STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
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November 23, 2010

Ms. Greta Hansen
Deputy County Counsel
Office of the County Counsel
County of Santa Clara
70 West Hedding Street, 9th Floor
San Jose, CA 95110 – 1770

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Appeal of Executive Director's Decision to Deny Request for Expedited Hearing**
Incorrect Reduction Claim
Handicapped and Disabled Students (09-4282-I-05)
Fiscal Years 2003-2004 through 2005-2006
County of Santa Clara, Claimant

Dear Ms. Hansen:

The analysis on the above-named matter is enclosed.

Hearing

This matter is set for hearing on Thursday, **December 2, 2010,** at 10:00 a.m., in Room 447, State Capitol, Sacramento, CA. 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 1183.01, subdivision (c)(2), of the Commission's regulations.

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.

Please contact Camille Shelton at (916) 323-8215 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Hearing: December 2, 2010
J:mandates/IRC/2009/09-4282-I-05/Appeal

ITEM 2

Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim

Handicapped and Disabled Students
09-4282-I-05

County of Santa Clara, Appellant

Executive Summary

This is an appeal of the Executive Director's decision, provided by letter dated November 2, 2010, to the County of Santa Clara that denies a request by the County to expedite the hearing on its incorrect reduction claim, originally filed April 13, 2010.[1] The incorrect reduction claim challenges the Controller's reduction of mental health rehabilitation costs for fiscal years 2003-2004 through 2005-2006 under the *Handicapped and Disabled Students* program.

Under the Commission's regulations, any party may appeal to the Commission for review of the actions and decisions of the executive director. The Commission is required to determine whether to uphold the executive director's decision by a majority vote of the members present. The Commission's decision is final and not subject to reconsideration.[2]

Background

Administrative Action

On April 13, 2010, the County filed an incorrect reduction claim. The cover letter to the incorrect reduction claim requested expedited resolution of the claim by June 1, 2010, as follows:

> The County respectfully requests expedited resolution of its IRC for three reasons. First, the County needs immediate clarification of its obligations under the AB 3632 program so that it can (1) avoid incurring additional costs that may later be disallowed and (2) ensure that it continues to provide disabled children with all services it is mandated to provide under state and federal law. Second, expedited resolution of the County's IRC is also necessary given the significant impact the Controller's decision will have on the County's mental health budget. Furthermore, expedited review is warranted because the Controller plans to begin making deductions from payments to the County on June 1, 2010. Third, if the Commission were to overturn the Controller's audit decision after June 1, 2010, the Controller may not have the funds necessary to repay the County for amounts

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[1] Under the Commission's regulations, the Executive Director prepares the Commission's meeting agendas. (Cal. Code Regs., tit. 2, § 1182.1.)

[2] California Code of Regulations, title, 2 section 1181, subdivision (c).

previously deducted. Accordingly, the County respectfully requests that the Commission schedule a hearing on this Incorrect Reduction Claim before June 1, 2010, or that it direct the Controller not to deduct any funds from payments to the County until a hearing on the County's claim has taken place, thereby maintaining the status quo until the Commission can reach a decision on the County's IRC.

On May 20, 2010, the County filed an amendment to the incorrect reduction claim, adding to the record a letter from the State Controller's Office dated May 7, 2010, denying the County's request for reconsideration of the audit decision and clarifying the amount reduced as $8,658,336.

On June 8, 2010, a letter was issued by the Commission deeming the incorrect reduction claim and the amendment complete, sending the incorrect reduction claim to the Controller for comment, and further responding to the request for an expedited hearing as follows:

> The cover letter accompanying the submission of this IRC requested expedited resolution of this matter. We understand your need for expedited resolution; however, pursuant to section 1185.1, subdivision (b), of the Commission's regulations, the SCO has 90 days to file written oppositions or recommendations and supporting documentation regarding this IRC.
>
> In addition, there are currently 155 IRCs pending before the Commission that were filed before your IRC was filed. The Commission is working on the pending caseload, and will make a determination on your claim as resources allow.
>
> The public hearing on this claim will be scheduled after the record closes. A staff analysis will be issued on the IRC at least eight weeks prior to the public hearing.

Comments on the incorrect reduction claim were due to be filed by September 8, 2010.[3] No comments were filed and, thus, the record on the incorrect reduction claim is closed.

On November 1, 2010, the County sent a letter requesting that the Commission schedule the hearing on its incorrect reduction claim at its meeting on December 2, 2010. In the alternative, the County requests that "the Commission promptly inform the County of the date on which its IRC [incorrect reduction claim] will be heard." (Ex. B.)

On November 2, 2010, the Commission's Executive Director denied the County's request to set the matter for hearing on December 2, 2010, and indicated that the hearing will be set once the Commission resolves the older incorrect reduction claims on file. (Ex. C.) The letter states the following:

> The County's request to set this matter for hearing on December 2, 2010, is denied. The County's incorrect reduction claim was filed April 13, 2010, was amended on May 20, 2010, and was deemed complete on June 8, 2010. The record on the incorrect reduction claim did not close until September 8, 2010.

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[3] Government Code section 17553, subdivision (d), provides that the Controller shall have 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The claimant then has thirty (30) days to reply. (Cal. Code Regs., tit. 2, § 1185.1.)

Pursuant to section 1185.5 of the Commission's regulations, a written draft staff analysis is required to be prepared after the record closes and issued to the claimant, the State Controller's Office, and interested parties on the mailing list at least eight (8) weeks before the hearing. The claimant and the State Controller's Office may then file written comments on the draft staff analysis at least five (5) weeks before the hearing. After the receipt and consideration of comments, a final staff analysis is prepared and is issued at least ten (10) days before the scheduled hearing. The parties have not stipulated to other time deadlines in this case. Thus, the record did not close and an analysis was not prepared in time to make the December 2, 2010 hearing.

The draft staff analysis on the County's incorrect reduction claim will be prepared and issued once the Commission resolves the older incorrect reduction claims on file. The parties will be notified of the hearing on the County's incorrect reduction claim when the draft staff analysis is issued.

On November 12, 2010, the County filed an appeal of the Executive Director's decision of November 2, 2010. (Ex. A.) The County states its appeal is based on the following reasons:

The County appeals Ms. Higashi's decision for three reasons. First, the County needs immediate clarification regarding its obligation under the AB 3632 program so that it can (1) avoid incurring additional costs that may be later disallowed and (2) ensure that it continues to provide disabled children with all services it is mandated to provide under state and federal laws.

Second, it is our understanding that the State Controller's Office ("Controller") will deduct the disallowed reimbursements from future SB 90 payments made to the county. If the Commission overturns the Controller's audit decision after the Controller has already deducted the disallowed reimbursements from mandate payments to the County, the Controller will be unable to reimburse the County for the incorrectly reduced payments as all funds allocated for the AB 3832 mandate during the relevant fiscal years will have been distributed. As a result, the County would, in effect, be denied its constitutional right to reimbursement for provision of state mandated programs. *See* Cal. Const. Art. XIII B, § 6(a).

Finally, there appears to be no basis for Ms. Higashi's decision not to inform the County of a date (approximate or specific) on which it can expect its IRC to be heard. The Commission notified the County that its IRC was complete on June 8, 2010. Under Government Code section 17553(d), the Controller was required to file a response on or before September 8, 2010. The Controller declined to file a response by that date. Accordingly, the record on the County's IRC closed on September 8, 2010, more than two months ago. Under Government Code section 17553(d), "the failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the [C]omission." In her letter denying the County's request for an expedited hearing, Ms. Higashi declined to inform the County of an alternate date on which it could expect its IRC to be heard, stating that "the draft staff analysis on the County's IRC will be prepared and issued once the Commission resolves the older incorrect reduction claims on file. The parties will be notified of the

hearing on the County's IRC when the draft staff analysis is issued." We appeal Ms. Higashi's decision to decline to prioritize the County's IRC over older pending claims that do not involve interests as compelling as (1) the rights of students to receive the mental health services to which they are entitled under state and federal law and (2) the County's need to avoid incurring additional millions in costs that may be later disallowed. Furthermore, even if the Commission is inclined to uphold Ms. Higashi's decision not to hear the County's IRC before older pending claims, there is no statutory or regulatory basis for her decision to decline to provide the County with a date (approximate or specific) on which the County can expect its IRC to be heard.

For the reasons set forth above, the County respectfully requests that the Commission overturn Ms. Higashi's decision denying the County's request for an expedited hearing on its IRC. The County further respectfully requests that the Commission immediately notify the County of a date on which the County can expect its IRC to be heard.

Court Action

On July 7, 2010, the County of Santa Clara filed a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 to challenge reductions made by the State Controller's Office in the amount of $8,658,336 on reimbursement claims for rehabilitation services provided to students in fiscal years 2003-2004 through 2005-2006 under the *Handicapped and Disabled Students* program.

The State Controller's Office and the Commission filed demurrers asking the court to dismiss the action on the ground that the County failed to exhaust the administrative remedies required by Government Code sections 17500 et seq.

The County opposed the demurrer and contended that it exhausted the administrative remedies because of the Commission's backlog of claims. In support of its argument, the County contended many of the same grounds that it alleges in this appeal to justify an expedited resolution of its incorrect reduction claim; i.e., that (1) the County needs to ensure that it continues to provide disabled children with all services it is mandated to provide under state and federal laws, (2) the County's need to avoid incurring additional millions in costs that may be later disallowed, and (3) if the Commission overturns the Controller's audit decision after the Controller has already deducted the disallowed reimbursements from mandate payments to the County, the Controller will be unable to reimburse the County for the incorrectly reduced payments as all funds allocated for the AB 3832 mandate during the relevant fiscal years will have been distributed. As a result, the County would, in effect, be denied its constitutional right to reimbursement for provision of state-mandated programs.

On November 18, 2010, the Court disagreed with the County and sustained the demurrers with leave to amend the petition for writ of mandate ***on or before December 17, 2010***. (Ex. D.) The court made the following findings:

1. The County failed to exhaust administrative remedies.
2. The County failed to plead facts indicating that the Commission has indulged in unreasonable delay or intentionally halted the administrative process with respect to the County's incorrect reduction claim.

3. The County's contentions regarding potential delay it may face in having to exhaust its administrative remedies is speculative.
4. The county has not yet attempted to obtain the Controller's agreement to shorten the time for the Commission to process the county's incorrect reduction claim, pursuant to Government Code section 17554. That statute allows the Commission to agree to waive procedural requirements and to shorten time if all parties to the claim agree.
5. The delay experienced by the County is not "presently" unreasonable (with the passing of less than 3 months since the record on the IRC closed).
6. The County fails to allege that it has experienced any harm to date, let alone irreparable harm for having to go through the administrative process. It has yet to experience any unreasonable delay with respect to the Commission's processing of the County's incorrect reduction claim.
7. There is no monetary harm resulting from a delay in the process since the county is entitled to full reimbursement plus interest if it prevails on the merits of its claim.
8. A litigant is also required to exhaust administrative remedies where the challenge is to the constitutionality of the administrative agency. (Citing, *Grossmont Unified School Dist. v. State of California* (2008) 169 Cal.App.4th 869, and *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62.)
9. The County's argument regarding the affect of the Budget Act suspension of the *Mandate Reimbursement Process* program on the County's obligation to comply with the administrative exhaustion requirement is unconvincing.

Staff Analysis

The County requests that the Commission overturn the Executive Director's decision denying the County's request for an expedited hearing on its incorrect reduction claim. The County further requests that the Commission immediately notify the County of a date on which the County can expect its incorrect reduction claim to be heard.

Staff recommends that the Commission deny the County's request for an expedited hearing. Staff further estimates that the soonest the County's claim could be set is September 2012.

The Legislature has not established deadlines for hearing an incorrect reduction claim

Although Government Code section 17553, subdivision (a)(2), requires that a statewide cost estimate on an approved test claim be adopted 12 to 18 months after the test claim is received, there are no statutory timelines for conducting a hearing on an incorrect reduction claim once the record on the claim is closed.

The Legislature has encouraged the Commission to review its incorrect reduction claim process in order to provide for "a more expeditious and less costly process." To assist in the process, the Legislature has indicated that the failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission.[4] The Legislature has also allowed an eligible claimant on an incorrect reduction claim to file a consolidated incorrect reduction claim on behalf of other claimants whose claims for

[4] Government Code sections 17553, subdivision (d), and 17558.6.

reimbursement are alleged to have been incorrectly reduced in a similar manner by the Controller's Office.[5]

But, the Legislature has imposed no timelines or deadlines on the Commission for conducting a hearing and resolving an incorrect reduction claim, and has not established an expedited hearing process. Rather, the Legislature has created the Commission to render sound quasi-judicial decisions and to "adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs." [6]

In such cases, the courts will not create an administrative timeline where the Legislature has not.

> It is important to remember that "a statute of limitations may not be created by judicial fiat" [citations omitted] and that limitations periods "are products of legislative authority and control." [Citations omitted.] By focusing solely on the passage of time, and not on the issue of disadvantage and prejudice, a court risks imposing a de facto-and impermissible-statute of limitations in a situation where the Legislature chose not to create a limitation on actions. Even inordinately long delays in administrative action have been judicially allowed. (See *NLRB v. Ironworkers* (1984) 466 U.S. 720 …., where the delay in taking administrative action lasted from 1978 until 1982, and related to wrongdoing which occurred from 1972 onward.) There is without a doubt a realization on the part of the Legislature that administrative agencies such as the Medical Board take action for the public welfare rather than for their own financial gain, and should not be hampered by time limits in the execution of their duty to take protective remedial action.[7]

The courts have only required the administrative agency to hold a hearing "within a reasonable time." [8]

<u>The soonest the County's claim could be set is September 2012</u>

The Bureau of State Audits has written about the Commission's backlog of incorrect reduction claims, and in its last report, recommended that the Commission "prioritize its workload and seek efficiencies to the extent possible."[9]

Using this approach, the most optimistic hearing date that could be set for the County of Santa Clara's incorrect reduction claim is September 2012. The selection of this date is based on current staffing, the most efficient approach to incorrect reduction claims and the following factors:

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[5] Government Code section 17558.7.

[6] Government Code section 17500.

[7] *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

[8] *Steen v. City of Los Angeles* (1948) 31 Cal.2d 542, 547; *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86; *Fahmy, supra,* 38 Cal.App.4th 810.

[9] Exhibit E, BSA Report, page 28.

- Current assignments of attorneys.
- Filing date of incorrect reduction claim.
- Precedential value of a decision. Will this decision allow claimants and the state to settle other incorrect reduction claims filed on the same program?
- Other strategies for resolution of pending claims.

Using existing resources, Commission staff would redirect approximately 80-120 hours/ month from test claims to incorrect reduction claims. Staff would require approximately 2-3 weeks per program. If there is more than one pending incorrect reduction claim per program, staff would determine if the cases should be consolidated, or if one precedential decision can be used to settle other incorrect reduction claims on the same program. This approach is dependent upon the availability of the Executive Director, Chief Legal Counsel, and legal staff.

Beginning in March 2011, two incorrect reduction claims on different programs would be scheduled at each hearing.

The spreadsheet identifying the pending incorrect reduction claim caseload is attached. The last two columns indicate scheduling order and identify cases in which an alternative strategy is being used to resolve the claims and identify issues (Note A and Note B). The last column identifies a proposed hearing date. Scheduling order is based on filing date of the first incorrect reduction claim. For example, the oldest incorrect reduction claim filed on the Mandate Reimbursement process is identified as "1a." The second claim filed on the same program is identified as "1b." All of the incorrect reduction claims on the *Investment Reports* program are identified as "Note A." All of the incorrect reduction claims on the *Health Fee Elimination* program are identified as "Note B."

Note A means that this is one of the 70 incorrect reduction claims that are pending on the *Investment Reports* Program. Commission staff has developed a proposed agreement pursuant to Government Code section 17554, to expedite the process by allowing the claims to be reviewed by the State Controller based on the Commission's prior decisions on the incorrect reduction claims filed by the County of Los Angeles and the City of Tustin. Commission staff is meeting with claimants' representatives to encourage their participation in this alternative approach. If a claim is resolved, claimant will withdraw the IRC. If a claim is not resolved, the Commission staff will schedule the IRC for hearing. We believe that this process will be more efficient than having claimants wait for the Commission to hear and determine 70 individual claims before remanding claims to the Controller for review.

Note B means that this is one of 32 incorrect reduction claims filed on the *Health Fee Elimination* program. A significant issue in these incorrect reduction claims was recently decided in the *Clovis* decision. Commission staff is meeting with the parties to identify the issues in dispute and select an incorrect reduction claim that contains these issues for analysis and determination. This claim would then be set for hearing based on its filing date.

The last column identifies tentative hearing dates that would be set based on the filing date of the first incorrect reduction claim on each program. However, after the first claims are determined, additional incorrect reduction claims on the same program may still need to be set for hearing in order for the Commission to resolve all outstanding issues.

There are no factors to justify expediting the County's claim. The County filed its incorrect reduction claim in April 2010, and in fact, has two older incorrect reduction claims on file.[10] The County's claim is the fourth incorrect reduction claim filed on the *Handicapped and Disabled Students* program, and presents an issue that is *not* challenged in the other pending claims on that program. Thus, a decision on the County's claim will have no precedential value to the other claims on that program.

As noted by the court, Government Code section 17554 authorizes the Commission to waive the application of any procedural requirements imposed by the statutes, including the shortening of time requirements, if all the parties to the claim agree. In this case, the only time requirement left to waive is the issuance of the draft staff analysis and the opportunity to comment on that analysis. Pursuant to section 1185.5 of the Commission's regulations, a written draft staff analysis is required to be prepared after the record closes and issued to the claimant, the State Controller's Office, and interested parties on the mailing list at least eight (8) weeks before the hearing. The claimant and the State Controller's Office may then file written comments on the draft staff analysis at least five (5) weeks before the hearing. The only way the County can move in front of the line and have its claim heard before the older claims is to get the other claimants that have filed incorrect reduction claims to waive their place in line.

The County has not shown that it will suffer prejudice or harm if its incorrect reduction claim is heard in September 2012

The County has not shown that it will suffer prejudice or harm if its case is heard in September 2012. As indicated by the court, there is no monetary harm resulting from a delay in the process since the County is entitled to full reimbursement plus interest if it prevails on the merits of its claim.[11] The County has received reimbursement for its mental health rehabilitation costs for fiscal years 2003-2004 through 2005-2006. The amount audited and reduced by the Controller has not yet been adjusted to "correct" for the overpayment pursuant to Government Code section 17561, subdivision (d)(2)(C).

The County argues that if the Commission overturns the Controller's audit decision after the Controller has already deducted the disallowed reimbursements from mandate payments to the claimant, the Controller will be unable to reimburse the claimant for the incorrectly reduced payments as all funds allocated for the AB 3832 mandate during the relevant fiscal years will have been distributed. As a result, the County would, in effect, be denied its constitutional right to reimbursement for provision of state-mandated programs. The County is wrong.

As noted above, if the County prevails on the merits, it is entitled by law to full reimbursement plus interest. The court in *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, recognized that article XIII B, section 6 imposes a constitutional requirement to reimburse the costs local agencies incur in providing state-mandated services and programs (*Id.* at p. 604); that all branches of government are required to comply with constitutional directives (*Id.* at p. 609); and that there is a presumption under Evidence Code section 664 that the State will comply with its requirement to reimburse local government pursuant to article XIII B, section 6 (*Id.* at p.

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[10] *Open Meeting Acts*, filed May 16, 2005 (04-4257-I-367); *Child Abduction and Recovery*, filed January 8, 2009 (08-4237-I-02).

[11] Exhibit D, Court's Order; see also, Exhibit F, *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 78, and Government Code section 17561.5.

610). If the Legislature fails to appropriate funds, the statutory scheme implementing article XIII B, section 6 "does not leave the local agencies remediless." (*Id.* at p. 613, fn. 28.) If a state-mandated program is specifically identified in a budget act as a mandate for which funding is not provided that fiscal year, local agencies can choose not to implement the program that fiscal year. When the Legislature nominally funds a mandate, local agencies' remedy is to file an action under Government Code section 17612, subdivision (c), to declare the mandate unenforceable and to enjoin its enforcement for that fiscal year. (*Ibid.*)

Furthermore, there is no evidence to justify prioritizing the County's claim over older pending claims. The County believes this case is compelling because the program provides mental health services to students. However, all of the incorrect reduction claims that are pending involve state-mandated programs that provide a service to the public.[12]

Conclusion and Staff Recommendation

Staff recommends that the Commission uphold the Executive Director's decision to deny the County's request to expedite the hearing.

[12] *County of Los Angeles v. State of California* (1987) 45 Cal.3d 46, 56.

Commission on State Mandates
155 Incorrect Reduction Claims

	File Number	Filing Date	Date Comments Filed	Record Closed	Claimant	Fiscal Year	Amount of Claim	Name	Schedule/Hearing	
1	01-4485-I-01	9/26/01	No comments filed	No	Redwood City Elementary School District	1995-1996	$1,122	Mandate Reimbursement Process	1a	Mar-11
2	01-4241-I-03	3/26/02	37480	Yes	San Diego Unified School District	1996-1997; 1997-1998	$1,201,436	Emergency Procedures	2a	Mar-11
3	02-9635802-I-02	9/6/02	7/7/03*	Yes	County Of Kings	1995-1996, 1996-1997, 1997-1998	$15,000	Investment Reports	Note A	
4	02-9635802-I-03	9/6/02	7/23/03*	Yes	City of Pleasanton	1995-1996, 1996-1997, 1997-1998	$15,000	Investment Reports	Note A	
5	02-9635802-I-04	9/6/02	7/22/03*	Yes	City of Sunnyvale	1995-1996, 1996-1997, 1997-1998	$43,978	Investment Reports	Note A	
6	02-9635802-I-05	9/6/02	7/7/03*	Yes	County of Santa Barbara	1995-1996, 1996-1997, 1997-1998	$41,308	Investment Reports	Note A	
7	02-9635802-I-06	9/6/02	8/21/03*	Yes	City of Hayward	1995 -1996, 1996-1997, 1997-1998	$55,732	Investment Reports	Note A	
8	02-9635802-I-07	9/6/02	8/21/03*	Yes	City of Oakland	1995 -1996, 1996-1997, 1997-1998	$122,530	Investment Reports	Note A	
9	02-9635802-I-08	9/6/02	8/21/03*	Yes	City of Palm Desert	1995-1996, 1996-1997, 1997-1998	$37,748	Investment Reports	Note A	
10	02-9635802-I-09	9/6/02	5/9/05 (C) 8/21/03 (SCO)	Yes	City of Redwood City	1995-1996, 1996-1997, 1997-1998	$15,755	Investment Reports	Note A	
11	02-9635802-I-10	9/6/02	8/21/03 (SCO) 6/3/04 (C)	Yes	City of San Bernardino	1995-1996, 1996-1997, 1997-1998	$10,083	Investment Reports	Note A	
12	02-9635802-I-11	9/6/02	5/9/05 7/7/03 (SCO)	Yes	County of Yuba	1995-1996, 1996-1997, 1997-1998	$7,859	Investment Reports	Note A	
13	02-9635802-I-12	9/6/02	5/9/05 (C) 7/14/03 (SCO)	Yes	City of Santa Clara	1995-1996, 1996-1997, 1997-1998	$47,125	Investment Reports	Note A	
14	02-9635802-I-13	9/6/02	7/14/03*	Yes	City of Paso Robles	1995-1996, 1996-1997, 1997-1998	$20,943	Investment Reports	Note A	
15	02-9635802-I-14	9/6/02	7/16/03*	Yes	County of Plumas	1995-1996, 1996-1997, 1997-1998	$34,166	Investment Reports	Note A	
16	02-9635802-I-15	9/6/02	7/7/03*	Yes	County of Madera	1995-1996, 1996-1997, 1997-1998	$16,167	Investment Reports	Note A	
17	02-9635802-I-16	9/6/02	3/18/05(C) 7/14/03 (SCO) 7/14/03*	Yes	City of Simi Valley	1995-1996, 1996-1997, 1997-1998	$23,004	Investment Reports	Note A	
18	02-9635802-I-17	9/6/02	7/14/03*	Yes	City of Santa Barbara	1995-1996, 1996-1997, 1997-1998 -	$49,049	Investment Reports	Note A	
19	02-9635802-I-18	9/17/02	7/27/03*	Yes	County of Kern	1995-1996, 1997-1998	$57,160	Investment Reports	Note A	
20	02-9635802-I-19	9/19/02	7/16/03*	Yes	County of Glenn	1995-1996, 1997-1998	$20,332	Investment Reports	Note A	
21	02-9635802-I-20	9/19/02	7/14/03*	Yes	City of Huntington Beach	1995-1996, 1996-1997	$21,578	Investment Reports	Note A	
22	02-9635802-I-21	9/19/02	7/12/04 (C) 7/21/03 (SCO)	Yes	City of Laguna Beach	1995-1996, 1996-1997	$16,172	Investment Reports	Note A	
23	02-9635802-I-22	9/19/02	8/20/04 (C) 7/21/03 (SCO)	Yes	City of Redding	1995-1996, 1996-1997	$13,756	Investment Reports	Note A	
24	02-9635802-I-23	9/19/02	6/3/04 (C) 7/21/03 (SCO)	Yes	City of West Covina	1995-1996, 1996-1997	$10,380	Investment Reports	Note A	
25	02-9635802-I-24	9/19/02	6/3/04 (C)	Yes	City of Cerritos	1995-1996, 1996-1997	$26,983	Investment Reports	Note A	
26	02-9635802-I-25	9/19/02	6/29/04 (C) 7/21/03 (SCO)	Yes	City of Irvine	1995-1996, 1996-1997	$82,486	Investment Reports	Note A	
27	02-9635802-I-26	9/19/02	7/12/04 (C) 7/24/03 (SCO)	Yes	City of Westminster	1995-1996, 1996-1997	$27,954	Investment Reports	Note A	
28	02-9635802-I-27	9/19/02	7/16/03*	Yes	County of Marin	1995-1996, 1997-1998,	$54,004	Investment Reports	Note A	
29	02-9635802-I-28	9/19/02	2/5/04 (C) 6/27/03 (SCO)	Yes	County of Seaside	1995-1996	$16,119	Investment Reports	Note A	
30	02-9635802-I-29	9/19/02	5/9/05 (C) 5/25/03 (SCO)	Yes	County of Nevada	1995-1996, 1997-1998	$30,755	Investment Reports	Note A	
31	02-9635802-I-30	9/30/02	7/16/03*	Yes	County of Riverside	1995-1996, 1997-1998	$70,510	Investment Reports	Note A	
32	02-9635802-I-31	9/30/02	5/18/05 (C) 7/23/03 (SCO)	Yes	City of Vista	1995-1996, 1996-1997	$15,412	Investment Reports	Note A	
33	02-9635802-I-32	9/30/02	3/11/04 (C) 7/23/03(SCO)	Yes	City of Visalia	1995-1996, 1996-1997	$26,617	Investment Reports	Note A	
34	02-9635802-I-33	10/9/02	7/15/03 (c) 6/23/03 (SCO)	Yes	City of Orange	1995-1996, 1996-1997	$24,420	Investment Reports	Note A	
35	02-9635802-I-34	10/11/02	1/30/04 (c) 7/23/03 (SCO)	Yes	City of Milpitas	1995-1996, 1996-1997	$11,129	Investment Reports	Note A	
36	02-9635802-I-35	10/11/02	1/15/04 (C) 8/18/03 (SCO)	Yes	City of Lakewood	1995-1996, 1996-1997	$13,685	Investment Reports	Note A	
37	02-9635802-I-36	10/11/02	1/30/04 (C) 8/18/03 (SCO)	Yes	City of Rialto	1995-1996, 1997-1998	$48,743	Investment Reports	Note A	
38	02-9635802-I-37	10/11/02	1/22/04 (C) 8/18/03 (SCO)	Yes	City of Claremont	1995-1996, 1996-1997	$15,337	Investment Reports	Note A	
39	02-9635802-I-38	10/11/02	2/17/04 (C) 8/18/03 (SCO)	Yes	City of Upland	1995-1996, 1997-1998	$53,160	Investment Reports	Note A	

