on MHMIS and the unique service function codes (SFCs) until they rolled out to the IS during FY 2005-06.

**(2) FY 2003-04**

There are two dataset files for FY 2003-04, data from MIS (UOS MIS 04) and data from IS (UOS IS Data 04). For MIS data (UOS MIS 04), units are recorded under the AB3632 SFCs. You can get the AB3632 reporting units and services by filter the Fund Priority Code D060. For IS data (UOS IS Data 04), you can filter the AB3632 plan (Plan ID 2004).

In addition, client information can be used to run the IS data to extract AB3632 units of service. Contract providers need to provide the back up documentation with the AB 3632 Client Name/Client Identification Number in order for us to extract the eligible AB3632 units in the MC/EPSTDT plan. Contract providers certified the accuracy of their cost report and supposed to maintain the back up detail for audit purpose.

Attached for your reference are the reporting units that provide AB3632 units of service. We extract the information from the files in the CD based on (1) and (2) above.

Please let me know if you have any questions and the next step.

Winnie

---

**From:** Pilipyuk, Anna [mailto:APilipyuk@sco.ca.gov]  
**Sent:** Monday, October 06, 2008 9:38 AM  
**To:** Winnie Suen  
**Cc:** HYAGHOBYAN@auditor.lacounty.gov; Paul McIver; Ryan, Christopher; Johnson, John E.  
**Subject:** HDS and HDSII

Winnie,

In order for us to select a sample, the County must identify the client population that makes up the units charged to the program. If AB 3632 Funding Source Plan does not work for contract providers, then how contract providers identify AB3632 units of service reported on the supplemental form LAC102. You had mentioned that contract providers are responsible for the AB3632 units of service reported on the supplemental form LAC102. Does LA County verify how contract providers identify AB 3632 units?

In order for us to continue with testing, we would need the county to provide the following information:

1. AB 3632 identifier each contract provider;
2. Brake down of AB 3632 clients between reporting units (RU) within each legal entity for FY 2003-04, FY 2004-05, and FY 2005-06. (From that report we would be able to select RUs for testing);
3. Once we have selected our sample of RUs, we would be able to request detailed reports for each selected RU. (detailed reports would need to include the following information: client's ID, service provided, minutes/units, date, duration of the service); and
4. Once we have received detailed reports of selected RUs, we would be able to request clients' files.

If you have any questions, please do not hesitate to contact me.

Thank you,  
-Anna

*Anna Pilipyuk*  
Auditor, Division of Audits  
State Controller's Office  
(916) 323-4206 - phone  
(916)324-7223 - fax  
apilipyuk@sco.ca.gov

**Tab 18**

**COUNTY OF LOS ANGELES**

MARVIN J. SOUTHARD, D.S.W.  
Director

ROBIN KAY, Ph.D.  
Chief Deputy Director

RODERICK SHANER, M.D.  
Medical Director



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**DEPARTMENT OF MENTAL HEALTH**

<http://dmh.lacounty.gov>

600 S. COMMONWEALTH AVE., 2<sup>nd</sup> fl., LOS ANGELES, CALIFORNIA 90005

Reply To: Child, Youth & Family Program Admin.  
Countywide Case Management / Interagency Program  
Phone: (213) 739-2334  
Fax: (213) 738-8521

May 11, 2009

TO: Anna Pilipyuk, Auditor  
Division of Audits

FROM: Paul Melver, LCSW, District Chief  
Child, Youth, and Family Program Administration

SUBJECT: **RESPONSES TO QUESTIONS OF APRIL 22, 2009**

**ELIGIBILITY**

Soon after our telephone conference call of March 12, 2009, I requested and received the claims data file from John Ortega of our Chief Information Office. I requested the claims data for FY 02-03, FY 03-04, FY 04-05, and FY 05-06, the entire period which is subject to your current audit. The claims data file was supposed to contain all claims for services in which "AB 3632" was identified as the " PLAN", regardless of the source of funding for the services, consistent with DMH policy and practice for claiming Units of Service in the Integrated System ( IS).

Upon receipt of the data, my Administrative Assistant, Marina Taylor, reviewed the entire file and annotated each case as "YES" (eligible for AB 3632) or "NO" (ineligible for AB 3632). She did not review each claim line, but used the seven digit identifier for each client and cross referenced each client in the IS, looking for a prior episode of assessment in Provider # 1939, #7191; or #7437, the only authorized providers of AB 3632 Assessment in Los Angeles County during the past fifteen years.

Upon completion of this first round of reviews, we selected a sample of 122 clients from 20 different agencies, including some contract agencies as well as some directly operated county programs. Each of the 122 selected were from the pool of "INELIGIBLE" clients identified by Ms. Taylor's review. We sent letters to the agencies requesting "proof of eligibility", as evidenced by a copy of an Assessment Report, an IEP, or at the very least, a Letter of Referral from one of my Assessment Unit staff. (See attached sample letter)

The responses to the letter were inconsistent. Indeed, some agencies sent copies of the aforementioned "proof of eligibility", and after my review, Ms. Taylor updated the annotated data file to indicate "Yes", when eligibility was confirmed. In some cases, agencies notified me that they did not have the proof of eligibility requested, and that in

Anna Pilipyuk, Auditor  
May 11, 2009  
Page 2

most cases the clients were also eligible for EPSDT/MediCal, which was the funding utilized for the services attributed to "AB 3632" in error. Incredibly, some agencies sent in information that clearly proved that the clients were INELIGIBLE. It is my belief that the vast majority of errors are related to inaccurate coding and are attributable to the confusion and inadequate training at the time of the implementation of the IS system.

