



September 9, 2016

Ms. Mary Wickham
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County of Los Angeles
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Los Angeles, CA 90012-2713

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Deputy County Counsel
County of Los Angeles
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713

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

Re: **Proposed Decision**

16-RAD-01

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

Government Code Sections 7572.55 and 7576;

Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Sections 60020, 60050,
60030, 60040, 60045, 60055, 60100, 60110, 60200

(Emergency regulations effective July 1, 1998 [Register 98, No. 26]

final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years 2002-2003 and 2003-2004

County of Los Angeles, Requester

AND

16-RAD-02

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, Section 60040

(Emergency regulations filed December 31, 1985, designated effective January 1, 1986
[Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986
[Register 86, No. 28]

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

County of Los Angeles, Requester

Dear Ms. Wickham and Mr. Lee:

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

Hearing

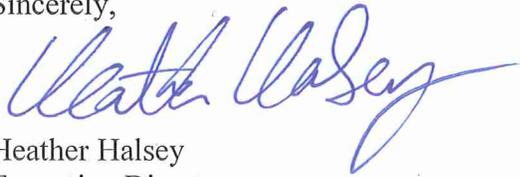
This matter is set for hearing on **Friday, September 23, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Ms. Wickham and Mr. Lee
September 9, 2016
Page 2

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,



Heather Halsey
Executive Director

ITEM 5
PROPOSED DECISION
REQUEST FOR RECONSIDERATION OF AN ADOPTED DECISION

16-RAD-01

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

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

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

Fiscal Years 2002-2003 and 2003-2004

AND

16-RAD-02

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

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

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

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

County of Los Angeles, Requester

EXECUTIVE SUMMARY

Overview

Pursuant to Government Code section 17559(a) and section 1187.15 of the Commission on State Mandate's (Commission's) regulations, the County of Los Angeles (claimant/requester¹) filed two Requests for Reconsideration of an Adopted Decision (RADs) for IRC 12-0240-I-0, *Handicapped and Disabled Students II (HDS II)* and IRC 13-4282-I-06, *Handicapped and Disabled Students (HDS)*.

¹ Hereinafter requester.

In ruling on the two IRCs, the Commission found that both IRCs had been untimely filed. Consequently, the Commission denied both IRCs by a vote of 6-0 on that basis.²

The requester now asks that the Commission order a reconsideration of the adopted Decisions in those IRCs due to an alleged error of law.³ The Requests for Reconsideration make two substantive legal arguments:

1. The statute of limitations is an affirmative defense that must be raised by the opposing party (in this case, the Controller), and the Controller failed to do so.⁴
2. The Commission improperly raised on its own motion (*sua sponte*) the limitations defense, erroneously relying upon the United States Supreme Court decision titled *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132.⁵

Reconsideration is a two-hearing process. Before the Commission considers a RAD, Commission staff is required to prepare a written analysis and recommend whether the RAD should be granted. Five affirmative votes are required to grant the RAD and to schedule the matter for a hearing on the merits.

Staff recommends that the Commission decline to hear the substance of the RAD because the requester has failed to meet its diligence requirement; the requester had the opportunity to make these legal arguments at or prior to the Commission's hearing of the IRCs, but has not provided an explanation of why it failed to do so.

Procedural History

On June 11, 2013, the requester filed IRC 12-0240-I-0, *Handicapped and Disabled Students II*. On August 2, 2013, the requester filed IRC 13-4282-I-06, *Handicapped and Disabled Students*.

On May 20, 2016, Commission staff issued the Draft Proposed Decisions.⁶ On June 10, 2016, the requester filed comments on the Draft Proposed Decisions.⁷

At its July 22, 2016 meeting, the Commission denied both IRCs.⁸

² Exhibit E, pages 261-263 (*HDS* vote), 276-277 (*HDS II* vote) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

³ Exhibit A, 16-RAD-01, pages 1 to 6; Exhibit B, 16-RAD-02, pages 9 to 12.

