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STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: INCORRECT REDUCTION CLAIMS

January 1, 2016 – December 31, 2016

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INTRODUCTION

Government Code section 17602 requires the Commission on State Mandates (Commission) to report to the Legislature “the number of individual and consolidated incorrect reduction claims decided during the preceding calendar year and whether and why the reduction was upheld or overturned.” This report fulfills that requirement.

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

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

This report includes a summary of the 21 IRCs completed by the Commission between January 1, 2016 and December 31, 2016. This includes three IRCs that were settled and withdrawn as a result of the Commission’s strategic approach to prioritizing for hearing those claims with many cross cutting issues and facilitating the work of the Controller and claimants in reevaluating pending IRCs consistent with the Commission’s decisions.

SUMMARY OF COMPLETED CLAIMS

A. Decided Incorrect Reduction Claims

Child Abduction and Recovery, 08-4237-I-02 and 12-4237-I-03

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;
Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5;
Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988
Fiscal Years 1999-2000, 2000-2001, 2001-2002, 2003-2004,
2004-2005, 2005-2006, and 2006-2007

Claimant: County of Santa Clara

Incorrect Reduction Claim Filed: January 28, 2009 and November 29, 2012

Decision Adopted: March 25, 2016

In these consolidated IRCs, the County of Santa Clara challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1999-2000 through 2001-2002 and 2003-2004 through 2006-2007 under the *Child Abduction and Recovery* program. By the time this matter went to hearing, the only issue in contention was whether the Controller's reductions totaling \$1,183,619 for salaries, benefits, and related indirect costs claimed for fiscal years 1999-2000 through 2001-2002, and 2003-2004 were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission denied these IRCs.

The Commission found that the Controller's reduction of costs for fiscal year 1999-2000 through 2001-2002 was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The payroll documentation provided by the claimant to the Controller, which did not specify the time spent on the program, does not comply with the documentation requirements of the Parameters and Guidelines. Moreover, based on the evidence in the record, the Controller's decision to reject the time study that claimant later prepared using data from later fiscal years as inadequate documentation to support the costs claimed for all the employees is not arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller considered the claimant's arguments and all relevant factors, and has demonstrated a rational connection between those factors and the decision made to reject the time study. The Commission cannot substitute its judgment for that of the Controller on audit decisions.

The Commission also found that the Controller's reduction of salary and benefit costs for fiscal year 2003-2004 was not arbitrary, capricious, or entirely lacking in evidentiary support. For this reimbursement claim, the claimant resubmitted the same time study conducted to support fiscal year 2003-2004 claimed costs, with a summary of the time study results and a projection of the results to a full fiscal year. The Controller determined that the claimant's time study did not adequately support the time claimed for fiscal year 2003-2004 because the time study included three employee classifications that the county did not include in their claim for reimbursement; the time study period included a holiday week when employees worked fewer hours; and actual timesheets kept for January 2005 through June 2005 showed varying changes in staffing levels and workload. Since the claimant did not provide time logs or other adequate documentation supporting the time spent on the mandate in fiscal year 2003-2004, the Controller extrapolated employee hours identified on timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year, instead of reducing costs to \$0. The Commission found that there is no evidence in the record that the Controller's rejection of the claimant's time study or the Controller's calculation of employee costs for fiscal year 2003-2004, is arbitrary, capricious, or entirely lacking in evidentiary support.

Domestic Violence Treatment Services – Authorization and Case Management, 07-9628101-I-01

Penal Code Sections 273.5(e), (f), (g), (h), and (i); 1000.93, 1000.94, 1000.95, and 1203.097
Statutes 1992, Chapters 183 and 184; Statutes 1994, Chapter 28X; Statutes 1995, Chapter 641
Fiscal Years 1998-1999, 1999-2000, and 2000-2001

Claimant: County of Santa Clara

Incorrect Reduction Claim Filed: August 15, 2007

Decision Adopted: March 25, 2016

In this IRC, the County of Santa Clara challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Domestic Violence Treatment Services – Authorization and Case Management* program. The Commission denied this IRC for lack of jurisdiction.

The Commission found that the three-year period of limitations for filing an IRC began to accrue when the final audit report was issued on February 26, 2004. Because this IRC was filed August 15, 2007, more than three years later, it was not timely filed and therefore the Commission has no jurisdiction to hear and decide this IRC.