	File Number	Filing Date	Date Comments Filed	Record Closed	Claimant	Fiscal Year	Amount of Claim	Name	Schedule/Hearing	
40	02-9635802-I-39	10/11/02	2/2/04 (C) 8/18/2003	Yes	City of Palmdale	1995-1996, 1996-1997, 1997-1998	$36,856	Investment Reports	Note A	
41	02-9635802-I-40	10/11/02	8/18/03*	Yes	City of Lynwood	1995-1996, 1997-1998	$14,546	Investment Reports	Note A	
42	02-9635802-I-41	10/11/02	1/22/04 (C) 8/11/03 (SCO)	Yes	City of Downey	1995-1996, 1997-1998	$69,265	Investment Reports	Note A	
43	02-9635802-I-42	10/11/02	1/30/04 (C) 8/11/03 (SCO)	Yes	City of Bell Gardens	1995-1996, 1997-1998	$78,938	Investment Reports	Note A	
44	02-9635802-I-43	10/11/02	1/7/04 (C) 8/11/04 (SCO)	Yes	City of Chino	1995-1996, 1997-1998	$33,188	Investment Reports	Note A	
45	02-9635802-I-44	10/11/02	1/20/04 (C) 8/11/03 (SCO)	Yes	City of Rancho Cucamonga	1995-1996, 1997-1998	$96,502	Investment Reports	Note A	
46	02-9635802-I-45	10/11/02	1/30/04 (C) 8/11/03 (SCO)	Yes	Town of Apple Valley	1995-1996, 1997-1998	$3,752	Investment Reports	Note A	
47	02-9635802-I-46	10/11/02	1/29/04 (C) 8/14/03 (SCO)	Yes	City of Montclair	1995-1996, 1996-1997	$11,492	Investment Reports	Note A	
48	02-9635802-I-48	10/11/02	8/14/03*	Yes	City of Costa Mesa	1995-1996, 1997-1998	$68,546	Investment Reports	Note A	
49	02-9635802-I-49	10/11/02	1/22/04 (C) 8/14/03 (SCO)	Yes	City of Norwalk	1995-1996, 1997-1998	$56,055	Investment Reports	Note A	
50	02-9635802-I-50	10/16/02	8/5/03 (C) 6/27/03 (SCO)	Yes	City Of Lodi	1995-1996, 1996-1997, 1998-1999	$17,496	Investment Reports	Note A	
51	02-9635802-I-52	10/16/02	8/5/03 (C) 6/30/03 (SCO)	Yes	City Of Walnut Creek	1995-1996, 1996-1997, 1998-1999	$48,107	Investment Reports	Note A	
52	02-9635802-I-53	10/16/02	9/7/05 (C) 7/31/03 (SCO)	Yes	City Of South Lake Tahoe	1995-1996, 1996-1997	$3,683	Investment Reports	Note A	
53	02-9635802-I-54	10/16/02	8/5/05 (C) 6/25/03 (SCO)	Yes	City Of San Carlos	1995-1996, 1996-1997, 1998-1999	$19,992	Investment Reports	Note A	
54	02-9635802-I-55	10/16/02	8/2/03 (C) 7/31/03 (SCO)	Yes	City Of Reedley	1995-1996	$2,167	Investment Reports	Note A	
55	02-9635802-I-56	10/16/02	9/2/03 (C) 7/31/03 (SCO)	Yes	City Of Pleasant Hill	1995-1996	$1,814	Investment Reports	Note A	
56	02-9635802-I-57	10/16/02	9/2/03 (C) 7/31/03 (SCO)	Yes	City Of Albany	1996-1997	$5,397	Investment Reports	Note A	
57	02-9635802-I-58	10/16/02	8/5/03 (C) 6/27/03 (SCO)	Yes	City Of Concord	1995-1996, 1996-1997	$3,203	Investment Reports	Note A	
58	02-9635802-I-59	10/16/02	8/5/03 (C) 6/27/03 (SCO)	Yes	City Of Corona	1995-1996, 1996-1997, 1998-1999	$47,507	Investment Reports	Note A	
59	02-9635802-I-60	10/16/02	8/5/03 (C) 6/25/03 (SCO)	Yes	City Of El Cajon	1995-1996, 1996-1997, 1998-1999	$5,096	Investment Reports	Note A	
60	02-9635802-I-61	10/16/02	8/28/03 (C) 7/25/03 (SCO)	Yes	City Of Patterson	1995-1996	$914	Investment Reports	Note A	
61	02-9635802-I-62	10/16/02	8/28/03 (C) 7/25/03 (SCO)	Yes	City Of Lathrop	1995-1996, 1996-1997	$7,003	Investment Reports	Note A	
62	02-9635802-I-63	10/16/02	8/5/03 (C) 7/25/03 (SCO)	Yes	City Of Monterey	1995-1996, 1996-1997, 1998-1999	$10,576	Investment Reports	Note A	
63	02-9635802-I-64	10/16/02	8/28/03 (C) 7/25/03 (SCO)	Yes	City Of Gilroy	1995-1996	$12,810	Investment Reports	Note A	
64	02-9635802-I-65	10/16/02	8/5/03 (C) 6/25/03 (SCO)	Yes	City Of Hanford	1995-1996, 1996-1997, 1998-1999	$7,935	Investment Reports	Note A	
65	02-9635802-I-66	10/16/02	8/28/03 (C) 7/25/03 (SCO)	Yes	City Of Antioch	1995-1996	$4,494	Investment Reports	Note A	
66	02-9635802-I-67	10/16/02	8/5/03 (C) 6/23/03 (SCO)	Yes	City Of Stockton	1995-1996, 1996-1997, 1998-1999	$30,048	Investment Reports	Note A	
67	02-9635802-I-68	10/16/02	8/5/03 (C) 6/25/03 (SCO)	Yes	City Of Turlock	1995-1996, 1996-1997, 1998-1999	$11,877	Investment Reports	Note A	
68	02-9635802-I-69	10/16/02	No Comments	No	City Of San Mateo	1995-1996, 1996-1997, 1998-1999	$29,810	Investment Reports	Note A	
69	02-9635802-I-70	10/16/02	7/7/03 (SCO)	No	City of Coachella	1996-1997	$2,112	Investment Reports	Note A	
70	02-9635802-I-71	10/16/02	7/3/03 (C)	Yes	City Of Menlo Park	1995-1996, 1996-1997	$20,283	Investment Reports	Note A	
71	02-9635802-I-72	10/17/02	2/23/04 (C) 6/23/03 (SCO)	Yes	City Of San Marcos	1995-1996, 1996-1997	$4,767	Investment Reports	Note A	
72	02-9635802-I-73	10/17/02	2/9/04 (C) 6/23/03 (SCO)	Yes	City Of Santa Ana	1996-1997	$16,535	Investment Reports	Note A	
73	02-8713-I-01	6/11/03	12/24/03*	Yes	County Of Riverside	1996-1997, 1997-1998, 1998-1999	$914,002	Absentee Ballots	3a	May-11
74	03-4435-I-45	2/20/04	10/18/07 (SCO) 11/19/07 (C)	Yes	Clovis Unified School District	1999-2000, 2001-2002	$2,669,586	Graduation Requirements	4a	May-11
75	04-4425-I-08	10/12/04	No Comments	No	North Orange County Community C	1999-2000	$34,317	Collective Bargaining	5a	Jul-11
76	04-4241-I-01	4/13/05	10/17/05*	Yes	San Diego Unified School District	2001-2002, 2002-2003	$1,203,208	Emergency Procedures, Earthquake Procedures, and Disasters	2b	
77	04-4257-I-367	5/16/05	4/24/08*	Yes	County of Santa Clara	1999-2000, 2000-2001, 2001-2002	$4,653,917	Open Meetings	6	Jul-11

	File Number	Filing Date	Date Comments Filed	Record Closed	Claimant	Fiscal Year	Amount of Claim	Name	Schedule/Hearing	
78	04-904133-I-01	6/27/05	No Comments	No	Sweetwater Union High School District	1999-2000, 2000-2001, 2001-2002	$49,949	Notification of Truancy	7a	Sep-11
79	05-4206-I-02	9/6/05	2/11/08*	Yes	West Valley-Mission Community College District	2000-2001, 2001-2002, 2002-2003	$383,654	Health Fee Elimination	Note B	
80	05-4206-I-03	9/6/05	12/16/08 (SCO) 8/11/09 (C)	Yes	Long Beach Community College District	2001-2002, 2002-2003	$466,629	Health Fee Elimination	Note B	
81	05-4206-I-04	9/6/05	4/24/08 (SCO) 7/15/09 (C)	Yes	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	$1,017,386	Health Fee Elimination	Note B	
82	05-4206-I-05	9/6/05	No Comments	No	State Center Community College District	1999-2000, 2000-2001, 2001-2002	$887,665	Health Fee Elimination	Note B	
83	05-4425-I-09	9/6/05	No Comments	No	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	$735,450	Collective Bargaining	5b	
84	05-4435-I-50	9/6/05	10/11/07 (SCO) 11/5/07 (C)	Yes	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	$8,053,485	Graduation Requirements	4b	
85	05-4451-I-01	9/6/05	5/4/09*	Yes	Clovis Unified School District	1999-2000, 2000-2001, 2001-2002, 2002-2003	$1,373,751	School District of Choice: Transfers and Appeals	8a	Sep-11
86	05-4451-I-02	9/6/05	No Comments	No	Newport-Mesa Unified School District	1997-1998, 1999-2000, 2000-2001, 2001-2002	$1,164,919	School District of Choice: Transfers and Appeals	8b	
87	05-4206-I-06	9/9/05	3/12/08 (SCO) 6/9/09 (C)	Yes	Los Rios Community College District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002	$3,205,600	Health Fee Elimination	Note B	
88	05-4206-I-07	9/9/05	3/24/08 (SCO) 5/12/09 (C)	Yes	Glendale Community College District	2000-2001, 2001-2002	$131,047	Health Fee Elimination	Note B	
89	05-4485-I-03	9/9/05	2/11/08*	Yes	Los Rios Community College District	1999-2000, 2000-2001	$10,004	Mandate Reimbursement Process	1b	
90	05-4206-I-08	9/15/05	1/7/08*	Yes	San Bernardino Community College District	2001-2002, 2002-2003	$610,323	Health Fee Elimination	Note B	
91	05-4206-I-09	9/15/05	4/24/08 (SCO) 5/12/09 (C)	Yes	North Orange County Community College District	2001-2002, 2002-2003	$346,582	Health Fee Elimination	Note B	
92	05-4206-I-10	9/15/05	3/12/08 (SCO) 7/13/09 (C)	Yes	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	$1,817,357	Health Fee Elimination	Note B	
93	05-4425-I-10	9/19/05	3/10/08 (SCO) 8/24/09 (C)	Yes	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	$448,696	Collective Bargaining	5c	
94	05-4241-I-06	11/10/05	3/12/08 (SCO) 9/3/09 (C)	Yes	Poway Unified School District	2000-2001, 2001-2002, 2002-2003	$738,364	Emergency Procedures, Earthquake Procedures, and Disasters	2c	
95	05-904133-I-02	12/12/05	No Comments	No	Los Angeles Unified School District	1998-1999, 1999-2000, 2000-2001	$2,352,507	Notification of Truancy	7b	
96	05-4425-I-11	12/19/05	3/23/10 (SCO)	No	Gavilan Joint Community College District	1995-1996	$124,245	Collective Bargaining	5d	
97	05-4206-I-11	3/27/06	11/24/08 (SCO) 8/11/09 (C)	Yes	El Camino Community College District	2000-2001, 2001-2002, 2002-2003	$399,891	Health Fee Elimination	Note B	
98	05-4451-I-03	3/27/06	5/4/09 (SCO) 4/15/09 (C)	Yes	Grossmont Union High School District	2000-2001, 2001-2002, 2002-2003	$440,636	School District of Choice: Transfer and Appeals	8c	
99	05-4282-I-02	5/1/06	8/10/06 (SCO) 11/9/09 (C)	Yes	County of Orange	1997-1998, 1998-1999	$1,629,815	Handicapped and Disabled Students	9a	Dec-11
100	05-4282-I-03	5/25/06	6/3/09 (SCO) 3/15/10 (C)	Yes	County of San Mateo	1996-1997, 1997-1998, 1998-1999	$3,232,423	Handicapped and Disabled Students	9b	Dec-11
101	05-4451-I-04	5/30/06	No Comments	No	Norwalk-La Mirada Unified School District	2000-2001, 2001-2002	$283,000	School District of Choice: Transfer and Appeals	8d	
102	05-4454-I-02	5/30/06	No Comments	No	Norwalk-La Mirada Unified School District	2000-2001, 2001-2002, 2002-2003	$427,380	Intradistrict Attendance	10a	Jan-12
103	05-4425-I-12	5/31/06	No Comments	No	Norwalk-La Mirada Unified School District	2000-2001, 2001-2002, 2002-2003	$809,091	Collective Bargaining	5e	
104	05-4206-I-12	6/16/06	12/23/08*	Yes	Santa Monica Community College District	2001-2002, 2002-2003	$364,407	Health Fee Elimination	Note B	

	File Number	Filing Date	Date Comments Filed	Record Closed	Claimant	Fiscal Year	Amount of Claim	Name	Schedule/Hearing	
105	05-4454-I-03	6/16/06	No Comments	No	Riverside Unified School District	1998-1999, 1999-2000, 2000-2001	$976,036	Intradistrict Attendance	10b	
106	05-904133-I-03	6/16/06	No Comments	No	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002	$588,101	Notification of Truancy	7c	
107	05-4452-I-01	6/26/06	No Comments	No	San Diego Unified School District	2001-2002, 2002-2003	$354,046	Notification to Teachers: Pupils Subject to Suspension or Expulsion	11	Jan-12
108	06-4206-I-13	7/3/06	1/7/08*	Yes	Pasadena Area Community College District	1999-2000, 2000-2001, 2001-2002	$375,941	Health Fee Elimination	Note B	
109	06-4509-I-01	11/22/06	No Comments	No	County of Santa Cruz	1999-2000, 2000-2001, 2001-2002	$173,280	Sexually Violent Predators	12a	Mar-12
110	07-3713-I-02	7/25/07	3/15/10 (SCO)	No	Santa Clara County	2000-2001, 2001-2002, 2002-2003	$19,284	Absentee Ballots	3b	
111	07-4509-I-02	7/25/07	No Comments	No	Santa Clara County	1998-1999, 1999-2000, 2000-2001	$203,363	Sexually Violent Predators	12b	
112	07-4442-I-01	7/26/07	No Comments	No	San Diego County Office of Education	2004-2005, 2005-2006	$13,353	Interdistrict Attendance Permits	13a	Mar-12
113	07-4425-I-13	8/7/07	No Comments	No	Santee School District	2000-2001, 2001-2002, 2002-2003, 2003-2004	$765,967	Collective Bargaining	5f	
114	07-4206-I-14	8/14/07	3/15/10 (SCO)	No	Pasadena Area Community College District	2002-2003, 2003-2004	$192,755	Health Fee Elimination	Note B	
115	07-4425-I-14 (Revised) Consolidated with 05-4425-I-12	9/14/07	No Comments	No	Norwalk-La Mirada Unified School District	2000-2001, 2001-2002, and 2002-2003	$516,078	Collective Bargaining (Revised)	5g	
116	07-4206-I-15	10/2/07	No Comments	No	Rancho Santiago Community College District	2000-2001, 2001-2002, and 2002-2003	$1,319,583	Health Fee Elimination	Note B	
117	07-904133-I-04 (Revised) Consolidated with 04-904133-I-04	10/5/07	No Comments	No	Sweetwater Union High School District	1999-2000, 2000-2001, and 2001-2002	$49,949	Notification of Truancy (Revised)	7d	
118	07-4206-I-16	10/11/07	3/15/10 (SCO)	No	Sierra Joint Community College District	2001-2002, 2002-2003, and 2003-2004	$560,846	Health Fee Elimination	Note B	
119	07-4454-I-04 (Revised) Consolidated with 05-4454-I-03	10/30/07	No Comments	No	Riverside Unified School District	1998-1999, 1999-2000, and 2000-2001	$976,036	Intradistrict Attendance (Revised)	10c	
120	07-904133-I-05	12/18/07	No Comments	No	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002	$108,442	Notification of Truancy	7e	
121	08-4425-I-15	7/22/08	No Comments	No	Contra Costa Community College District	2001-2002; 2002-2003; 2003-2004	$494,564	Collective Bargaining	5h	
122	08-4454-I-05	8/1/08	No Comments	No	San Juan Unified School District	1999-2000, 2000-2001, 2001-2002, 2002-2003	$335,371	Intradistrict Attendance	10d	
123	08-4435-I-52	8/4/08	No Comments	No	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	$8,053,465	Graduation Requirements	8b	
124	08-904133-I-06 (Revised) Consolidated with 05-904133-I-03	8/26/08	No Comments	No	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002	$330,647	Notification of Truancy (Revised)	7f	
125	08-4237-I-02	1/28/09	No Comments	No	County of Santa Clara	1999-2000; 2000-2001; 2001-2002	$1,268,210	Child Abduction and Recovery Program	14	May-12
126	08-4206-I-17	2/5/09	No Comments	No	Santa Monica Community College District	2003-2004; 2004-2005; 2005-2006	$795,942	Health Fee Elimination	Note B	
127	08-4206-I-18	2/5/09	No Comments	No	Los Rios Community College District	2002-2003; 2003-2004; 2004-2005	$2,554,615	Health Fee Elimination	Note B	

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128	08-4425-I-16	2/5/09	No Comments	No	Los Rios Community College District	2001-2002; 2002-2003; 2003-2004	$286,895	Collective Bargaining	5i	
129	08-9723-I-01	5/21/09	No Comments	No	Sweet water Union High School District	2004-2005 and 2005-2006	$160,120	National Norm-Referenced Achievement Test (NNRAT)	15	May-12
130	08-9723-I-02	5/21/09	No Comments	No	Sweetwater Union High School District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003 2003-2004	$1,446,786	Standardized Testing and Reporting (STAR)	16	Jul-12
131	09-4425-I-17	8/4/09	No comments	No	Sierra Joint Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$17,971	Collective Bargaining	5j	
132	09-4206-I-19	9/25/09	No comments	No	Citrus Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$434,874	Health Fee Elimination	Note B	
133	09-4206-I-20	9/25/09	No comments	No	Cerritos Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$203,396	Health Fee Elimination	Note B	
134	09-4206-I-21	9/25/09	No comments	No	Kern Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$814,081	Health Fee Elimination	Note B	
135	09-4206-I-22	9/25/09	No comments	No	Long Beach Community College District	2003-2004, 2004-2005, 2005-2006	$676,727	Health Fee Elimination	Note B	
136	09-4206-I-23	10/5/09	No comments	No	Los Rios Community College District	2005-2006, 2006-2007, 2007-2008	$2,757,467	Health Fee Elimination	Note B	
137	09-4206-I-24	10/5/09	No comments	No	Foothill-De Anza Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$440-752	Health Fee Elimination	Note B	
138	09-4206-I-25	10/5/09	No Comments	No	Yosemite Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$451, 873	Health Fee Elimination	Note B	
139	09-4206-I-26	10/26/09	No Comments	No	Redwoods Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$263,986	Health Fee Elimination	Note B	
140	09-4081-I-01	1/14/10	No comments	No	City of Los Angeles	2003-2004	$516,132	Firefighter's Cancer Presumption	17	Jul-12
141	09-4282-I-04	3/16/10	No Comments	No	County of Orange	2000-2001	$1,046,844	Handicapped and Disabled Students	18a	Sep-12
142	09-4282-I-05	4/13/10	No Comments	No	County of Santa Clara	2003-2004, 2004-2005, 2005-2006	$8,606,362	Handicapped and Disabled Students	18b	Sep-12
143	09-4206-I-27	6/9/10	No Comments	No	Allan Hancock Joint Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$341,518	Health Fee Elimination	Note B	
144	09-4206-I-29	6/15/10	No Comments	No	San Diego Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$379,946	Health Fee Elimination	Note B	
145	09-4206-I-30	6/15/10	No Comments	No	Pasadena Area Community College District	2004-2005, 2005-2006	$317,939	Health Fee Elimination	Note B	
146	09-4206-I-28	6/16/10	No Comments	No	Rancho Santiago Community College District	2005-2006, 2006-2007, 2007-2008, 2008-2009	$2,522,329	Health Fee Elimination	Note B	
147	09-4442-I-02	6/29/10	No Comments	No	San Diego County Office of Education	2006-2007; 2007-2008	$11,203	Interdistrict Attendance Permits	13b	
148	10-4206-I-31	7/16/10	No Comments	No	San Bernardino Community College District	2003-2004; 2004-2005; 2005-2006; 2006-2007	$895,614	Health Fee Elimination	Note B	
149	10-904133-I-07 (Revised) Consolidated with 07-904133-I-05	7/16/10	No Comments	No	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002	$87,312	Notification of Truancy (Revised)	7g	
150	10-4206-I-32	9/1/10	No Comments	No	State Center Community College District	2002-2003, 2003-2004, 2005-2006, 2006-2007	$902,744	Health Fee Elimination	Note B	

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151	10-904133-I-08 (Revised) Consolidated with 05-904133-I-03 (08-904133-I-06)	9/13/10	No Comments	No	Riverside Unified School District	2000-2001, 2001-2002	$298,282	Notification of Truancy (2nd Revised)	7h	
152	10-4499-I-01	9/16/10	No Comments	No	County of Santa Clara	2003-2004, 2004-2005, 2005-2006	$526,802	Peace Officers Bill of Rights (POBOR)	19	Dec-12
153	10-904133-I-09	10/6/10	No Comments	No	San Juan Unified School District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$132,847	Notification of Truancy	7i	
154	10-4206-I-33	10/26/10	No Comments	No	El Camino Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$674,212	Health Fee Elimination	Note B	
155	10-904133-I-10	11/1/10	No Comments	No	Riverside Unified School District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$326,088	Notification of Truancy	7j	

J:mandates/IRC/2009/09-4282-I-05/Appeal
Hearing: December 2, 2010

ITEM 2

Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim

Handicapped and Disabled Students, 09-4282-I-05

County of Santa Clara, Appellant

TABLE OF CONTENTS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

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Miguel Márquez
COUNTY COUNSEL

Winifred Botha
Orry P. Korb
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

November 12, 2010

VIA E-MAIL, FASCIMILE, AND U.S. MAIL

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
csminfo@csm.ca.gov
FAX: (916) 445-0278

Re: Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim

To the Commission on State Mandates:

The County of Santa Clara ("County") respectfully appeals the decision of Paula Higashi, Executive Director of the Commission on State Mandates ("Commission"), to deny the County's request for an expedited hearing on its Incorrect Reduction Claim (IRC) filed on April 12, 2010. On November 1, 2010, after the record in the County's IRC had closed, the County requested that the Commission schedule its IRC to be heard at the Commission's next scheduled meeting on December 2, 2010, or alternatively, that the Commission inform the County of the date on which its IRC would be heard. On November 2, 2010, Ms. Higashi notified the County that its request to have the IRC heard at the Commission's December 2, 2010 meeting was denied. Ms. Higashi further declined to inform the County of an alternate date on which it could expect its IRC to be heard.

The County hereby exercises its right under Title 2 section 1181(c) of the California Code of Regulations to appeal Ms. Higashi's decision to deny its requests.

Basis for the County's Appeal

The County appeals Ms. Higashi's decision for three reasons. First, the County needs immediate clarification regarding its obligations under the AB 3632 program so that it can (1) avoid incurring additional costs that may be later disallowed and (2) ensure that it continues to provide disabled children with all services it is mandated to provider under state and federal law.

Second, it is our understanding that the State Controller's Office ("Controller") will deduct the disallowed reimbursements from future SB 90 payments made to the county. If the Commission overturns the Controller's audit decision after the Controller has already deducted

the disallowed reimbursements from mandate payments to the County, the Controller will be unable to reimburse the County for the incorrectly reduced payments as all funds allocated for the AB 3632 mandate during the relevant fiscal years will have been distributed. As a result, the County would, in effect, be denied its constitutional right to reimbursement for provision of state mandated programs. *See* Cal. Const. Art. XIII B, § 6(a).

Finally, there appears to be no basis for Ms. Higashi's decision not to inform the County of a date (approximate or specific) on which it can expect its IRC to be heard. The Commission notified the County that its IRC was complete on June 8, 2010. Under Government Code section 17553(d), the Controller was required to file a response on or before September 8, 2010. The Controller declined to file a response by that date. Accordingly, the record on the County's IRC closed on September 8, 2010, more than two months ago. Under Government Code section 17553(d), "[t]he failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the [C]ommission." In her letter denying the County's request for an expedited hearing, Ms. Higashi declined to inform the County of an alternate date on which it could expect its IRC to be heard, stating that "the draft staff analysis on the County's [IRC] will be prepared and issued once the Commission resolves the older incorrect reduction claims on file. The parties will be notified of the hearing on the County's [IRC] when the draft staff analysis is issued." We appeal Ms. Higashi's decision to decline to prioritize the County's IRC over older pending claims that do not involve interests as compelling as (1) the rights of students to receive the mental health services to which they are entitled under state and federal law and (2) the County's need to avoid incurring additional millions in costs that may be later disallowed. Furthermore, even if the Commission is inclined to uphold Ms. Higashi's decision not to hear the County's IRC before older pending claims, there is no statutory or regulatory basis for her decision to decline to provide the County with a date (approximate or specific) on which the County can expect its IRC to be heard.

For the reasons set forth above, the County respectfully requests that the Commission overturn Ms. Higashi's decision denying the County's request for an expedited hearing on its IRC. The County further respectfully requests that the Commission immediately notify the County of a date on which the County can expect its IRC to be heard.