⁴ Exhibit A, 16-RAD-01, pages 4 to 5; Exhibit B, 16-RAD-02, pages 10 to 11.

⁵ Exhibit A, 16-RAD-01, pages 5 to 6; Exhibit B, 16-RAD-02, pages 11 to 12.

⁶ Exhibit D-1, pages 129-162 (Draft Proposed Decision in *HDS II*), Exhibit C-1, pages 13-49 (Draft Proposed Decision in *HDS*).

⁷ Exhibit D-2, pages 163 to 170 (Claimant's Comments on the Draft Proposed Decision in *HDS II*), Exhibit C-2, pages 50-57 (Claimant's Comments on the Draft Proposed Decision in *HDS*).

⁸ Exhibit E, pages 263 to 279 (hearing on *HDS II* IRC), pages 244 to 262 (hearing on *HDS* IRC) (Excerpts of Reporter's Transcript of Proceedings, Commission on State Mandates, July 22, 2016).

On August 26, 2016, the requester filed RADs on both decisions.⁹

Commission Responsibilities

Government Code section 17559(a) grants the Commission, within a limited statutory timeframe, the authority to reconsider a prior final decision: “The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party.”

Reconsideration is a two-hearing process. Before the Commission considers a request for reconsideration of an adopted decision, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted.¹⁰ Five affirmative votes are required to grant a request for reconsideration and schedule the matter for a hearing on the merits.¹¹

If the Commission grants a request for reconsideration, Commission staff is required to prepare a draft proposed decision on the merits to issue for comment.¹² A subsequent hearing on the merits must then be conducted to determine if the adopted decision in question must be revised to correct an error of law.¹³ Five affirmative votes are required to revise a previously adopted decision.¹⁴

Issue

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

Issue	Description	Staff Recommendation
Has the requester met the diligence requirement by providing a satisfactory explanation of why it failed to raise the legal issues earlier?	A party moving for reconsideration must establish its diligence by providing a satisfactory explanation of why it failed to make its legal arguments earlier. Without such a diligence requirement, disappointed litigants could routinely file reconsideration motions asserting new legal theories.	<i>Deny</i> — The limitations arguments which the requester now makes for the first time in its RADs could have been made at or prior to the Commission’s July 2016 hearing. The RADs provide no explanation of why requester failed to make its legal arguments at or prior to the Commission’s July 2016 hearing.

⁹ Exhibit A, 16-RAD-01, pages 1 to 6. Exhibit B, 16-RAD-02, pages 7 to 12.

¹⁰ California Code of Regulations, Title 2, Section 1187.15(f).

¹¹ California Code of Regulations, Title 2, Section 1187.15(f).

¹² California Code of Regulations, Title 2, Section 1187.15(g)(1)(A).

¹³ California Code of Regulations, Title 2, Section 1187.15(g).

¹⁴ California Code of Regulations, Title 2, Section 1187.15(g)(2).

Staff Analysis

Neither the Government Code nor the Commission's regulations specify the criteria to be used in determining whether or not a RAD is to be heard. However, the fact that the Commission regulations create a two-hearing process requiring a super-majority of five affirmative votes at each hearing implies that RAD requests are not favored. Commission decisions, adopted after a full opportunity for written and oral argument by the parties, are final and binding, and serve to exhaust the parties' administrative remedies.¹⁵ Thus, the Commission's approval of a RAD on the merits of an alleged error of law in a prior final decision is limited.

In this respect, the Commission's RAD process is similar to that for reconsiderations in the Superior Court. Before a Superior Court will hear the merits of a motion for reconsideration on the basis of alleged legal error, the moving party must meet a "diligence requirement" by providing "a satisfactory explanation for the failure to present [the law] earlier."¹⁶ "A party seeking reconsideration of a prior order based on 'new or different facts, circumstances or law' must provide a satisfactory explanation for failing to present the information at the first hearing; i.e., a showing of *reasonable diligence*."¹⁷

The First District Court of Appeal explained in 1997 that, absent a diligence requirement, disappointed litigants would routinely file reconsideration motions asserting new legal theories:

If counsel need not explain the failure to earlier produce pertinent legal authority that was available, the ability of a party to obtain reconsideration would expand in inverse relationship to the competence of counsel. Without a diligence requirement the number of times a court could be required to reconsider its prior orders would be limited only by the ability of counsel to belatedly conjure a legal theory different from those previously rejected, which is not much of a limitation.¹⁸

The RADs contain no explanation of why requester's legal theories regarding the statute of limitations were not presented at or prior to the Commission's hearing on the IRCs. Therefore, staff concludes that the requester has failed to satisfy its diligence requirement.

A review of the record reveals that the requester had the opportunity to present its limitations arguments, but failed to do so.

The legal arguments which the requester now asserts on reconsideration were not asserted by the requester in its written comments on the Draft Proposed Decisions filed June 10, 2016, nor in the arguments made by the requester at the Commission hearing on July 22, 2016.

The RADs contain no explanation of why these legal arguments were not made earlier. The reported court decisions cited by the requester in the RADs are dated 1965, 1996, 1999 and

¹⁵ *California School Boards Ass'n v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

¹⁶ *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1200.

¹⁷ Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 9:328 (emphasis in original).

¹⁸ *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199.

2012.¹⁹ The U.S. Supreme Court's *John R. Sand & Gravel Co.* opinion was issued in 2008. The requester does not cite any recently enacted or newly decided law in its RADs. The RADs are based on court rulings which were readily available to the requester before the Commission's July 2016 hearing — court rulings which the requester inexplicably failed to cite or argue.

Finally, the record contains no explanation of why these readily available legal arguments were not made earlier.²⁰ Staff therefore concludes that the record does not establish that the requester acted with sufficient diligence to have its RADs heard.

Staff recommends that the Commission decline to hear the substance of the RADs.

Conclusion

Staff concludes that the requester has failed to satisfy its diligence requirement. The RADs contain no explanation of why requester's legal theories regarding the statute of limitations were not presented at or prior to the Commission's hearing on the IRCs.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision declining to order a reconsideration and authorize staff to make any technical, non-substantive changes following the hearing.

¹⁹ Exhibit A, 16-RAD-01, pages 3 to 6; Exhibit B, 16-RAD-02, pages 9 to 12.

²⁰ Exhibit A, 16-RAD-01, pages 3 to 6; Exhibit B, 16-RAD-02, pages 9 to 12.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE REQUEST FOR
RECONSIDERATION OF AN ADOPTED
DECISION:

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892);
Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2,
Chapter 1, Sections 60020, 60030, 60040,
60045, 60050, 60055, 60100, 60110, 60200
(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

Filed on August 26, 2016

AND

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

Filed on August 26, 2016

County of Los Angeles, Requester

Case Nos.: 16-RAD-01 and 16-RAD-2

Handicapped and Disabled Students II, 12-
0240-I and *Handicapped and Disabled
Students*, 13-4282-I-06

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

(Adopted September 23, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided these consolidated Requests for Reconsideration of an Adopted Decision (RADs) during a regularly scheduled hearing on September 23, 2016. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a RAD is Government Code Section 17559(a), California Code of Regulations, title 2, section 1187.15, and related constitutional, statutory, regulatory, case, and common law.

The Commission [adopted/modified/rejected] the Proposed Decision as its Decision by a vote of [vote count will be included in the adopted Decision] as follows²¹:

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

Summary of Findings

Pursuant to Government Code section 17559(a) and section 1187.15 of the Commission’s regulations, the County of Los Angeles (claimant/requester²²) has filed two RADs of prior Incorrect Reductions Claim (IRC) Decisions adopted by the Commission on July 22, 2016. The Commission denied both IRCs on the basis that they were not timely filed within the statute of limitations required by section 1185.1 of the Commission’s regulations. The requester now contends that the two decisions need to be reconsidered to correct an error of law. The executive director has consolidated the two, nearly identical RADs for this hearing.