As noted above, Ms. Taylor and I did not do any tests of the individual claim lines to validate the services. One would need to compare the claims against the clinical records and IEP documents to determine if the services delivered were appropriate and consistent with the IEP. The tasks performed by Ms. Taylor and I did not address the issues of duplicate transactions, ineligible services, and miscoded services, but rather only to verify that the clients for whom services were claimed were indeed eligible as "AB 3632" students. Approximately ten days ago, I discovered that the data files sent to me by John Ortega did not contain all of the data for the entire audit period as I had requested. The data for FY 05-06 was omitted, so the detailed review conducted by Ms. Taylor covered only FY 02-03, FY 03-04, and FY 04-05.

I will forward under separate cover the updated file that Ms. Taylor was working from, if that would be helpful. I am not sure what data John Ortega sent to you, or if he modified it after Ms. Taylor reviewed it for me.

### **REHABILITATION**

Los Angeles County does not provide, and has never authorized rehabilitation services to any AB 3632 eligible clients. As you may know, Los Angeles County filed a test claim with the Commission on State Mandates seeking inclusion of rehabilitation services in the menu of mandated and reimbursable services under AB 3632. In 2005, the Commission ruled that such services are not mandated and not reimbursable, so we have never included recommendations for rehabilitation in our assessment reports and to the best of my knowledge it has never appeared in any student IEPs.

Even when State DMH issued DMH Information Notice # 08-15 on June 23, 2008, which indicated that rehabilitation could be provided and funded with IDEA or State General Funds, I felt that State DMH was incorrect. We maintained our position that it is neither mandated nor reimbursable, despite vehement protestations from both local and statewide mental health service providers.

To be clear, rehabilitation is a legitimate mental health service in the EPSDT/ MediCal program, and there are clients who are eligible under both programs (EPSDT/MediCal and AB 3632). If clients received rehabilitation services, it was under the EPSDT /MediCal program and was not indicative of an AB 3632 related service.

Anna Pilipyuk, Auditor  
May 11, 2009  
Page 3

As you know, State DMH recently rescinded DMH Information Notice # 08-15, confirming my position on this issue.

**MODE 60 SFC 63**

To date, I have been unable to complete my evaluation and research on this issue. I am going to be out of town at a conference from May 12 through May 17. You have been very patient on this, and I assure you I will address this upon my return to give you a written response to your questions.

If you have any questions about any of the above information, please contact me.  
Thank you

PM:ya

Attachment

c: Hasmik Yaghobyan, Auditor-Controller  
Winnie suen, DMH

**Tab 19**



**Pilipyuk, Anna**

**From:** Pilipyuk, Anna  
**Sent:** Wednesday, April 22, 2009 02:26 PM  
**To:** HYAGHOBYAN@auditor.lacounty.gov; Paul McIver; 'Winnie Suen'; John Ortega  
**Cc:** Ryan, Christopher; Johnson, John E.; Read, Rebecca  
**Subject:** HDS and HDSII audits

**Importance:** High

To all,  
I would like to update everyone on the current audit status and follow up on some outstanding issues.

We received UOS data yesterday (4/21/2009). The file included FYs 2001-09 (we requested only FY 2002-06). We had difficulty downloading and querying the data because all years were included in data table. In addition, the Medi-Cal units column was inadvertently deleted. I spoke to John Ortega this morning and he stated that he will post new data (broken by FYs and including Medi-Cal units) by the close of business today.

Paul,

We have some questions on how you and your staff arrived to the list of all the eligible clients:

1. What is the total population of eligible clients?
2. In terms of client eligibility, what steps did you take to verify eligibility?
3. Did you discover any ineligible clients? If so, how many?
4. What portion of the total population did you test?
5. Did you perform tests to validate the services provided? If so, what steps did you perform to verify services?
6. Do you feel that the steps performed address all of the issues noted in testing? These issues include duplicate transactions, ineligible services and miscoded services.

We also wanted to follow up with you on Mode 60 SFC 63. During our last conference call you stated that you would like to research this matter before providing a response. Specifically, you were going to respond as to why the county believes that the pre-services are eligible in accordance with the parameters and guidelines of the program. We have not heard from you on this matter.

Furthermore, we have some questions on rehabilitation services:

1. Does Los Angeles County provide any rehabilitation services? If yes, how does the county identify the services?
2. Does Los Angeles County provide any rehabilitation (Mode 15) to AB3632 clients?
3. Does the county include any rehabilitation services in the claim?

Thank you,  
-Anna

**Anna Pilipyuk**  
Auditor  
State Controller's Office

Division of Audits - Mandated Cost  
(916) 323-4206 - phone  
(916) 324-7223 - fax  
apilipyuk@sco.ca.gov

Prepared by: AP Date: 12/18/09  
Reviewed by: CR Date: 12/22/09

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**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 November 26, 2014, I served the:

**State Controller's Office (SCO) Comments**

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

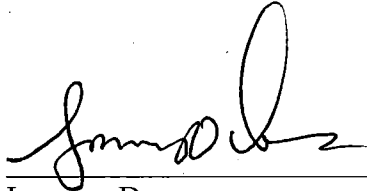
Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274

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 November 26, 2014 at Sacramento, California.



---

Lorenzo Duran

Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 11/26/14

**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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jhurst@counties.org

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