



November 16, 2022

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

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

Re: Proposed Decision

Interagency Child Abuse and Neglect Investigation Reports (ICAN), 20-0022-I-02
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7),
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,
Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes
1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997,
Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000,
Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number
29);² "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91); Statutes 2019,
Chapter 588 (SB 22)
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005,
2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012
City of South Lake Tahoe, Claimant

Dear Ms. Chinn and Ms. Sidarous:

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

Hearing

This matter is set for hearing on **Friday, December 2, 2022**, at 10:00 a.m., via Zoom.

Statutes 2022, chapter 48 (Sec. 20 and 80), signed by Governor Newsom on June 30, 2022, amended the Bagley-Keene Open Meeting Act to extend until July 1, 2023, the authority to hold public meetings through teleconferencing and to make public meetings accessible electronically to all members of the public seeking to observe and to address the state body in order to protect the health and safety of civil servants and the public. The statute further suspends and no longer requires until July 1, 2023, the physical presence of members or other personnel of the state body or the public as a condition of participation in or quorum for a public meeting; the identification of each teleconference location from which a member will be participating; the posting of the

¹ Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

² The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

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notice and agenda at each teleconference location; and the ability of the public to address the state body at each teleconference location

The Commission on State Mandates (Commission) is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters.

If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial *9 to use the "Raise Hand" feature.

There are two options for joining the meeting via Zoom:

1. Through the link below you can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well. **(You are encouraged to use this option.)**

<https://csm-ca-gov.zoom.us/j/89490805623?pwd=eHU1QUIEellkUnBTK3g1K0ZwQUtsZz09>

Passcode: 119816

2. Through your landline, smart mobile, or non-smart mobile phone, either number works. You will be able to listen to the proceedings but will not be able to view the meeting or any documents being shared.

+1 216 706 7075 US Toll

+1 866 390 1828 US Toll-free

Conference code: 155007

Please don't hesitate to reach out to us for help with technical problems at csminfo@csm.ca.gov or 916 323-3562.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.

If you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible. However, comments filed less than five days prior to a meeting or submitted at the meeting will not be included in the Commissioners' hearing binders. Due to the meeting being remote, in lieu of the commenter providing 12 paper copies of the comments at the meeting for such late filings (Cal. Code Regs., tit. 2, § 1181.10(b)(1)), please file the PDF document or section of the PDF document via the Commission's dropbox at <https://csm.ca.gov/dropbox.php> prior to the hearing.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Ms. Chinn and Ms. Sidarous

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Special Accommodations

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 4
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,¹ 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)²

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Interagency Child Abuse and Neglect Investigation Reports

Fiscal Years 1999-2000 through 2011-2012

20-0022-I-02

City of South Lake Tahoe, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller’s Office (Controller’s) reduction of costs claimed by the City of South Lake Tahoe for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program for fiscal years 1999-2000 through 2011-2012. This IRC and Decision are limited to Findings 2 and 3 in the Controller’s audit report.

At issue are the Controller’s reductions to the number of Suspected Child Abuse Reports (SCARs) investigated by the claimant for purposes of reporting cases that are “not unfounded” to the State Department of Justice (DOJ) and reductions to indirect labor costs. Specifically, the claimant challenges the Controller’s exclusion of all police department-generated SCARs, reduction of other agency-generated SCARs in which a full initial investigation was performed,

¹ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

² The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

and exclusion of the public safety dispatcher and evidence technician positions from the indirect cost pool.

Staff finds that the Controller's reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support and recommends that the Commission on State Mandates (Commission) deny this IRC.

Procedural History

The Commission adopted Parameters and Guidelines for the *Interagency Child Abuse and Neglect Investigation Reports* program on December 16, 2013. The claimant signed amended reimbursement claims for fiscal years 1999-2000 through 2011-2012 on July 6, 2015. The Controller commenced the audit in December 2017 and issued the final audit report on May 21, 2018. The claimant filed the IRC on May 13, 2021. The Controller filed late comments on the IRC on February 16, 2022. Commission staff issued the Draft Proposed Decision on September 12, 2022.³ The Controller filed comments on the Draft Proposed Decision on September 14, 2022.⁴ The claimant filed late comments on the Draft Proposed Decision on October 4, 2022.⁵

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁶ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

³ Exhibit C, Draft Proposed Decision, issued September 12, 2022.

⁴ Exhibit D, Controller's Comments on the Draft Proposed Decision, filed September 14, 2022.

⁵ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022.

⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁷

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁸

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁹ In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁰

Claims

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

Issue	Description	Staff Recommendation
Did the claimant timely file the IRC?	At the time of issuance of the final audit report, section 1185.1(c) of the Commission’s regulations required an IRC to be filed no later than three years after the claimant first receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with the notice requirements of Government Code section 17558.5(c).	<i>Timely filed</i> – The IRC was filed May 13, 2021, within three years of the final audit report and is therefore timely.
Is the Controller’s reduction of investigation costs in	Under the Parameters and Guidelines, claimants are	<i>Correct as a matter of law and not arbitrary, capricious,</i>

⁷ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁸ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁰ Government Code section 17559(b), which provides that 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 in the record.

Issue	Description	Staff Recommendation
<p>Finding 2, based on the Controller’s exclusion of the SCARs submitted by mandated reporters employed by the claimant’s police department, correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>eligible for reimbursement to complete an investigation for purposes of preparing and submitting the Form SS 8583 to the Department of Justice (DOJ).¹¹ Submitting the Form SS 8583 to DOJ is required when a report of abuse is “not unfounded.” However, as applied to cases in which the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, where the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to prepare and submit the Form SS 8583 to DOJ), and no further investigation would be required.¹² The Parameters and Guidelines contemplate, however, that there may be some circumstances where receipt of a SCAR may require the police department to conduct additional</p>	<p><i>or entirely lacking in evidentiary support</i> – The Controller’s determination, that “the level of investigation performed by the mandated reporter to gather the necessary information for completing the SS 8572 form <i>is frequently sufficient</i> to complete form SS 8583” when the mandated reporter is employed by the investigating agency, and that supporting documentation is required to determine if the investigation by the agency is performed for the purpose of preparing and submitting a report to DOJ, is correct as a matter of law.¹⁴</p> <p>The record shows that the Controller reviewed all available documentation provided by the claimant, and determined that the documentation did not establish that the level of investigation performed was limited to the mandate or exceeded that required of the mandated reporter employed by the police department when completing the SCAR. The claimant has not</p>

¹¹ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines, page 8).

¹² Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines, page 41).

¹⁴ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report, page 30).