Reconsideration is a two-hearing process. Before the Commission determines whether the substance of a requester’s legal argument is correct, the Commission must decide whether or not to hear the RAD at all. A super-majority of five affirmative votes is required to grant the RADs and schedule them for hearing on the merits.

The Commission denies the consolidated RADs because the requester has provided no explanation of why its legal theories were not presented at or prior to the Commission’s July 22, 2016 hearing on the underlying IRCs.

²¹ A vote by the Commission to order a reconsideration requires a minimum of five votes to pass. “Five affirmative votes shall be required to grant the request for reconsideration.” California Code of Regulations, title 2, section 1187.15(f).

²² Hereinafter requester.

COMMISSION FINDINGS

I. Chronology

- 07/22/2016 Commission denied IRC 12-0240-I-01, *Handicapped and Disabled Students II*, by 6-0 vote.²³
- 07/22/2016 Commission denied IRC 13-4282-I-06, the *Handicapped and Disabled Students* by 6-0 vote.²⁴
- 07/27/2016 Commission served Adopted Decision for 12-0240-I-01.²⁵
- 07/27/2016 Commission served Adopted Decision for 13-4282-I-06.²⁶
- 08/26/2016 Requester filed 16-RAD-01 on the Adopted Decision for 12-0240-I-01, *Handicapped and Disabled Students II*.²⁷
- 08/26/2016 Requester filed 16-RAD-02 on the Adopted Decision for 13-4282-I-06, *Handicapped and Disabled Students*.²⁸

II. Background

Pursuant to Government Code section 17559(a) and section 1187.15 of the Commission's regulations, the requester asks that the Commission order a reconsideration of the Decisions adopted July 22, 2016, which denied IRCs 12-0240-I-01 and 13-4282-I-06.²⁹ Both IRCs were denied because they were untimely filed pursuant to section 1185.1 of the Commission's regulations, and, thus, the Commission did not have jurisdiction to hear and decide them.³⁰

Reconsideration Process

Government Code section 17559(a) and section 1187.15 of the Commission's regulations authorize the Commission, within a very limited timeframe, to order a reconsideration of all or

²³ Exhibit E, pages 263 to 277 (hearing on *HDS II* IRC) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

²⁴ Exhibit E, pages 244 to 262 (hearing on *HDS* IRC) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

Throughout this Decision, the *HDS II* program will usually be referred to prior to the *HDS* program, because, between the two IRCs, the IRC in the *HDS II* program was filed first and bears the lower case number.

²⁵ Exhibit D-4, pages 211 to 234 (Adopted Decision in *HDS II*), pages 231-234 (proof of service).

²⁶ Exhibit C-4, pages 102 to 128 (Adopted Decision in *HDS*), pages 125 to 128 (proof of service).

²⁷ Exhibit A, 16-RAD-01, pages 1 to 6.

²⁸ Exhibit B, 16-RAD-02, pages 7 to 12.

²⁹ Exhibit A, 16-RAD-01, pages 1 to 6; Exhibit B, 16-RAD-02, pages 7 to 12.

³⁰ Exhibit D-4, pages 221 to 229 (limitations analysis in Adopted Decision in *HDS II* program); Exhibit C-4, pages 113 to 123 (limitations analysis in Adopted Decision in *HDS* program).

part of an adopted decision on an IRC on petition of any party to correct an error of law. Section 17559(a) states the following:

The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire 30 days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of the 30-day period, the commission may grant a stay of that expiration for no more than 30 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

Reconsideration is a two-hearing process. Before the Commission considers a RAD, Commission staff is required to prepare a written analysis and recommend whether the RAD should be granted.³¹ Five affirmative votes are required to grant the RAD and schedule the matter for a hearing on the merits.³²

If the Commission grants the RAD, Commission staff is required to prepare a draft proposed decision on the merits to issue for comment.³³ A subsequent hearing on the merits must then be conducted to determine if the adopted decision in question must be revised to correct an error of law.³⁴ Five affirmative votes are required to revise a previously adopted decision.³⁵