Enrollment Fee Collection and Waivers, 13-9913-I-01

Education Code Section 76300; Statutes 1984, 2d Ex. Sess., Chapter 1;
Statutes 1984, Chapters 274, and 1401; Statutes 1985, Chapters 920 and 1454;
Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136;
Statutes 1991, Chapter 114; Statutes 1992, Chapter 703;
Statutes 1993, Chapters 8, 66, 67 and 1124; Statutes 1994, Chapters 153 and 422;
Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58501-58503, 58611-58613, 58620, and 58630
Fiscal Years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003,
2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

Claimant: Gavilan Community College District

Incorrect Reduction Claim Filed: March 26, 2014

Decision Adopted: July 22, 2016

This IRC challenged the State Controller's (Controller's) finding that the Gavilan Community College District (claimant) claimed unallowable costs of \$3,766,932 for the Enrollment Fee Collection and Waivers program for fiscal years 1998-1999 through 2007-2008. The Controller found unsupported and ineligible salaries and benefits and contract services claimed, overstated indirect cost rates, and overstated offsetting savings and reimbursements. The claimant disputed the merits of these audit findings, and argued that the audit was not completed within the two year deadline in Government Code section 17558.5 and was therefore void.

The Commission found there is no evidence in the record that the audit was completed within the two-year deadline in Government Code section 17558.5, and thus, the audit findings are void.

In late comments on the Draft Proposed Decision, the Controller stated that is not challenging the proposed conclusion and recommendation, and has pulled the audit report off of its website and notified the claimant of its withdrawal. According to the Controller, "The State will pay the district for the withdrawn audit findings upon availability of funds."¹ However, because the IRC was not withdrawn by the claimant prior to the hearing, the Commission was required to render a decision. Therefore, the Commission approved this IRC and requested that the Controller reinstate all costs reduced totaling \$3,766,932, in accordance with Government Code section 17551(d) and section 1185.9 of the Commission regulations.

¹ Exhibit D, Controller's Late Comments on the Draft Proposed Decision, page 1.

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

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892);
Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Chapter 1, Sections 60020,
60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26],
Final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years 2002-2003 and 2003-2004

Claimant: County of Los Angeles

Incorrect Reduction Claim Filed: June 11, 2013

Decision Adopted: July 22, 2016

In this IRC, the County of Los Angeles challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2002-2003 and 2003-2004 under the *Handicapped and Disabled Students II* program. The Commission denied this IRC.

The Controller's Final Audit Report was dated May 28, 2010. Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later. After a review of the record and the applicable law, the Commission found that the IRC was untimely filed.

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

Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632);
Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(Emergency regulations filed December 31, 1985, designated effective January 1, 1986
[Register 86, No. 1] and refiled June 30, 1986,
designated effective July 12, 1986 [Register 86, No. 28])
Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Claimant: County of Los Angeles

Incorrect Reduction Claim Filed: August 2, 2013

Decision Adopted: July 22, 2016

In this IRC, the County of Los Angeles challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004 through 2005-2006 under the Handicapped and Disabled Students program. The Commission denied this IRC.

The Controller's Final Audit Report was dated June 30, 2010. Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013. Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days later. After a review of the record and the applicable law, the Commission found that the IRC was untimely filed.

Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services; and Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services, 11-9705-I-02 and 12-9705-I-03

Government Code Section 7576 as amended by Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110 Fiscal Years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006

AND

Government Code Sections 7571, 7572, 7572.5, 7572.55, 7576, 7581, and 7586 as added by Statutes 1984, Chapter 1747 (AB 3632); and as amended by Statutes 1985, Chapter 1274 (AB 882); Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200 and 60550 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and refiled June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26]; Final regulations effective August 9, 1999 [Register 99, No. 33])² Fiscal Years 2006-2007, 2007-2008, and 2008-2009

Claimant: County of Orange

Incorrect Reduction Claim Filed: November 9, 2011 and March 8, 2013

Decision Adopted: September 23, 2016

The County of Orange challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2000-2001 through 2005-2006 under the *Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services* program and claims filed for fiscal years 2006-2007 through 2008-2009 under the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program. The Commission denied these consolidated IRCs.