Issue	Description	Staff Recommendation
	interviews for the sole purpose of preparing and submitting the Form SS 8583 to DOJ (“Conducting initial interviews with parents, victims, suspects, or witnesses, <i>where applicable</i> ”), and if those costs are supported by documentation. ¹³	provided evidence to the contrary.
Is the Controller’s reduction of investigation costs in Finding 2, based on the number of SCARs referred to the claimant’s police department by other agencies for which the claimant alleges the police department completed a full initial investigation, correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?	The Controller determined that the police department completed a full initial investigation for only 10 percent of the SCARs referred by other agencies. ¹⁵ For the remaining 90 percent, the Controller allowed additional time increments for partial initial investigation activities, consistent with the Parameters and Guidelines, despite the fact that the claimant did not provide supporting documentation. ¹⁶ The claimant asserts that four additional investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated, because without performing these additional investigative activities, “it would have been impossible to determine the disposition	<i>Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – None of the additional activities proposed by the claimant were approved by the Commission as reasonably necessary activities and therefore the claimant’s proposed activities are not eligible for reimbursement. The record shows that the Controller reviewed all available documentation provided by the claimant and determined that the documentation established that some, but not all, of the other agency-generated SCARs were fully investigated by the police department. For the 90 percent of other agency-generated SCARs where the Controller determined that the police department did not complete a full initial

¹³ Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines), emphasis added.

¹⁵ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

¹⁶ Exhibit A, IRC, filed May 13, 2021, page 485 (Final Audit Report).

Issue	Description	Staff Recommendation
	of the case: whether or not the allegations were founded and a SS 8583 report was required to be sent to the DOJ as required by State law and this mandate program.” ¹⁷	investigation, the Controller found that certain preliminary investigative activities were reimbursable, despite the fact that the claimant did not provide supporting documentation. The claimant has not submitted evidence showing otherwise.
Is the Controller’s reduction of indirect costs in Finding 3, by excluding the public safety dispatcher and evidence technician classifications from the indirect cost pool, correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?	The Parameters and Guidelines require the claimant to choose between two methodologies when calculating an ICRP, one in which the cost objective is a department as a whole, and the other in which the cost objective is a group, such as a division or program, within the department.	<i>Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – The claimant’s position is based on the incorrect premise that the cost objective here is the ICAN program, not the police department as a whole. Under the applicable ICRP methodology of classifying the police department’s expenditures as a whole into direct and indirect costs, the degree to which the job duties performed by the public safety dispatcher and evidence technician are direct or indirect is based on the relationship of those duties to the police department’s direct and indirect functions as a whole. The Controller analyzed the public safety dispatcher and evidence technician duty statements and did not identify any duties that were indirect in nature, or “in support of general business functions and which are not attributable

¹⁷ Exhibit A, IRC, filed May 13, 2021, page 7.

Issue	Description	Staff Recommendation
		to a special project or unit.” ¹⁸ There is no evidence in the record that the Controller failed to explain its position or consider the claimant’s documentation.

Staff Analysis

A. The Claimant Timely Filed the IRC.

At the time the Controller issued the audit report, section 1185.1(c) of the Commission’s regulations required an IRC to be filed no later than three years after the date the claimant receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a reimbursement claim resulting from an audit or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges, and the reason for the adjustment.¹⁹

Here, the Controller issued the final audit report on May 21, 2018.²⁰ The audit report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments and therefore complies with the notice requirements of section 17558.5(c).²¹ The claimant filed the IRC on May 13, 2021.²² The IRC was filed within three years of the date of the final audit report. Staff finds that the IRC was timely filed.

B. The Controller’s Reduction in Finding 2 for the Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Exclusion of 10 Suspected Child Abuse Reports (SCARs) Received by the Claimant’s Police Department, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

Staff finds that the Controller’s reduction of investigation costs in Finding 2, based on the Controller’s exclusion of the SCARs submitted by mandated reporters employed by the claimant’s police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Under the Parameters and Guidelines, claimants are eligible for reimbursement to complete an investigation for purposes of preparing and submitting

¹⁸ Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report, page 36), emphasis added.

¹⁹ Government Code section 17558.5(c).

²⁰ Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

²¹ Exhibit A, IRC, filed May 13, 2021, pages 463-508 (Final Audit Report).

²² Exhibit A, IRC, filed May 13, 2021, page 1.

the Form SS 8583 to the Department of Justice (DOJ).²³ Submitting the Form SS 8583 to DOJ is required when a report of abuse is “not unfounded.” However, as applied to cases in which the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, where the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to prepare and submit the Form SS 8583 to DOJ), and no further investigation would be required.²⁴ The Parameters and Guidelines contemplate, however, that there may be some circumstances where receipt of a SCAR may require the police department to conduct additional interviews for the sole purpose of preparing and submitting the Form SS 8583 to DOJ (“Conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*”), and if those costs are supported by documentation.²⁵

Thus, the Controller’s determination, that “the level of investigation performed by the mandated reporter to gather the necessary information for completing the SS 8572 form *is frequently sufficient* to complete form SS 8583” when the mandated reporter is employed by the investigating agency, and that supporting documentation is required to determine if the investigation by the agency is performed for the purpose of preparing and submitting a report to DOJ, is correct as a matter of law.²⁶

The record shows that the Controller reviewed all available documentation provided by the claimant, and determined that the documentation did not establish that the level of investigation performed was limited to the mandate or exceeded that required of the mandated reporter employed by the police department when completing the SCAR. The claimant has not provided evidence to the contrary.

C. The Controller’s Reduction in Finding 2 for the Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Reduction to the Number of Suspected Child Abuse Reports (SCARs) Referred to the Claimant’s Police Department by Other Agencies, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

Staff finds that the Controller’s reduction of investigation costs in Finding 2, based on the number of SCARs referred to the claimant’s police department by other agencies for which the claimant alleges the police department completed a full initial investigation, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Controller determined that the police department completed a full initial investigation for only 10 percent of the SCARs referred by other agencies.²⁷ For the remaining 90 percent, the Controller allowed

²³ Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines).

²⁴ Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

²⁵ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

²⁶ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

²⁷ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

additional time increments for partial initial investigation activities, consistent with the Parameters and Guidelines, despite the fact that the claimant did not provide supporting documentation.²⁸ The claimant asserts that four additional investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated, because without performing these additional investigative activities, “it would have been impossible to determine the disposition of the case: whether or not the allegations were founded and a SS 8583 report was required to be sent to the DOJ as required by State law and this mandate program.”²⁹ None of the additional activities proposed by the claimant were approved by the Commission as reasonably necessary activities and therefore the claimant’s proposed activities are not eligible for reimbursement.

