



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



MARVIN J. SOUTHARD, D.S.W.  
Director  
ROBIN KAY, Ph.D.  
Chief Deputy Director  
RODERICK SHANER, M.D.  
Medical Director

**RECEIVED**  
March 26, 2015  
*Commission on  
State Mandates*

March 25, 2015

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

Dear Ms. Halsey:

**LOS ANGELES COUNTY REBUTTAL TO  
STATE CONTROLLER'S OFFICE COMMENTS TO IRC NO. 13-4282-I-06  
(Handicapped and Disabled Students Program)**

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

We appreciate your consideration of this information.

Sincerely,

*Robin Kay Ph.D.*

Robin Kay, Ph.D.  
Chief Deputy Director

RK:lw

c: Lyn Wallensak

**Los Angeles County IRC No. 13-4282-I-06**  
Handicapped and Disabled Students Program  
Fiscal Years 2003-04, 2004-05 and 2005-06  
Rebuttal to State Controller's Office Comments

**Introduction**

The following is the County of Los Angeles' response to the State Controller's Office's (SCO) comments on the County's Incorrect Reduction Claim (IRC) in which the County is contesting the disallowance of costs associated with the County's provision of State-mandated mental health services under the Handicapped and Disabled Students Program (Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985) for the period of July 1, 2003, through June 30, 2006. Of the \$26,924,935 in claimed costs for this three-year period, the SCO disallowed \$18,382,526.

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

- Fiscal Year 2003-04: \$5,247,918<sup>1</sup>
- Fiscal Year 2004-05: \$6,396,075<sup>2</sup>
- Fiscal Year 2005-06: \$6,536,836<sup>3</sup>

**SCO Comments and County Response**

The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position.

The Program's Parameters and Guidelines provide for two possible claiming methods: Either the Cost Report Method or the **Actual Increased Cost Method**. As described in detail in the County's IRC, the County contends the Cost Report Method of claiming is a cost allocation, or reasonable reimbursement, method. The naming conventions, along with the fact that the purpose of the Cost Report is to allocate costs among various funding sources, support this conclusion.

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<sup>1</sup> The SCO's audited "allowance" resulted in a negative balance of \$954,297. The SCO thus made a bottom-line adjustment to remove \$954,297 of IDEA funds from the off-setting revenues and then retroactively applied this amount to the audited allowance of the Seriously and Emotionally Disturbed Pupil Out-of-State Placement Program, thereby reducing the amount of SB 90 funds owed for that program. This IRC requests acknowledgement of this adjustment and seeks reinstatement of the original claim amount of \$4,293,621 plus the \$954,297.

<sup>2</sup> This amount represents the audit disallowance of \$7,047,989 less \$389,212 associated with the disallowance of costs associated with residential placements, which the County has elected not to challenge, and \$262,702 associated with the double-counting of certain assessment costs due to the re-filed claims based on the CSM Reconsideration Decision.

<sup>3</sup> This amount represents the audit disallowance of \$7,040,916 less \$239,779 associated with the disallowance of costs associated with residential placements, which the County has elected not to challenge, and \$264,301 associated with the double-counting of certain assessment costs due to the re-filed claims based on the CSM Reconsideration Decision.

As discussed in the County's IRC, for the relevant time periods, the CSM's authority to include a cost allocation or reasonable reimbursement methodology in the parameters and guidelines was clearly established in California law. Significantly, however, the SCO's authority to audit the application of a reasonable reimbursement methodology was not established until 2008, after the Legislature enacted, and the Governor signed, Assembly Bill 1222 on October 8, 2007, adding Government Code Sections 17561(d)(1)(C) and 17561(d)(2). The SCO, therefore, had no authority to audit the claims in question as the law providing it with such authority was not in effect during the periods in question.