Very truly yours,

MIGUEL MÁRQUEZ
County Counsel

GRETA S. HANSEN
Acting Lead Deputy County Counsel

CC: Camille Shelton, General Counsel to the Commission on State Mandates (via e-mail)
Richard Chivaro, General Counsel to the State Controller (via U.S. mail)
Kathleen Lynch, Deputy Attorney General (via e-mail)

Original List Date:
Last Updated: 10/6/2010
List Print Date: 11/02/2010
Claim Number: 09-4282-I-05
Issue: Handicapped and Disabled Students

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 324-0256 JLal@sco.ca.gov (916) 323-6527
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Email Fax:	(916) 323-5849 jspano@sco.ca.gov (916) 327-0832
Ms. Greta S. Hansen County of Santa Clara Office of the County Counsel 70 W. Hedding Street, East Wing 9th Floor San Jose, CA 95110	Tel: Email Fax:	(408) 292-7240 greta.hansen@cco.sccgov.org (408) 299-5930
Mr. Edward Jewik Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Email Fax:	(213) 974-8564 ejewik@auditor.lacounty.gov (213) 617-8106
Ms. Kimberley Nguyen MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Email Fax:	(916) 471-5516 kimberleynguyen@maximus.com (916) 366-4838
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Miguel Márquez
COUNTY COUNSEL

Winifred Botha
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ASSISTANT COUNTY COUNSEL

November 1, 2010

RECEIVED
NOV 0 1 2010
COMMISSION ON STATE MANDATES

VIA E-MAIL, FACSIMILE, AND U.S. MAIL

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
csminfo@csm.ca.gov
FAX: (916) 445-0278

Re: *Incorrect Reduction Claim Regarding the Handicapped and Disabled Students Program Filed by the County of Santa Clara*

To the Commission on State Mandates:

The County of Santa Clara ("County") respectfully renews its request for an expedited hearing on its Incorrect Reduction Claim (IRC) filed on April 12, 2010. As you may recall, in the cover letter accompanying the County's IRC, we requested that the Commission on State Mandates ("Commission") schedule a hearing on the County's IRC on or before June 1, 2010, or in the alternative, that the Commission at least advise the County of the date on which the IRC would be heard in its formal notice informing the County that the IRC it submitted was complete. On June 8, 2010, the Commission notified the County that its IRC was complete, but denied the County's request for an expedited hearing, stating that "pursuant to section 1185.1, subdivision (b) of the Commission's regulations, the [State Controller's Office ("Controller")] has 90 days to file written oppositions or recommendations and supporting documentation regarding this IRC."

The Controller's response to the County's IRC was due on September 16, 2010. As of mid-October, the County had not received a response to its IRC from the Controller. Accordingly, my colleague Jenny Yelin called the Commission on October 13, 2010 to inquire whether a response had been filed. Commission staff member Nancy Patton confirmed that the Controller has not filed a response to the County's IRC, and further stated that the Controller typically fails to respond to IRCs by the 90-day deadline. On October 19, 2010, I spoke with Camille Shelton, General Counsel to the Commission, and she confirmed that the Controller regularly fails to timely respond to IRCs.

As you know, California Government Code section 17553(d) expressly provides that "[t]he Controller shall have no more than 90 days after the date a claim is delivered or mailed to

file any rebuttal to an incorrect reduction claim." Furthermore, "[t]he failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the [C]ommission." *Id.* Given that the statutorily prescribed deadline for the Controller to respond to the County's IRC passed more than a month and a half ago, the record on the County's IRC is now closed in light of the fact that the Controller has forgone the opportunity to file a response to the County's IRC. Accordingly, the County renews its request for an expedited hearing, and specifically requests that its IRC be heard at the Commission's scheduled meeting on December 2, 2010. To the extent the County's IRC cannot be heard on that date, the County respectfully requests that the Commission promptly inform the County of the date on which its IRC will be heard.

Very truly yours,

MIGUEL MÁRQUEZ
County Counsel

GRETA S. HANSEN
Acting Lead Deputy County Counsel

CC: Camille Shelton, General Counsel to the Commission on State Mandates (via e-mail)
Richard Chivaro, General Counsel to the State Controller (via U.S. mail)
Kathleen Lynch, Deputy Attorney General (via e-mail)

GSH:gsh

332641

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Miguel Márquez
COUNTY COUNSEL

Winifred Botha
Orry P. Korb
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

FAX
TELECOPIER COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Commission on State Mandates

OFFICE:

FAX #: (916) 445-0278 REG. OFFICE #:

FROM

NAME: Greata Hansen, Acting Lead Deputy County Counsel

OFFICE: OFFICE OF THE COUNTY COUNSEL, COUNTY OF SANTA CLARA

FAX#: (408) 292-7240 REG. OFFICE #: (408) 299-5900

Comments: Incorrect Reduction Claim Regarding the Handicapped and Disabled Students

TOTAL # OF PAGES, INCLUDING THIS COVER SHEET, TRANSMITTED: 3

DATE: November 1, 2010 TIME: 10:03 am approx.

☐ Original will not follow

☒ Original will follow via:

☒ Regular Mail ☐ Express Mail

☐ Federal Express ☐ Certified Mail/Return Receipt

☐ Other

☐ If this box is checked, please sign below as receiver and fax this cover sheet back to us (408) 292-7240 as confirmation of receipt.

Dated: _____

Camille Shelton

From: Greta Hansen [Greta.Hansen@cco.sccgov.org]
Sent: Friday, November 12, 2010 5:10 PM
To: jlal@sco.ca.gov; jspano@sco.ca.gov; ejewik@lacounty.gov; kimberleynguyen@maximus.com; jkanemasu@sco.ca.gov
Subject: Appeal of Decision by the Commission on State Mandates' Executive Director
Attachments: Appeal of Decision by Commission Executive Director.pdf

Attached please find the Count of Santa Clara's Appeal of the Commission on State Mandates' Executive Director's decision to decline the County's request for an expedited hearing on its Incorrect Reduction Claim.

Greta S. Hansen, Acting Lead Deputy County Counsel
Office of the County Counsel, County of Santa Clara
70 W. Hedding Street - East Wing 9th Floor
San Jose, CA 95110
Phone: (408) 299-5930 / Fax: (408) 292-7240
Email: greta.hansen@cco.sccgov.org

Paula Higashi

From: Camille Shelton
Sent: Friday, November 12, 2010 6:54 PM
To: Paula Higashi
Subject: Fwd: Proof of Service for Appeal of Executive Director's Decision
Attachments: 20101112175543966.pdf; ATT149647.htm

Sent from my iPhone

Begin forwarded message:

From: Greta Hansen <Greta.Hansen@cco.sccgov.org>
Date: November 12, 2010 6:08:15 PM PST
To: "csminfo@csm.ca.gov" <csminfo@csm.ca.gov>
Cc: Camille Shelton <Camille.Shelton@csm.ca.gov>
Subject: Proof of Service for Appeal of Executive Director's Decision

Attached please find a proof of service for the County's appeal of the Executive Director's decision.

Thank you,

Greta S. Hansen, Acting Lead Deputy County Counsel
Office of the County Counsel, County of Santa Clara
70 W. Hedding Street - East Wing 9th Floor
San Jose, CA 95110
Phone: (408) 299-5930 / Fax: (408) 292-7240
Email: greta.hansen@cco.sccgov.org

PROOF OF SERVICE

The undersigned declares that:

I am an attorney in the Office of the County Counsel, County of Santa Clara. I am over 18 years old and am not a party to this action. My business address is 70 W. Hedding Street, 9th Floor, East Wing, San Jose, CA 95110. On November 12, 2010, I served

Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim

on all parties and interested parties to the County of Santa Clara's Incorrect Reduction Claim (Handicapped and Disabled Students 09-4282-I-5; Fiscal Years 2003-04 through 2005-06) by sending a true copy of the above document to

Jay Lal, State Controller's Office
jlal@sco.ca.gov

Jim Spano, State Controller's Office
jspano@sco.ca.gov

Edward Jewik, Los Angeles County Auditor-Controller's Office
ejewik@auditor.lacouty.gov

Kimberley Nguyen, MAXIMUS
kimberleynguyen@maximus.com

Jill Kanemasu, State Controller's Office
jkanemasu@sco.ca.gov

by causing the above document to be transmitted via e-mail to each of the persons listed above at the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Date: November 12, 2010

Greta S. Hansen

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

70 West Hedding Street, 9th Floor
San Jose, California 95110-1770
(408) 299-5900
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Miguel Márquez
COUNTY COUNSEL

Winifred Botha
Orry P. Korb
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

November 1, 2010

VIA E-MAIL, FACSIMILE, AND U.S. MAIL

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
csminfo@csm.ca.gov
FAX: (916) 445-0278

Re: Incorrect Reduction Claim Regarding the Handicapped and Disabled Students Program Filed by the County of Santa Clara

To the Commission on State Mandates:

The County of Santa Clara ("County") respectfully renews its request for an expedited hearing on its Incorrect Reduction Claim (IRC) filed on April 12, 2010. As you may recall, in the cover letter accompanying the County's IRC, we requested that the Commission on State Mandates ("Commission") schedule a hearing on the County's IRC on or before June 1, 2010, or in the alternative, that the Commission at least advise the County of the date on which the IRC would be heard in its formal notice informing the County that the IRC it submitted was complete. On June 8, 2010, the Commission notified the County that its IRC was complete, but denied the County's request for an expedited hearing, stating that "pursuant to section 1185.1, subdivision (b) of the Commission's regulations, the [State Controller's Office ("Controller")] has 90 days to file written oppositions or recommendations and supporting documentation regarding this IRC."

The Controller's response to the County's IRC was due on September 16, 2010. As of mid-October, the County had not received a response to its IRC from the Controller. Accordingly, my colleague Jenny Yelin called the Commission on October 13, 2010 to inquire whether a response had been filed. Commission staff member Nancy Patton confirmed that the Controller has not filed a response to the County's IRC, and further stated that the Controller typically fails to respond to IRCs by the 90-day deadline. On October 19, 2010, I spoke with Camille Shelton, General Counsel to the Commission, and she confirmed that the Controller regularly fails to timely respond to IRCs.

As you know, California Government Code section 17553(d) expressly provides that "[t]he Controller shall have no more than 90 days after the date a claim is delivered or mailed to

file any rebuttal to an incorrect reduction claim." Furthermore, "[t]he failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the [C]ommission." *Id.* Given that the statutorily prescribed deadline for the Controller to respond to the County's IRC passed more than a month and a half ago, the record on the County's IRC is now closed in light of the fact that the Controller has forgone the opportunity to file a response to the County's IRC. Accordingly, the County renews its request for an expedited hearing, and specifically requests that its IRC be heard at the Commission's scheduled meeting on December 2, 2010. To the extent the County's IRC cannot be heard on that date, the County respectfully requests that the Commission promptly inform the County of the date on which its IRC will be heard.

Very truly yours,

MIGUEL MÁRQUEZ
County Counsel

GRETA S. HANSEN
Acting Lead Deputy County Counsel

CC: Camille Shelton, General Counsel to the Commission on State Mandates (via e-mail)
Richard Chivaro, General Counsel to the State Controller (via U.S. mail)
Kathleen Lynch, Deputy Attorney General (via e-mail)

GSH:gsh

332641

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT C

November 2, 2010

Ms. Greta Hansen
Deputy County Counsel
Office of the County Counsel
County of Santa Clara
70 West Hedding Street, 9th Floor
San Jose, CA 95110 – 1770

RE: Incorrect Reduction Claim
Handicapped and Disabled Students (09-4282-I-5)
Fiscal Years 2003-2004 through 2005-2006
County of Santa Clara, Claimant

Dear Ms. Hansen:

We are in receipt of your letter dated November 1, 2010, requesting that the Commission on State Mandates ("Commission") schedule the hearing on the County's incorrect reduction claim for the *Handicapped and Disabled Students* program at its meeting on December 2, 2010. In the alternative, the County requests that "the Commission promptly inform the County of the date on which its IRC [incorrect reduction claim] will be heard."

The County's request to set this matter for hearing on December 2, 2010, is denied. The County's incorrect reduction claim was filed April 13, 2010, was amended on May 20, 2010, and was deemed complete on June 8, 2010. The record on the incorrect reduction claim did not close until September 8, 2010. Pursuant to section 1185.5 of the Commission's regulations, a written draft staff analysis is required to be prepared after the record closes and issued to the claimant, the State Controller's Office, and interested parties on the mailing list at least eight (8) weeks before the hearing. The claimant and the State Controller's Office may then file written comments on the draft staff analysis at least five (5) weeks before the hearing. After the receipt and consideration of comments, a final staff analysis is prepared and is issued at least ten (10) days before the scheduled hearing. The parties have not stipulated to other time deadlines in this case. Thus, the record did not close and an analysis was not prepared in time to make the December 2, 2010 hearing.

The draft staff analysis on the County's incorrect reduction claim will be prepared and issued once the Commission resolves the older incorrect reduction claims on file. The parties will be notified of the hearing on the County's incorrect reduction claim when the draft staff analysis is issued.

Pursuant to the Commission's regulations, the Commission's meeting agendas are prepared by the Executive Director. (Cal. Code Regs., tit. 2, § 1182.1.) Any party in interest may appeal to the Commission for review of the actions and decisions of the Executive Director. The appeal must be submitted in writing within ten (10) days of first being served written notice of the Executive Directors' action or decision. If an appeal is filed, the item will be scheduled for

hearing and vote by the Commission at its next scheduled meeting. (Cal. Code Regs, tit. 2, § 1181.)

Sincerely,

PAULA HIGASHI
Executive Director

cc. Mailing List, Kathleen Lynch

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

EXHIBIT D

MINUTE ORDER

DATE: 11/19/2010 TIME: 09:00:00 AM DEPT: 31

JUDICIAL OFFICER PRESIDING: Michael P. Kenny
CLERK: Susan Lee
REPORTER/ERM: Tabarez, E. #7478
BAILIFF/COURT ATTENDANT: Derek Greenwood

CASE NO: **34-2010-80000592-CU-WM-GDS** CASE INIT.DATE: 07/07/2010
CASE TITLE: **County Of Santa Clara vs. California Commission On State Mandates**
CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,5534399

EVENT TYPE: Hearing on Demurrer - Writ of Mandate
MOVING PARTY: California Commission On State Mandates
CAUSAL DOCUMENT/DATE FILED: Demurrer to petition for writ of mandate, 08/10/2010

EVENT ID/DOCUMENT ID: ,5543002

EVENT TYPE: Hearing on Demurrer - Writ of Mandate
MOVING PARTY: California State Controllers Office
CAUSAL DOCUMENT/DATE FILED: Demurrer, 08/11/2010

APPEARANCES
Camille Shelton, counsel, present for Respondent(s).
Kathleen Lynch, counsel, present for Respondent(s).
Patrick E. Premo and Greta S. Hansen, counsel present for Petitioner.

NATURE OF PROCEEDINGS: DEMURRERS

TENTATIVE RULING

The following shall constitute the Court's tentative ruling on Respondents California Commission on State Mandate's (the "Commission") and California State Controllers Office and John Chiang's[1] Demurrers to Petitioner County of Santa Clara's Petition for Peremptory Writ of Administrative Mandamus, which are scheduled to be heard by the Court on November 19, 2010, at 9:00 a.m., in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

BACKGROUND FACTS AND PROCEDURE

A demurrer is generally confined to the pleading under attack. Accordingly, the Court is required to provisionally assume the truth of the facts pled in Petitioner's Petition unless those facts are contradicted by law or facts of which the Court may take judicial notice. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459 (citations omitted).) The Court therefore relies on Petitioner's Petition for Peremptory Writ of Administrative Mandamus ("Petition") for the relevant facts. The Court, however, does not admit contentions, deductions, or conclusions of fact or law alleged in the challenged pleading. (*Ibid.* (citations omitted).)

Petitioner County of Santa Clara (the "County" or "Petitioner") operates the Santa Clara County Mental Health Department, which provides mental health services to County residents. (Petition at ¶ 3.) The County provides mental health services to eligible disabled children in accordance with the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400, *et seq.*, and Assembly Bill 3632 ("AB 3632"), Government Code §§ 7570, *et seq.* (Petition at ¶¶ 11.) According to the County, IDEA requires any state receiving federal education funding under the Act to provide children with disabilities various services intended to allow these children to benefit from public education. (Petition at ¶ 7.) The State of California receives federal IDEA funds and, pursuant to AB 3632, assigned to county mental health departments the responsibility of providing mental health services to disabled children in accordance with IDEA. (Petition at ¶ 9.) The County contends that it is constitutionally entitled to reimbursement for eligible mental health services as a result of the mandate imposed on the County by AB 3632. (Petition at ¶ 10.)

Among the mental health services provided by the County to eligible children are "mental health rehabilitation services," which are one-on-one mental health interventions provided at home, in school, or in other community settings by counselors trained in cognitive behavioral interventions. (Petition at ¶ 12.) Mental health rehabilitation services are individually tailored to help children manage the symptoms of their mental health disorders, which would otherwise make it difficult or impossible for these children to function at school. (Petition at ¶ 12.) Most of the children who receive mental health rehabilitation services from the County would require placement in a more restrictive setting if these services were not provided to them. (Petition at ¶ 13.)

The Controller reimburses counties for their AB 3632-related costs in accordance with the Parameters and Guidelines adopted by the Commission. (Petition at ¶ 14.) The County submitted a reimbursement claim to the Controller for the fiscal years 2004, 2005, and 2006. (Petition at ¶¶ 15, 16.) In 2007, the Controller initiated an audit of the County's AB 3632 reimbursement claims for these years. (Petition at ¶ 16.) The Controller issued his final audit decision on June 20, 2009. (Petition at ¶ 16.)

In Finding One of the Controller's decision, the Controller concluded that the County was not entitled to reimbursement for the approximately $8.6 million it incurred in providing mental health rehabilitation services to disabled children in fiscal years 2004, 2005, and 2006. (Petition at ¶ 17.) The Controller concluded that the County's mental health rehabilitation services were not subject to reimbursement because the services fell outside of the program's Parameters and Guidelines. (Petition at ¶ 17.)

On January 15, 2010, the County submitted a request for reconsideration of the Controller's audit decision. (Petition at ¶ 18.) The Controller denied the County's request for reconsideration on March 10, 2010. (Petition at ¶ 19.)

On April 12, 2010, the County submitted an Incorrect Reduction Claim to the Commission pursuant to Government Code § 17558.7(a) challenging the Controller's audit decision. (Petition at ¶ 24.) In its claim, the County requested that the Commission schedule a hearing on its claim before June 1, 2010, indicate the date on which the County's claim would be heard in the Commission's notice advising the County that its claim was complete, and direct the Controller not to deduct any funds from payments to the County in the interim. (Petition at ¶ 24.)

On June 8, 2010, the Commission acknowledged the County's claim was complete, but declined the County's request to expedite consideration, to specify a date on which the County's claim would be heard, and to stay implementation of the Controller's decision pending a determination. (Petition at ¶ 25.) The Commission noted that 155 claims were filed before the County's, and the Commission would make a determination on the County's claim as resources allowed. (Petition at ¶ 25.)

On July 7, 2010, the County filed its Petition pursuant to Civil Procedure Code § 1094.5 seeking a peremptory writ of mandate compelling the Respondents to vacate Finding One in its June 20, 2009 audit decision and to issue a new finding that the mental health rehabilitation services provided by the County in fiscal years 2004, 2005, and 2006 are reimbursable. Alternatively, the County seeks a peremptory writ of mandate compelling the Commission to direct the Controller to stay deductions premised on its decision disallowing mental health rehabilitation services and to hear and decide the County's Incorrect Reduction Claim within 90 days. Petitioner also contends that the Commission's incorrect reduction claims process is unconstitutional as applied to Petitioner.

In its Petition, Petitioner alleges that the Commission has more than 150 incorrect reduction claims on its docket. (Petition at ¶ 26.) Since December 2003, the Commission has decided only seven incorrect reduction claims – a rate of approximately only one claim per year. (Petition at ¶ 26.) There is no plan in place to address the growing claim backlog; indeed, only three of the more than 150 incorrect reduction claims have been scheduled for a hearing in 2010. (Petition at ¶ 26.) If the Commission continues deciding claims at this pace, it will take *more than 150 years* for it to decide the more than 150 claims in line before the County's. In the meantime, the Controller will deduct the disputed $8.6 million from future payments owed to the County, and may disallow millions expended on mental health rehabilitation services in subsequent fiscal years. (Petition at ¶ 26.)

Petitioner estimates that it will take several decades before the Commission reaches a decision on Petitioner's claim, and during this time, the County will be placed in the position of either having to spend tens of millions of dollars providing mental health rehabilitation services without knowing whether the State will reimburse Petitioner or ignoring the State's mandate that Petitioner provide disabled children with mental health rehabilitation services. (Petition at ¶ 26.) Accordingly, Petitioner alleges that it should not be required to wait for the Commission to resolve Petitioner's claim prior to seeking judicial relief. (Petition at ¶ 27.)

On August 10 and 11, 2010, the Commission and the Controller, respectively, demurred to the County's Petition on various grounds primarily related to the County's alleged failure to exhaust administrative remedies. In the event the Court overruled Respondents' demurrers, Respondents filed alternative motions to strike various portions of the County's Petition.

DISCUSSION

The incorrect reduction claim administrative process.[2]

"To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an 'incorrect reduction claim' with the commission." (2 CCR § 1185(a); Gov't Code § 17551(d).) Within ten days after the submission of an incorrect reduction claim, the Commission is required to determine and notify the claimant of whether the claim is complete. (2 CCR § 1185(g); Gov't Code § 17553(d).) If an incorrect reduction claim is complete, the Commission is required to send a copy of the claim to the Controller within ten days of receipt. (2 CCR §§ 1185(h), 1185.1(a); Gov't Code § 17553(d).) The Controller then has 90 days within which to file a response to the claim with the Commission. (2 CCR § 1185.1(b); Gov't Code § 17553(d).) The claimant and all interested parties then have 30 days to file a rebuttal to the response of the Controller. (2 CCR § 1185.1(c).)

Once the record on an incorrect reduction claim is closed, the Commission is required to prepare a written analysis of the claim that includes an analysis of the parties' responses to the claim and a recommendation on whether the claim was incorrectly reduced. (2 CCR § 1185.5(a).) The Commission is required to circulate its draft analysis to the interested parties at least eight weeks prior to the hearing on the incorrect reduction claim or at such other time as determined by the Commission's Executive Director or by stipulation by the claimant and the Controller. (2 CCR § 1185.5(a).) "A 'matter' is set for

hearing when commission staff issues its draft analysis."[3] (2 CCR § 1187(b).) The Controller and the claimant may file written comments to the draft staff analysis with the Commission at least five weeks before the hearing on the claim or as otherwise stipulated to by the Controller and the claimant or otherwise directed by the Commission's Executive Director. (2 CCR § 1185.5(c).)

Pursuant to agreement of all parties to a claim, the Commission may agree to waive otherwise applicable procedural requirements and may shorten the governing time periods for processing an incorrect reduction claim. (Gov't Code § 17554.)

The regulations outlining the hearing procedure for an incorrect reduction claim are outlined in Article 7 of Chapter 2.5 of Division 2 of Title 2 of the CCR. "If a matter is heard before the commission itself, or a panel of the commission, and a hearing officer presided, the hearing officer who presided at the hearing shall be present during consideration of the claim and, if requested, shall assist and advise the commission in preparation of the proposed decision." (2 CCR § 1188.1(a).) Generally, a "proposed decision must be prepared within a reasonable time following submission of the matter to the hearing officer or panel or commission vote, and within a reasonable time after the evidentiary hearing."[4] (2 CCR § 1188.1(g).) After the hearing, the Commission may adopt the proposed decision or the Commission may choose to reject the proposed decision and decide the matter itself upon the record. (2 CCR §§ 1188.1(d), (e).) Even after a proposed decision becomes the final decision of the Commission, the Commission may make substantive changes to the decision or order reconsideration of an incorrect reduction claim on petition of any party in certain circumstances. (2 CCR § 1188.4(a); Gov't Code § 17559(a).)

"If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced." (2 CCR § 1185.7.)

"A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a hearing." (Gov't Code § 17559(b).)

Petitioner failed to exhaust administrative remedies.

In their demurrers, Respondents contend that Petitioner is precluded from applying to this Court for relief pursuant to Civil Procedure Code § 1094.5 on the following grounds: (1) Petitioner has failed to exhaust administrative remedies; and, accordingly, (2) there is no final decision of the Commission for the Court to review. Because these grounds are irrefutably intertwined, the Court addresses them together below.

"Exhaustion of administrative remedies is 'a jurisdictional prerequisite to resort to the courts.'" (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70 (citation omitted).) "The exhaustion doctrine is principally grounded on concerns favoring administrative autonomy (i.e., courts should not interfere with an agency determination until the agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary)." (*Farmers Ins. Exch. v. Super. Ct.* (1992) 2 Cal.4th 377, 391 (citation omitted).) "As Witkin explains it, '[the] administrative tribunal is created by law to adjudicate the issue sought to be presented to the court. The claim or "cause of action" is within the special jurisdiction of the administrative tribunal, and the courts may act only to *review* the final administrative determination. If a court allowed a suit to be maintained prior to such final determination, it would be interfering with the subject matter jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative remedy has been held *jurisdictional* in California.'" (*County of Contra Costa v. State of Cal.* (1986) 177 Cal.App.3d 62, 73.)

However, as explained in *County of Contra Costa v. State of California*, *supra*:

"[T]he doctrine of exhaustion of administrative remedies has not hardened into inflexible dogma. It contains its own exceptions, as when the subject matter of the controversy lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy, and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." [Citations.] Thus the jurisdictional sweep of the doctrine presupposes that none of these recognized exceptions applies. Consequently, the doctrine precludes original judicial actions only in the absence of those exceptions.

(*County of Contra Costa, supra*, 177 Cal.App.3d at 73 (citations omitted).)

Petitioner concedes that it did not wait for a final decision from the Commission on Petitioner's incorrect reduction claim prior to filing its Petition. Instead, Petitioner contends that it is exempt from the administrative exhaustion requirement because (1) the administrative procedure is inadequate to afford Petitioner the relief it seeks; (2) and pursuit of the administrative remedy would result in irreparable harm. (Opposition at 9:27-28.)

The inadequate remedy exception to the administrative exhaustion requirement does not exempt Petitioner's claims.

As explained above, Courts may exempt a litigant from the administrative exhaustion requirement where the remedy afforded by an administrative agency is inadequate. (*County of Contra Costa, supra*, 177 Cal.App.3d at 73 (citation omitted).) This exemption applies in circumstances were the "administrative procedure is too slow to be effective," as argued by Petitioners here. (*City of San Jose v. Operating Eng. Local Union No. 3* (2010) 49 Cal.4th 597, 609 (citation omitted).)

In support of its argument, Petitioner relies on *Social Services Union. S.E.I.U. Local 535 v. County of San Diego*, (1984) 158 Cal.App.3d 1126, *Los Angeles County Employees Association v. County of Los Angeles*, (1985) 168 Cal.App.3d 683, and *County of City of San Jose*,[5] *supra*. The Court agrees with Respondents that these cases are factually distinguishable on the basis that they are labor relations cases and offer little assistance to Petitioner. *Social Services Union*, *supra*, and *Los Angeles County*, *supra*, are further distinguishable because the courts' application of the inadequate remedy exception to the exhaustion requirement was predicated on the fact that an expedited decision was impossible under the circumstances before the courts. (*Social Services Union*, *supra*, 158 Cal.App.3d at 1131 ("While the labor relations ordinance provides a procedure for complaining about unfair labor practices, including discrimination . . . *it does not provide for any expedited hearings or appeals*"); (*L.A. County*, *supra* 168 Cal.App.3d at 686-87 ("A speedy decision was necessary and not possible under the relatively elaborate factfinding procedures set forth in the commission's rules and regulations") (citation omitted).)