The record shows that the Controller reviewed all available documentation provided by the claimant and determined that the documentation established that some, but not all, of the other agency-generated SCARs were fully investigated by the police department. For the 90 percent of other agency-generated SCARs where the Controller determined that the police department did not complete a full initial investigation, the Controller found that certain preliminary investigative activities were reimbursable, despite the fact that the claimant did not provide supporting documentation. The claimant has not submitted evidence showing otherwise.

D. The Controller’s Reduction of Indirect Costs in Finding 3 Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

Staff finds that the Controller’s reduction of indirect costs in Finding 3, by excluding the public safety dispatcher and evidence technician classifications from the indirect cost pool, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to choose between two methodologies when calculating an ICRP, one in which the cost objective is a department as a whole, and the other in which the cost objective is a group, such as a division or program, within the department. Under the applicable ICRP methodology of classifying the police department’s expenditures as a whole into direct and indirect costs, the degree to which the job duties performed by the public safety dispatcher and evidence technician are direct or indirect is based on the relationship of those duties to the police department’s direct and indirect functions as a whole. The Controller correctly interpreted the Parameters and Guidelines and analyzed the public safety dispatcher and evidence technician duty statements and did not identify any duties that were indirect in nature, or “in support of general business functions and which are not attributable to a special project or unit.”³⁰ There is no evidence in the record that the Controller failed to explain its position or consider the claimant’s documentation. Rather, the record shows that the Controller adequately considered all relevant factors and demonstrated a rational connection between those factors and the decisions made. Under these circumstances, the Commission’s review of the Controller’s audit decisions is limited, out of deference to the Controller’s authority and presumed expertise.

²⁸ Exhibit A, IRC, filed May 13, 2021, page 485 (Final Audit Report).

²⁹ Exhibit A, IRC, filed May 13, 2021, page 7.

³⁰ Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

The Commission may not reweigh the evidence or substitute its judgement for that of the Controller.³¹

Conclusion

Based on the forgoing analysis, staff finds that:

- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the exclusion of 10 suspected child abuse reports (SCARs) received by the claimant's police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the reduction to the number of suspected child abuse reports (SCARs) referred to the claimant's police department by other agencies, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction of indirect costs in Finding 3 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

³¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,³² 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)³³

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Fiscal Years 1999-2000 through 2011-2012

Filed on May 13, 2021

City of South Lake Tahoe, Claimant

Case No.: 20-0022-I-02

Interagency Child Abuse and Neglect Investigation Reports

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

(Adopted December 2, 2022)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on December 2, 2022. [Witness list will be included in the adopted Decision.]

³² Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

³³ The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Scott Morgan, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	
Shawn Silva, Representative of the State Controller	
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	

Summary of the Findings

This IRC addresses reductions made by the State Controller’s Office (Controller) to costs claimed by the City of South Lake Tahoe (claimant) for fiscal years 1999-2000 through 2011-2012 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program. The *ICAN* program requires child protective agencies, including law enforcement agencies, to submit a report to the Department of Justice (DOJ, Form SS 8583), when the agency receives a report of suspected child abuse (SCARs, Form SS 8572) from a mandated reporter and the agency determines that the suspected child abuse is “not unfounded.” The claimant disputes reductions totaling \$638,346 for the audit period.

The Controller found that the claimant overstated the number of SCARs investigated for purposes of preparing and submitting Form SS 8583 to DOJ, on the basis that the claimant failed to exclude SCARs generated by mandated reporters employed by its own police department and included other agency-generated SCARs for which a full initial investigation was either not performed or documented (Finding 2). The Controller also found that the claimant overstated indirect costs based on its determination that the public safety dispatcher and evidence technician positions do not perform any indirect job duties and therefore the Controller excluded these positions from the indirect cost pool (Finding 3). The claimant disputes these findings.

As a preliminary matter, the Commission finds that the claimant timely filed the IRC.

The Commission finds that the Controller’s reduction of investigation costs in Finding 2, based on the Controller’s exclusion of the SCARs submitted by mandated reporters employed by the claimant’s police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Under the Parameters and Guidelines, claimants are eligible for reimbursement to complete an investigation for purposes of preparing and submitting

the Form SS 8583 to the Department of Justice (DOJ).³⁴ Submitting the Form SS 8583 to DOJ is required when a report of abuse is “not unfounded.” However, in cases where the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, where the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to prepare and submit the Form SS 8583 to DOJ), and no further investigation would be required, and there is no evidence in the record in this case to the contrary.³⁵ Thus, this reduction is correct as a matter of law.³⁶

The Commission further finds that the Controller’s reduction of investigation costs in Finding 2, based on the number of SCARs referred to the claimant’s police department by other agencies for which the claimant alleges the police department completed a full initial investigation, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Controller determined that the police department completed a full initial investigation for only 10 percent of the SCARs referred by other agencies.³⁷ For the remaining 90 percent, the Controller allowed additional time increments for partial initial investigation activities, consistent with the Parameters and Guidelines, despite the fact that the claimant did not provide supporting documentation.³⁸ The claimant asserts that four additional investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated, because without performing these additional investigative activities, it would have been impossible to determine case disposition.³⁹ None of the additional activities proposed by the claimant were approved by the Commission as reasonably necessary activities and therefore the claimant’s proposed activities are not eligible for reimbursement.

The Commission finds that the Controller’s reduction of indirect costs in Finding 3, which excluded the public safety dispatcher and evidence technician classifications from the indirect cost pool, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to choose between two methodologies when calculating an ICRP, one in which the cost objective is a department as a whole, and the other in which the cost objective is a group, such as a division or program, within the department. Under the applicable ICRP methodology of classifying the police department’s expenditures as a whole into direct and indirect costs, the degree to which the job duties performed by the public safety dispatcher and evidence technician are direct or indirect is based on the relationship of those duties to the police department’s direct and indirect functions as a whole. The Controller correctly interpreted the Parameters and Guidelines and analyzed the

³⁴ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines).

³⁵ Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

³⁶ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

³⁷ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

³⁸ Exhibit A, IRC, filed May 13, 2021, page 485 (Final Audit Report).