The SCO also disputes that, even if it had the authority to audit, it used an incorrect audit methodology. However, the SCO in its comments (p. 19) states "Our objective was to determine whether the costs of the county-filed claims are reimbursable under the program's parameters and guidelines. This includes **tracing costs of county-filed claims to source documentation** to ascertain the validity and accuracy of the costs." (Emphasis supplied)

In utilizing the Cost Report Method, the County followed the instructions of the California Department of Mental Health (CDMH). In each case, the Cost and Reporting Financial System (CRFS) Instruction Manuals specifically required a separate form (Form 1909 SEP in Fiscal Year 2003-04 and Form 1912 in Fiscal Years 2004-05 and 2005-06) be completed for the Special Education Program (SEP), the CDMH designation for the mandated services county mental health agencies are required to provide under the Handicapped and Disabled Students Program.

As described in the 2004-05 and 2005-06 CFRS Instruction Manuals, the purpose of Form 1912 (which replaced Form 1909 SEP used in prior years) is to:

"identify total SEP costs, regardless of funding source. The MH 1912 SEP will be used for reporting total program costs associated with the SEP mandate to the California Legislature and the California Department of Education (CDE). **Additionally, for those counties submitting SB 90 Claims for this program, the MH 1912 SEP will be the supporting documentation for that claim.**" (Emphasis supplied)

The SCO determined that this supporting documentation was "untestable." In its comments, the SCO also cited other "issues" it had with the forms. The format and the required information were determined by the State, specifically CDMH. The fact that the SCO has issues with the form is not within the County's control to address.

The County attempted to accommodate the SCO by extracting data from its claims processing information systems. However, as the SCO acknowledges, repeated attempts to develop a "query" that would extract the data from the County's Mental Health Management Information

System (MHMIS) and Integrated System (IS) generated results that were unreliable.<sup>4</sup> The “fourth generation” query used by the SCO for its audit report suffered from similar problems, grossly understating the services provided including leaving out services by some legal entities in their entirety, as shown in County exhibits A-10 through A-12. Relying on data queries – especially when the data being queried was not the source documentation for the claim – is inappropriate.

According to the State cost report instructions and the program Parameters and Guidelines, the cost report, and specifically form 1909 or 1912, is the supporting documentation for the claim. In turn, this form is compiled utilizing the information provided, and attested to, by each legal entity (i.e., a provider of mental health services) in its own cost report. Each of these cost reports relies, ultimately, on the legal entity’s internal records of services. While the legal entity may utilize information from the County’s information systems, they may make adjustments to account for data entry errors and other factors. The source documentation, therefore, would be in each agency’s internal records and these are the documents that the SCO should have used in conducting the audit.

As identified in the IRC, the County attempted to work with the SCO to revise the audit report and recognize claims that had not been identified in the “fourth generation” query. In November 2010, the County requested the SCO reconsider its audit findings and issue a new audit report. After several conference calls, the SCO agreed to engage in a reconsideration process. In April 2011, the County began the process of trying to identify and validate additional units of service that had been excluded from the data run, as well as recalculating off-setting reimbursements and correcting other calculations made in the audit. In June 2012, this documentation was submitted to the SCO. The SCO worked with the County through March 2013 to assess and validate the information. However, in a letter dated May 7, 2013, the SCO suddenly informed the County it would not continue with the reconsideration request and the County would need to file an IRC.

The SCO in its comments continues to insist that any such “new” information cannot be considered once the audit is concluded because any additional funds paid would be a “gift of public funds” under the State Constitution and Government Code. Such a claim is preposterous. Expenditures of public funds are not “gifts” within the Constitutional prohibition if

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<sup>4</sup> The MHMIS and IS are the Los Angeles County Department of Mental Health (LAC DMH) claim processing information systems in use during Fiscal Years 2003-04 through 2005-06. Both systems, and two versions of the IS, 1.0 and 1.1, were in use during these fiscal years and different agencies transitioned to the newer systems at different times. Further complicating any attempt to extract data is the fact that when queries were run for the audit, LAC DMH had switched to IS Version 2.0. By that time, MHMIS data was stored in a data warehouse and was “static.” However, data in the IS is “live”. Therefore, information generated based on queries in the IS Version 2.0, is based on the programming of the system as it exists on the day the data is run, not as it appeared at the time. As a result, a particular procedure code may map to a different Mode and Service Function Code when a query is run than versus at the time the service was rendered.

expended for a *public purpose*. That which constitutes a public purpose is within the sound discretion of the Legislature, and not within the SCO's arbitrary determinations. Further, accurately reimbursing a county for costs it incurred pursuant to a State-imposed mandate cannot reasonably be construed to constitute a gift of public funds. In this case, the County is seeking the accurate and full recognition of costs the County incurred in the provision of State-mandated services, correction to offsetting revenues because of erroneous assumptions made by the SCO, and the recognition of pre- and post-IEP services that are mandated under the program.