Petitioner's argument is further flawed in light of Petitioner's failure to allege that it attempted to obtain the Controller's agreement to shorten the time for the Commission to process Petitioner's incorrect reduction claim. Pursuant to Government Code § 17554, the Commission may agree to waive otherwise applicable procedural requirements and to shorten applicable time periods *pursuant to an agreement by all parties to a claim.* While Petitioner alleges that on April 12, 2010, it asked the Commission to expedite the hearing on Petitioner's incorrect reduction claim. (Petition at ¶ 24), there is no indication that Petitioner sought the agreement of the Controller to expedite the claim and was rebuffed by the Commission.

On November 1, 2010, Petitioner renewed "its request for an expedited hearing, and specifically

requests that its incorrect reduction claim be heard at the Commission's scheduled meeting on December 2, 2010. To the extent the County's IRC cannot be heard on that date, the County respectfully requests that the Commission promptly inform the County of the date on which its IRC will be heard."

On November 2, 2010, the Commission replied, denying Petitioner's request to set an expedited hearing on December 2. The Commission pointed out that pursuant to Government Code § 1185.5, the Commission is required to circulate a draft staff analysis at least eight weeks prior to the hearing date, and Petitioner's proposed hearing date did not accommodate the regulatory timelines. The Commission then noted that "[t]he parties have not stipulated to other time deadlines in this case." Petitioner fails to present any evidence that it attempted to follow the procedure outlined in Government Code § 17554 for expediting the Commission's handling of Petitioner's incorrect reduction claim.

In *Hollon v. Pierce*, (1967) 257 Cal.App.2d 468, the Third Appellate District recognized an exception to the exhaustion requirement where an administrative agency "indulges in unreasonable delay." (*Hollon*, *supra*, 257 Cal.App.2d at 476 (citation omitted).) There, the "administrative machinery had stopped," in part, because the evidence indicated the agency "would take no further action 'pending civil action.'" (*Ibid.*) Petitioner fails to plead any facts indicating that the Commission has indulged in unreasonable delay or intentionally halted the administrative process with respect to Petitioner's incorrect reduction claim.

Finally, complicating the matter for Petitioner is the speculative nature of the delay alleged by Petitioner. At this point in time, Petitioner presents only its contentions regarding the potential delay it may face in having to exhaust its administrative remedies. (*See Bollengier*, *supra*, 222 Cal.App.3d at 1130 (rejecting applicability of futility exception to exhaustion requirement because "'[h]is own speculative, subjective feelings about the matter do not allow him to unilaterally ignore avenues of review. If that were the case, exhaustion would be a dead doctrine") (citation omitted); *Abelleira v. Dist. Ct. of Appeal* (1941) 17 Cal.2d 280, 292 (rejecting as "purely speculative" "[t]he question is whether the payment of benefits at this time constitutes such an immediate and irreparable injury as to warrant the drastic step of interfering with an uncompleted administrative proceeding, in defiance of an established rule of jurisdiction").)

Petitioner filed its incorrect reduction claim with the Commission on April 12, 2010. (Petition at ¶ 24.) On May 30, 2010, Petitioner submitted an amended claim. On June 8, 2010, the Commission acknowledged that Petitioner's incorrect reduction claim was complete and the record was thereafter kept open for 90 days to allow the Controller to file a response to Petitioner's claim. Although the record did not close until September 8, 2010, Petitioner filed its Petition seeking judicial intervention with respect to its incorrect reduction claim on July 7, 2010, almost two months before the record closed. A little less than three months has passed since the closure of the record. The Court cannot presently conclude that the delay experienced by Petitioner is unreasonable.

<u>The irreparable harm exception to the administrative exhaustion requirement does not exempt Petitioner's claims.</u>

Courts also have exempted litigants from the administrative exhaustion requirement when the "pursuit of the administrative remedy would result in irreparable harm . . . ." (*County of Contra Costa, supra*, 177 Cal.App.3d at 73 (citations omitted).) "However, this exception to the exhaustion rule has been applied rarely and only in the clearest of cases." (*City and County of S.F. v. Int'l Union of Operating Eng. Local 39* (2007) 151 Cal.App.4th 938, 948 (citation omitted).) "An exception to the jurisdictional requirement of exhaustion of administrative remedies will not be applied where, as in this case, the asserted injury is 'purely speculative.'" (*Wilkinson v. Norcal Mutual Ins. Co.* (1979) 98 Cal.App.3d 307, 316 (citation omitted).)

In its Petition, Petitioner contends that "the County will be placed in the untenable position of having either (a) to spend tens of millions of dollars providing mental health rehabilitation services without knowing whether the State will reimburse the County, or (b) to ignore the State Legislature's mandate to provide disabled children with the mental health care to which they are entitled under federal special education law" if Petitioner is forced to wait for a Commission decision prior to seeking judicial relief." (Petition at ¶ 27.) Petitioner alleges that, "[i]n the meantime, the Controller will deduct the disputed $8.6 million from future payments owed to the County, and may disallow additional millions expended on mental health rehabilitation services in subsequent fiscal years." (Petition at ¶ 26.)

At this point in time, the Court also cannot conclude that the irreparable harm exception to the administrative exhaustion requirement exempts Petitioner's claims. Petitioner fails to allege that it has experienced any harm to date, let alone irreparable harm. Petitioner's claims regarding the harm it may suffer are too speculative to support application of the irreparable harm exception. (*See Bollengier, supra*, 222 Cal.App.3d at 1130; *Abelleira, supra*, 17 Cal.2d at 292.) The harm Petitioner alleges it will suffer is largely based on its claims regarding the potential delay it may face in obtaining a final decision from the Commission. Petitioner has yet to experience any unreasonable delay with respect to the Commission's processing of Petitioner's incorrect reduction claim. Moreover, to the extent Petitioner will suffer monetary harm as a result of waiting for the Commission to issue a final decision, the Court agrees that this harm is not irreparable. If the Commission finds that the Controller incorrectly reduced Petitioner's claim, Petitioner is entitled to reimbursement of those funds, plus interest.

Petitioner's constitutional claim is subject to the administrative exhaustion requirement.

The parties disagree on whether Petitioner's claim that the Commission's incorrect reduction claim process, as applied to Petitioner, is unconstitutional is exempt from the administrative exhaustion requirement. Petitioner relies on various cases for the proposition that "[w]here, as here, a litigant challenges the constitutionality of an administrative process, the litigant need not first exhaust that process." (Opposition at 18:7-9.) Respondents contend otherwise, and the Court agrees.

Lund v. California State Employees Association, (1990) 222 Cal.App.3d 174, and *California v. Superior Court (Veta)*, (1974) 12 Cal.3d 237, upon which Petitioner relies, do not stand for the proposition that a litigant challenging the constitutionality of an administrative agency's process is exempt from administrative exhaustion requirements. Instead, these cases stand for the proposition that a litigant challenging the constitutionality of an administrative agency's authorizing statute is exempt from the exhaustion requirement. As quoted by Petitioner, the Supreme Court in *Veta* stated: "It would be heroic indeed to compel a party to appear before an administrative body to challenge ***its very existence*** and to expect a dispassionate hearing before its preponderantly lay membership ***on the constitutionality of the statute establishing its status and functions***." (*Veta, supra*, 12 Cal.3d at 251 (emphasis added).)

Bollengier v. Doctors Medical Center, (1990) 222 Cal.App.3d 1115, 1127, is the strongest authority cited by Petitioner. There, the Fifth Appellate District stated: "A party is not required to exhaust the administrative remedies when those administrative procedures are the very source of the asserted injury. [Citation.] This rule is merely another facet of the inadequate remedy exception to the exhaustion rule. [Citation.] Under this exception, a party is excused from exhausting administrative remedies where the challenge is to the constitutionality of the administrative agency itself or the agency's procedure." (*Bollengier, supra*, 222 Cal.App.3d at 1127 (citation omitted).) In so holding, the *Bollengier* court relied on the Third Appellate District's case in *Chrysler Corporation v. New Motor Vehicle Board*, (1979) 89 Cal.App.3d 1034, 1039, which cites the *Veta* case as it's authority for the *Chrysler* court's holding that challenges to an administrative agency's procedure are exempt from the administrative exhaustion requirement. As discussed above, however, *Veta* does not stand for this proposition. Accordingly, *Bollengier* offers no assistance to Petitioner.

Instead, the court finds the Third Appellate District's decisions in *County of Contra Costa v. State of California*, (1986) 177 Cal.App.3d 62, and *Grossmount Union High School District v. State Department of Education*, (2008) 169 Cal.App.4th 869, instructive.[6] In *County of Contra Costa*, the court noted that "the doctrine of exhaustion of administrative remedies applies to actions raising constitutional issues." (*Contra Costa*, *supra*, 177 Cal.App.3d at 74 (citation omitted).) The court recognized the exception for "when the constitutionality of the agency itself is challenged. A litigant is not required to exhaust his administrative remedies where the challenge is to the constitutionality of the administrative agency." (*Id.* at 74-75 (citation omitted).)

In both cases, the courts noted the benefits of requiring a litigant raising a constitutional issue to exhaust administrative remedies:

"The Commission "has the power to determine whether a statute or regulation mandates a new program, or higher level of service of an existing program and whether there are any 'costs' mandated by the legislation. A proceeding before the [Commission] will promote judicial efficiency by unearthing the relevant evidence and providing a record which the court may review. [Citation.] It is still the rule that a party must exhaust administrative remedies even though, if unsuccessful, he intends to raise constitutional issues in a judicial proceeding."

(*Grossmount*, *supra*, 169 Cal.App.4th at 885 (quoting *County of Contra Costa*, *supra*, 177 Cal.App.3d at 75 n.8).)

Petitioner's argument regarding the affect of the Budget Act on Petitioner's obligation to comply with the administrative exhaustion requirement is unconvincing.

Petitioner now contends that it is excused from having to complete the incorrect reduction claim process in light of the Legislature's passage of the 2010 Budget Act. (Opposition at Section III.) Pursuant to the Budget Act, Petitioner indicates that the Legislature suspended the requirement that local governments must file incorrect reduction claims before the Commission. (Opposition at 19:8-10.) Accordingly, the incorrect reduction claim process is now voluntary, and Petitioner no longer needs to abide by this process. (Opposition at 19:13-15.)

The Court is unconvinced by Petitioner's argument. If, as Petitioner contends, the incorrect reduction claim process is not required, then Petitioner is essentially challenging the decision of the Controller to deny Petitioner's reimbursement claim. There would never be a final decision of the Commission for Petitioner to challenge and for the Court to review. If this is the case, then there is no need for Petitioner to name the Commission as a respondent in this action and the Commission should therefore be dismissed as a party.

The parties' Requests for Judicial Notice are GRANTED.

The parties' unopposed Requests for Judicial Notice are GRANTED. These documents are proper subjects of judicial notice pursuant to Evidence Code § 452(c) and *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750.

DISPOSITION

Respondents' demurrers are SUSTAINED without leave to amend. Petitioner's Petition is hereby dismissed. In accordance with Local Rule 9.16, counsel for Respondents are directed to prepare a judgment consistent with this ruling, incorporating this Court's ruling as an exhibit; submit it to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit it to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

[1] Respondent California State Controller's Office and John Chiang are collectively referred to herein as the "Controller").
[2] "Whether a party has exhausted its administrative remedies 'in a given case will depend upon the procedures applicable to the public agency in question.'" (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1211 (citation omitted).)

[3] A "matter" subject to a hearing includes an incorrect reduction claim. (2 CCR § 1187(a).)
[4] "If a matter is heard before the commission itself, the executive director may prepare and present the proposed statement of decision to the commission and interested parties before the hearing. The commission may adopt the proposed statement of decision on the same day as the hearing if there is no objection from the claimant or interested parties." (2 CCR § 1188.1(b).)
[5] In *City of San Jose*, *supra*, the California Supreme Court addressed the issue of whether the administrative exhaustion doctrine always applies or never applies to claims of unfair labor practices. (*City of San Jose*, *supra*, 49 Cal.4th at 608-9.) The court confirmed that whether a party is required to exhaust administrative remedies depends on the facts of the particular case and, in the case there, the procedures available to petitioner were sufficient to grant expeditious relief. (*Id.* at 611.)
[6] Both *County of Contra Costa* and *Grossmount* confirm that "the fact that a constitutional provision is self-executing does not relieve a party from complying with reasonable procedures for assertion of that right. (*County of Contra Costa*, *supra*, 177 Cal.App.3d at 75; *Grossmount*, *supra*, 169 Cal.App.4th at 885.)

COURT RULING

The matter is argued and submitted. The Court takes the matter under submission.

COURT RULING ON SUBMITTED MATTER

The Court's November 18, 2010 Tentative Ruling is AFFIRMED with the following modifications:

Respondents' demurrers are SUSTAINED with leave to amend. Petitioner is ordered to file and serve an amended petition for writ of mandate on or before December 17, 2010.

This Minute Order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Certificate of Service by Mailing is attached.

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing MINUTE ORDER DATED NOVEMBER 19, 2010 by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each which envelopes was addressed respectively to the persons and addresses show below:

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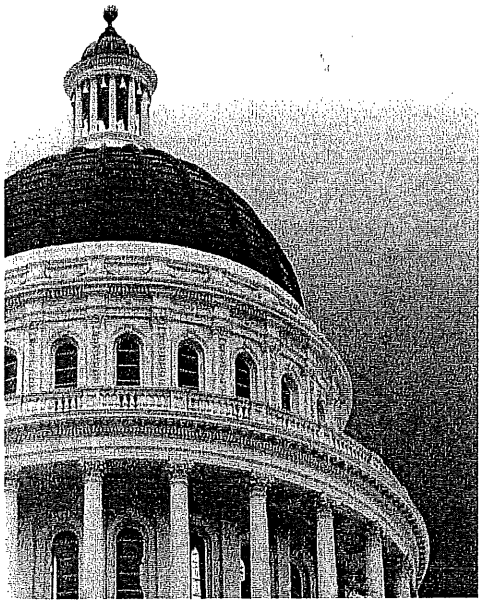
I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: November 19, 2010

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

/s/ S. Lee

By S. Lee, Deputy Clerk



State Mandates:

Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities

October 2009 Report 2009-501

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October 15, 2009 2009-501

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Under its authority to perform follow-up audits and those addressing areas of high risk, the California State Auditor presents its audit report concerning state mandate determination and payment processes.

This report concludes that while the Commission on State Mandates (Commission) has made progress in reducing its backlog of test claims for state mandates, the continuing backlog is large and includes many items from 2003 or earlier. This situation, combined with the long time that elapses before the Commission makes determinations, means that substantial costs will continue to build before the Legislature has the information it needs to take any necessary action. In addition, cost estimates at the time the Legislature considers a potential mandate are inherently difficult to develop. This situation underscores the need for the Commission to more quickly complete the test claim process and develop a statewide cost estimate, which is the first accurate measure of what a mandate will actually cost the State.

The State Controller's Office (Controller) appropriately oversees mandate claims, but the continuing high level of its audit adjustments indicates that the State could save more money if the Controller were able to fill vacant audit positions. In addition, largely because of insufficient funding, the State's liability related to state mandates grew to $2.6 billion in June 2008 and is likely to continue to climb. Further, participants in the mandate process have rarely used recently established options that could relieve the Commission of some of its workload, and a recent court case has taken away the Legislature's ability to direct the Commission to reconsider its decisions in light of changes to the law. For all of these reasons, additional reform proposals put forward by the Department of Finance, the Legislative Analyst's Office, and local entities merit further discussion. Finally, we have added the areas of mandate determination and payment to the list of high-risk issues we continue to monitor.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Contents

Summary

Results in Brief

Over the last six years, since we issued our last report on state mandates,[1] operational and structural changes have marginally improved the way state mandates are determined and subsequently managed in California. However, long delays and a growing liability indicate the need for further changes. Reimbursable costs for the mandate activities that local entities performed during fiscal years 2003–04 through 2007–08 were significant, averaging $482 million annually. A test claim from a local entity, such as a local governmental agency or a school district, begins the process for the Commission on State Mandates (Commission) to determine whether a mandate exists. Although the Commission has made progress in reducing its backlog of test claims over the last six years, the continuing backlog is large. In fact, many test claims from 2003 or earlier are still outstanding. This circumstance, combined with the long time elapsed before the Commission makes determinations, means that substantial costs will continue to build up before the Legislature has the information it needs to take any necessary action. In addition, cost estimates at the time the Legislature considers a potential mandate are inherently difficult to develop. This situation underscores the need for the Commission to more quickly complete the test claim process and develop a statewide cost estimate, which is the first accurate measure of what a mandate will actually cost the State. Finally, the Commission's backlog of incorrect reduction claims, which local entities file when they believe their claims for payment have been inappropriately cut by the State Controller's Office (Controller), has significantly increased.

The Controller uses a risk-based system for selecting claims to audit, has improved its process by auditing claims earlier than in the past, has sought parameter and guideline amendments to resolve identified claiming issues, and has undertaken outreach activities. Nevertheless, the continuing high level of audit adjustments for some programs indicates that the State could save more money if the Controller were able to fill 10 vacant audit positions. In addition, the Commission's lack of action on incorrect reduction claims has hindered the Controller's efforts to implement clear and consistent policies related to cost reimbursement. This has created uncertainty about what constitutes a proper claim. Finally, largely because of insufficient funding, the State's liability related to state mandates

Audit Highlights . . .

Our review of state mandate determination and payment processes found that:

» *The Commission on State Mandates (Commission) still has a large backlog of test claims, including many claims from 2003 or earlier.*

» *The high level of audit adjustments for some mandates suggests that the State could save more money if the State Controller's Office were able to fill 10 vacant audit positions.*

» *The Commission's backlog of incorrect reduction claims has significantly increased and creates uncertainty about what constitutes a proper claim.*

» *The State's liability for state mandates has grown to $2.6 billion in June 2008, largely because of insufficient funding.*

» *Recent reforms that could relieve the Commission of some of its workload have rarely been used.*

» *A number of state and local entities have proposed mandate reforms that merit further discussion.*

[1] State mandates are new programs or higher levels of service required of local entities by the State. The State is required to provide funding to reimburse local entities for their associated costs.

grew to $2.6 billion in June 2008. Consequently, the ongoing need to pay for past mandate activities is likely to affect adversely the State's spending on other priorities in the future.

Legislation affecting the structure of the state mandate system has had limited results. Participants in the mandate process rarely use options that could relieve the Commission of some of its workload, and when the options are unsuccessful they can lengthen processing times. However, these options have been available for less than two years, and the State has done little to publicize them. In addition, a recent court case has taken away the Legislature's ability to direct the Commission to reconsider its decisions in light of changes to the law. Although this avenue is now barred, a process that ensures mandate determinations are revised when appropriate is necessary. Commission staff said that in April 2009 a legislative subcommittee directed the Department of Finance (Finance), the Legislative Analyst's Office (Legislative Analyst), and Commission and legislative staff to form a working group to develop legislation to establish a mandate reconsideration process consistent with the court decision. Finance, the Legislative Analyst, and local entities have proposed other mandate reforms including ones focused on problems related to initial cost estimates and delays in mandate funding. Reform proposals merit further discussion, given the significance of the costs associated with state mandates.

Our assessment of current state mandate issues has led us to add the areas of mandate determination and payment to our list of high-risk issues. To the extent that resources are available, we will continue to monitor the progress of the Commission in reducing its work backlog, the level of the State's liability, and the status of recent and future reforms intended to improve the mandate process.

Recommendations

To ensure that it sufficiently resolves its backlog of test claims and incorrect reduction claims, the Commission should work with Finance to seek additional resources to reduce its backlog of work. In doing so, the Commission should prioritize and seek efficiencies to the extent possible.

To ensure that it can meet its responsibilities, including a heightened focus on audits of state mandates, the Controller should work with Finance to obtain sufficient resources. Additionally, the Controller should increase its efforts to fill vacant positions that can be used for auditing mandate claims.

To promote alternative processes related to establishing and claiming costs under mandates, the Commission and Finance should make information about these alternatives readily available to local entities on their Web sites.

To establish a reconsideration process that will allow mandates to be revised when appropriate, Commission staff should continue their efforts to work with the legislative subcommittee and other relevant parties.

To improve the state mandate process, the Legislature, in conjunction with relevant state agencies and local entities, should ensure the further discussion of reforms.

Agency Comments

The agencies we reviewed agree with our recommendations and plan to take steps to implement them.

insignificant activities and indirect costs and in anticipating additional costs resulting from guidelines may create inaccurate cost estimates. To create better estimates, Finance has reviewed the guidelines adopted since 2006 for local entities in an attempt to discern the kinds of activities that result in additional costs.

Although our testing of the five large mandates covered mandates reported since January 2004, the mandates were based on a myriad of laws, the earliest of which date back to 1983. The most recent law used by the Commission in determining a tested mandate within the five we reviewed dates to 2000. As a result, we did not review any estimates Finance created within the last nine years.

For each of the three mandates we tested where initial estimates were available, Finance did not quantify major costs.

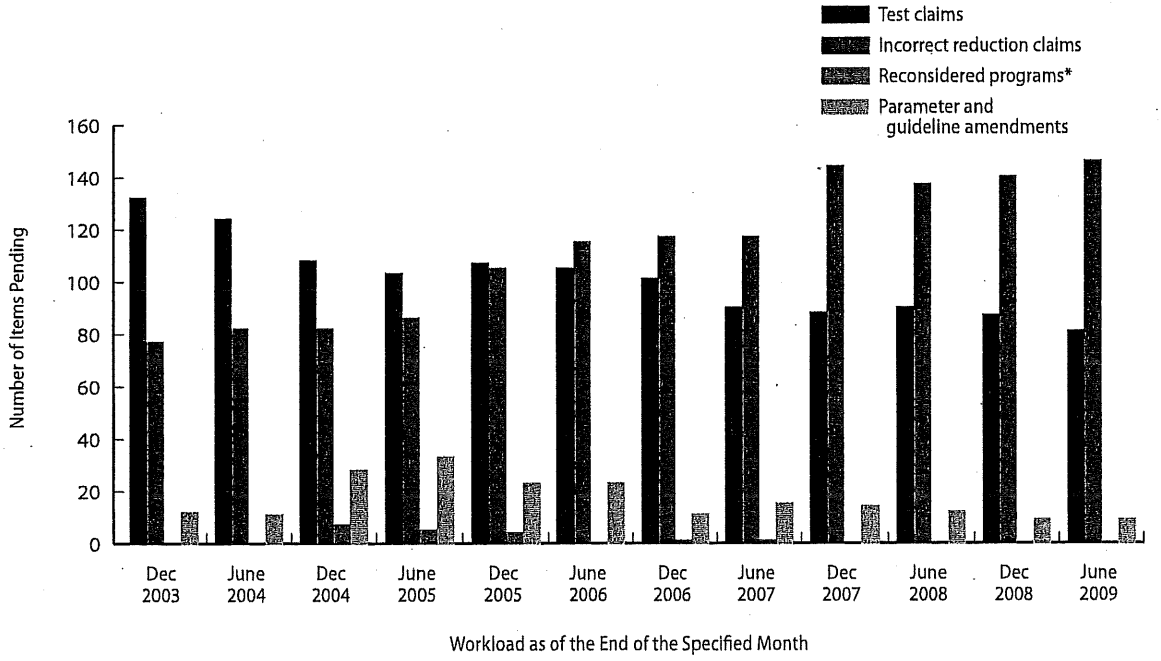
Problems with the accuracy of initial estimates are illustrated by three of the five large mandates we tested, which are the three for which initial estimates were available. All five mandates we tested were based on multiple legislative bills, many of which indicated no reimbursable mandate costs. We focused on the remaining bills that had cost estimates. In each of the three where initial estimates were available, Finance did not quantify any major costs. In the first example, the Stull Act, Finance estimated that future costs would be major but did not quantify them, stating the costs were unknown. In the second and third examples, the bills for the Enrollment Fee Collection and Waivers mandate and the Administrative License Suspension mandate, Finance did not estimate any annual costs greater than $2 million. The combined average annual approved claims for those three mandates from fiscal years 2003–04 through 2007–08 were $41.9 million. For the final two large mandates, representatives from Finance and the State Archives told us there were no cost estimates on file related to the bills on which the mandates were based. For two of the bills we would expect Finance estimates as the bills indicate the Legislative Counsel had determined a mandate might be created. Because of the lack of data, we could not determine whether Finance produced cost estimates for those two mandates and, if so, how large they were. The fact that early estimates are inherently difficult to develop and that mandates are often based on legislation passed years or decades previously underscores the need to address the Commission's test claim backlog so the Legislature can act more quickly if the mandates generate significant costs that warrant attention.

The Commission's Backlog of Incorrect Reduction Claims Continues to Grow

The Commission has not addressed many local entities' incorrect reduction claims, allowing its backlog of these items to grow substantially. A local entity may file an incorrect reduction claim if

it believes the Controller has improperly reduced its claim through a desk review or field audit. The Commission serves, in effect, as the appeal authority that hears local entities' incorrect reduction claims and decides if the Controller's adjustments were appropriate. Commission staff indicate that attorneys and other staff review these items. However, the Commission has only completed a limited number of these claims, and consequently its backlog grew from 77 in December 2003 to 146 in June 2009. Figure 6 depicts the growing backlog of incorrect reduction claims in comparison to the Commission's other work items, including test claims.

Figure 6
The Commission on State Mandates' Outstanding Workload
December 2003 Through June 2009



Sources: Reports by the Commission on State Mandates (Commission) to the Legislature on approved and denied mandate claims as well as other Commission information.

Note: Test claims, incorrect reduction claims, reconsidered programs, and parameter and guideline amendments require differing levels of Commission resources. This figure presents the number of pending items, not the level of resources required to complete them.

* Reconsidered programs relate to situations where the Legislature asked the Commission to reconsider its past state mandate decisions. The Commission reconsidered 13 programs between December 2003 and December 2007. Due to a court ruling in 2009, the Legislature can no longer ask the Commission to reconsider its decisions.

During these five and one-half years, the Commission completed determinations on only seven incorrect reduction claims. These determinations implemented the decisions of two superior court cases related to the Graduation Requirements mandate. As of June 2009, $57 million in contested claims remain outstanding; one incorrect reduction claim remains from September 2000, while the majority were filed in 2002. Many of the outstanding items are related to the same mandate program. The Investment Reports mandate accounts for 72 of the incorrect reduction claims pending and makes up nearly $3 million of the total amount contested.[8]

As of June 2009, $57 million in contested claims remain outstanding.

According to Commission staff, reductions to the Commission's authorized positions and budget have made it difficult to complete these items. As of August 2009 Commission staff had developed a plan to address the backlog. The plan depends on whether the Commission receives additional staff. If it does, the plan calls for hearings on the incorrect reduction claims to begin in July 2010. If additional staff are not provided, the plan proposes to complete the workload as time and resources permit. As discussed previously, it is the Commission's understanding that no additional resources will be provided to it for fiscal year 2010–11. Thus, it expects to complete the workload as time and resources permit.

The Commission has processed most requests for amendments to mandate guidelines. The Commission completed 61 of 70 requested guideline amendments between January 2004 and June 2009. These amendment completions addressed an influx of requests in fiscal years 2004–05 and 2005–06, including requests related to two programs we reviewed in our state mandate audit issued in 2003 on the Animal Adoption and Peace Officers Procedural Bill of Rights mandates.