³⁹ Exhibit A, IRC, filed May 13, 2021, pages 5-7, 10.

public safety dispatcher and evidence technician duty statements and did not identify any duties that were indirect in nature, or “in support of general business functions and which are not attributable to a special project or unit.”⁴⁰ There is no evidence in the record that the Controller failed to explain its position or consider the claimant’s documentation. Rather, the record shows that the Controller adequately considered all relevant factors and demonstrated a rational connection between those factors and the decisions made. Under these circumstances, the Commission’s review of the Controller’s audit decisions is limited, out of deference to the Controller’s authority and presumed expertise. The Commission may not reweigh the evidence or substitute its judgement for that of the Controller.⁴¹

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

12/06/2007	The Commission adopted the Test Claim Decision.
12/16/2013	The Commission adopted the Parameters and Guidelines.
03/07/2014	The Controller issued claiming instructions for costs incurred in fiscal years 1999-2000 through 2012-2013.
04/28/2014	The Controller issued revised claiming instructions for costs incurred in fiscal years 1999-2000 through 2012-2013.
07/06/2015	The claimant signed amended reimbursement claims for fiscal years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012. ⁴²
10/14/2016	The Controller commenced the audit. ⁴³
02/28/2018	The Controller issued the Draft Audit Report. ⁴⁴
03/07/2018	The claimant filed comments on the Draft Audit Report. ⁴⁵
05/21/2018	The Controller issued the Final Audit Report. ⁴⁶

⁴⁰ Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

⁴¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁴² Exhibit A, IRC, filed May 13, 2021, pages 521, 531, 540, 548, 556, 565, 573, 580, 589, 598, 607, 616, 625 (dated reimbursement claims).

⁴³ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 5 (Declaration of Lisa Kurokawa).

⁴⁴ Exhibit A, IRC, filed May 13, 2021, page 470 (Final Audit Report).

⁴⁵ Exhibit A, IRC, filed May 13, 2021, page 470 (Final Audit Report).

⁴⁶ Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

05/13/2021 The claimant filed the IRC.⁴⁷
02/16/2022 The Controller filed late comments on the IRC.⁴⁸
09/12/2022 Commission staff issued the Draft Proposed Decision.⁴⁹
09/14/2022 The Controller filed comments on the Draft Proposed Decision.⁵⁰
10/04/2022 The claimant filed late comments on the Draft Proposed Decision.⁵¹

II. Background

A. Interagency Child Abuse and Neglect Investigation Reports Program

The *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program addresses amendments to California’s mandatory child abuse reporting laws under The Child Abuse and Neglect Reporting Act (CANRA). CANRA provides rules and procedures for child protective agencies, including law enforcement, when these agencies receive reports of suspected child abuse or neglect from a mandated reporter.⁵² Mandated reporters are individuals identified by their profession as having frequent contact with children and include law enforcement personnel, physicians, teachers, social workers, and members of a number of other professions, who are required to report to “an agency specified in [Penal Code] section 11165.9,” whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect.⁵³ Once a child abuse reporting form (known as the “Suspected Child Abuse Report” Form SS 8572) is received, the Act requires cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys’ offices.⁵⁴ The Act requires any city or county police or sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department to complete a “Child Abuse Investigation Report” (Form SS 8583) and submit it to DOJ, who maintains reports of child abuse statewide in the Child Abuse Central Index (CACI), when a report of suspected child abuse is “not unfounded.”⁵⁵ The Act imposes additional cross-reporting and

⁴⁷ Exhibit A, IRC, filed May 13, 2021.

⁴⁸ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022.

⁴⁹ Exhibit C, Draft Proposed Decision, issued September 12, 2022.

⁵⁰ Exhibit D, Controller’s Comments on the Draft Proposed Decision, filed September 14, 2022.

⁵¹ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022.

⁵² Penal Code section 11164 et seq. The terms “Suspected Child Abuse Report,” “SCAR,” and “Form SS 8572” are used interchangeably to refer to the mandatory child abuse reporting form adopted by the Department of Justice.

⁵³ Penal Code section 11166.

⁵⁴ Exhibit A, IRC, filed May 13, 2021, page 237-241 (Parameters and Guidelines).

⁵⁵ Exhibit A, IRC, filed May 13, 2021, pages 241-244 (Parameters and Guidelines). Beginning January 1, 2012, law enforcement agencies are no longer required to report to DOJ. See Penal Code section 11169(b).

recordkeeping duties in the event of a child's death from abuse or neglect.⁵⁶ The Act requires agencies and DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the CACI.⁵⁷ The Act also provides due process protections for persons listed in the index.⁵⁸

On December 6, 2007, the Commission adopted the Test Claim Decision, finding that cities and counties, through their police and sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorney offices, and county licensing agencies, are mandated to perform the following categories of reimbursable activities:⁵⁹

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters;
- Receive reports from mandated reporters of suspected child abuse; refer those reports to the correct agency when the recipient agency lacks jurisdiction; cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; report to licensing agencies; and make additional reports in the case of a child's death from abuse or neglect;
- Investigate reports of suspected child abuse to determine whether to report to the Department of Justice (DOJ);
- Notify suspected abusers of listing in the Child Abuse Central Index;
- Retain records, as specified; and
- Provide due process procedures to those individuals reported to the Child Abuse Central Index.

On December 6, 2013, the Commission adopted the Parameters and Guidelines, with the period of reimbursement beginning fiscal year 1999-2000.⁶⁰

At issue in this IRC is the scope of the investigative activities of suspected child abuse performed by the claimant's law enforcement agency necessary to determine whether to report to DOJ and to complete the report (SS Form 8583). As is discussed at length in the Parameters and Guidelines and Test Claim Decision, "reimbursement is not required for the full course of investigative activities performed by law enforcement agencies [when they receive a report of suspected child abuse], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ."⁶¹ Accordingly, the Parameters and

⁵⁶ Exhibit A, IRC, filed May 13, 2021, pages 240-241 (Decision and Parameters and Guidelines).

⁵⁷ Exhibit A, IRC, filed May 13, 2021, pages 244-246 (Decision and Parameters and Guidelines).

⁵⁸ Exhibit A, IRC, filed May 13, 2021, page 247 (Decision and Parameters and Guidelines).

⁵⁹ Exhibit A, IRC, filed May 13, 2021, pages 158-165 (Decision and Parameters and Guidelines).

⁶⁰ Exhibit A, IRC, filed May 13, 2021, page 234 (Decision and Parameters and Guidelines).

⁶¹ Exhibit A, IRC, filed May 13, 2021, page 183 (Decision and Parameters and Guidelines).

Guidelines define and specify the scope of the investigation activities necessary to satisfy the DOJ reporting requirement to include:

- Review the initial Suspected Child Abuse Report prepared by the mandated reporter (SCAR or Form SS 8572);
- Conduct initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Make a report of the findings of those interviews, which may be reviewed by a supervisor.⁶²

The Parameters and Guidelines further provide that reimbursement is *not* required in the following circumstances:

- Investigative activities conducted by a mandated reporter to complete the SCAR (Form SS 8572);
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form SS 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.⁶³

Section IV.B.5. of the Parameters and Guidelines authorizes reimbursement for the mandate to retain copies of the SCAR (Form SS 8572) and Form SS 8583, with the original investigative report, when a report is filed with DOJ:

- a. City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.⁶⁴

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

⁶² Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines).