The Commission found that the Controller's reduction of costs claimed by the County of Orange for board and care and treatment services for out-of-state residential placement of SED pupils in facilities organized and operated for-profit was correct as a matter of law. During the entire reimbursement period for this program, state law and the Parameters and Guidelines required that out-of-state residential programs that provide board and care and treatment services to SED pupils shall be organized and operated on a nonprofit basis. The Parameters and Guidelines further require the claimant to provide supporting documentation for the costs claimed.

Some of the residential facilities were not organized and operated on a nonprofit basis. Other vendor payments made by the claimant were made to nonprofit corporations, but those corporations contracted with for-profit facilities to provide the services. And the claimant did not provide any documentation to support the nonprofit status of some of the facilities, and admitted the for-profit status of the other facilities.

² Note that this caption differs from the Test Claim and Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the statutes and executive orders and the specific sections approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Former Education Code Section 72246 (Renumbered as Section 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

and Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Claimant: Foothill-DeAnza Community College District

Incorrect Reduction Claim Filed: October 5, 2009 and November 22, 2010

Decision Adopted: May 26, 2016

The Foothill-DeAnza Community College District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2002-2003 through 2005-2006 under the *Health Fee Elimination* program. The Commission denied these consolidated IRCs.

The Commission found that the audit was both timely initiated and timely completed in accordance with Government Code section 17558.5. Additionally, the Commission concluded that it does not have jurisdiction to consider the adjustments to indirect costs for fiscal year 2004-2005 that resulted in an increase to the reimbursement claim; and does not have jurisdiction to consider the 2005-2006 reimbursement claim in its entirety, because there is no reduction for that fiscal year. Furthermore, the Commission found that reductions of indirect costs claimed for fiscal years 2002-2003 and 2003-2004, based on the claimant's failure to obtain federal approval for its indirect cost rate calculated pursuant to the federal OMB Circular A-21 method, and the Controller's recalculation of indirect costs using another method authorized by the Parameters and Guidelines and claiming instructions, were correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission further found that the reduction of costs based on understated offsetting health fee authority was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Notification of Truancy, 13-904133-I-13

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 2007-2008, 2008-2009, and 2009-2010

Claimant: Riverside Unified School District

Incorrect Reduction Claim Filed: November 15, 2013

Decision Adopted: January 22, 2016

Riverside Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2007-2008 through 2009-2010 under the *Notification of Truancy* program, totaling \$68,410. The Commission denied this IRC.

The Commission found that the reduction totaling \$68,410, based on the Controller's sampling and extrapolation methodology, for initial notifications of truancy distributed for pupils who had fewer than three unexcused absences or tardiness occurrences during the school year and for pupils who accumulated fewer than three absences while between the ages of six and 18 and so were not subject to the compulsory education laws, is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Peace Officers Procedural Bill of Rights, 10-4499-I-01

Government Code Sections 3301, 3303, 3304, 3305, and 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Claimant: County of Santa Clara

Incorrect Reduction Claim Filed: September 16, 2010

Decision Adopted: March 25, 2016

The County of Santa Clara challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004, 2004-2005, and 2005-2006 under the *Peace Officers Procedural Bill of Rights* program, totaling \$526,802. The Commission denied this IRC.

The Commission found that the Controller properly reduced costs claimed for activities that go beyond the scope of the mandate and that the reductions are correct as a matter of law. The denied activities primarily involved investigating officer misconduct or procedural requirements that fall under pre-existing state and federal due process protections that were not approved for reimbursement in the Test Claim and Parameters and Guidelines. In addition, Finding 5 disallowed travel and training costs that the Controller held were unrelated to the mandated activities.

Peace Officers Procedural Bill of Rights, 12-4499-I-02

Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

Claimant: City of Los Angeles

Incorrect Reduction Claim Filed: September 28, 2012

Decision Adopted: May 26, 2016

The City of Los Angeles challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004 through 2007-2008 under the *Peace Officers Procedural Bill of Rights* program, totaling \$21,464,469. The Commission denied this IRC.

The Commission found that the reduction of costs claimed for unallowable salaries, benefits, and related indirect costs in audit Finding 1 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Of the nine administrative activities claimed, the Controller found only two are allowable: (1) updating status changes in POBOR case files, and (2) updating the database and noting the case assignment to an investigator for adjudication. The seven disallowed activities were found to be beyond the scope of the mandate because they involve managing case files for investigations and disciplinary cases. The Parameters and Guidelines authorize reimbursement only for developing or updating policies, specific mandate-related training, and updating the status of POBOR cases.