Underlying Facts of Both IRCs

In 2013, the requester filed two IRCs, challenging the Controller's reductions to its mandate reimbursement claims. The first IRC was filed on June 11, 2013, *Handicapped and Disabled Students II*, 12-0240-I-01, and alleged that the Controller had incorrectly reduced costs incurred during fiscal years 2002-2003 and 2003-2004. The second IRC was filed on August 2, 2013, *Handicapped and Disabled Students*, 13-4282-I-06, and alleged that the Controller incorrectly reduced costs incurred during fiscal years 2003-2004, 2004-2005, and 2005-2006. In response to each IRC, the Controller submitted comments, and the requester submitted rebuttal comments.

Per section 1185.1 of the Commission regulations, staff analyzed the IRCs for, among other things, completeness, timeliness, and the signature under oath of the designated local official.³⁶ On May 20, 2016, Commission staff issued for comment a Draft Proposed Decision for each of

³¹ California Code of Regulations, Title 2, Section 1187.15(f).

³² "Five affirmative votes shall be required to grant the request for reconsideration." California Code of Regulations, Title 2, Section 1187.15(f).

³³ California Code of Regulations, Title 2, Section 1187.15(g)(1)(A).

³⁴ California Code of Regulations, Title 2, Section 1187.15(g).

³⁵ "The procedures set forth in article 7 shall govern the Commission's hearings and decisions process, except that five affirmative votes shall be required to change an adopted decision." California Code of Regulations, Title 2, Section 1187.15(g)(2).

³⁶ California Code of Regulations, title 2, section 1185.1.

the IRCs.³⁷ Both Draft Proposed Decisions recommended that each IRC should be denied on either or both of two alternative grounds: (1) the IRCs were untimely filed, and (2) the claimant (requester) waived its right to file the IRCs.³⁸

Both the requester³⁹ and the Controller filed comments on the Draft Proposed Decision.⁴⁰

On July 6, 2016, Commission staff issued the Proposed Decision for 13-4282-I-06.⁴¹ On July 7, 2016, Commission staff issued the Proposed Decision for 12-0240-I-01.⁴²

On July 22, 2016, the requester appeared before the Commission and argued against the adoption of the Proposed Decision as to each of the IRCs.⁴³

After the presentation of arguments by the requester and the Controller and after debate among the Commissioners, the Commission voted 6-0 to deny the IRCs on the basis that each was untimely filed.⁴⁴ The Commission opted to delete the portions of the Proposed Decisions which would have found that the requester waived its right to file an IRC.⁴⁵ As so amended, the

³⁷ Exhibit D-1, pages 129 to 162 (Draft Proposed Decision in *HDS II*); Exhibit C-1, pages 13 to 51 (Draft Proposed Decision in *HDS*).

³⁸ Exhibit D-1, pages 147 to 158 (limitations and waiver analyses) (Draft Proposed Decision in *HDS II*); Exhibit C-1, pages 33 to 45 (limitations and waiver analyses) (Draft Proposed Decision in *HDS*).

³⁹ Exhibit D-2, pages 163 to 170 (Claimant's Comments on the Draft Proposed Decision in *HDS II*); Exhibit C-2, pages 50 to 58 (Claimant's Comments on the Draft Proposed Decision in *HDS*).

⁴⁰ Exhibit D-2, pages 163 to 170 (Claimant's Comments on the Draft Proposed Decision in *HDS II*); Exhibit C-2, pages 50 to 58 (Claimant's Comments on the Draft Proposed Decision in *HDS*). Note that Controller's Comments are not included in the record for the RADs as they are not relevant to these matters.

⁴¹ Exhibit C-3, pages 58 to 101 (Proposed Decision in *HDS*).

⁴² Exhibit D-3, pages 171 to 210 (Proposed Decision in *HDS II*).