⁶³ Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

⁶⁴ Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.⁶⁵

Under the Parameters and Guidelines, “actual costs” may be claimed for reimbursement, supported by contemporaneous source documents. However, for task repetitive activities, time studies to support salary and benefit costs is allowed. Section IV. of the Parameters and Guidelines states the following:

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

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

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller’s Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller’s Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.⁶⁶

Section V.B. addresses indirect costs:

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2)

⁶⁵ Exhibit A, IRC, filed May 13, 2021, page 245 (Parameters and Guidelines).

⁶⁶ Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.⁶⁷

All documents used to support reimbursable activities must be retained during the period subject to an audit by the Controller.⁶⁸

⁶⁷ Exhibit A, IRC, filed May 13, 2021, pages 248-249 (Parameters and Guidelines).

⁶⁸ Exhibit A, IRC, filed May 13, 2021, page 249 (Parameters and Guidelines).

Beginning January 1, 2012, law enforcement agencies are no longer required to report to DOJ.⁶⁹

B. The Controller's Audit and Summary of the Issues

The reimbursement claims for fiscal years 1999-2000 through 2011-2012 totaled \$1,505,262. The Controller found that \$239,395 is allowable and \$1,265,867 is unallowable.⁷⁰ The following two findings are in dispute:

**1. Finding 2: Unallowable salaries and benefits – Reporting to the State
Department of Justice: Complete an Investigation for Purposes of Preparing the
SS 8583 Report Form cost component**

The claimant computed claimed costs based on estimated average time increments. For each fiscal year of the audit period, the claimant estimated that it took, on average, four hours and 18 minutes (4.3 hours) to perform the initial investigation activities for each SCAR (Form SS 8572) received for purposes of preparing the SS 8583 Report Form for DOJ. The claimant multiplied the estimated average time increments for different employee classifications by the total number of SCARs to calculate the claimed hours. The claimant then used the productive hourly rates for each classification, and department-wide benefit rates to calculate the claimed salaries and benefits for this component.⁷¹

In Finding 2, the Controller found that of the claimed total of \$883,519 in salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component, \$146,055 is allowable and \$737,464 is unallowable.⁷² The Controller determined that the claimant's misinterpretation of the Parameters and Guidelines resulted in the claimant overstating the number of SCARS investigated, estimating time increments, and misstating productive hourly rates.⁷³ The claimant's challenge to Finding 2 in this IRC is limited to the adjusted total number of SCARS investigated for purposes of preparing the SS 8583 for DOJ.

The claimant provided the Controller with revised SCAR statistics during the audit, which included a total of 3,802 SCARS investigated for the audit period.⁷⁴ The Controller determined that the claimant failed to exclude: (1) SCARS generated by the claimant's police department, and (2) other agency-generated SCARS that were cross-reported to, but not investigated by, the claimant's police department.⁷⁵ These two determinations comprise the first two issues raised by the claimant in the IRC.

⁶⁹ Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines [citing Penal Code section 11169(b)]).

⁷⁰ Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

⁷¹ Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

⁷² Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

⁷³ Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

⁷⁴ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

⁷⁵ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

The Controller reasoned that under the Parameters and Guidelines, the reimbursable activities for completing an initial investigation for purposes of preparing the Form SS 8583 include: reviewing the initial SCAR (Form SS 8572); conducting initial interviews with involved parties; and making a written report of those interviews which may be reviewed by a supervisor.⁷⁶ The Controller excluded all SCARs generated by the claimant's police department when calculating the total number of initial investigations, based on its finding that the case file documentation did not support that reimbursable investigative activities were performed by the claimant's police department.⁷⁷ The Controller calculated the weighted average number of SCARs generated by other agencies at 81.76 percent (3,107), meaning that 18.24 percent (693) were excluded on the basis that they were initiated by claimant's police department.⁷⁸

Based on a review of a random sampling of case files, the Controller concluded that "contrary to what the city had claimed, the police department investigated very few of the other agency-generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary."⁷⁹ Specifically, the Controller reviewed 148 case files for three years of the audit period (fiscal years 2008-2009 through 2010-2011) and determined that "a vast majority" of the other agency-generated SCARs were referred from Child Protective Services (CPS) and "very few came from other mandated reporters."⁸⁰

The files showed that CPS regularly and systematically cross-reported SCARs to the Police Department. The Police Department received these CPS referrals and made notes of the referrals in their files, but typically did not perform an investigation on these cases before closing the files. For the vast majority of SCARs referred from CPS, the Police Department identified CPS as the investigating agency and closed the cases if no further investigation was deemed necessary.

For the few cases in which the Police Department did in fact perform an investigation, the SCAR files contained clear evidence and support that an investigation had been performed. For these SCARs, the files contained very detailed written narratives of the investigation(s) performed and of the interviews conducted. These narratives identified the officers involved, the type of investigative work performed, the type of crimes committed, any follow-up investigations needed, who had been interviewed, and dates and times of the interviews, etc.⁸¹

The Controller found that of the 81.76 percent of total SCARS generated by other agencies, a weighted average of 10 percent (311) had complete and documented initial investigations

⁷⁶ Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

⁷⁷ Exhibit A, IRC, filed May 13, 2021, pages 482-483, 494-496 (Final Audit Report).

⁷⁸ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

⁷⁹ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

⁸⁰ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

⁸¹ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

performed by the police department.⁸² In describing the methodology employed, the Controller stated as follows:

Reviewed and analyzed the city's listing of SCARs investigated for FY 1999-2000 through FY 2011-12. To confirm the validity of the number of SCARs investigated, we performed random non-statistical case sampling for the three most recent fiscal years of the audit period (FY 2008-09, FY 2009-10, and FY 2010-11). The three years sampled were representative of all fiscal years, as the investigation process had not changed throughout the audit period. We sampled and reviewed 148 cases (32 out of 163 in FY 2008-09, 66 out of 654 in FY 2009-10, and 50 out of 456 in FY 2010-11). Our review of these 148 cases yielded an identical common deviation with identical nature and cause of the error. Our sampling results indicated that only 10% of the SCAR cases in the city's listing had actually been investigated. Consistent with the American Institute of Certified Public Accountants (AICPA) Audit Sampling Guide, we projected the error to the population of all SCAR cases claimed as investigated for the audit period (see Finding 2).⁸³

Based on discussions with claimant's police department during the audit, the Controller revised these numbers to include additional cases where the claimant asserted that some preliminary investigative activities had occurred but a full initial investigation was not performed, and no investigative activities were documented in the SCAR case files.⁸⁴ The Controller explained that while the Parameters and Guidelines authorize reimbursement for the Complete an Investigation cost component for reviewing the initial SCAR, conducting initial interviews, and making a report of the findings of those interviews, "Reimbursement for these activities is allowable only to the extent that the city obtains information required to prepare and submit the SS 8583 report form to the DOJ."⁸⁵ Nonetheless, the Controller determined that "preliminary activities might have helped to corroborate the information reported by CPS, make a determination if the cases were unfounded, and then close the cases."⁸⁶

Specifically, the Controller found that a review of the initial SCAR is a necessary and reimbursable activity for every other agency-generated SCAR referred to the police department, regardless of whether a full initial investigation is completed.⁸⁷ The Controller also found that closing and documenting the other agency-generated SCAR cases are also reasonable activities, but only for those cases that were not fully investigated.⁸⁸ Partial initial investigations were calculated by subtracting allowable SCARS that were fully investigated from the total number of

⁸² Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

⁸³ Exhibit A, IRC, filed May 13, 2021, page 469 (Final Audit Report).