Conversely, Commission staff postponed addressing a major amendment submitted by the Controller in April 2006 (boilerplate amendment), awaiting the outcome of litigation. The boilerplate amendment requests the incorporation of standardized language into the guidelines for 49 mandates determined before 2003. Specifically, it proposes standard rules for record retention and documentation requirements as well as the elimination of references to outdated Controller claiming instructions. This amendment addressed a recommendation from our 2002 state mandates audit. Staff state that the Commission has incorporated such language into all guidelines developed

[8] The Investment Reports mandate requires local agencies to submit to their legislative bodies and others a statement of investment policy annually and investment reports quarterly.

after January 2003. Further, the Commission subsequently updated the boilerplate language in 2005 in response to a recommendation from our 2003 state mandate audit.

However, Commission staff said that pending litigation[9] addressing documentation requirements for several mandates that originated before 2003 caused staff to suspend work on the boilerplate request. Although the Commission was not a party to this litigation, the case challenged the standards and rules, including those similar to Commission guidelines adopted after January 2003, applied in the Controller's auditing of mandate claims. Consequently, Commission staff believed it was not prudent to work on the Controller's boilerplate request, which includes amendments to the guidelines for those mandates. In its February 2009 decision, the court indicated that mandate guidelines can be used as valid rules for auditing mandate claims. Although this decision is on appeal, Commission staff developed a plan to work on the amendment request after we asked about the status of it in June 2009. Commission staff state they have scheduled 24 mandates for review in 2009 and 25 for review in early 2010. Completing its work on the boilerplate amendment could help to resolve issues of contention between local entities and the Controller. We discuss this matter further in Chapter 2.

Recommendations

To ensure that it resolves sufficiently its backlog of test claims, incorrect reduction claims, and the boilerplate amendment request, the Commission should do the following:

- Work with Finance to seek additional resources to reduce its backlog, including test claims and incorrect reduction claims. In doing so, Commission staff should prioritize its workload and seek efficiencies to the extent possible.

- Implement its work plan to address the Controller's boilerplate amendment.

[9] *Clovis Unified School District v. State Controller.*

Chapter 2

THE STATE CONTROLLER'S OFFICE APPROPRIATELY OVERSEES MANDATE CLAIMS, BUT THE STATE DOES NOT MAKE TIMELY PAYMENTS

Chapter Summary

The State Controller's Office (Controller) uses a risk-based system for selecting the state mandate claims for reimbursement that it will audit, has improved its process by auditing claims earlier than in the past, has sought parameter and guideline amendments to resolve identified claims issues, and has undertaken outreach activities to inform local entities about audit issues. Nevertheless, continuing high reduction rates, reflecting large audit adjustments for some mandates, indicate that filling vacant audit positions and giving a high priority to mandate audits could save money for the State. In addition, lack of action on incorrect reduction claims by the Commission on State Mandates (Commission) has undermined the Controller's efforts to implement clear and consistent policies related to cost reimbursement. This has created uncertainty about what constitutes a proper claim. Finally, largely because of insufficient funding, the State's liability related to state mandates has grown despite state law intended to ensure more timely payments to local governments. Consequently, the ongoing need to pay for past mandate activities continues to affect adversely the State's ability to pay for current operations and to make future investments.

The Controller Appropriately Uses Desk Reviews and Field Audits to Process and Verify Mandate Reimbursement Claims

To ensure that local entities submit accurate claims, the Controller uses a strategy that combines desk reviews with field audits. Desk reviews are high-level reviews performed on all claims, and field audits, which are performed for selected claims, are detailed reviews examining source documentation. Reduction rates, stemming from field-audit adjustments, vary among mandate programs but have averaged 47 percent for audits begun since fiscal year 2003–04. In other words, the Controller has denied on average 47 percent of the claimed costs it has audited over this period. The Controller uses its audit results and other factors to identify high-risk programs for future field audits.

Desk Reviews Provide High-Level Screening of Mandate Claims

In recent years claim reductions at the desk-review level have constituted a relatively small portion of the overall claim reductions made by the Controller. However, large claim reductions can result when a mandate program is suspended or set aside and some local entities continue to file claims for the program. Suspended or set-aside mandate programs are not reimbursable to local entities as state mandates for a given fiscal year. During the period when a mandate is suspended or set aside, local entities are not required to undertake activities stipulated for the mandate and are not eligible for reimbursements if they do. In such cases, the Controller can make legitimate reductions to the corresponding mandate claims.

Desk reviews performed by the Controller check claims for basic requirements. When local entities submit mandate claims to the Controller for reimbursement, staff review them to ensure that they are filed for the correct program and fiscal year, and are properly certified. Staff also perform a sample review of claims to ensure they are mathematically correct, and include required documentation, if necessary. The Controller's practice is to desk-review every mandate claim submitted for state reimbursement, which includes, on average, about 15,000 annual claims for various mandate programs. In cases where a claiming error is identified at this level, the Controller has the authority to reduce or reject it and the responsibility to inform the local entity of the error. After making necessary corrections, the local entity can resubmit the claim to the Controller for state reimbursement.

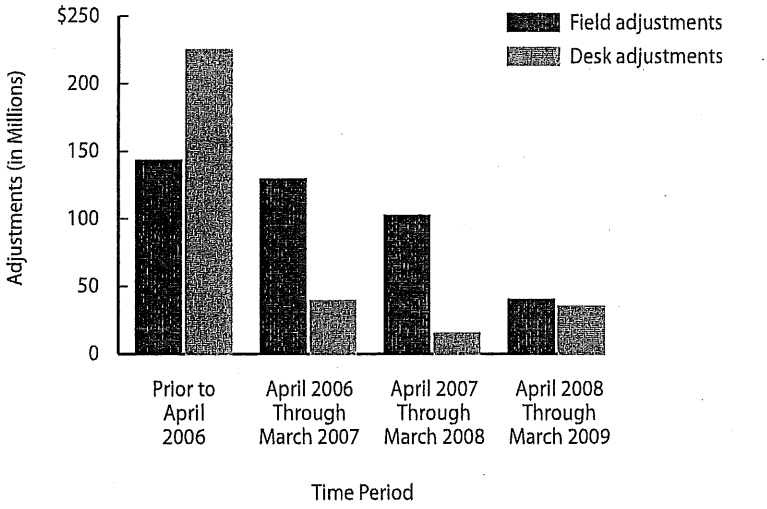
Desk review adjustments have accounted for only 25 percent of all claim reductions since April 2006.

In the period before April 2006, desk adjustments made up 61 percent of the total accumulated desk-review and field-audit claim reductions. However, as Figure 7 shows, desk-review adjustments constitute a much smaller portion of the claim reductions recorded by the Controller in the last few years, accounting for only 25 percent of all claim reductions determined by the Controller since April 2006. The primary reason for the drop in the percentage is the high level of desk adjustments the Controller made to claims under the School Bus Safety II mandate before April 2006. The adjustments, which were made because the mandate was set aside, totaled more than $148 million or 66 percent of the desk adjustments before April 2006.

The manager of the Local Reimbursement Section mentioned another factor that contributed to the decrease in annual adjustments made through desk reviews. She said that over the last three years, her staff have focused on developing an electronic system for filing reimbursement claims. As of August 2009 she said the system was available, but it did not yet cover all mandates.

She anticipated that the system would be fully operational in 18 months, leaving staff with more time to analyze claims and identify potential claim adjustments.

Figure 7
Field Audit and Desk Review Adjustments Through March 2009



Source: State Controller's Office reports of audit findings for state mandates.
Note: Reports do not provide adjustment data by year before April 2006.

Field Audits Are Detailed Reviews That Can Yield Significant Reductions in Claim Amounts

Field audits can lead to large dollar cuts in mandate claims for state reimbursement. The Controller disallows portions of mandate claims when it finds they include activities that are not reimbursable according to the parameters and guidelines (guidelines) established by the Commission or are not supported by source documentation. The Controller has the authority to audit mandate claims to identify claiming errors and needed revisions to the guidelines. Although all mandate claims are reviewed at the desk level, the Controller only conducts field audits on select mandate claims. The Controller performs an annual risk-based analysis to identify potentially costly errors in an effort to use its field-audit resources as efficiently as possible. The result is a list of potential candidates for future audits (audits listing).

In its review the Controller considers mandates with high-dollar claims, high claims in relation to population or enrollment, systematic claiming issues per past audits, new mandate programs,

and other factors to identify the mandate-entity combinations most likely to include errors. For example, the Stull Act mandate imposes requirements on school districts to perform increased evaluations of their staff. We noted two school districts, each with an enrollment between 8,500 and 8,700. One school district's Stull Act mandate claim for fiscal year 2006–07 reflected a high dollar amount—$34 per student—in relation to its enrollment; the other school district's claim was only 17 cents per student and would be considered less likely to include overstated costs.

Most of the time, the Controller selects claims to audit from its audits listing. However, audits are sometimes started for mandates and entities that were not initially identified as being high risk. For the last four fiscal years, the Controller began an average of eight audits, out of a total average of 58 audits it started each year, on entities that it had not previously identified as high risk. According to the chief of the Controller's Mandated Cost Audits Bureau (audits chief), such audits are performed in response to new information that suggests a high-risk claim and to facilitate the training of new audit staff.

The Controller has audited 36 percent of the claimed dollars for mandate costs incurred during fiscal year 2003–04.

Claims filed for reimbursement are subject to the initiation of an audit by the Controller no later than three years after the date the actual claim is filed or last amended, whichever is later, unless no funds are appropriated or no payment is made to a local entity. In the latter situation, the three-year period begins on the day the initial payment is made. Further, any audit started by the Controller must be completed within two years of the date started. As of May 2009 the Controller had audited 36 percent of the total $466 million in claimed dollars for mandate costs incurred during fiscal year 2003–04, 29 percent of claimed costs for fiscal year 2004–05, and 22 percent of claimed costs for fiscal year 2005–06.

Because the State has failed to pay many claims, as discussed later in this chapter, the Controller's window for initiating field audits is still open for certain mandate programs and claims. According to the audits chief, the statute of limitations for costs incurred for fiscal year 2003–04 is still open for many claims either because they are initial filings for new mandates or because the State has delayed their payment. Therefore, significant claims may still be audited for fiscal year 2003–04. Nevertheless, he indicated that further audit efforts may not significantly increase the audit coverage rate for fiscal year 2003–04 claims. The coverage percentages for later years should increase as the Controller continues to perform audits of claims prior to the expiration of the statute of limitations for them.

Nothing precludes the Controller from initiating audits once the Commission has adopted guidelines and local entities have submitted claims. In fact, it is advantageous for the Controller

to audit claims as soon as possible in order to identify promptly possible misunderstandings among local entities about reimbursable activities and acceptable forms of supporting documentation. The sooner the Controller can identify problem areas, the sooner it can propose changes to guidelines that can help local entities submit more accurate claims and avoid future audit adjustments. Earlier auditing can also help the State avoid the situation in which it must go through the process of recovering funds it has already paid. In our 2003 audit of state mandates, we found that the Controller had not performed audits of the two mandates on which our report focused; in both cases, the mandates had substantial claims. At that time, the Controller indicated that its focus was on auditing paid claims to ensure that any inappropriate claiming could be identified before the three-year statutory time limit for auditing those claims expired. We recommended in our 2003 audit that in the future it undertake audits sooner to get a jump on possible problems. During this audit, we found that the Controller had changed its process since our previous review to allow for earlier audit initiation and may start audits before making its first payments to local entities.

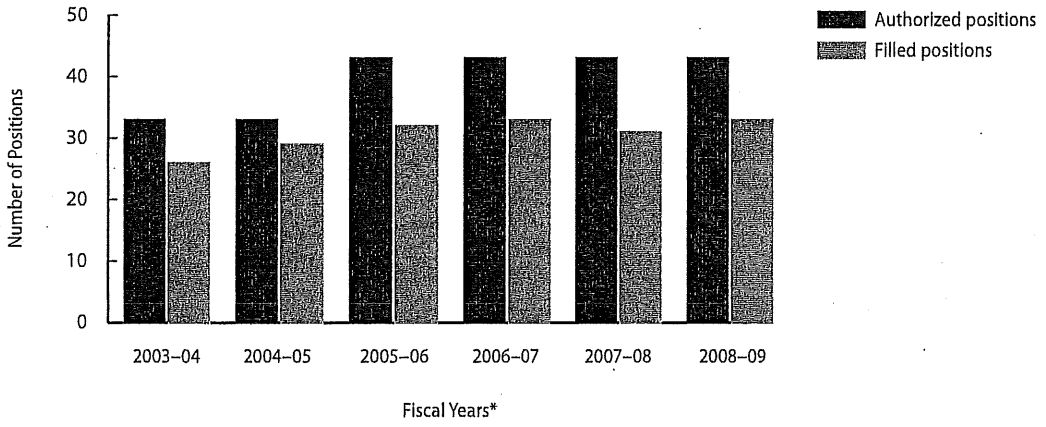
The Controller has changed its process to allow for earlier audit initiation and may start audits before making its first payments.

Audit efforts on state mandates, undertaken by the Mandated Cost Audits Bureau within the Controller's Audits Division, were greatly aided by a 175 percent increase in audit staff positions (from 12 to 33) in fiscal year 2003–04. However, the Controller was not able to take as much advantage of an additional increase of 10 staff positions two years later. Effective fiscal year 2003–04, the Controller successfully submitted a budget change proposal, increasing authorized field-audit positions from 12 to 33. Then in fiscal year 2005–06, the Legislature temporarily increased field-audit staff to 43. These positions became permanent with the approval of another budget change proposal, which became effective in fiscal year 2007–08.

Although the Controller's effort to increase authorized audit positions has been successful, it has not been able to keep all of its positions occupied. As displayed in Figure 8 on the following page, the Controller has had 10 or more authorized field-audit positions unfilled since fiscal year 2005–06. According to the audits chief, the Controller has been unable to fill the additional 10 staff positions because of the erosion of its budget over time when General Fund responsibilities have not been funded. In addition, he said that uncompetitive pay has led to its difficulties in hiring and retaining staff. Finally he noted that the Audits Division has continually had to assess its priorities and allocate resources to activities paid for by the General Fund, such as mandate audits, and those supported by other funds, such as bond-funded programs. Given the recent reduction in staffing in the Controller's budget and other budget pressures, the Controller sees no relief in being able

to fill vacant mandate auditor positions. In light of the substantial amounts involved, however, filling these positions to maximize the Controller's audits of mandate claims is important to better ensure that the State makes only appropriate reimbursements.

Figure 8
The State Controller's Office Authorized and Filled Field Audit Positions
Fiscal Years 2003–04 Through 2008–09



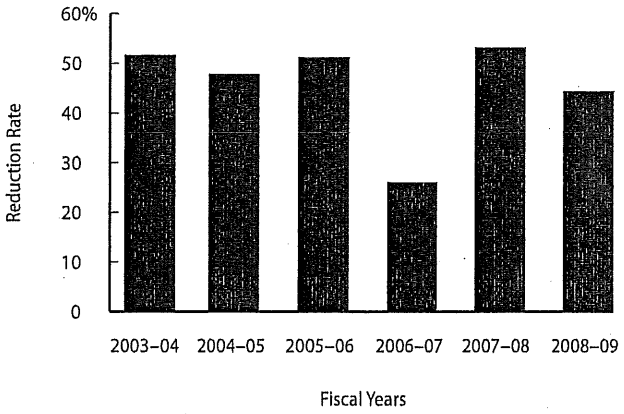
Sources: Chief of the Mandated Cost Audits Bureau of the State Controller's Office and relevant budget change proposals.

* Staffing positions are as of June of each fiscal year. The figure includes 10 temporary positions that were authorized beginning in fiscal year 2005–06. These positions became permanent in fiscal year 2007–08.

Reduction Rates Are High on Average, but They Vary Significantly Among Mandates

The Controller has reduced 47 percent of the cumulative dollars it has field-audited for all mandate audits initiated since fiscal year 2003–04, cutting about $334 million in claims. As indicated in Figure 9, the reduction rate has usually hovered around 50 percent. However, the reduction rate for audits initiated in fiscal year 2006–07 is much lower at 26 percent. Data for that fiscal year showed that the Handicapped and Disabled Students I and II mandate accounted for 62 percent of the audited dollars but had a low reduction rate of only 5 percent. We discuss the Controller's reasons for its focus on this mandate as part of our discussion of Figure 10. Excluding the results of this mandate, the reduction rate was 59 percent for audits started in fiscal year 2006–07.

Figure 9
Reduction Rates for the State Controller's Office Field Audits According to Fiscal Years That Audits Began Fiscal Year 2003–04 Through May 2009



Source: The Bureau of State Audits' analysis of audit result data obtained from the State Controller's Office.

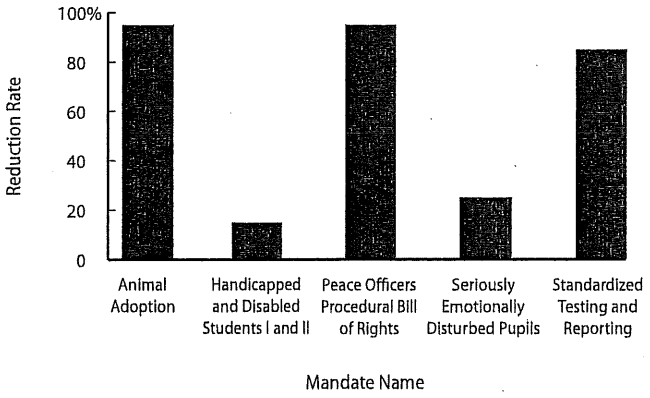
Note: Fiscal year 2008–09 information is as of May 2009.

The high overall reduction rate masks significant differences in the reduction rate among various mandate programs. For large mandates we highlighted for special attention, the average reduction rate for audits started after the beginning of fiscal year 2003–04 and completed by May 2009 ranged from 15 percent to 95 percent, as indicated in Figure 10 on the following page. The Controller reduced only 15 percent of the audited dollars for Handicapped and Disabled Students I and II mandate claims, but it reduced 95 percent of the audited dollars for two other mandates—the Animal Adoption mandate and the Peace Officers Procedural Bill of Rights (Peace Officer Rights) mandate. The Controller has field-audited, or as of May 2009 was in the process of auditing, 86 percent of the $29 million in fiscal year 2003–04 Peace Officer Rights mandate claims. However, as of that date the Controller had audited, or was in the process of auditing, only 31 percent of Animal Adoption's $23 million in claims for fiscal year 2004–05, although the reduction rate is just as high.[10]

[10] For the mandates we reviewed, we identified the amount of audit coverage for the earliest year of costs since July 2003 because that is when we would expect the highest audit coverage of claimed dollars. Fiscal year 2004–05 is the earliest year for Animal Adoption because the mandate was suspended, and thus not reimbursable, for fiscal year 2003–04.

Figure 10

**Average Field Audit Reduction Rates for Highlighted Mandates
Fiscal Year 2003–04 Through May 2009**



Source: Bureau of State Audits' analysis of audit result data obtained from the State Controller's Office.

Notes: We selected specific mandates for highlighted review throughout our audit. However, as of May 2009, no audit reports had been published for the Stull Act or the Enrollment Fee Collection and Waivers mandates, and the Graduation Requirements mandate had no audits started since before July 2003. Thus, these three highlighted programs do not appear in this figure.

The Handicapped and Disabled Students I and II and the Seriously Emotionally Disturbed Pupils mandates were not combined at the time these audits were conducted.

The reduction rate for the Animal Adoption mandate is based on the one audit report published for this mandate through May 2009; however, it is in line with the very high error rates we found in our testing of this mandate in 2003. The Controller's audit report indicates that 49 percent of the reduction is attributable to unsupported salary and benefit costs. The audited city claimed salary and benefit costs based on year-end estimates, and the Controller has given the city an opportunity to perform a time study to be reviewed later. Since a high amount of the reduction is attributable to the year-end estimates, the reduction rate could be significantly reduced if the time study supports the claim. According to the audits chief in July 2009, the city recently indicated its completion of a time study. He said the Controller plans to review the study and revise the audit report as appropriate.

Also, the audits chief indicates that the Controller considers the statute of limitations in performing field audits and that additional Animal Adoption reports will be performed later on, increasing its audit coverage, because most Animal Adoption claims have not been paid. However, as we already noted in this chapter, auditing claims sooner rather than later avoids having to recapture amounts that have already been paid. In addition, had the Controller filled more of its vacant audit positions, it would have had more resources available to devote to mandates such as Animal Adoption.

The Standardized Testing and Reporting (Standardized Testing) mandate also has a high reduction rate. The rate is 85 percent; however, only 23 percent of the $22 million in Standardized Testing claims submitted for fiscal year 2003–04 have been field-audited or are in the process of being field-audited. According to the audits chief, since the three-year statute of limitations to initiate field audits is still open for older Standardized Testing claims due to their not being paid, the Controller plans to audit additional older Standardized Testing claims in the future. The audits chief stated that the Controller has recently directed efforts to perform audits of mandates where claims have been paid or partially paid and the window of opportunity for audits is closing.

In contrast, the Handicapped and Disabled Students I and II mandate for the six-year period has a low reduction rate of 15 percent, yet the Controller has expended significant efforts in auditing these mandate claims. Detailed field audits of 93 percent of the $65 million in fiscal year 2003–04 claims have been performed or are in process. According to the audits chief, a primary reason that field audits were performed to this extent was that the claimed costs for this mandate were significant. In fact, costs for this mandate were by far the largest in that fiscal year. He also said that around fiscal year 2002–03 the Department of Finance (Finance) was considering a proposal to change the first Handicapped and Disabled Students mandate to a block grant and asked the Controller to perform expanded audits of this program to gain audited cost data. Similarly, the Seriously Emotionally Disturbed Pupils mandate has a relatively low reduction rate of 25 percent, while its audit coverage for fiscal year 2003–04 is 96 percent of submitted claimed dollars for the program. However, the claimed dollars only totaled $22 million for fiscal year 2003–04. The audits chief explained that a local entity's Seriously Emotionally Disturbed Pupils claims are often audited along with its Handicapped and Disabled Students I and II claims because the programs have interrelated costs.[11]

Despite the fact that the Graduation Requirements mandate has been in existence since 1987, the Controller has not audited it recently. Graduation Requirements mandate claims had a reduction rate of 54 percent for field audits initiated in fiscal year 2002–03. Although the reduction rate was relatively high, the Controller has not audited any of the claimed dollars for costs incurred during fiscal years 2003–04 through 2008–09. This mandate has been the subject of litigation. In June 2009 the Controller issued new claiming instructions based on revised Commission guidelines.

[11] The Handicapped and Disabled Students I and II and Seriously Emotionally Disturbed Pupils mandates were consolidated into one mandate in 2006.

These instructions require all local entities to file prospectively using a reimbursement formula for teacher salary costs and grant all local entities the opportunity to refile claims retrospectively to fiscal year 1995–96.[12] In July 2009 the audits chief told us that the Controller planned to consider the Graduation Requirements claims for audit now that the litigation is resolved and the reimbursement methodology clarified.

Commission Backlogs Have Hindered the Controller's Efforts to Fix Problems

To update local entities on the mandate process and prevent the claiming of nonreimbursable costs, the Controller has taken steps to inform local entities about state mandates through its Web site and outreach opportunities. In addition, the Controller has requested changes to mandate guidelines to clarify problems specific to particular mandates and to bring consistency to mandate requirements in general. Inaction by the Commission on incorrect reduction claims has partially thwarted these efforts by leaving disputes unresolved.

The Controller Uses Outreach to Discuss Claim Issues Directly With Local Entities

The Controller addresses mandate issues through workshops, presentations, and meetings.

Outreach conducted by the Controller addresses mandate issues identified through field audits, such as the failure to adequately support employees' time charges. The Controller communicates these issues through workshops, presentations, and meetings. Outreach events are usually held by other organizations, such as the California State Association of Counties or School Services of California, Inc., although the Controller sometimes coordinates and makes efforts to inform local entities of these activities. The Controller participated in 28 such events between January 2008 and July 2009. It uses another key method to communicate audit-related issues to local entities and the consultants who assist them with their claims. The Controller maintains a state mandate Web site with claim instructions, reports, time study guidelines, a Listserv, and a frequently-asked-questions document. The frequently-asked-questions document addresses general mandate issues—such as claim due dates and record retention requirements—and program-specific issues—such as the pitfalls of claiming costs for a particular mandate that are not reimbursable under its guidelines. In July 2009 the Controller revised its frequently-asked-questions document to specifically address local agencies in addition to educational agencies.

[12] In Chapter 3, we discuss the use of reimbursement formulas.

To Resolve Identified Issues, the Controller Requests Amendments to Guidelines

The Controller sends amendment requests to the Commission to clarify the guidelines of certain mandates that the Controller and local entities interpret differently. The Controller frequently disagrees with local entities about documentation requirements for older mandates where the guidelines may be unclear. To clarify claiming issues or address changes in law, the Controller requests the Commission to amend the guidelines of certain mandates. Specifically, if the Controller finds that issues identified in audited claims are a result of a deficiency in the guidelines for the mandate, it sends a request to the Commission to amend the mandate's guidelines. For example, in response to a recommendation from our 2003 audit report on state mandates, the Controller proposed an amendment to the guidelines to reflect a revised formula for measuring the reimbursable portion of building or acquiring additional shelter space for the Animal Adoption mandate.

To address a recommendation from our 2002 state mandate audit report, it also worked with the Commission to develop boilerplate language to integrate into all guidelines adopted beginning in early 2003. In April 2006 the Controller requested that the Commission incorporate several portions of the boilerplate amendment into the guidelines for many older mandates. Existing mandates that had guidelines adopted before 2003 do not include the standard boilerplate wording. This request would primarily address issues related to what constitutes acceptable documentation. As discussed in Chapter 1, Commission staff decided to defer processing this request until the court reached a decision in *Clovis Unified School District v. State Controller.* The lower court reached a judgment on this case in February 2009, and although it has been appealed, Commission staff indicated to us in July 2009 that they had developed a plan to process this amendment request.

The Controller worked with the Commission to develop boilerplate language to integrate into all guidelines adopted beginning in early 2003.

Pending Incorrect Reduction Claims Undermine the Controller's Audit Results

As of June 2009, $57 million in incorrect reduction claims swelled the Commission's backlog. Local entities that disagree with cuts to their claims made by the Controller may file incorrect reduction claims with the Commission, which adjudicates the dispute. A significant number of outstanding incorrect reduction claims can cast a shadow over the Controller's efforts to ensure appropriate claiming by local entities.

As mentioned in Chapter 1, the Commission has taken little action to resolve the complaints raised by local entities about reductions. Its inability to resolve these claims because of staffing limitations and other priorities leaves local entities uncertain about what qualifies as reimbursable costs. Further, until the incorrect reduction claims are resolved, the Controller may continue to make similar field-audit reductions that are reversed later by the Commission. Conversely, if the Commission ultimately finds the Controller's reductions to be correct, local entities will have continued to submit inappropriate claims until the time the Commission makes its decision. Either way, speedier resolution of outstanding incorrect reduction claims would allow the Controller to conduct audits with an awareness of the Commission's decisions and to incorporate those results into its audit findings and outreach efforts. The pending reduction claims also indicate a possible understatement of the State's mandate liability because of the fact that claim reductions may be reversed. This keeps the Legislature from being able to assess the true cost of mandates. Finally, when incorrect reduction claims are later upheld, local entities are deprived of the use of the money while the matter is being decided.