⁴³ Exhibit E, pages 244 to 277 (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

⁴⁴ Exhibit E, pages 261-263 (vote on *HDS* IRC), 276-277 (vote on *HDS II* IRC) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

⁴⁵ Exhibit E, pages 261-263 (vote on *HDS* IRC), 276-277 (vote on *HDS II* IRC) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

Proposed Decisions became the adopted Decisions of the Commission.⁴⁶ Commission staff served the adopted Decisions on the requester on July 27, 2016.⁴⁷

On August 26, 2016, the requester filed the RADs alleging that the Decisions contain an error of law.⁴⁸ The RADs make the following two substantive legal arguments:

1. The statute of limitations is an affirmative defense that must be raised by the opposing party (in this case, the Controller), and the Controller failed to do so.⁴⁹
2. The Commission improperly raised on its own motion (*sua sponte*) the limitations defense, erroneously relying upon the United States Supreme Court decision titled *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132.⁵⁰

Neither of these arguments was raised by the requester in its written comments on the Draft Proposed Decisions or during the requester's arguments before the Commission at the July 22, 2016 hearing.⁵¹

III. Position of the Parties

A. County of Los Angeles

The requester asks that the Commission reconsider these two decisions pursuant to Government Code section 17559(a) and section 1187.15 of the Commission's regulations, and set the matter for hearing to determine whether the Decisions contain an error of law.

IV. Discussion

The Commission possesses the statutory and regulatory authority to reconsider an adopted IRC decision. Government Code section 17559(a) reads in relevant part, "The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party." Commission Regulation 1187.15(a) states in relevant part, "the Commission may make substantive changes to an adopted decision under this section or order a reconsideration of all or part of a matter on petition of any party."⁵²

⁴⁶ Exhibit E, pages 261-263 (vote on *HDS* IRC), 276-277 (vote on *HDS II* IRC) (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

⁴⁷ Exhibit D-4, pages 211 to 234 (Adopted Decision in *HDS II*); Exhibit C-4, pages 102 to 128 (Adopted Decision in *HDS*).

⁴⁸ Exhibit A, 16-RAD-01, pages 1 to 6; Exhibit B, 16-RAD-02, pages 7 to 12.

⁴⁹ Exhibit A, 16-RAD-01, pages 4 to 5; Exhibit B, 16-RAD-02, pages 10 to 11.

⁵⁰ Exhibit A, 16-RAD-01, pages 5 to 6; Exhibit B, 16-RAD-02, pages 11 to 12.

⁵¹ Exhibit D-2, pages 163 to 166 (Claimant's Comments on the Draft Proposed Decision in *HDS II*); Exhibit C-2, pages 50 to 53 (Claimant's Comments on the Draft Proposed Decision in *HDS*); Exhibit E, pages 244 to 277 (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

⁵² Code of California Regulations, Title 2, Section 1187.15(a).

The Commission has specified in its regulations that a claimant may request a reconsideration to correct an error of law. Regulation 1187.15(b) states in relevant part, “Any party, interested party, or Commission member may request that the Commission reconsider and change an adopted decision to correct an error of law.”⁵³

Reconsideration is a two-hearing process. Before the Commission determines whether the substance of a claimant’s legal argument is correct, the Commission must decide whether or not to hear the reconsideration at all.⁵⁴ Five affirmative votes are required to grant the request for reconsideration and to schedule the matter for a hearing on the merits.⁵⁵ For the reasons stated below, the Commission denies the consolidated RADs.

The Commission Denies the Requests for Reconsideration of the Prior Adopted Decisions Because the Requester Has Provided No Explanation of Why Its Legal Theories Were Not Presented At or Prior to the Commission’s July 22, 2016 Hearings on the Underlying IRCs.

Neither the Government Code nor the Commission’s regulations specify the criteria to be used in determining whether or not a reconsideration is to be heard. However, the fact that the Commission regulations create a two-hearing process requiring a super-majority of five affirmative votes at each step implies that the Commission did not intend to hear the merits of all reconsideration requests and that RADs are disfavored. Commission decisions, adopted after a full opportunity for written and oral argument by the parties, are final and binding, and serve to exhaust the parties’ administrative remedies.⁵⁶ Thus, the Commission’s approval of a request for reconsideration of the merits of a prior final decision is limited.