⁸⁴ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

⁸⁵ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

⁸⁶ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

⁸⁷ Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

⁸⁸ Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

other agency-generated SCARs for each fiscal year in the audit period, despite a lack of supporting documentation.⁸⁹

2. Finding 3: Unallowable indirect costs

In Finding 3, the Controller found that of the \$589,348 in indirect costs claimed by the claimant for the audit period, \$68,134 is allowable and \$521,214 is unallowable.⁹⁰ The Controller summarized the claimed and allowable indirect costs as follows:

Fiscal Year	Claimed Indirect Costs	Allowable Indirect Costs	Audit Adjustment
1999-2000	\$ 10,967	\$ 1,317	\$ (9,650)
2000-2001	15,401	1,991	(13,410)
2001-2002	18,241	2,900	(15,341)
2002-2003	29,653	3,969	(25,684)
2003-2004	32,331	3,368	(28,963)
2004-2005	36,433	4,678	(31,755)
2005-2006	41,922	5,204	(36,718)
2006-2007	48,886	5,250	(43,636)
2007-2008	48,966	5,599	(43,367)
2008-2009	68,206	3,563	(64,643)
2009-2010	110,850	16,186	(94,664)
2010-2011	91,644	9,025	(82,619)
2011-2012	35,848	5,084	(30,764)
Total	\$ 589,348	\$ 68,134	\$ 521,214

The Controller determined that the indirect costs were unallowable because the claimant overstated its indirect cost rates for the audit period and then applied those overstated indirect cost rates to overstated salaries.⁹¹

The claimant determined its indirect costs by calculating an Indirect Cost Rate Proposal (ICRP) for each fiscal year of the audit period.⁹² The claimant calculated the ICRP by combining expenditures from five accounts within its police department: administration, operations, certified training, joint dispatch center, and support and then allocated the total salaries, benefits, and services and supplies for these accounts between direct and indirect cost categories and added overhead costs to the indirect cost pool.⁹³ The claimant then divided total indirect costs by direct salaries and overtime to get indirect cost rates.⁹⁴

⁸⁹ Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

⁹⁰ Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

⁹¹ Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

⁹² Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

⁹³ Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

⁹⁴ Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

The Controller found that the claimant incorrectly included overtime when calculating indirect costs, and should have used only direct salaries as the base.⁹⁵ The claimant does not dispute the reduction of indirect costs on this basis.

However, the claimant classified 21 positions as 100 percent indirect at some point during the audit period and allocated the related salary and benefit costs to the indirect cost pool.⁹⁶ The Controller determined that 13 of these 21 job classifications “are support roles or are mostly administrative in nature” and accepted the claimant’s assessment.⁹⁷ But the Controller flagged the eight remaining positions as unlikely to be 100 percent indirect, due to the nature of the positions and the duties performed.⁹⁸

The Controller then reviewed duty statements to determine the extent to which each classification’s respective duties related to the police department’s direct functions versus indirect administration or support roles.⁹⁹ The Controller reasoned that generally, “any classification involved in providing specific, identifiable, and direct services should be considered as direct labor costs,” whereas “indirect labor costs are those which are not readily identifiable or assignable to one unit and typically would benefit more than one department.”¹⁰⁰

The Controller analyzed the representative duties for the eight positions in order to calculate the fractional percentages of indirect labor for each, and determined that the public safety dispatcher and evidence technician positions did not perform any indirect duties.¹⁰¹ The Controller recalculated allowable indirect costs by applying the audited indirect cost rates to the allowable salaries.¹⁰²

III. Positions of the Parties

A. City of South Lake Tahoe

The claimant’s submitted claims for fiscal years 1999-2000 through 2011-2012 total \$1,505,262.¹⁰³ The claimant seeks reinstatement of \$638,346.¹⁰⁴ The claimant alleges that the Controller’s reductions as a result of Findings 2 and 3 are incorrect. First, the claimant challenges the Controller’s exclusion of SCARs generated by the police department from the total number of SCARs used to determine the claimant’s time spent performing an initial

⁹⁵ Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

⁹⁶ Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

⁹⁷ Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

⁹⁸ Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

⁹⁹ Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

¹⁰⁰ Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

¹⁰¹ Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

¹⁰² Exhibit A, IRC, filed May 13, 2021, page 502 (Final Audit Report).

¹⁰³ Exhibit A, IRC, filed May 13, 2021, page 466 (Final Audit Report).

¹⁰⁴ Exhibit A, IRC, filed May 13, 2021, page 1.

investigation to prepare and submit the Form SS 8583 to DOJ.¹⁰⁵ Second, the claimant asserts that the Controller erred in finding that the police department did not fully investigate most of the SCARs reported to it by other agencies.¹⁰⁶ Lastly, the claimant argues that the Controller incorrectly reduced indirect costs by excluding the public safety dispatcher and evidence technician positions when calculating the Indirect Cost Rate Proposal (ICRP).¹⁰⁷

The claimant submitted the following supporting documentation with the IRC:

- A declaration by South Lake Tahoe Police Department Lieutenant Shannon Laney, stating that he oversees child abuse and neglect investigations, is responsible for assisting with recovery of state-mandated costs, and was directly involved in the audit at issue. Mr. Laney also declares the authenticity of claimant's Exhibits A and B (2015 crime analysis report, time studies), E (child abuse reports), and G (job descriptions) to the IRC;¹⁰⁸
- A declaration by claimant representative Annette Chinn, describing the exhibits submitted with the IRC;¹⁰⁹
- Time studies, police department-generated time reports, time analysis, and correspondence related to the computation of time for the reimbursement claims, all of which were provided to the Controller during the audit (claimant's Exhibits A and B);¹¹⁰
- Spreadsheets provided by the Controller to the claimant showing how the Controller determined child abuse case eligibility and the percentage of allowable cases (claimant's Exhibit C);¹¹¹
- A 2005 DOJ guide on reporting child abuse (claimant's Exhibit D);¹¹²
- Copies of child abuse reports and supporting documents provided by the claimant to the Controller during the audit (claimant's Exhibit E);¹¹³
- Job descriptions for the Public Safety Dispatcher and Property/Evidence Technician positions (claimant's Exhibit G);¹¹⁴

¹⁰⁵ Exhibit A, IRC, filed May 13, 2021, page 3.