Further, as described in the IRC, the concept of equitable set-off would apply regardless. Equitable set-off is a right developed by the courts many years ago as an exercise of their equitable powers, and their inherent obligation to do justice. Under equitable set-off, a party which owes money to another entity (hereafter "debtor") as part of a transaction which has mutual debits and credits, is permitted to apply the credits against the debt, ultimately leaving the debtor liable only for the balance.<sup>5</sup> A complete discussion of equitable set-off was included in the original IRC and for brevity will not be repeated here.

### Conclusion

In providing services to pupils under the Handicapped and Disabled Students Program, the County incurred State-mandated costs that have been inappropriately disallowed by the SCO. Therefore, the County requests the Commission reinstate \$18,180,829 of claimed costs.

As noted above and in the IRC, the County relied on CDMH instructions and forms in compiling the claim in accordance with the Cost Report Method. As the Cost Report Method is a cost allocation method, the SCO did not have statutory authority to conduct the audit and, even if it did, its audit protocols were incorrect. Finally, at a minimum, the County would request reinstatement of costs that were disallowed on audit based on the identification of additional claim lines, errors made in calculations, and the erroneous disallowance of certain claims based on the mode or procedure code.

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<sup>5</sup> Plut v. Fireman's Fund Insurance (2000) 85 Cal. App. 4<sup>th</sup> 89, 106

**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.

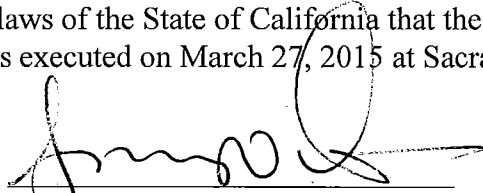
On March 27, 2015, I served the:

**Claimant Rebuttal 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 March 27, 2015 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:** 2/19/15

**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.)

**Socorro Aquino**, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Lacey Baysinger**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

**Danielle Brandon**, Budget Analyst, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

danielle.brandon@dof.ca.gov

**Allan Burdick**,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

**Gwendolyn Carlos**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcs@aol.com

**Marieta Delfin**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

**Dorothy Holzem**, *California Special Districts Association*

1112 I Street, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dorothyh@csda.net

**Justyn Howard**, *Program Budget Manager, Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-1546

justyn.howard@dof.ca.gov

**Edward Jewik**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

**Jill Kanemasu**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

**Robin Kay**, *County of Los Angeles*

**Claimant Representative**

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

Phone: (213) 738-4108

rkay@dmh.lacounty.gov

**Jay Lal**, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0256

JLal@sco.ca.gov

**Kathleen Lynch**, *Department of Finance (A-15)*

915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

kathleen.lynch@dof.ca.gov

**Geoffrey Neill**, *Senior Legislative Analyst, Revenue & Taxation, California State Association of Counties (CSAC)*



1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
gneill@counties.org

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Christian Osmena**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

**Arthur Palkowitz**, *Stutz Artiano Shinoff & Holtz*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@sashlaw.com

**Keith Petersen**, *SixTen & Associates*  
P.O. Box 340430, Sacramento, CA 95834-0430  
Phone: (916) 419-7093  
kbsixten@aol.com

**Jai Prasad**, *County of San Bernardino*  
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA  
92415-0018  
Phone: (909) 386-8854  
jai.prasad@atc.sbcounty.gov

**Kathy Rios**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-5919  
krios@sco.ca.gov

**Lee Scott**, *Department of Finance*  
15 L Street, 8th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
lee.scott@dof.ca.gov

**David Scribner**, *Max8550*  
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670  
Phone: (916) 852-8970  
dscribner@max8550.com

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-5849  
jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
DSpeciale@sco.ca.gov

**Evelyn Suess**, Principal Program Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
evelyn.suess@dof.ca.gov