In this respect, RADs on the basis of an alleged “error of law” before the Commission are similar to requests for reconsideration in the Superior Court. Pursuant to Code of Civil Procedure section 1008(a), a litigant’s request for reconsideration of a decision issued by the Superior Court is limited and must be based upon “new or different facts, circumstances, or law.”⁵⁷ And before a Superior Court will hear the merits of a motion for reconsideration on the basis of new or different law, the moving party must meet a “diligence requirement” by providing “a satisfactory

⁵³ Code of California Regulations, Title 2, Section 1187.15(b).

⁵⁴ Code of California Regulations, Title 2, Section 1187.15(f).

⁵⁵ “Five affirmative votes shall be required to grant the request for reconsideration.” California Code of Regulations, Title 2, Section 1187.15(f).

⁵⁶ *California School Boards Ass’n v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

⁵⁷ “When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” Code of Civil Procedure section 1008(a).

explanation for the failure to present [the law] earlier.”⁵⁸ “A party seeking reconsideration of a prior order based on ‘new or different facts, circumstances or law’ must provide a satisfactory explanation for failing to present the information at the first hearing; i.e., a showing of *reasonable diligence*.”⁵⁹

The First District Court of Appeal explained in 1997 that, absent a diligence requirement, disappointed litigants would routinely file reconsideration motions asserting new legal theories:

If counsel need not explain the failure to earlier produce pertinent legal authority that was available, the ability of a party to obtain reconsideration would expand in inverse relationship to the competence of counsel. Without a diligence requirement the number of times a court could be required to reconsider its prior orders would be limited only by the ability of counsel to belatedly conjure a legal theory different from those previously rejected, which is not much of a limitation.⁶⁰

The diligence requirement is also based on the policy of protecting tribunals from being inundated with repeated requests for previously rejected remedies. As the First District Court of Appeal noted in a 2010 decision, “[I]t was appellants’ responsibility to advance all correct legal theories for an award of attorney fees in their original motion, so as not to burden the trial court with repeated motions for the same relief.”⁶¹

Here, the requester has failed to satisfy its diligence requirement. The RADs contain no explanation of why requester’s legal theories regarding the statute of limitations were not presented at or prior to the Commission’s hearing on the IRCs.

A review of the record reveals that the requester had several opportunities to make its limitations arguments — to wit, that the Controller waived its limitations defense, that the Commission cannot *sua sponte* raise the limitations defense, and that the U.S. Supreme Court decision in *John R. Sand & Gravel Co. v. United States* is inapplicable — but that the requester consistently failed to assert these legal arguments.

The requester first became formally aware of the Commission staff’s recommendation to deny the IRCs on statute of limitations grounds when, on May 20, 2016, the two Draft Proposed Decisions were uploaded to the Commission website and electronically delivered to the

⁵⁸ *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1200.

⁵⁹ Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 9:328 (emphasis in original).

⁶⁰ *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199.

⁶¹ *California Correctional Peace Officers Ass’n v. Virga* (2010) 181 Cal.App.4th 30, 46 (emphasis omitted).

requester.⁶² Both of the Draft Proposed Decisions recommended that the IRCs be denied on limitations grounds.⁶³

The requester then could have made — but did not — its arguments regarding the law of limitations. The requester could have made its legal arguments in its written comments filed in response to the Draft Proposed Decisions. The requester could have made its legal arguments, in writing and/or orally, at the Commission hearing on July 22, 2016. The requester did not do either.⁶⁴

The requester first became aware of the Commission's citation of the U.S. Supreme Court decision titled *John R. Sand & Gravel Co. v. United States* when, on July 6, 2016, Commission staff uploaded onto its website and electronically served on the requester the Proposed Decision in the IRC filed under the *Handicapped and Disabled Students* program, No. 13-4282-I-06.⁶⁵

The requester then could have made — but did not — its arguments regarding the *John R. Sand & Gravel Co.* decision. The requester could have made its legal arguments in writing or orally, at the Commission hearing on July 22, 2016. The requester did not.⁶⁶ (Moreover, the requester's objection to the citation of the *John R. Sand & Gravel Co.* decision is merely a refinement of the requester's overarching objection to the fact that the Commission raised the limitations issue when the Controller did not. The pivotal fact is that the requester was aware of Commission staff's recommendations regarding the statute of limitations as of May 20, 2016, but did not assert its opposing legal arguments until the RADs were filed.)