¹⁰⁶ Exhibit A, IRC, filed May 13, 2021, page 5.

¹⁰⁷ Exhibit A, IRC, filed May 13, 2021, page 11.

¹⁰⁸ Exhibit A, IRC, filed May 13, 2021, page 17 (Declaration of Shannon Laney).

¹⁰⁹ Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

¹¹⁰ Exhibit A, IRC, filed May 13, 2021, pages 20-38; 39-59.

¹¹¹ Exhibit A, IRC, filed May 13, 2021, pages 20-38; 60-70.

¹¹² Exhibit A, IRC, filed May 13, 2021, pages 71-95.

¹¹³ Exhibit A, IRC, filed May 13, 2021, pages 96-154.

¹¹⁴ Exhibit A, IRC, filed May 13, 2021, pages 251-256.

- A list of “common clerical duties” from the website indeed.com (claimant’s Exhibit H);¹¹⁵
- Excerpts from the July 2015 edition of the State of California Local Agencies Mandated Cost Manual (claimant’s Exhibit I);¹¹⁶ and
- U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200) (claimant’s Exhibit J).¹¹⁷

The claimant states that time claimed “was based on a sampling analysis of actual police department records (claimant’s Exhibit A) as well as by using results from a time study conducted in 2015 (claimant’s Exhibit B),” documentation which the claimant states it provided to the Controller at the beginning of the audit.¹¹⁸

The claimant filed late comments on the Draft Proposed Decision disagreeing with the findings on all issues, but focused its comments on Audit Finding 3, reduction to indirect costs, as explained further below.¹¹⁹

1. Reduction of initial investigation time (Audit Finding 2)

- Exclusion of police department-generated Suspected Child Abuse Reports (Form SS 8572) from the number of reports investigated

The claimant asserts that the Controller incorrectly interpreted the Parameters and Guidelines in determining that all investigative time spent on suspected child abuse cases reported directly to the claimant’s police department was not eligible for reimbursement.¹²⁰ The claimant asserts that for “a number of cases,” in order to make the determination required to complete the Form SS 8583, the police department was required to perform a level of investigation beyond that necessary for the mandated reporter employed by the police department to complete the Form SS 8572.¹²¹

¹¹⁵ Exhibit A, IRC, filed May 13, 2021, pages 257-261.

¹¹⁶ Exhibit A, IRC, filed May 13, 2021, pages 262-282.

¹¹⁷ Exhibit A, IRC, filed May 13, 2021, pages 282-428.

¹¹⁸ Exhibit A, IRC, filed May 13, 2021, page 3. While the IRC states that claimant calculated time claimed based in part upon a 2015 time study, supporting documentation submitted by the claimant contradicts this statement in at least two other places: “2015 time studies not used in claim[,] done for verification in case of audit” (page 27 [claimant’s Exhibit A]) and “Please clarify that the 2015 time study, while not used in developing the time in the claim, has all the info needed to show all the eligible time and activities pertinent to the claim in detail” (page 41 [claimant’s Exhibit B]). The audit report does not mention a 2015 time study as the basis for the claimant’s computation of time claimed to perform investigative activities.

¹¹⁹ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 1.

¹²⁰ Exhibit A, IRC, filed May 13, 2021, page 3.

¹²¹ Exhibit A, IRC, filed May 13, 2021, page 4.

The claimant challenges the Controller’s determination that “[t]here is no correlation between the severity of a case and the scope of information needed” and asserts that while the Form SS 8572 only requires interviewing one reporting party, completing the Form SS 8583 requires interviewing victims, witnesses, and suspects to determine whether the case is substantiated, unfounded, or inconclusive.¹²² The claimant cites to a 2015 DOJ guide as support (claimant’s Exhibit D).¹²³ According to the claimant, police department personnel can complete the Form SS 8572 in 15 minutes by interviewing one reporting party.¹²⁴ The claimant contends that during the audit, it provided the Controller with police department-generated suspected child abuse case files wherein “it was shown that multiple officers had to interview multiple parties (victims, witnesses, suspects) to determine if the case was unfounded, substantiated, or inconclusive.”¹²⁵ The claimant points to Exhibit A of the IRC, which consists of time studies, police department-generated time reports, time analysis, and related correspondence as showing the number of eligible interviews conducted per case, all of which were provided to the Controller during the audit, and argues that the 2015 time study should be used to calculate the time performing reimbursable interviews (36 minutes per interview), which are those interviews above and beyond interviewing one party and completing the Form SS 8572 (15 minutes).¹²⁶

The claimant also contests the Controller’s determination that of the 10 police department-generated cases cited by the claimant as requiring additional investigative activities beyond those needed to complete the Form SS 8572, only one case file contained a completed Form SS 8572 and none had a completed Form SS 8583.¹²⁷ The claimant argues that the Form SS 8583 is only prepared when a case is determined to be “not unfounded” *and the suspect is contacted*, again pointing to a 2015 DOJ guide as support (claimant’s Exhibit D).¹²⁸ The claimant further asserts that the police department’s child abuse case files do not always retain copies of the Form SS 8572 and Form SS 8583; and because approximately 10 years passed from the date the cases occurred and the audit was conducted, with no prior notice that reimbursement would be conditioned upon retention of the forms, it would violate due process to retroactively require so at this late date.¹²⁹

The claimant therefore requests that the total number of allowable cases be revised to include police department-generated cases in which the case file documentation shows that more than one party (victims, witnesses, suspects) was interviewed.¹³⁰

¹²² Exhibit A, IRC, filed May 13, 2021, page 4.

¹²³ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁴ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁵ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁶ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁷ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁸ Exhibit A, IRC, filed May 13, 2021, page 4.

¹²⁹ Exhibit A, IRC, filed May 13, 2021, page 5.