Regarding the reductions for the 15 investigative activities claimed, described as: “time for conducting investigations, collecting evidence, writing reports, and editing reports.” The Parameters and Guidelines provide for reimbursement only for providing notice of the nature of the interrogation, tape recording the interrogation, providing access to the tape or transcription, as specified; and compensating an officer for an investigation that occurs during off-duty time, where necessitated by the seriousness of the investigation. The Commission expressly denied reimbursement to conduct an investigation, collect evidence, write reports, edit reports, prepare for the interrogation, or conduct the interrogation.

Of the 16 activities claimed under “adverse comment”, the audit found that five are not reimbursable because they are part of the investigation process: (1) investigating the circumstances surrounding the adverse comment; (2) preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken and that can include report writing, interviews, or any activity where information is gathered for the complaint form; (3) “time spent by an Area [sic] to investigate the complaint” after the preliminary investigation; (4) the assigned advocate reviews the investigation for status and thoroughness; and (5) the time needed to conduct any additional investigations. The Parameters and Guidelines provide for reimbursement only to provide notice and an opportunity to respond to an adverse comment (if not already required by existing due process requirements), to obtain the signature of the officer on an adverse comment, and review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

School District of Choice: Transfers and Appeals, 11-4451-I-05

Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, 48209.14
Statutes 1993, Chapter 160 (AB 19); Statutes 1994, Chapter 1262 (AB 2768)
Fiscal Year 1997-1998

Claimant: Chula Vista Elementary School District

Incorrect Reduction Claim Filed: July 29, 2011

Decision Adopted: July 22, 2016

The Chula Vista Elementary School District challenged reductions made by the Controller to reimbursement claims filed for fiscal year 1997-1998 under the *School District of Choice: Transfers and Appeals* program, totaling \$25,081. The Commission approved this IRC.

The Commission found that the IRC was filed in a timely manner, but there was no evidence in the record that the Controller initiated the audit before the statutory deadline. Therefore, the Commission found that the Controller's audit is void. The Commission requested that the Controller, in accordance with Government Code section 17551(d) and section 1185.9 of the Commission's regulations, reinstate to the claimant all costs incorrectly reduced.

Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services, 12-9705-I-04

Government Code Section 7576 as amended by Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110³
Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Claimant: County of Los Angeles

Incorrect Reduction Claim Filed: May 7, 2013

Decision Adopted: October 28, 2016

The County of Los Angeles challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2003-2004 through 2005-2006 under the *Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services* program, totaling \$5,746,047 (Findings 1 and 3). The Commission denied this IRC.

The Commission found that the Controller’s reduction of costs claimed for vendor services provided by out-of-state residential programs that are organized and operated on a for-profit basis (Finding 1) is correct as a matter of law. The Parameters and Guidelines for this program track the regulatory language and state that reimbursement is authorized for payments to service vendors providing mental health services to SED pupils placed in out-of-state residential facilities, as specified in California Code of Regulations, title 2, section 60100. Section 60100(h) states that out-of-state residential programs shall meet the requirements in Welfare and Institutions Code section 11460(c)(2) through (3) and 11460(c)(3) specifies that “State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home *organized and operated on a nonprofit basis.*” The July 21, 2006 correction to the Parameters and Guidelines clarifies that “mental health services” provided to these students includes residential board and care. Thus, reimbursement for the mandated activity of “providing mental health services” in out-of-state facilities includes both treatment and board and care, which is conditioned on the providers meeting the requirements of Welfare and Institutions Code section 11460(c)(3), to be organized and operated on a nonprofit basis. The law does not support the claimant’s position that the mental health treatment portion of the out-of-state “residential program” be excluded from the requirement that the “program” be organized and operated on a nonprofit basis.

In Finding 3, the Controller found that the claimant used an indirect cost rate methodology that is inconsistent with other related mandate programs. The Controller further found that the claimant, in some instances, applied a rate based on costs two years prior and, in other instances, applied a rate based on actual claim year costs. The disparate rates were applied to expenses in the same pool of costs, resulting in significant fluctuations in rates from year to year. The Controller recalculated indirect costs using actual rates applicable to the appropriate fiscal year and applied the rate to eligible costs. The claimant did not specifically address the reasons for the Controller’s reductions relating to the indirect cost rate. Thus, the Commission found that there is no evidence in the record that the Controller’s findings in Finding 3 are incorrect as a matter of law, or are arbitrary, capricious, or entirely lacking in evidentiary support.