Moreover, if the reason the requester did not make such arguments was that a good cause reason existed why its representative did not have the time to prepare and make such arguments during the normal comment period or at the hearing as allowed by regulation, it could have, pursuant to section 1187.9 of the Commission's regulations, requested an extension of time to comment on the Draft Proposed Decision and a postponement of hearing, if necessary. Claimant did not avail itself of the ability to request an extension or postponement in these cases.

⁶² Exhibit D-1, pages 159 to 162 (proof of service to Draft Proposed Decision in *HDS II*); Exhibit C-1, pages 46 to 49 (proof of service of Draft Proposed Decision in *HDS*).

⁶³ Exhibit D-1, pages 147 to 152 (limitations analyses in Draft Proposed Decision in *HDS II*); Exhibit C-1, pages 33 to 38 (limitations analyses in Draft Proposed Decision in *HDS*).

⁶⁴ Exhibit D-2, pages 163 to 166 (Claimant's Comments on the Draft Proposed Decision in *HDS II*); Exhibit C-2, pages 50 to 53 (Claimant's Comments on the Draft Proposed Decision in *HDS*); Exhibit E, pages 244 to 277 (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

⁶⁵ Exhibit C-3, page 81 (*Sand* citation in Proposed Decision in *HDS*). The citation to the *John R. Sand & Gravel Co.* decision appears in the Proposed Decision and the adopted Decision on the IRC filed under the *Handicapped and Disabled Students* program, No. 13-4282-I-06. A citation to the *John R. Sand & Gravel Co.* decision does not appear in the analogous Commission documents regarding the IRC filed under the *Handicapped and Disabled Students II* program, No. 12-0240-I-01.

⁶⁶ Exhibit E, pages 244 to 277 (Excerpts of Reporter's Transcript of Proceedings, Hearing of Commission on State Mandates, July 22, 2016).

The RADs contain no explanation of why these legal arguments were not made earlier. The reported court decisions cited by the requester are dated 1965, 1996, 1999 and 2012.⁶⁷ The U.S. Supreme Court's *John R. Sand & Gravel Co.* opinion was issued in 2008. The requester does not cite any recently enacted or newly decided law in its RADs. The RADs are based on court rulings which were readily available to requester before the Commission's July 2016 hearing — court rulings which claimant inexplicably failed to cite or argue.

Finally, the record contains no explanation of why these readily available legal arguments were not made earlier.⁶⁸ Therefore, the record does not establish that the requester acted with sufficient diligence to have its RADs heard.

V. Conclusion

The Commission therefore declines to order a reconsideration.

⁶⁷ Exhibit A, 16-RAD-01, pages 3 to 6; Exhibit B, 16-RAD-02, pages 9 to 12.

⁶⁸ Exhibit A, 16-RAD-01, pages 3 to 6; Exhibit B, 16-RAD-02, pages 9 to 12.

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 September 9, 2016, I served the:

Proposed Decision

16-RAD-01

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

Government Code Sections 7572.55 and 7576;

Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Sections 60020, 60050,

60030, 60040, 60045, 60055, 60100, 60110, 60200

(Emergency regulations effective July 1, 1998 [Register 98, No. 26]

final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years 2002-2003 and 2003-2004

County of Los Angeles, Requester

AND

16-RAD-02

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, Section 60040

(Emergency regulations filed December 31, 1985, designated effective January 1, 1986

[Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986

[Register 86, No. 28]

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

County of Los Angeles, Requester

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 September 9, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/1/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

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