The Outstanding Mandate Liability Remains High and Is Likely to Continue Increasing

The outstanding liability for state mandates has grown to $2.6 billion because of the steady amount of annual claims and erratic funding from the Legislature. The outstanding liability may continue to increase due to new mandate determinations and recent developments that could result in additional liabilities.

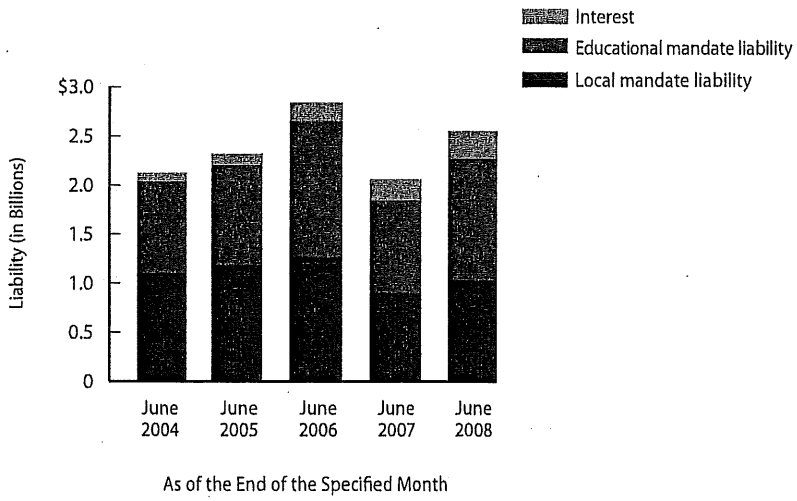
The outstanding mandate liability has grown to $2.6 billion at June 2008.

The total outstanding liability for state mandates is composed of local mandate liabilities, educational mandate liabilities, and interest owed on unpaid claims. Educational mandate liabilities have been the largest component for each fiscal year-end after June 2005. Before that, local mandate liabilities were the largest component at the end of both June 2004 and June 2005, but in subsequent fiscal years have dropped to the second-largest component. As Figure 11 shows, the total outstanding mandate liability rose from $2.1 billion at June 2004 to a high of $2.8 billion at the end of fiscal year 2005–06. It then dropped somewhat at June 2007, before rising to $2.6 billion at June 2008.

A recent change in state law eliminated a requirement that local entities submit estimated claims to the Controller in February in anticipation of actual claims for that year. Instead, they now report only actual claims by February following the end of the previous fiscal year. Consequently, the Controller has not yet recorded any claims for fiscal year 2008–09 in its mandate

reimbursement system. Nevertheless, local entities are still required to undertake mandated activities, and given the steadiness of reimbursement claims over the previous five years, it seems likely that additional claims related to fiscal year 2008–09 activities will amount to at least $450 million. Because the State appropriated only $27.9 million for state mandates in fiscal year 2008–09, the total outstanding liability at June 30, 2009, is likely to be around $3 billion. In the past three years, the Controller has reported the mandate liability in March of the following fiscal year.

Figure 11
Outstanding State Mandate Liability
June 2004 Through June 2008



Source: Annual summary by the State Controller's Office of the state mandate liability.

Moderate growth in annual claims, in part related to the reconsideration of certain mandates and to program suspensions, helped slow an increase in the mandate liability. Primarily in 2004 and 2005, the Legislature directed the Commission to reconsider its decision on a number of mandates based on new laws underlying the mandates. Subsequently, the Commission set aside the guidelines for these mandates, including Open Meetings/Brown Act Reform, School Accountability Report Cards, and Mandate Reimbursement Process. These three mandates accounted for about $42 million a year in approved claims before the Commission set them aside, so the effect was substantial. State law says that if the Legislature specifies that it will not provide reimbursement for a mandate in a particular year, local entities need not carry out the mandated activities. This process is referred to as mandate suspension. If the Legislature deletes funding for the mandate

but it does not specifically identify the mandate as suspended, state law says local entities may seek a court order declaring the mandate unenforceable. The State does not enforce suspended mandates during the suspension year, and local agencies cannot claim reimbursement for them. From June 2004 to June 2008, there were seven newly suspended programs, which together averaged $13 million annually in the two years prior to their suspension.

Erratic funding by the Legislature has contributed to the growth in the outstanding liability for state mandates.

Conversely, erratic funding by the Legislature has contributed to growth in the outstanding liability for state mandates. Between fiscal years 2004–05 and 2007–08, the annual level of funding for state mandates ranged between $58.4 million and $1.2 billion, and fiscal year 2006–07 was the only period when funding was greater than approved claims. In addition, the Legislature has extended repayment of local claims for years before fiscal year 2004–05. In 2004 the Legislature established a five-year plan for payment of this balance, but in 2005 it extended the plan by 10 years, until fiscal year 2020–21. In April 2009 the Controller reported that the outstanding balance to be paid on these old claims totaled $931 million.

Recent developments could also significantly increase the mandate liability. First, in March 2009 a state court of appeal found that the Legislature did not have the authority to compel the Commission to reconsider its decisions and that certain mandates should therefore continue to be reimbursable.[13] This ruling allows local entities to file claims under these mandates for the intervening fiscal years. As mentioned previously, before they were set aside, the annual claims for these mandates were substantial. We discuss this matter further in Chapter 3.

Second, for the Graduation Requirements mandate,[14] the Legislative Analyst's Office (Legislative Analyst) in a February 2009 report noted that the resolution of litigation mentioned earlier in this chapter may result in significant additional costs to the State. The Legislative Analyst estimated that the outstanding liability for this mandate, reflecting costs as far back as fiscal year 1995–96, could total about $2 billion and that annual ongoing mandate costs could amount to roughly $200 million, resulting in part from the reimbursement formula adopted by the Commission.

Finally, in December 2008 the State and school districts reached a tentative settlement agreement related to the Behavioral Intervention Plans mandate contingent on certain conditions, such

[13] *California School Boards Association v. State of California.*

[14] The Graduation Requirements mandate requires all students to complete an additional high school science class.

as the Legislature appropriating necessary funding. This mandate relates to a requirement that school districts conduct one particular type of behavioral assessment followed by a particular type of behavioral interventional plan for any special education student exhibiting serious behavioral problems. The tentative settlement provided for a retroactive reimbursement to school districts of $520 million, to be paid between fiscal years 2009–10 and 2016–17, and $65 million in ongoing annual costs beginning in fiscal year 2009–10. However, the Legislature did not appropriate the necessary funding. Finance indicates a settlement could be considered next year.

Recommendations

To ensure that it can meet its responsibilities, including a heightened focus on audits of state mandates, the Controller should work with Finance to obtain sufficient resources. Additionally, the Controller should increase its efforts to fill vacant positions in its Mandated Cost Audits Bureau.

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Chapter 3

RECENT STRUCTURAL CHANGES HAVE NOT BEEN WIDELY EMBRACED, INDICATING THE NEED FOR EXAMINATION OF FURTHER REFORMS

Chapter Summary

Legislation affecting the structure of the state mandate system has yielded limited results. Additionally, a recent court decision has posed challenges for revising mandates. New processes intended to relieve the Commission on State Mandates (Commission) of some of its work have rarely been used. When used unsuccessfully, these processes can lengthen its time to process mandates. These options have, however, been available for less than two years, and the State has done little to promote them. In addition, a recent court case took away the Legislature's ability to direct the Commission to reconsider mandate decisions in light of law changes. Although this avenue was barred, it is important that the State have a process that allows the Commission to revisit mandate determinations when appropriate. The Department of Finance (Finance), the Legislative Analyst's Office (Legislative Analyst), and local entities have floated mandate reform ideas that address problems such as those related to initial cost estimates and delays in mandate funding. Although reform proposals may entail other considerations, they merit further study given the significance of the costs associated with state mandates.

New Mandate Processes Have Been Used Rarely and Appear to Have Limited Applicability

Effective January 2008 a new law established two alternative processes for determining reimbursable mandate costs and for developing estimates of the cost for mandates. These alternatives have limited applications and have not yet been implemented regularly. The legislatively determined mandate process (legislatively determined process) allows Finance and a local entity to develop a reimbursement methodology using a formula rather than basing it on detailed actual costs. The formula may contain a factor related to the mandate activity, such as units of input or output. Finance and the local entity then present the proposed formula and related cost estimate to the Legislature. By accepting them and enacting state law, the Legislature recognizes the existence and cost of the mandate, entirely eliminating the Commission's role in the process.

Under the second new process, within 30 days of the Commission's statement of decision recognizing a new mandate, Finance and the local entity that submitted the test claim notify the Commission of their intent to pursue the jointly developed reasonable reimbursement methodology process (joint process). In this process, Finance and the local entity again join to create a formula for reimbursement. In their letter of intent to follow the joint process sent to the Commission, Finance and the local entity must include the date on which they will provide the Commission with an informational update regarding their progress in developing the formula.

By relieving the Commission of some of its work, new processes could give Commission staff more time to address their work backlog.

Although under the joint process Commission participation is not eliminated, it greatly reduces the Commission's workload related to establishing a mandate's guidelines and adopting a statewide cost estimate. The Commission reviews the formula to ensure that it has been developed according to statutory requirements; it does not examine the formula's detailed methodology. By relieving the Commission of at least some of its work, these new processes have the potential to give Commission staff more time to address the work backlog we discuss in Chapter 1. These processes are also beneficial to local entities because methodologies that involve formulas typically have much simpler documentation requirements, and to the State Controller's Office (Controller) because simpler documentation usually takes less effort to audit and should result in fewer claim adjustments.

The legislatively determined process outlined in the new law had not yet generated a new mandate as of August 2009, and the joint process had only been implemented once. Because it has produced no mandates, the ultimate success of the legislatively determined approach is unknown. As of August 2009 Finance was negotiating formulas for two mandates under this process. The joint process, although implemented just once, has failed to yield significant results. The Firearm Hearings for Discharged Inpatients mandate, the sole mandate to successfully follow the joint process as of June 2009, appears to be a very small mandate in dollar terms. With a statewide cost estimate of almost $155,000 spanning nine fiscal years, an average annual cost of about $17,000, the difference in process is unlikely to have provided significant benefits to the Commission, the Controller, or local entities. Although the Commission had a backlog of 17 mandates awaiting the adoption of statewide cost estimates as of June 2009, only three were on the joint process track.

Additionally, the Commission can work with Finance, local entities, and others, including the Controller, to develop a reimbursement formula for a mandate (Commission process) instead of adopting guidelines for claiming actual costs in the traditional way.

The Commission has had the authority to adopt formulas for years. However between 2005 and 2008, the Commission had to assure that proposed reimbursement formulas considered the costs of 50 percent of all potential local entities that could submit a claim for that mandate. Commission staff say that this standard was difficult to meet and that they denied several proposed formulas that did not meet the 50 percent criterion. Effective 2008 the Legislature eased statutory requirements for adopting formulas. Under the amended statutes, proposed reimbursement formulas require the consideration of costs from a representative sample of eligible local entities. The Commission process does not reduce the Commission's participation in setting mandate guidelines as drastically as does the joint process; however, it does provide the joint process's benefits related to simpler documentation requirements and less complicated audits.

Since the elimination of the 50 percent criterion, the Commission process has been used twice as of August 2009: in the development of reimbursement formulas for the Peace Officers Procedural Bill of Rights (Peace Officer Rights) and the Graduation Requirements mandates. Since the optional Peace Officer Rights reimbursement formula became available to local entities beginning fiscal year 2006–07, annual approved mandate costs have decreased by about $3.8 million. Information provided by the Controller indicated that, of all local entities submitting claims, 75 percent used the reimbursement formula to file their Peace Officer Rights claims for fiscal year 2007–08. The decreased costs and high use by local entities for this mandate indicate that the formula method offers the potential for savings in mandate costs for the State.

Since the optional reimbursement formula became available beginning fiscal year 2006–07, annual approved costs for the Peace Officer Rights mandate have dropped about $3.8 million.

Alternative Mandate Processes Are Feasible Only in Certain Situations

The most significant reason that the legislatively determined, joint, and Commission processes have not been used more often is that they are only workable under certain circumstances and are thus not as broadly applicable as the Legislature may have expected. The legislatively determined process is a good alternative for determining a reimbursement formula when Finance and local entities agree that a mandate exists and that it includes specific mandated activities. The joint process is preferable when Finance and local entities dispute the existence or requirements of a mandate, a dispute that is resolved before the Commission, but are then willing to negotiate funding levels. The Commission process is preferable when Finance and local entities continue to dispute significant aspects of the mandate. With the Commission as part of the process, local entities may feel reassured that all the activities indicated as reimbursable in the statement of decision will be used to develop the formula, while Finance is assured that only the

activities identified as reimbursable are included. The Commission process can also be more flexible than the joint process. It allows for the use of optional reimbursement formulas or the use of formulas for some activities and actual cost reimbursement for others.

The manager of Finance's Mandates Unit, which focuses on mandates in areas other than education, said that Finance has not been more proactive in initiating use of alternative processes because it concluded that mandates determined by the Commission since 2006 were not promising candidates. Either local entities had a significant disparity in costs based on unaudited survey data or Finance believed disagreements would continue because the Commission had denied many portions of the test claim when determining whether a mandate existed. Similarly, the Program Budget Manager (program manager) of Finance's Education Systems Unit, which deals with educational mandates, said that in one case the unit approached local entities to develop a reimbursement formula as an alternative to using the litigation process as the means to determine reimbursement and because the mandate appeared to be a good candidate for a reimbursement formula. However, the program manager stated that after surveying costs and developing a reimbursement formula, the local entities withdrew from the process.

Issues related to cost data, differing cost structures, or complex program design can raise insurmountable problems for the alternative processes.

Issues related to cost data, differing cost structures, or complex program design can raise insurmountable problems for the alternative processes. For example, according to the manager of Finance's Mandates Unit, a few attempts at developing reimbursement formulas have collapsed because it was not possible to obtain the representative sample of eligible local entities needed for support. The program manager of the Education Systems Unit believes it is even more difficult to obtain the necessary support for educational entities. Differing views on the quality of cost data may also block agreement. For instance, a consultant we talked to believes that Finance prefers to rely on audited cost data. He viewed this as another hurdle to gathering cost information and reaching final agreement.

In addition, both Finance and local entities point out the difficulty of agreeing on reimbursement formulas in situations where large variations in size among entities result in fundamentally different cost structures. For example, a formula that adequately covers the costs of a large entity may not be sufficient for a smaller district that does not benefit from the same economies of scale. Finally, the program structure of educational mandates may cause problems. For instance, the program manager of the Education Systems Unit believes that educational mandates have not been good candidates for reimbursement formulas because they usually do not relate to clear inputs or outputs that could be associated with a standard

payment rate. Thus, the traditional mandate process discussed in the Introduction, which involves setting guidelines that define activities to be reimbursed based on actual costs, may be preferable when cost data are difficult to obtain or when unit costs vary significantly among entities.

The State Has Done Little to Publicize Alternative Processes

Another factor that may be contributing to the lack of success of the new processes is the State's limited efforts to communicate them to local entities. While the manager of the Mandates Unit indicates that its outreach has been limited, Finance's Education Systems Unit has not participated in any outreach. The manager of the Mandates Unit explained that its limited outreach is partly due to reduced travel budgets that have restricted outreach to Sacramento area workshops. According to its program manager, the Education Systems Unit is not involved in any outreach but thinks that the majority of potential educational entities are aware of the alternative processes. Although not required by law, such outreach is important to ensure that local entities are aware of the alternatives available to them.

Finance's low level of outreach may have been mitigated in part by the Controller's presentations throughout the State, which have discussed the legislatively determined and joint processes. However, as of July 2009 neither Finance nor the Commission had provided information on their Web sites publicizing the existence of the three alternative processes. In July 2009, after we suggested that the Controller include information about the joint and legislatively determined processes on its Web site, the Controller updated its frequently-asked-questions document to include a brief description of these processes. Internet sites offer a relatively inexpensive way to reach a large audience and are a communication method the public has come to expect the government to use.

Unsuccessful Negotiations Can Cause Significant Delays

When alternative processes are unsuccessful, they can substantially delay the completion of the mandate determination process.

Although alternative processes offer potential benefits, when they fail they can delay the traditional mandate determination process. For example, two attempts to develop reimbursement formulas, one under the joint process and one under the Commission process, were unsuccessful, prolonging the Commission's process for adopting guidelines and statewide cost estimates. When Finance and the local entity notify the Commission of their intent to undertake one of these alternative processes, the Commission puts its normal process for establishing guidelines and a statewide cost estimate on hold. In one case, the Commission's process was

delayed for one year while Finance and local entities attempted to negotiate a reimbursement formula for the Criminal Statistics Report mandate, an effort that ultimately failed because they could not agree on any reimbursement formulas the local entities proposed. Similarly, the Local Recreational Areas: Background Screenings mandate was delayed 2.5 years while Finance and local entities unsuccessfully attempted to negotiate a reimbursement formula. This attempt started before the Legislature amended the requirements for the Commission process; however, the original standard was apparently not the primary obstacle to success as the effort ended in June 2008 after requirements were eased.

Additional information on the status of alternative processes would help inform the Legislature about how widely the reforms are being used and about delays that may be holding up certain mandates.

Currently, the Commission is not required to report on items moving through the alternative processes although it does report to the Legislature when it approves a reimbursement formula for a mandate. Additional information on the status of these items would help inform the Legislature about how widely the reforms are being used and about delays that may be holding up certain mandates.

A Recent Court Case Overturned Revised Test Claim Decisions

The Legislature is no longer able to use its past approach to address concerns regarding the Commission's test claim decisions in response to changes in law. In *California School Boards Association v. State of California*, decided in March 2009, a state court of appeal held that the Legislature's direction to the Commission to reconsider cases that were already final violates the separation of powers doctrine. It indicated state law contemplates that the Commission is a quasi-judicial body with the sole and exclusive authority to adjudicate whether a state mandate exists and is limited only by judicial review. However, the court stated that it did not imply that there is no way to obtain reconsideration of a Commission decision when the law has changed, but that the process for declaring reconsideration of a decision was beyond the scope of its opinion.

In 2004 and 2005 the Legislature directed the Commission to reconsider or set aside its decisions on specific mandates to reflect changes in law or to better reflect legislative intent. For three mandates addressed in the court case, the Commission revised its original decision after reconsideration as directed by the Legislature, determining them nonreimbursable. Before the reconsiderations, the Open Meetings Act/Brown Act Reform, School Accountability Report Cards, and Mandate Reimbursement Process mandates had combined annual approved claims totaling about $42 million. As a result of the court's ruling, the Commission's decisions were reversed and the right to reimbursement for these mandates remains uninterrupted for local entities.

In April 2009 an Assembly Budget Subcommittee recognized the importance of reforming the reconsideration process and, according to Commission staff, directed Finance, the Legislative Analyst, and Commission and legislative staff to form a working group to develop legislation to establish a mandate reconsideration process consistent with the court decision. In response, Commission staff prepared a working draft for discussion. This proposal would allow the Commission to amend a test claim decision upon a showing that there has been a subsequent change based upon new or different facts, circumstances, or mandate law that supported the original mandate decision. Commission staff said that, as of late August 2009, no follow-up hearings or meetings to discuss the proposal have been held. Until a new reconsideration process is established, mandate guidelines may not reflect statutory or other relevant changes. Thus, the State could pay for mandate activities that are no longer required.

Participants in the Mandate Process Have Proposed Reforms That Merit Consideration

The mandate process suffers from various problems that have motivated stakeholders to contemplate numerous reform proposals. As noted previously, some improvements have been made, but other suggestions for reform have not. Given the ongoing problems and significant costs noted in previous chapters, we believe the State could benefit from taking a second look at structural reforms proposed in recent years. In particular, for new mandates state law requires the Legislative Analyst to recommend whether the mandates should be repealed, funded, suspended, or modified. The Legislative Analyst, as appropriate, also reviews specific existing mandates as part of its broader mission to advise the Legislature on state expenditures. Its reports have typically highlighted problem areas and recommended solutions. Similarly, Finance has offered suggestions to the Legislature, and it participates in implemented reforms. In addition, the Commission contracted with the Center for Collaborative Policy (Center) at California State University, Sacramento, to evaluate mandate reform ideas. The Center's 2006 report contrasted ideas from state and local representatives involved in the mandate process. Key consultants, some of whom have represented local entity associations, also provided insights when we asked them for their perspectives on mandate reform.

Various entities, including the Legislative Analyst, Finance, and the Center for Collaborative Policy have put forward ideas for mandate reform.

The experience of other states also offers possibilities for managing state mandates differently. States that provided us information generally have processes for dealing with state mandates that are not comparable with that of California. Nonetheless, we have included a few promising ideas from them, along with those from California's key mandate players, in Table 3 on the following page.

This table summarizes potential reforms that could fundamentally change California's state mandate system. It excludes reforms that the State has recently adopted, such as the use of reimbursement formulas, those focused on individual mandates, or those aimed at fine-tuning existing processes.

Table 3
State Mandate Issues and Proposed Reforms

	ISSUE	PROPOSED REFORM	POTENTIAL CONSIDERATIONS
Pre-mandate processes	Costs are frequently underestimated when the Legislature initially creates a mandate; costs can exceed expectations.	Create a mandate cost review committee composed of state and local representatives to review bills while in the legislative process and provide information about what mandates would entail.	Legislative members could gain additional awareness about the cost of laws that impose a reimbursable mandate. Costs and issues related to legislation could be evaluated up front.
		Use pilot projects in selected local entities to test potential new mandates or changes to existing mandates before applying them statewide.	Pilot projects could help identify unworkable provisions and undesirable effects of new programs or procedures, and these projects could clarify fiscal impacts before full implementation.
	Delays in the test claim process and its eventual effect on mandate funding undermine protection of local entities and increase the State's mandate liability.	Impose a fiscal disincentive for delays in the test claim process which are caused by the Commission on State Mandates (Commission) and other parties beyond the statutory time frame. For example, interest could be charged on unpaid claims associated with late mandate determinations.	Fiscal disincentive could encourage timely participation by parties. It may also increase the State's liability to local entities.
Post-mandate processes	Local entities have little accountability to perform mandated activities effectively.	Convert mandated activities to funding sources, such as block grants or categorical programs administered by state agencies.	This method could reduce administrative hurdles and improve coordination with broader policy objectives while maintaining performance by a majority of local entities.
	Some mandates represent permanent solutions to temporary problems.	Implement sunset reviews to force periodic review of individual mandates.	Sunset provisions allow the Legislature to reexamine the need for mandates and their costs.
	There is no current mechanism in place to have the Commission reconsider past mandate decisions to reflect recent legal opinions, federal law, or other factors.	Establish a process allowing interested parties to request that the Commission amend its test claim decisions upon a showing that there has been a subsequent change based on new or different facts, circumstances, or mandate laws.	A reconsideration process could promote state and local entities' confidence in the mandate process by assuring that mandates reflect current legal opinions, federal law, and other factors.
Other	Commission membership is dominated by representatives of the State.	Recast the membership of the Commission to include more local entity appointees.	Some believe more local representation would ensure that all perspectives are weighed equally before decisions are rendered.

Sources: Annual Legislative Analyst's Office budget analyses; Department of Finance's *Report on Evaluation of Current Mandates Reimbursement Process* (March 2006); the Center for Collaborative Policy, California State University, Sacramento's *Assessment Report Reforming the Mandate Reimbursement Process* (April 2006); consultants assisting local entities; and Minnesota Office of the Legislative Auditor, *State Mandates on Local Governments* (January 2000).

Note: Proposed reforms and potential considerations may summarize similar ideas from a number of sources.

In the pre-mandate period, before the Commission becomes involved in determining whether a mandate exists, problems can arise when the Legislature establishes new required activities for local entities. This may be done without effective evaluation of the potential breadth or cost of the activities. As discussed in Chapter 1, the actual costs of mandated activities can vary substantially from initial estimates. This indicates a possible void in the Legislature's understanding of what activities and costs a new program or higher level of service will entail and of differences in how local entities perform mandated activities. Table 3 presents three solutions intended to shed more light on new activities and their costs.

The first solution proposes the creation of a mandate cost committee to review proposed new local programs being considered during the legislative process. Importantly, the committee would include representatives from local entities who could add perspective on potential costs and the difficulty of implementing specific activities. The second recommends the use of pilot programs in selected locations. Pilot programs offer the chance to test a program on a limited basis and to adjust required activities for unforeseen problems. Real-world implementation also potentially provides a better idea of what a program will actually cost. The third reform idea proposes a fiscal disincentive to parties that delay the test claim process beyond the statutory time frame. For example, an interest penalty could be imposed for delaying the process beyond the required deadline.

Pilot programs offer the chance to test a program on a limited basis and to adjust required activities for unforeseen problems.

In the post-mandate period, after the Commission has reported a new mandate and its estimated cost, problems can arise due to the lack of state control of mandate activities undertaken by local entities and the tendency for programs to diverge from original intentions or lose their usefulness over time. The first post-mandate reform idea presented in Table 3 recommends converting some mandates to funding sources such as block grants or categorical programs. Such change, which would require a legislative modification, would cause the affected mandate to come under the management of a state agency and presumably improve coordination between mandated activities and other broader policies. It could also relieve local entities of some of the administrative challenges associated with mandates.

The second reform proposes the sunsetting of each mandate. This would force the reassessment of mandate activities and costs, hopefully leading to the modifications needed to keep worthy activities on track or to eliminate mandates that have outlived their usefulness. The third idea recognizes the need to update mandate programs in light of new laws and court decisions that could raise questions about a mandate's reimbursable activities or validity. Updating mandates regularly could maintain compliance

with current laws and decisions, as well as bolstering trust in the mandate process. We discuss the need for a reconsideration process in the previous section.

Finally, some local entities believe that the composition of the Commission and the manner in which local representatives are appointed causes Commission decisions to be skewed in favor of the State. Currently, only two of the seven Commission members are required to come from local entities, and the governor appoints both of these members. Proponents of recasting Commission membership believe that having more local membership and perhaps having the Legislature appoint a certain number of local members would ensure that all perspectives are weighed equally before decisions are rendered.

Our assessment of current state mandate issues has led the Bureau of State Audits (bureau) to add the areas of mandate determination and payment to its list of high-risk issues. The length of time that elapses before the Commission decides whether a mandate exists and, if so, estimates accumulated costs, and the large and growing mandate liability are of concern to local entities throughout California and to the State itself. Thus, to the extent that resources are available, the bureau will continue to monitor the progress of the Commission in reducing its work backlog, the level of the State's liability, and the status of recent and future reforms intended to improve the mandate process.

Recommendations

To promote the legislatively determined, joint, and Commission processes and to provide the necessary information to assess their success, the following actions should occur:

- The Commission should add additional information in its semiannual report to inform the Legislature about the status of mandates being developed under joint and Commission processes, including delays that may be occurring. If the Commission believes it needs a statutory change to implement this recommendation, it should seek it.

- The Commission and Finance should inform local entities of these processes by making information about the alternatives readily available on their Web sites.

The Commission should continue its efforts to work with the legislative subcommittee and other relevant parties to establish a reconsideration process that will allow mandates to undergo revision when appropriate.

To improve the state mandate process, the Legislature, in conjunction with relevant state agencies and local entities, should ensure the further discussion of reforms.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,

Elaine M. Howle

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State Auditor

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C

Supreme Court of California, In Bank.
Adeline J. **HORNER**, Plaintiff and Appellant,
v.
BOARD OF **TRUSTEES** OF EXCELSIOR UNION HIGH SCHOOL DISTRICT OF LOS ANGELES etal., Defendants and Respondents.
L.A.27260.