³ Note that this caption differs from the Test Claim and Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the Parameters and Guidelines at issue in this case.

Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services,
10-9705-I-01 and 13-9705-I-05

Government Code Section 7576 as amended by Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110⁴
Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Claimant: County of San Diego

Incorrect Reduction Claim Filed: November 10, 2010 and September 9, 2013

Decision Adopted: May 26, 2016

The County of San Diego challenged reductions made by the Controller to reimbursement claims filed for fiscal years 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006 under the *Seriously Emotionally Disturbed Pupils (SED): Out-of-State Mental Health Services* program, totaling \$2,626,697. The Commission denied these consolidated IRCs.

The Commission found that the Controller's reduction of costs for fiscal years 2001-2002 through 2005-2006 is correct as a matter of law. State law and the Parameters and Guidelines required out-of-state residential programs that provide board and care and treatment services to SED pupils shall meet the requirements of Welfare and Institutions Code section 11460(c)(2) through (3), which specified that reimbursement shall only be provided to facilities organized and operated on a nonprofit basis. The claimant contended that state law conflicted with federal law which did not limit the placement of SED pupils to nonprofit facilities. Absent a decision from the courts on this issue, however, the Commission is required by law to presume that state statutes and duly adopted regulations, are valid.⁵ Accordingly, reimbursement is required only if the out-of-state service vendor is organized and operated on a nonprofit basis. Costs for out-of-state for-profit service vendors are beyond the scope of the mandate.

In this case, the Controller concluded, based on a service agreement provided by the claimant, that the vendor payments made by the claimant to Mental Health Systems, Inc., a California nonprofit corporation are not reimbursable because Mental Health Systems, Inc. contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide the board and care and treatment services for SED pupils. Since the facility providing the treatment and board and care is a for-profit facility, the Controller correctly found that the costs were not eligible for reimbursement under the Parameters and Guidelines and state law. The decisions issued by the Office of Administrative Hearings (OAH) and the United States Supreme Court that claimant relies upon to argue for subvention are not applicable in this case because those cases do not address the subvention requirement of Article XIII B section 6 of the California Constitution. Moreover, the claimant has provided no documentation or evidence that the costs claimed in the subject reimbursement claims were incurred as a result of a court order finding that no other alternative placement was identified for a SED pupil during the audit years in question.

⁴ Note that this caption differs from the Test Claim and Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim and Decision. Generally, a parameters and guidelines caption should include only the statutes and executive orders and the specific sections approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

⁵ California Constitution, article III, section 3.5; *Robin J. v. Superior Court* (2004) 124 Cal.App.4th 414, 425.

The Stull Act, 14-9825-I-01

Education Code Sections 44660-44665
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4
Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001,
2001-2002, 2002-2003, 2003-2004, and 2004-2005

Claimant: Oceanside Unified School District

Incorrect Reduction Claim Filed: July 17, 2010

Decision Adopted: September 23, 2016

The Oceanside Unified School District challenged reductions made by the Controller to reimbursement claims filed for fiscal years 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005 under *The Stull Act* program, totaling \$1,270,420. The Commission partially approved this IRC.

The Commission found that the reduction of costs based on the number of employees evaluated under the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant did not provide any evidence of the employees evaluated during the audit. After the audit, however, the claimant provided the Controller with documentation showing that 1,698 employees were evaluated under the mandate during the audit period. The Controller found that of the 1,698 employees listed by the claimant that received evaluations for the audit period, 1,149 evaluations fell within the scope of the mandate. The claimant agrees with this finding, except for a small number of evaluations in fiscal year 1997-1998. The claimant, however, does not provide sufficient evidence to rebut the Controller's findings for that fiscal year.