March 5, 1964.

Mandamus proceeding to compel the **board** of **trustees** of a high school district to reinstate the petitioner with classification of a permanent employee. From a judgment of the Superior Court, Los Angeles County, Bayard Rhone, J., directing the **board** to hold a hearing, and from an order denying petitioner's motion to vacate the judgment and to order **board** to reinstate petitioner, the petitioner appealed. The Supreme Court, Gibson, C. J., held, inter alia, that section 13444 of the Education Code providing for an administrative hearing to a dismissed teacher was intended to apply to dismissal at the end of school year and to supplement section 13443 relating to notice required for dismissal of probationary employee by adding to teacher's right to a statement of reasons for his dismissal provided for in that section the right to a formal hearing, and that the circumstance that no final decision concerning petitioner's dismissal was made before the start of the new school year did not cause petitioner to obtain tenure.

Affirmed.

West Headnotes

[1] Schools 345 ⚿63(1)

345 Schools
345II Public Schools
345II(C) Government, Officers, and District Meetings
345k63 District and Other Local Officers
345k63(1) k. Appointment, Qualification, and Tenure. Most Cited Cases
Under a statutory provision that a probationary employee can be dismissed "during the school year for cause only, as in the case of permanent employees", a probationary employee can be dismissed during school year only on limited grounds provided for dismissal of permanent employees and is entitled to a court proceeding like the one available to a permanent employee. West's Ann.Education Code, §§ 13412 et seq., 13442.

[2] Schools 345 ⚿147.31

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.31 k. In General. Most Cited Cases
(Formerly 345k147.30, 345k141(5))
Section 13444 of the Education Code providing for an administrative hearing to a dismissed teacher was intended to apply to dismissal at the end of school year and to supplement section 13443 relating to notice required for dismissal of probationary employee by adding to teacher's right to a statement of reasons for his dismissal provided for in that section the right to a formal hearing. West's Ann.Education Code, §§ 13443, 13444.

[3] Schools 345 ⚿147.9

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.8 Grounds for Adverse Action
345k147.9 k. In General. Most Cited Cases
(Formerly 345k147.8, 345k141(4))

Schools 345 ⚿147.38

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.38 k. Hearing. Most Cited

Cases
(Formerly 345k141(5))
The purpose of 1961 amendments of sections 13443 and 13444 of the Education Code was to extend to probationary teachers of all school districts the requirement of cause for dismissal and the right to a hearing, and thus both sections still relate to termination of services at end of school year, whereas dismissal during a school year is governed by section 13442 alone. West's Ann.Education Code, §§ 13442, 13443, 13444.

[4] Schools 345 ⚿147.32

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.32 k. Time; Continuance. Most Cited Cases
(Formerly 345k141(5))
Since statutes relating to dismissal of probationary teacher do not fix time limit within which a hearing must be held, the only time restriction is that hearing must be held within a reasonable time, and school district governing board will not lose jurisdiction to hold a hearing unless there has been an unreasonable delay. West's Ann.Gov.Code, §§ 11500-11529; West's Ann.Education Code, §§ 13442-13444.

[5] Schools 345 ⚿147.44

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.44 k. Judicial Review. Most Cited Cases
(Formerly 345k141(5))

Schools 345 ⚿147.32

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.32 k. Time; Continuance. Most Cited Cases
(Formerly 345k141(5))
Where delay in granting dismissed probationary teacher a hearing was partly caused by school district board's belief in good faith that teacher was not entitled to a hearing and partly by fact that teacher reiterated request for hearing before instituting court proceedings, and at the time teacher asked for hearing there existed difference of opinion as to whether she was legally entitled thereto, trial court properly concluded that board had not lost jurisdiction to hold a hearing. West's Ann.Gov.Code, §§ 11500-11529; West's Ann.Education Code, §§ 13442-13444.

[6] Schools 345 ⚿133.6(7)

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)1 In General
345k133.6 Permanent Tenure
345k133.6(7) k. Length of Service and Probation. Most Cited Cases
(Formerly 345k133.11)
The circumstance that no final decision concerning dismissal of probationary teacher was made before start of new school year did not cause teacher to obtain tenure since a probationary teacher obtains tenure when he has been employed for three consecutive school years and is then reelected for next succeeding year, and there was no tacit reelection where board had timely notified teacher of intended termination of employment. West's Ann.Education Code, §§ 13304, 13443, 13444.

[7] Schools 345 ⚿133.6(7)

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)1 In General
345k133.6 Permanent Tenure
345k133.6(7) k. Length of Service and Probation. Most Cited Cases
(Formerly 345k133.11)
Under statute providing that a probationary teacher obtains a tenure when he has been employed for three consecutive school years and is then reelected for next succeeding year although reelection may take place without affirmative action by board when teacher is not properly notified that he will not be rehired for the

next year, there is no tacit reelection where board has timely notified teacher of intended termination of employment. West's Ann.Education Code, §§ 13304, 13443, 13444.

[8] Schools 345 ⚿133.6(7)

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)1 In General
345k133.6 Permanent Tenure
345k133.6(7) k. Length of Service and Probation. Most Cited Cases
(Formerly 345k133.11)
The statutes in using term "dismissal" in referring to notice to a probationary teacher of a decision not to reemploy him indicate that notice constitutes a dismissal. West's Ann.Education Code, §§ 13443, 13444.

[9] Schools 345 ⚿147.6

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.6 k. Effect of Tenure or Lack Thereof. Most Cited Cases
(Formerly 345k141(5))

Schools 345 ⚿147.44

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)2 Adverse Personnel Actions
345k147.30 Proceedings
345k147.44 k. Judicial Review. Most Cited Cases
(Formerly 345k141(5))
The dismissal of probationary teacher, because of provision for rehearing, is subject to condition subsequent that it will become ineffective if school district board at the hearing decides that termination of employment was improper. West's Ann.Education Code, § 13444.
***186 **714 *80** Tanner, Odell & Taft and Donald W. Odell, Los Angeles, for plaintiff and appellant.

Harold W. Kennedy, County Counsel, and James W. Briggs, Deputy County Counsel, for defendants and respondents.

Stanley Mosk, Atty. Gen., Elizabeth Palmer, Deputy Atty. Gen., and Irving G. Breyer, San Francisco, amici curiae.

GIBSON, Chief Justice.

Adeline J. **Horner**, who was serving her third year as a probationary high school teacher for the Excelsior Union High School District of Los Angeles County, was notified on April 13, 1962, that her services would not be needed for the following school year. Within five days after receipt of the notification she filed a notice of defense and requested a hearing and a statement of the reasons for the refusal to rehire her. On May 4, 1962, she was given a written statement of the reasons for the termination of her services and notified that her request for a hearing was denied. After her repeated requests to the **board** to hold a hearing or give her a teaching assignment had been refused, she filed a petition in the superior court for a writ of mandate directing the **board** to reinstate her with the classification of a permanent employee. The court concluded that she is entitled to a ***81** hearing but that she is not entitled to reinstatement unless the **board** finds at the hearing that no cause exists for her dismissal. Judgment was entered which directed the **board** to hold a hearing, and petitioner moved to vacate the judgment and to enter instead a judgment ordering the **board** to reinstate her with the classification of a permanent employee. The motion was denied, and petitioner has ***187 **715** appealed from the judgment and the order denying her motion.

With certain exceptions not relevant here, a probationary teacher obtains tenure as a permanent teacher if he has been employed by a school district for three consecutive school years and is 're-elected' for the next school year. (Ed.Code, s 13304.) Petitioner contends that there could be no effective termination of her employment until a hearing was held, that because there had been no hearing prior to July 1, which under section 5101 of the Education Code is the beginning of the new school year, her employment continued into the new school year, and that she thus obtained tenure. The board makes two contentions, first, that petitioner was not entitled to a hearing, and second, that, assuming she was so entitled, the notification prior to May 15 that her services would not be required in the

ensuing year terminated her employment subject to the condition subsequent that her dismissal would become ineffective if after a hearing held at her request the board should find that the termination was without good cause.

The following sections of the Education Code govern the termination of the employment of probationary teachers:

's 13442. Governing boards of school districts shall dismiss probationary employees during the school year for cause only, as in the case of permanent employees. * * *

's 13443. (a) On or before the 15th day of May in any year the governing board may give notice in writing to a probationary employee that his services will not be required for the ensuing year.

'The notice shall be deemed sufficient and complete when delivered in person to the employee by the clerk or secretary of the governing board of the school district or deposited in the United States registered mail with postage prepaid, addressed to the employee at his last known place of address.

'(b) Upon the request of such employee, the governing board shall give such employee a written statement of the reasons for the dismissal. The determination of the board as to the sufficiency of the reasons for dismissal shall be conclusive***82** but the cause shall relate solely to the welfare of the schools and the pupils thereof. No right of judicial review shall exist for such employee on the question of the sufficiency of the reasons for dismissal. * * *

's 13444. The governing board of any school district shall dismiss probationary employees for cause only. The determination of the board as to the sufficiency of the cause for dismissal shall be conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof. The determination of the board as to the sufficiency of the cause for dismissal shall not be subject to judicial review. The causes for dismissal shall not be restricted to those specified in section 13403.

'No employee shall be denied the right to a hearing to determine the cause for his dismissal and in case a hearing is requested by the employee the proceeding shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in said Chapter 5, except that the respondent shall file his notice of defense, if any, within five days after service upon him of accusation and he shall be notified of such five-day period for filing in the accusation, and excepting further, that in districts with an average daily attendance of less than 85,000 the governing board of the district itself may conduct the hearing without its being presided over by a hearing officer as otherwise required by Chapter 5. No employee in districts with an average daily attendance of less than 85,000 shall be denied the right to receive written notice stating the causes for dismissal and such written notice shall not deprive any employee so dismissed of the further right to a hearing as described in this section. All expenses of the hearing, including the *****188 **716** cost of the hearing officer, shall be paid by the governing board from the district funds.

'The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.'[FN1]

> FN1. Sections 13443 and 13444 of the Education Code were amended in 1961 to read as stated above. In their briefs the parties correctly assume that the sections as amended are applicable here, although they became effective during the course of the school year 1961-1962, at the end of which petitioner's employment was terminated. In Sitzman v. City Board of Education of City of Eureka, Cal., 37 Cal.Rptr. 191, 389 P.2d 719, we reject the contention that making these statutes applicable under such circumstances would be a retroactive application which is presumed not to be intended by the Legislature.

[1] ***83** It should be noted preliminarily that a permanent employee can be dismissed only on the limited grounds stated in section 13403 of the Education Code and that he is, on demand, entitled to a hearing in the superior court to determine whether the grounds for his dismissal are true and sufficient. (Ed.Code, s 13412 et seq.) Under the provision now contained in section 13442 that a probationary employee can be

dismissed 'during the school year for cause only, as in the case of permanent employees,' it has been held that a probationary employee can be dismissed during the school year only on the limited grounds provided for the dismissal of permanent employees and that he is entitled to a court proceeding like the one available to a permanent employee. (Comstock v. **Board of Trustees** (1937) 20 Cal.App.2d 731, 67 P.2d 694; see Titus v. Lawndale School Dist. (1958) 157 Cal.App.2d 822, 827, 322 P.2d 56.)

[2] It is clear that section 13442 relates solely to the dismissal of probationary teachers during the school year and that section 13443 concerns termination of the services of probationary teachers at the end of the school year. The question in dispute is whether the provision for an administrative hearing contained in section 13444 is intended to modify section 13442 with respect to dismissal during the school year or to supplement section 13443 as to termination at the end of the school year. We have concluded that section 13444 was intended to apply to dismissal at the end of the school year and to supplement section 13443 by adding to the teacher's right to a statement of the reasons for his dismissal provided for in that section the right to a formal hearing.[FN2] (In accord, see 39 Ops.Cal.Atty.Gen. 186 (1962).)

> FN2. A contrary conclusion was reached by the San Mateo County Superior Court, which held that termination of services at the end of the school year is governed solely by section 13443 and that the requirement for a hearing in section 13444 applies only to dismissal during the school year. (Hamma v. Burlingame Dist., No. 99338 (1962).) To the same effect is an opinion by the County Counsel of Los Angeles County dated January 29, 1962.

As we have seen, under section 13442 a probationary teacher can be dismissed during the school year only on the limited grounds stated in section 13403 of the Education Code, and, in case of such dismissal, he is entitled to court proceedings as provided for in section 13412. The provisions of section 13444 that the causes for dismissal are not restricted to those specified in section 13403 and the provisions requiring*84 a hearing by the board instead of court action are inconsistent with section 13442. This inconsistency and the fact that section 13444 gives the teacher less protection than section 13442 show that section 13444 does not relate to a dismissal during the school year but that the Legislature intended it to apply to a termination of employment at the end of the school year. When section 13444 is so construed, its provisions and those of section 13443 contain some duplication, but this can be explained by the circumstance that the sections in the present form were adopted in 1961 at different times as the result of two separate bills Assembly Bill 2063, enacted Stats.1961, ch. 2063, p. 4290, amending section 13443, and Assembly Bill 337, enacted Stats.1961,***189 **717 ch. 2114, pp. 4374-4375, amending section 13444.

The legislative history supports our construction of section 13444. Even before there was any express provision in the code requiring a hearing in the event a probationary teacher was notified that his contract would not be renewed for the coming school year, we recognized in Keenan v. San Francisco Unified School Dist. (1950) 34 Cal.2d 708, 214 P.2d 382, that such a teacher might be entitled to a hearing. The Education Code then provided that school boards might on or before May 15 of a school year give notice to a probationary employee that his services would not be required for the next year (s 13582). However, at that time probationary teachers in school districts having an average daily attendance of 60,000 or more pupils could be so dismissed 'for cause only' (s 13583).[FN3] Keenan involved the dismissal at the end of a school year of a probationary teacher in a larger district, and thus he could be dismissed for cause only. Although we acknowledged that the right of a probationary employee to a hearing was entirely statutory and could be denied by the Legislature, we held that where a statute specifies that an employee shall be dismissed for cause only, the clear implication of such language is that a full hearing should be affiorded and that "unless the statute expressly negatives the necessity of a hearing, common fairness and justice compel the inclusion of such a requirement by implication." (34 Cal.2d at p. 714, 214 P.2d at p. 385.) To the same effect is Tucker v. San Francisco Unified School Dist. (1952) 111 Cal.App.2d 875, 245 P.2d 597. Following*85 Keenan and Tucker the Legislature in 1953 amended section 13583 to make specific provision for a hearing pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Gov.Code, ss 11500-11529) where a hearing is requested by a probationary employee of a larger school district dismissed under the section (Stats.1953, ch. 1040, pp. 2508-2509). By amendment in 1959 former sections 13582 and 13583 obtained their present

numbers 13443 and 13444. (Stats.1959, ch. 2, pp. 948-949.)

> FN3. Such districts will sometimes be referred to in this opinion as 'larger' districts. The figure of $60,000 was changed to 85,000 in 1955 (Stats.1955, ch. 1077, p. 2052), and the term 'larger' districts will also be used to refer to those having 85,000 pupils or more after 1955.

[3] Thus prior to the 1961 amendments section 13443 permitted the termination of the services of a probationary teacher at the end of a school year by notification on or before May 15 without requiring that a dismissal be for cause or that a hearing be held.[FN4] Section 13444 then provided that, anything in section 13443 to the contrary notwithstanding, probationary teachers in school districts with 85,000 or more pupils could be dismissed for cause only and would be entitled to a hearing.[FN5] There can be no doubt that section 13444, like section 13443 ***190 **718 to which it constituted an exception, then applied to termination of services at the end of a school year. The obvious purpose of the 1961 amendments of sections 13443 and 13444 was to extend to the probationary teachers of all school districts the requirement of cause for dismissal and the right to a hearing, and thus both sections still relate to termination of services at the end of a school year, whereas dismissal during a school year is governed by section 13442 alone. In 1963 the Legislature removed all doubt in this respect by adding to the Education Code section 13444.5, which reads: *86 'The provisions of Sections 13443 and 13444 shall not be construed as in any way modifying or affecting the provisions of Section 13442.' (Stats.1962, ch. 59, p. 687.)

> FN4. Prior to its amendment in 1961, section 13443 of the Education Code read: 'On or before the fifteenth day of May in any year the governing board may give notice in writing to a probationary employee that his services will not be required for the ensuing year.
>
> 'The notice shall be deemed sufficient and complete when delivered in person to the employee by the clerk or secretary of the governing board of the school district or deposited in the United States registered mail with postage prepaid, addressed to the employee at his last known place of address.' (Stats.1959, ch. 2, p. 948.)

> FN5. Prior to its amendment in 1961, section 13444 of the Education Code read in part: 'Anything in Section 13443 to the contrary notwithstanding, governing boards of school districts having an average daily attendance of 85,000 or more pupils shall dismiss probationary employees for cause only. The determination of the board as to the sufficiency of the cause for dismissal shall be conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof.
>
> 'In case a hearing is requested by the employee the proceeding shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code * * *.' (Stats.1959, ch. 2, pp. 948-949.)

There remains the question whether, notwithstanding the timely notice given petitioner that her employment would not be continued, the failure to grant her a hearing before the beginning of the ensuing school year caused her to be automatically rehired as a permanent employee.

Neither the Education Code nor the chapter of the Administrative Procedure Act relating to administrative adjudication (Gov.Code, ss 11500-11529) contains a provision determining at what time a hearing like the one here involved must be held or concluded. The only date mentioned in sections 13442-13444 of the Education Code is the provision of section 13443 that notice of a decision not to reemploy must be given on or before May 15, and that date cannot be the time limit within which the hearing must be held because the codes provide for many time-consuming steps between the giving of the notice and the hearing. Thus, the teacher may ask for a written statement of the reasons for the dismissal (Ed.Code, s 13443), after receiving the statement he may ask for a hearing (Ed.Code, s 13444), an accusation must be filed (Gov.Code, s 11503), within five days thereafter the teacher may file his notice of defense (Ed.Code, s 13444), in the larger districts the board must and in other districts the board may obtain a hearing officer to preside over the hearing (Gov.Code, s 11517;

Ed.Code, s 13444), and the teacher must be given notice of the hearing at least ten days in advance (Gov.Code, s 11509).

[4][5] Where the statutes do not fix a time limit within which a hearing must be held, the only time restriction is that the hearing must be held within a reasonable time, and the governing board will not lose jurisdiction to hold a hearing unless there has been an unreasonable delay. (Steen v. City of Los Angeles, 31 Cal.2d 542, 545-547, 190 P.2d 937; Pearson v. County of Los Angeles, 49 Cal.2d 523, 539-540, 319 P.2d 624.) We cannot say that there has been an unreasonable delay in the present case. It appears that the delay was partly caused by the board's belief in good faith that petitioner was not entitled to a hearing and partly by the fact that petitioner reiterated her requests for a hearing before instituting court proceedings. At the time petitioner asked for a hearing there existed, as we have seen, a difference of opinion as to whether she was legally entitled to it, and there was then no authoritative decision on the point. In ***87** the circumstances, the trial court properly concluded that the board had not lost jurisdiction to hold a hearing. (Pearson v. County of Los Angeles, supra, 49 Cal.2d 523, 540, 319 P.2d 624.)

[6][7][8][9] The circumstance that no final decision concerning petitioner's dismissal was made before the start of the new school year did not cause petitioner to obtain tenure. As we have seen, under section 13304 of the Education Code a probationary teacher obtains tenure when he has been employed for three consecutive school years and is then reelected for the next succeeding year. Although the reelection may take place without affirmative action by the board when the teacher is not properly notified that he will not be rehired for the next year (Abraham v. Sims, 2 Cal.2d 698, 710-711, 42 P.2d 1029), there is no tacit reelection where, as here, the board has timely notified the teacher of the intended termination of the *****191 **719** employment. It should also be noted that sections 13443 and 13444 use the term 'dismissal' in referring to the notice to a probationary teacher of a decision not to reemploy him and that they thus indicate that the notice constitutes a dismissal. Another indication that the notice is considered a dismissal is found in the provision of section 13444 that a written notice stating the causes for dismissal shall not deprive 'any employee so dismissed' of the further right to a hearing. The dismissal, because of the provision for a hearing in section 13444, is subject to the condition subsequent that it will become ineffective if the board at the hearing decides that the termination of the employment was improper. Here no hearing has as yet been held, the condition subsequent has not occurred, and the dismissal by the notice given petitioner prior to May 15 is still effective. Thus, there is no basis for petitioner's contentions that her employment has continued into the new school year and that she obtained tenure.

The judgment and the order appealed from are affirmed.

TRAYNOR, SCHAUER, McCOMB, PETERS, TOBRINER and PEEK, JJ., concur.
CAL. 1964.
Horner v. Board of Trustees of Excelsior Union High School Dist. of Los Angeles
61 Cal.2d 79, 389 P.2d 713, 37 Cal.Rptr. 185

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(Cite as: 38 Cal.App.4th 810)

HOSNI NAGIB FAHMY, Plaintiff and Respondent,
v.
MEDICAL BOARD OF CALIFORNIA, Defendant and Appellant.
No. B082927.

Court of Appeal, Second District, Division 2, California.
Sep 26, 1995.

SUMMARY

In a mandamus proceeding, the trial court overturned, on a laches theory, the discipline imposed by the state medical board against a doctor as a result of his patient's death from the complications of an undiagnosed ectopic pregnancy. The trial court concluded that the medical board delayed unreasonably and thereby lost jurisdiction to act against the doctor by delaying for over three years between discovery of the relevant facts and instituting proceedings to revoke the doctor's medical license. (Superior Court of Los Angeles County, No. BS025541, Robert H. O'Brien, Judge.)

The Court of Appeal reversed and directed the trial court to issue a new order denying the writ petition and to enter judgment in favor of the medical board. The court held that the trial court erred in failing to find demonstrable prejudice to the doctor, and further in determining as a matter of law that a three-year delay was unreasonable. Dismissal of an administrative proceeding on the basis of laches is only warranted where the party asserting the laches theory has been substantially prejudiced. A statute of limitations may not be created by judicial fiat; the Legislature, in failing to impose a statute of limitations on physician disciplinary proceedings, has evinced its intent to protect people from incompetent doctors, regardless of how long it takes the state medical board to act. Furthermore, the doctor did not produce sufficient evidence of prejudice to support the court's finding. (Opinion by Boren, P. J., with Nott, J., and Brandlin, J., [FN*] concurring.)

FN* Judge of the Municipal Court for the South Bay Judicial District sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 74--Mandamus--Rehearing and Appeal--Review.
In a mandamus proceeding, where the facts forming the basis of the trial court's ruling are not in dispute, the reviewing court is not bound by the trial court's legal determinations, and must arrive at its own legal conclusions on appeal.

(2a, 2b) Healing Arts and Institutions § 24--Physicians--Regulation-- Disciplinary Proceedings--Judicial Review--Laches.
In a mandamus proceeding brought by a doctor, whose patient died of complications that resulted from an undiagnosed ectopic pregnancy, against the state medical board to overturn its administrative decision to revoke his medical license, the trial court erred in overturning the administrative decision on a theory of laches. Although a trial court has the inherent power to dismiss administrative proceedings brought to revoke a state-issued license where there has been an unreasonable delay between discovery of the relevant facts and the commencement of revocation proceedings, dismissal is only warranted where the party asserting the laches theory has been substantially prejudiced. The trial court here did not find demonstrable prejudice, but instead determined that a three-year delay was unreasonable as a matter of law by analogizing this license revocation proceeding to a medical malpractice or manslaughter proceeding, then shifted to the medical board the burden of proving that the doctor had not been prejudiced.
[See 11 **Witkin,** Summary of Cal. Law (9th ed. 1990) Equity, § 15.]

(3) Healing Arts and Institutions § 24--Physicians--Regulation-- Disciplinary Proceedings--Judicial Review--Laches.
The Legislature, in failing to impose a statute of limitations on physician disciplinary proceedings, has evinced its intent to protect people from incompetent doctors, regardless of how long it takes the state medical board to act. A statute of limitations may not

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be created by judicial fiat; limitations periods are products of legislative authority and control. By focusing solely on the passage of time, and not on the issue of disadvantage and prejudice, a court risks imposing a de facto-and impermissible-statute of limitations in a situation where the Legislature chose not to create a limitation on actions. Even inordinately long delays in taking administrative action have been judicially allowed. Administrative agencies such as the state medical board take action for the public welfare rather than for their own financial gain and should not be hampered by time limits in the execution of their duty to take protective remedial action.

(4) Healing Arts and Institutions § 24--Physicians--Regulation-- Disciplinary Proceedings--Judicial Review--Laches--Sufficiency of Evidence of Prejudice.
In a mandamus proceeding brought by a doctor against the state medical board to overturn its administrative decision to revoke his medical license, the doctor did not produce sufficient evidence of prejudice to support the court's finding of laches in the three-year delay between the medical board's discovery of the relevant facts and their institution of the administrative proceeding. Even assuming the medical records relating to the patient's treatment two days prior to her death were incomplete, possible negligence in failing to diagnose the patient's ectopic pregnancy two days earlier did not excuse this doctor's failure to assess the patient's hemoglobin levels or his performance of a suction curettage the day of her death from blood loss. Thus, those earlier records had negligible relevance. Also, no contention was made that any of the witnesses, including the doctor, was unable to testify effectively or be cross-examined at the administrative hearing due to the passage of time. Moreover, the doctor's recollection of the incident was memorialized in a deposition taken during the year following the patient's death.

COUNSEL

Daniel E. Lungren, Attorney General, and Rosa M. Mosley, Deputy Attorney General, for Defendant and Appellant.

Rosner, Owens & Nunziato, David L. Rosner and Phil J. Montoya, Jr., for Plaintiff and Respondent.

BOREN, P. J.

A patient died from the complications of an undiagnosed ectopic pregnancy after seeking medical care from respondent Hosni Nagib Fahmy, M.D. The Medical Board of California, Division of Medical Quality (the Medical Board) took disciplinary action against Fahmy as a result of the patient's death. The discipline imposed by the Medical Board was overturned by the trial court on a laches theory. The court concluded that the Medical Board, by investigating the case for three years and three months before instituting proceedings against Fahmy's medical license, lost jurisdiction to act because it delayed unreasonably "as a matter of law." We reverse.

Facts

On May 8, 1986, a 33-year-old patient named Claudia Caventou presented herself as a first-time patient at the medical clinic of respondent Fahmy. She ***813** reported that she was pregnant, and complained of severe abdominal pain, vaginal bleeding, shortness of breath and nausea. Fahmy's notes indicate his belief that Caventou might be suffering a miscarriage, and his awareness that he needed to rule out the possibility of an ectopic pregnancy, ovarian cyst, or ulcer.

Without performing a blood test to determine Caventou's hemoglobin level-which would have revealed substantial blood loss-Fahmy performed a suction curettage with the idea of sending the patient to the hospital afterward to check for an ectopic pregnancy or cyst. The patient was conscious, alert and ambulatory after the intrauterine procedure. About 20 minutes later, she collapsed in Fahmy's office and was transported to a hospital. Surgery was performed, but physicians were unable to save her due to an excessive loss of blood. Approximately one hour passed from the time Fahmy first examined her to the time she collapsed.