In addition, the Commission found that, based on this record, the Controller's reduction of costs to \$0 is arbitrary, capricious, or entirely lacking in evidentiary support. The Controller agreed that the claimant performed the required evaluations under the mandate and concluded that 1,149 evaluations were performed by the claimant during the audit period and, thus, a reduction of costs to \$0 was not supported by the record. However, the parties dispute the time taken to perform the mandate. The claimant alleges that each evaluation took five to ten hours, and later asserted that each evaluation took 2.5 hours based on time studies conducted by other school districts. There is no evidence in the record to support the conclusion that it took the claimant's employees 2.5 hours, or five to ten hours, to conduct the evaluations under the mandate. The Controller had offered to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated (which results in reimbursement of \$35,967, which includes both direct and indirect costs), based on the claimant's time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form; teacher evaluation forms provided by the claimant that disclosed 30 minutes of actual classroom observation; and the Controller's review of a sample of written evaluations for teachers for fiscal years 2006-2007 and 2007-2008. There is no evidence in the record that the Controller's findings are wrong, or that the Controller's offer to apply the 30 minutes to the evaluations conducted in fiscal years 1997-1998 through 2004-2005 is arbitrary, capricious, or entirely lacking in evidentiary support.

Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requested that the Controller reinstate \$35,967, which includes both direct and indirect costs, to the claimant.

B. Withdrawn Incorrect Reduction Claims

The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC is settled and the claimant withdraws the IRC. The claimant and the Controller can also negotiate a resolution independent of Commission staff. For other claims, an IRC is withdrawn after Commission staff has issued a draft proposed decision but before the proposed decision is heard by the Commission. Even though the IRC is withdrawn, there is still a significant amount of staff resources committed to the preparation of the draft proposed decision.

A total of three IRCs were resolved by the parties and withdrawn by the claimant between January 1, 2016 and December 31, 2016. Below is a breakdown of those withdrawn IRCs:

Firefighter's Cancer Presumption (CSM 4081)

- 09-4081-I-01

Health Fee Elimination (CSM 4206)

- 10-4206-I-33

Integrated Waste Management (00-TC-07)

- 13-0007-I-01

STRATEGIC APPROACH TO IRC BACKLOG REDUCTION

The remaining 23 IRCs are currently tentatively scheduled for hearing between January 2017 and September 2018. However, because IRCs have the lowest priority for hearing, their scheduling may be pushed to a later date if other items with higher priority, such as test claims, are filed. Whether elimination of the IRC backlog will take more time than current staff expectation will depend on a variety of factors, including the time involved to resolve the currently pending and recently reactivated stormwater permit (NPDES) test claims. Fourteen pending test claims addressing stormwater are now active, after a decision was recently issued by the California Supreme Court on the Los Angeles Municipal Stormwater test claim, and will be prioritized over pending IRCs. These test claims are perhaps the largest (with records exceeding 10,000 pages) and most complex claims that have come before the Commission, and they will take significantly more time and Commission resources than average claims. This already has and will continue to delay completion of the IRC backlog, though continued progress is expected.

The Commission remains committed to continuing to eliminate the entire IRC backlog by adhering to the first-in-time policy, unless circumstances justify an exception. The following are strategies the Commission is employing to more efficiently decide matters, with a goal of eliminating the backlog as soon as possible: (1) claim consolidation; and (2) cross cutting issues.

1. Claim Consolidation – It may be appropriate in some cases to consolidate IRCs so that one analysis and decision adopted by the Commission support multiple claims. Government Code section 17558.8 and section 1185.6 of the Commission's regulations allow the executive director to consolidate IRCs. However, consolidation has been used sparingly for IRCs because it only works if the issues of law and fact are the same, and the Controller's auditors were consistent in making claim reductions based on similar documentation. Commission staff is working with Controller staff and the claimant community to identify situations where claims can be consolidated.

2. Cross Cutting Issues – Commission staff is working with the Controller and members of the claimant community to identify issues that are common to multiple IRCs. If the Commission decides an issue in one matter that is contested in other matters, the time required to complete those other matters will be reduced. For example, in 2010, the Commission adopted decisions on the County of Los Angeles and the City of Tustin *Investment Reports* IRCs. Commission staff also conducted several informal conferences with the parties to encourage the informal resolution of the remaining claims. Commission staff prepared stipulations, which were signed by many of the parties, in which the Controller agreed to reevaluate the IRCs on the *Investment Reports* program consistent with the Commission’s prior decisions on the IRCs with cross cutting issues. The claimants also agreed to make available to the Controller, as may be requested, all documentation in support of claimed costs. In doing so, the Commission resolved certain issues that were common to nearly all of the *Investment Reports* IRCs and which helped to spur the resolution of the remaining IRCs on that program.