The Medical Board learned of Caventou's death on June 22, 1989, when Fahmy's malpractice insurer sent out a notice of settlement as required by law. An investigation followed. An accusation was filed against Fahmy by the Medical Board on October 20, 1992. Following a disciplinary hearing, the Medical Board revoked Fahmy's license in July of 1993 on the grounds he committed gross negligence in his treatment of the decedent. The findings underlying the Medical Board's determination were that (1) Fahmy

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"failed to give Caventou a blood test to determine her hemoglobin level which was essential to detect her substantial blood loss and which would have in light of her multiple symptoms, alerted him to the appropriate diagnosis of ectopic pregnancy," and (2) "At the time of respondent's examination of Caventou, the performance of curettage surgery was not indicated considering the entire syndrome of impending cardio-vascular failure."

In its decision, the Medical Board rejected Fahmy's claim of laches, finding that there was no showing of prejudice because the medical records affecting the outcome of Fahmy's case were in his possession and because his recollection of the incident was memorialized in a deposition taken in 1987. The Medical Board stayed the revocation of Fahmy's license and placed him on probation for five years. It ordered him to take a course relating to the complications of pregnancy and to pass an oral examination in the field of obstetrics and gynecology.

Fahmy filed a petition for a writ of mandamus on October 12, 1993. He sought to have the Medical Board's administrative decision overturned on the grounds that (1) the revocation decision was not supported by the ***814** findings or evidence, (2) there was insufficient evidence establishing that his conduct fell below the relevant standard of care, and (3) the Medical Board's delay in initiating proceedings against him denied him the right to a fair trial.

The trial court granted the writ on February 18, 1994. The court listed the factual bases for granting the writ. Specifically, the factual predicate cited by the court was that (1) the incident giving rise to the charges arose on May 8, 1986, (2) the Medical Board learned of the incident on June 22, 1989, and (3) the Medical Board's action against Fahmy was filed on October 20, 1992. Based on these undisputed facts, the court concluded, "The delay in filing the Accusation against petitioner, at least, over three (3) years after knowledge of the incident is unreasonable as a matter of law. The effect of the delay is to shift the burden to the [Medical Board] to prove that its delay was reasonable and the petitioner was not prejudiced thereby. In order to excuse its delay, the [Medical Board] must show exceptional circumstances prevented earlier action." The court determined that the unreasonable delay meant that the Medical Board proceeded without jurisdiction, that Fahmy was denied a fair hearing, and that there was laches.

Discussion

(1) The trial court decided the writ as a matter of law. The facts forming the basis of the trial court's ruling, which in this instance are the dates upon which certain specified events occurred, are not in dispute. We are not bound by the trial court's legal determinations, and must arrive at our own legal conclusions on appeal. (*Karpe v. Teachers' Ret irement Bd.* (1976) 64 Cal.App.3d 868, 870 [135 Cal.Rptr. 21]; *Wilson v. State Personnel Bd.* (1976) 58 Cal.App.3d 865, 870 [130 Cal.Rptr. 292].)

(2a) The parties agree that no statute of limitations applies to physician discipline proceedings. Nevertheless, Fahmy cites the rule that "... the trial court has the inherent power to dismiss administrative proceedings brought to revoke a state-issued license where there has been an unreasonable delay between the discovery of the facts constituting the reason for the revocation and the commencement of revocation proceedings, and where the licensee has been prejudiced by the delay." (*Gates v. Department of Motor Vehicles* (1979) 94 Cal.App.3d 921, 925 [156 Cal.Rptr. 791].)

The court in *Gates* found that the licensee, an automobile dismantler, was prejudiced and deprived of a fair administrative hearing because "... the ***815** memories of witnesses had diminished to a point where respondent could not engage in effective cross-examination." (94 Cal.App.3d at pp. 925-926.) [FN1] This was the result of an unexplained 16-month delay between discovery of the facts and the filing of license revocation charges.

> FN1 The trial court in *Gates* found, " 'The delay from investigation to accusation to hearing was such that the DMV witnesses had no recollection of many of the events they testified to and were simply reading their records. Likewise, petitioner [Gates] and his wife had difficulty recalling the events relating to the alleged violations out of all the cars and records handled by them two years before. This unreasonable delay in commencing the proceedings made effective cross-examination of the DMV investigators impossible.' " (94 Cal.App.3d at p. 924.)

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The *Gates* opinion cites several Supreme Court holdings in State Bar disciplinary proceedings which "suggest[] that dismissal would be warranted *if a party established that he was prejudiced* by an unreasonable delay in initiating charges against him." (94 Cal.App.3d at p. 925, italics added.) Additional authority similarly emphasizes that the burden of proving prejudice due to delay rests upon the party asserting the theory: "Laches is an equitable defense which requires both unreasonable delay and prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 188 [258 Cal.Rptr. 302].) Thus, it is not enough for a tribunal to simply find that a delay was, by virtue of the passage of time, unreasonable "as a matter of law." That finding *must* be supported by substantial evidence of prejudice. (*Id.* at p. 189; see also *Brown v. State Personnel Bd.* (1985) 166 Cal.App.3d 1151, 1159 [213 Cal.Rptr. 53] [" '[d]elay is not a bar unless it works to the *disadvantage or prejudice* of other parties.' "].)

In this case, the trial court did not find that Fahmy was demonstrably prejudiced by the Medical Board's delay. Rather, the court inexplicably selected three years as the period after which delay in bringing charges becomes unreasonable as a matter of law, then shifted to the Medical Board the burden of justifying the delay and proving Fahmy was not prejudiced.

The trial court's determination that a three-year delay is unreasonable as a matter of law flies in the face of the Legislature's informed refusal to impose a statute of limitations on physician disciplinary proceedings. The Legislature has seen fit to impose a limitation on actions in other administrative disciplinary settings. (See, e.g., Gov. Code, § 19635, which places a three-year statute of limitations on administrative actions against state employees for violation of any civil service law, or for fraud, embezzlement, or ***816** falsification of records.) (3) In fact, when the Legislature passed the Medical Judicial Procedure Improvement Act a few years ago (Stats. 1990, ch. 1597, § 39, p. 7702, its statement of legislative intent evinced a concern for "protecting the people of California," *not* for protecting the right of incompetent doctors to retain their licenses. [FN2] The new law noticeably lacks a statute of limitations. The Legislature is presumably aware that there are statutes limiting the right to bring action in other, arguably analogous situations. [FN3] Yet the Legislature chose not to impose any limitation on the Medical Board in this precise situation.

> FN2 "The 1989-90 Regular Session of the Legislature declares that the physician discipline system administered by the board's Division of Medical Quality is inadequate to protect the health, safety, and welfare of the people of California against incompetent or impaired physicians." (Stats. 1990, ch. 1597, § 1, p. 7683.)
>
> FN3 Fahmy analogizes the Medical Board's disciplinary action to a private medical malpractice suit, for which there is a three-year statute of limitations. (Code Civ. Proc., § 340.5.) He also analogizes this proceeding to a criminal prosecution for involuntary manslaughter, for which there is a three-year statute of limitations. (Pen. Code, §§ 192, 193, 801.)

It is important to remember that "a statute of limitations may not be created by judicial fiat" (*Mt. San Antonio Community College Dist. v. Public Employment Relations Bd., supra*, 210 Cal.App.3d at p. 188) and that limitations periods "are products of legislative authority and control." (*Zastrow v. Zastrow* (1976) 61 Cal.App.3d 710, 715 [132 Cal.Rptr. 536].) By focusing solely on the passage of time, and not on the issue of disadvantage and prejudice, a court risks imposing a de facto-and impermissible-statute of limitations in a situation where the Legislature chose not to create a limitation on actions. Even inordinately long delays in taking administrative action have been judicially allowed. (See *NLRB v. Ironworkers* (1984) 466 U.S. 720 [80 L.Ed.2d 715, 104 S.Ct. 2081], where the delay in taking administrative action lasted from 1978 until 1982, and related to wrongdoing which occurred from 1972 onward.) There is without a doubt a realization on the part of the Legislature that administrative agencies such as the Medical Board take action for the public welfare rather than for their own financial gain, and should not be hampered by time limits in the execution of their duty to take protective remedial action. That is particularly true in the case of the Medical Board, which is charged with protecting the lives and health of the citizenry from incompetent

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(Cite as: 38 Cal.App.4th 810)

or grossly negligent medical practitioners. It is apparent that the Legislature wishes to have the Medical Board protect California patients from physicians who are incapable of providing appropriate services in life or death situations, regardless of how long it takes the Medical Board to act. [FN4] *817

> FN4 In a somewhat different context, which involved the timeliness of disciplinary action by a state agency, our Supreme Court recently acknowledged, "[W]e cannot assume that the Legislature intended to penalize state agencies and the people of this state by mandating reinstatement of an incompetent or untrustworthy employee solely because the Board failed to render a timely decision in the employee's appeal. The statute clearly contemplates review of the adverse action by the court, not reinstatement of an employee whose conduct may have proven the employee unfit for public service or for the position currently held, or otherwise justifies punitive action." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1150 [43 Cal.Rptr.2d 693, 899 P.2d 79].)

Fahmy and the trial court relied on the case of *Brown v. State Personnel Bd., supra*, 166 Cal.App.3d 1151, for the proposition that an administrative delay can be unreasonable as a matter of law, which in turn shifts the burden to the agency of explaining the delay and disproving prejudice. There, a state university professor was dismissed from his job after students complained he was sexually harassing them. The appellate court found a strong analogy between the professor's position with the state and the position of other state employees who were subject to a three-year statute of limitations if they were to be disciplined for instances of misconduct. Accordingly, the court applied the three-year statute of limitations by analogy to the professor's claim of laches, and shifted the burden of proving laches to the agency.

We find the *Brown* case inapposite in the context of a license revocation proceeding. [FN5] The purpose of a license revocation proceeding is to protect the public from incompetent practitioners by eliminating those individuals from the roster of state-licensed professionals. The license revocation proceeding is civil in nature, not criminal. By contrast, the purpose of a criminal proceeding is to punish someone for a specific act of wrongdoing, and the purpose of a civil proceeding for medical malpractice is to compensate financially for a particular loss occasioned by negligence. Neither a criminal prosecution nor a malpractice action serves the purpose intended by license revocation proceedings. "The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent." (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540 [92 Cal.Rptr. 525]; *Lam v. Bureau of Security & Investigative Services, supra*, 34 Cal.App.4th at p. 38.) (2b) Thus, it was not appropriate for the trial court to "borrow" a statute of limitations by analogizing this license revocation *818 proceeding to a medical malpractice or manslaughter proceeding, nor to shift the burden of disproving laches to the Medical Board. (*Lam, supra*, at p. 38.)

> FN5 We note that in the 10 years since *Brown* was decided, the section of the opinion applying a statute of limitations to a laches defense in an administrative setting has never been followed, except by the same court in the recent case of *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29 [40 Cal.Rptr.2d 137]. Even then, the court in *Lam* refused to apply a statute of limitations by analogy to the laches theory asserted by a locksmith who was having his license revoked after using his professional skill to break into someone's apartment.

(4) We must now determine whether Fahmy produced sufficient evidence of prejudice to justify the dismissal of disciplinary charges against him. In his trial brief below, Fahmy made no argument or showing whatsoever that he was prejudiced by the Medical Board's delay. In his appellate brief, Fahmy asserts that "it is impossible to identify all evidence which has been lost or is otherwise unavailable and which would have aided [him] in defending the [a]ccusation against him." He specifically complains that Caventou's medical records relating to her prior treatment at Harbor-UCLA Medical Center on May 6, 1986, were incomplete and the names of the physicians who treated her there were unknown. He suggests that this

compromised his ability to prove that other physicians contributed to Caventou's death.

The hearing exhibits reveal that the custodian of medical records at Harbor-UCLA Medical Center provided the parties with "all the records" relating to UCLA's treatment of Caventou. Even if this disciplinary action had been brought earlier, there is no reason to believe there would have been any more records than were produced at the hearing in 1993. Assuming that some of the records from UCLA were missing, their absence did not affect the outcome of this case. The physicians at UCLA may have been negligent in failing to diagnose the ectopic pregnancy on May 6. Nevertheless, this does not excuse Fahmy's failure to assess Caventou's hemoglobin levels on May 8, when an ectopic pregnancy was an acknowledged possibility, and she was bleeding and in severe pain. Nor does it excuse Fahmy's performance of a suction curettage when the patient was exhibiting signs of "impending cardio-vascular failure." Thus, the records or witnesses from UCLA have negligible relevance to Fahmy's conduct on the day of Caventou's death.

No contention is made that any of the witnesses, including Fahmy, were unable to testify effectively or be cross-examined at the administrative hearing due to the passage of time. (Cf. *Gates v. Department of Motor Vehicles, supra*, 94 Cal.App.3d 921, 924.) Moreover, Fahmy's recollection of the incident was memorialized in a deposition taken in 1987, the year after Caventou's death. In short, there is no colorable showing of prejudice to support a finding of laches. ***819**

Disposition

The judgment is reversed. The trial court is directed to issue a new order denying the writ, and to enter judgment in favor of appellant Medical Board of California. Costs, if any, to the prevailing party.

Nott, J., and Brandlin, J., [FN*] concurred.

FN* Judge of the Municipal Court for the South Bay Judicial District sitting under assignment by the Chairperson of the Judicial Council.

Respondent's petition for review by the Supreme Court was denied December 13, 1995. ***820**

Cal.App.2.Dist.
Fahmy v. Medical Bd. of California
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POTTO A. STEEN, Appellant,
v.
THE CITY OF LOS ANGELES et al., Respondents.
L. A. No. 20025.

Supreme Court of California
Mar. 23, 1948.

HEADNOTES

(1) Municipal Corporations § 312--Employees--Removal--Hearing.
Under a city charter provision declaring that within a specified time after filing of a statement of grounds for discharge of a civil service employee, the board of civil service commissioners may, or on written application by the employee filed within a designated time after service of such statement on him, shall investigate the grounds, the board does not lose jurisdiction over a discharge proceeding merely by lapse of time; the most that can be said is that a hearing must be held within a reasonable time, and that the appointing power must diligently prosecute the proceeding.
See 18 **Cal.Jur.** 986; 37 **Am.Jur.** 867.
(2) Administrative Law § 12--Court Review of Administrative Action.
The proper procedure on the failure of an administrative board to give a hearing under appropriate circumstances, is to remand the case to the board for proper proceedings. The policy underlying such a rule is that the determination of the issues should first be made by the administrative agency.

(3) Administrative Law § 8--Administrative Proceedings--Hearing--Dismissal.
By analogy to the rule prevailing in the prosecution of civil actions, a proceeding before a local administrative agency exercising quasi judicial functions should be dismissed when the proceeding is not diligently prosecuted.
See 9 **Cal.Jur.** 526; 5 **Cal.Jur. 10-Yr.Supp.** [1944 Rev.] 250; 17 **Am.Jur.** 88.
(4) Municipal Corporations § 312--Employees--Removal--Hearing.
On the investigation by a municipal civil service board of the grounds for discharge of an employee, the appointing power making the charges has the burden of proving them, and the duty of prosecuting the proceeding diligently.

(5) Municipal Corporations § 312--Employees--Removal--Hearing--Dismissal.
A municipal civil service board did not abuse its discretion in refusing to dismiss a discharge proceeding against an employee for delay in its prosecution where, after procuring the reversal of a judgment denying a petition to review an order sustaining the discharge, the employee took no further steps in such proceeding and made no showing as to his reasons for failing to do so.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Stanley Murray, Judge assigned. Affirmed.

Action for declaratory relief with respect to plaintiff's rights as a city civil service employee. Judgment for defendants affirmed.

COUNSEL

Cryer & Jones, George E. Cryer and R. Alston Jones for Appellant.

Ray L. Chesebro, City Attorney, Bourke Jones, Assistant City Attorney, George William Adams and John F. Feldmeier, Deputy City Attorneys for Respondents.

CARTER, J.

In this action for declaratory relief plaintiff failed to obtain the relief prayed for in his complaint in respect to his rights as a civil service employee of defendant, city of Los Angeles.

The controversy between the parties has been before this court previously. (*Steen v. Board of Civil Service Commrs.*, 26 Cal.2d 716 [160 P.2d 816].) In that case the plaintiff sought in the superior court a review and annulment of an order of the Board of Civil Service Commissioners (a local administrative agency exer-

cising quasi judicial functions, hereafter called board) of the city of Los Angeles which sustained the discharge of plaintiff as a civil service employee of the Department of Water and Power (hereafter called department), a department of the government of said city. No evidence was introduced at the hearing on the petition for review inasmuch as it was opposed by respondents on the sole ground that the petition failed to state a cause of action, and the superior court rendered judgment denying relief on the ground that plaintiff had not filed a demand for reinstatement with the board within the time required, and that his petition failed to state a cause of action. On appeal from that judgment this court held that the demand was timely; that plaintiff must be accorded a hearing by the board, and his petition for review stated facts sufficient to show that he had been denied a hearing. The denial of the petition for review was accordingly reversed.

Prior to the foregoing proceeding, and on August 12, 1943, the department filed with the board a notice of discharge of plaintiff. On August 18, 1943, plaintiff made demand for a hearing by the board. On December 15, 1943, the board made ***544** its order sustaining the discharge. On February 25, 1944, plaintiff filed with the board a demand for reinstatement. Thereafter he commenced the proceeding for review above mentioned culminating in this court's decision in *Steen v. Board of Civil Service Commrs., supra.* The remittitur in said case was filed in the superior court on August 1, 1945. Thereafter, in that proceeding, neither plaintiff, the board, department nor the city, took any further action except as hereinafter mentioned. The board did not file an answer or return to plaintiff's petition in that action. No further hearing was had thereon. Neither the board nor the department made any move to give plaintiff a hearing before the board (except as later appears). Plaintiff made no request for a hearing, other than the demand of August 18, 1943, hereinbefore mentioned. On February 5, 1946, plaintiff commenced the instant action to have it declared that the discharge proceeding against him should be dismissed on the grounds that the board had lost jurisdiction due to the delay in the prosecution of the charge against him, and that he was entitled to be reinstated. On May 29, 1946, plaintiff's review proceeding which culminated in the prior decision of this court (*Steen v. Board of Civil Service Commrs., supra*) was dismissed on his motion in the superior court.

On June 28, 1946, the trial court rendered judgment in the instant action denying plaintiff relief, and declaring that the discharge proceeding before the board did not terminate by lapse of time, and it is still properly pending there; that plaintiff is entitled to a hearing before the board on the charges filed against him and the matter is remanded to the board for that purpose. Plaintiff appealed from that judgment. Thereafter, this court granted respondents' application to produce evidence here consisting of the record of a hearing before the board on August 9, 1946. At that time plaintiff moved the board for a dismissal of the proceeding on the ground that the board had lost jurisdiction and there was a fatal lack of diligence in the prosecution of the charges against him. The motion was denied.

Plaintiff contends that the board was required, under section 112 of the city charter, to hold a hearing within 15 days after the statement of charges was filed with the board (in the instant case that would mean 15 days after August 17, 1943), or at least within a reasonable time; that inasmuch as over three years had elapsed since the filing of the notice of discharge, the proceeding against plaintiff must be dismissed; that ***545** the court proceedings above outlined do not excuse the delay; and that he was under no obligation to proceed to obtain judgment in the first action (the review proceeding) for the board was required to give him a hearing and its failure to do so was the initial wrong in the case.

It should first be observed that the trial court in this action declared that plaintiff is entitled to a hearing before the board as this court decided in *Steen v. Board of Civil Service Commrs., supra.* Thus the objective sought to be accomplished by the first action has been achieved.

(1) Section 112 of the Los Angeles Charter, after providing for the filing by the appointing power of the statement of grounds for discharge with the board reads: "Within fifteen days after such statement shall have been filed, the said board, upon its own motion, may, or upon written application of the person so removed, discharged or suspended, filed with said board within five days after service upon him of such statement, shall proceed to investigate the grounds for such removal, discharge or suspension." Assuming that the investigation referred to is the hearing the board must accord (see, Steen v. Board of Civil Service

Commrs., supra, pp. 723, 725), plainly the reference to fifteen and five days does not limit the time in which the hearing must be had. The apparent intent is that within said fifteen days the board on its own motion may decide to grant a hearing, but that does not mean the hearing must be within that period. If the employee seeks relief within the five-days' limit, a hearing must be had, but it need not be within the five days. If the hearing had to be held within those short periods and there were many cases to be considered the administrative function would be thrown into hopeless confusion and rendered ineffective. It might well be physically impossible to meet the requirement. The board is an agency with continuing existence. It does not lose jurisdiction over a discharge proceeding merely by lapse of time. The most that can be said is that a hearing must be held within a reasonable time; that the appointing power, the initiator of the discharge proceeding, must diligently prosecute that proceeding. In *Universal Consolidated Oil Co. v. Byram,* 25 Cal.2d 353 [153 P.2d 746], this court considered the propriety of remanding a matter to the county board of supervisors sitting as a board of equalization, where the action of the board denying relief was reviewed by the court and it was found a proper hearing had not been accorded. It declared ***546** that a remand to the board for a hearing was proper although under the statute the board (while sitting as a board of equalization) had a limited life each year. The court concluded that the "intent of the law" requires that the case be remanded to the board for a hearing. It is necessary that there exist a very clear indication that the jurisdiction of a board has been exhausted after the expiration of a certain period of time, before a court will find such loss of power. (See, *Whiting Finance Co. v. Hopkins,* 199 Cal. 428 [249 P. 853]; *Buswell v. Supervisors etc.,* 116 Cal. 351 [48 P. 226].) (2) While special consideration was not given to the wording of the statutes involved, it is established that the proper procedure upon the failure of an administrative board to give a hearing under appropriate circumstances, is to remand the case to the board for proper proceedings. (*La Prade v. Department of Water & Power,* 27 Cal.2d 47 [162 P.2d 13]; *Bila v. Young,* 20 Cal.2d 865 [129 P.2d 364]; *Ware v. Retirement Board,* 65 Cal.App.2d 781 [151 P.2d 549].) The policy underlying such a rule is that the determination of the issues should first be made by the administrative agency. It is given jurisdiction for that purpose, and interference with that jurisdiction should not be permitted until it has been pursued to the point of exhaustion. Therefore, insofar as the termination of the jurisdiction of the board is concerned, the conclusion must be that it does not lose its jurisdiction to proceed in accordance with the provisions of the charter by delay in the conduct of a hearing.

(3) If we consider the matter of delay in a hearing by the board as analogous to laxity in the prosecution of a civil action-in bringing it to trial, it appears that courts have inherent power independent of statutory provisions to dismiss an action on motion of the defendant where it is not diligently prosecuted. (*Raggio v. Southern Pacific Co.,* 181 Cal. 472 [185 P. 171]; *Gray v. Bybee,* 60 Cal.App.2d 564 [141 P.2d 32]; *Hibernia Sav. & Loan Soc. v. Lauffer,* 41 Cal.App.2d 725 [107 P.2d 494]; *Vogel v. Marsh,* 122 Cal.App. 748 [10 P.2d 791]; *Oberkotter v. Spreckels,* 64 Cal.App. 470 [221 P. 698]; 9 Cal.Jur. 526-527, 539-540; 5 Cal.Jur. 10-Yr. Supp. [1944 Rev.], pp. 250-251; 27 C.J.S., Dismissal and Nonsuit, § 65.) The policy to expedite justice underlying the rule, exists where the proceeding is before a local administrative agency exercising quasi judicial functions such as the board in the instant case. By analogy a proceeding before such a ***547** board should be dismissed where an unreasonable time has elapsed-where the proceeding is not diligently prosecuted.

(4) Under the city charter, a statement of the charges, as ground for the discharge of a civil service employee, is filed with the board. The burden of proving these charges rests upon the appointing power, the one making the charges. (*La Prado v. Department of Water & Power, supra,* 51.) Thus in the discharge proceeding before the board, the appointing power is analogous to what in a civil action would be the plaintiff, and the employee the defendant. It follows that the duty to prosecute diligently the proceeding before the board is that of the appointing power, and if it is derelict, a motion to dismiss on that ground is proper. If granted the employee should be reinstated.

(5) In the instant case, as appears from the evidence proffered in this court, plaintiff moved the board for a dismissal at the hearing on August 9, 1946, and it was denied. Plaintiff now claims that for the board to refuse to dismiss was an abuse of discretion and hence it may be so declared by the court in this action. Plaintiff did not move to dismiss the proceeding before the board before he commenced this action. But assuming, that plaintiff is not required to raise the question of dismissal for failure to prosecute before

the board rather than in the court in this action, he has not made out a case of abuse of discretion. It will be recalled that the first order of the board (December 15, 1943) was adverse to him. He sought an annulment thereof in his proceeding for review which was denied by the superior court. He appealed, and the denial was reversed. The remittitur went down, but he never sought an order of annulment from the trial court. The proceeding in the court below was somewhat similar to the sustaining of a demurrer followed by a judgment of dismissal and an appeal therefrom. The denial of relief was reversed by this court-no more-no less. The matter was thus at large with the petition for review pending and no action on the part of the court. "The proceeding [after reversal] is left where it stood before the judgment or order was made, and the parties stand in the same position as if no such judgment or order had ever been rendered or made. They have the same rights which they originally had." (2 Cal.Jur. 996.) There was no judgment, therefore, in the review proceeding. Plaintiff was free at all times to obtain such a judgment-the relief he sought. The appointing power could not, ***548** at least prior to the reversal, prosecute the matter further before the board without compromising its position that the board's order sustaining the discharge was valid-that everything in respect to a hearing that was required had been done. There is nothing to indicate bad faith by the appointing power in seeking to sustain the validity of the proceeding. As a general principle the time consumed by a pending appeal is not computed in ascertaining what is a reasonable time for prosecuting a proceeding. (See, *Christin v. Superior Court*, 9 Cal.2d 526 [71 P.2d 205, 112 A.L.R. 1153]; *Westphal v. Westphal*, 61 Cal.App.2d 544 [143 P.2d 405].) After the denial of relief by the trial court was reversed, and the remittitur went down, there was nothing to prevent plaintiff from obtaining a judgment entitling him to a hearing before the board. He was the moving party in that proceeding. He was in a position analogous to an appellant (he was seeking a review and annulment of the board's order) and as such the duty rested upon him to prosecute his proceeding which may be likened to an appeal. He makes no showing of any reason why he did not proceed the first action. He is therefore not entitled to a dismissal because of the delay in the prosecution of the charges against him.

We have heretofore referred to the granting of respondents' request to produce evidence here consisting of the record of a hearing held by the board on August 9, 1946, resulting in the charges against plaintiff being sustained. Supplemental material offered by plaintiff on the same subject was also received. That evidence was received solely for the purpose of completing the picture of the proceedings taken. We do not here purport to pass upon the correctness of the determination reached at that hearing. That is a matter that may be reviewed by the superior court in proper proceedings therefor.

The judgment is affirmed.

Gibson, C. J., Traynor J., and Schauer, J., concurred. Shenk, J., Edmonds, J., and Spence, J., concurred in the judgment. ***549**

Cal.
Steen v. City of Los Angeles
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Commission on State Mandates

Original List Date:
Last Updated: 10/6/2010
List Print Date: 11/23/2010
Claim Number: 09-4282-I-05
Issue: Handicapped and Disabled Students

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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