¹³⁰ Exhibit A, IRC, filed May 13, 2021, page 5.

b. Reduction of other agency-generated SCARs

The claimant disputes the Controller's finding that the police department "investigated very few of the other agency-generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary."¹³¹ Specifically, the claimant challenges the Controller's determination that claimant's police department either did not investigate or only partially investigated 90 percent of the total SCARs claimed.¹³² The claimant asserts that additional preliminary investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated.¹³³

The claimant cites to a time study it performed in 2015 to show the steps taken when a SCAR report is forwarded to the police department for investigation, with corresponding times and whether the Controller allowed the claimed activities:

- 1) Detective reads and reviews SCAR and attached documentation (allowed by Controller at 18 minutes per case).
- 2) Detective verifies if a report was previously prepared (not allowed by Controller, proposed at six minutes per case).
- 3) Records technician verifies if a report was previously prepared (not allowed by Controller, proposed at six minutes per case).
- 4) Detective checks prior case history to determine if the case is within agency's jurisdiction and not duplicate (not allowed by Controller, proposed at 36 minutes per case).
- 5) Detective or Sergeant contacts the reporting agency or at least one adult with information regarding the allegations to obtain more details in order to determine if in-person interviews are necessary and how to proceed on the case (not allowed by Controller, proposed at 26-36 minutes per case).
- 6) Sergeant approves and closes case (allowed by Controller at 10 minutes per case).
- 7) Records technician documents and closes case (allowed by Controller at six minutes per case).¹³⁴

The claimant concedes that the Controller allowed time spent performing preliminary investigative activities even where a full initial investigation was not done, but disputes the Controller's determination regarding which proposed investigative activities constitute preliminary investigative activities.¹³⁵ The Controller allowed time spent performing the following preliminary activities:

¹³¹ Exhibit A, IRC, filed May 13, 2021, page 5.

¹³² Exhibit A, IRC, filed May 13, 2021, page 5.

¹³³ Exhibit A, IRC, filed May 13, 2021, page 10.

¹³⁴ Exhibit A, IRC, filed May 13, 2021, pages 5-6.

¹³⁵ Exhibit A, IRC, filed May 13, 2021, page 6.

- 1) Read and review SCAR.
- 6) Approve closing the case.
- 7) Document and file the closed case.¹³⁶

The Controller did not allow time for verifying if a report was previously prepared (Activities 2 and 3 above), checking prior case history (Activity 4), or contacting the reporting agency or a person with information about the allegations to determine if in-person interviews are necessary (Activity 5).¹³⁷

The claimant challenges the Controller's assessment that the additional preliminary investigative activities proposed by the claimant are outside the scope of the Parameters and Guidelines.¹³⁸ The claimant asserts that contacting the reporting agency or a person with information about the case to determine whether to conduct in-person interviews falls under the eligible investigative activity of "conduct initial interview with involved parties," as listed in the Parameters and Guidelines.¹³⁹ Furthermore, the claimant argues, these additional activities are reasonably necessary to determine whether the allegations are unfounded (and thus, to close the case) or whether to proceed with the investigation by conducting in-person interviews.¹⁴⁰ The claimant alleges that without performing these additional activities, it would be unable to determine "whether or not the allegations were founded and a SS 8583 report was required to be sent to DOJ."¹⁴¹

The claimant cites to the Department of Social Services' (CDSS) position, as summarized in the Decision and Parameters and Guidelines, to support its argument that prior to actual interviews, it is necessary to first determine whether an in-person investigation is required.¹⁴² The claimant alleges that its proposed additional preliminary activities (Activities 2 through 5 above) are nearly identical to the activities the Department of Social Services stated it performs before determining whether to find the SCAR unfounded and close the case or conduct an in-person investigation.¹⁴³ The claimant asserts that, similarly, the police department must perform these additional preliminary activities to determine whether a SCAR is founded, unfounded, or inconclusive.¹⁴⁴

The claimant argues that the Controller has erred by strictly interpreting the Claiming Instructions, despite the fact that they function as general guidelines, not an exclusive and

¹³⁶ Exhibit A, IRC, filed May 13, 2021, page 6.

¹³⁷ Exhibit A, IRC, filed May 13, 2021, page 6.

¹³⁸ Exhibit A, IRC, filed May 13, 2021, page 6.

¹³⁹ Exhibit A, IRC, filed May 13, 2021, page 6.

¹⁴⁰ Exhibit A, IRC, filed May 13, 2021, page 7.

¹⁴¹ Exhibit A, IRC, filed May 13, 2021, pages 6-7.

¹⁴² Exhibit A, IRC, filed May 13, 2021, page 7.

¹⁴³ Exhibit A, IRC, filed May 13, 2021, page 8.

¹⁴⁴ Exhibit A, IRC, filed May 13, 2021, page 8.

exhaustive list of every eligible task that might occur during the preliminary investigative process.¹⁴⁵ To assume otherwise, the claimant contends, would violate the intent of state mandate statutes, which ensure reimbursement of actual costs incurred to comply with the program.¹⁴⁶ Specifically, the claimant alleges that the Controller erred by interpreting the Claiming Instructions as limiting eligible investigative activities to “conducting initial interviews with parents, victims, witnesses, or suspects” and concluding that if the case file did not contain a detailed narrative report of those interviews, then an investigation did not occur.¹⁴⁷

The claimant contends that the Controller’s requirement that the case file contain a written narrative report showing all interviews and investigative activities is not supported by the Parameters and Guidelines.¹⁴⁸ According to the claimant, police department procedures do not require detailed narrative reports for cases that are deemed unfounded or inconclusive.¹⁴⁹ Instead, the reports contain brief descriptions and identification of the officer who reviewed the report, demonstrating that investigative activities took place in order to make a determination of unfounded or inconclusive and close the case.¹⁵⁰ While the reports are in short form, the claimant argues that this alone is insufficient to disallow the claimant’s valid and eligible investigation costs, particularly when viewed in tandem with the SCAR, time studies, and command staff assertions that the short report format is standard practice for unfounded or inconclusive cases.¹⁵¹ The claimant offers as evidence the 2015 time study submitted to the Controller during the audit, which it claims documents the time and process for reviewing other-agency generated SCARs and shows that interviews and preliminary investigative activities occurred, even when no detailed narrative was prepared.¹⁵² The claimant also points to redacted copies of child abuse reports and supporting documents submitted to the Controller during the audit (claimant’s Exhibit E), namely the South Lake Tahoe Police Department 11166 PC Referral Form, as showing through brief descriptions in the “comments” section, in combination with the identification of the assigned officer as the reviewing party, that investigative activities occurred: “A case could not be signed of [sic] as ‘not substantiated’ without some review and action” by the police department.¹⁵³

The claimant further argues that the Controller’s request for detailed investigation reports violates due process.¹⁵⁴ The claimant cites to *Clovis Unified School Dist. v. Chiang* (2010) 188

¹⁴⁵ Exhibit A, IRC, filed May 13, 2021, page 8.

¹⁴⁶ Exhibit A, IRC, filed May 13, 2021, page 8.

¹⁴⁷ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁴⁸ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁴⁹ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵⁰ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵¹ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵² Exhibit A, IRC, filed May 13, 2021, pages 9, 20-38, 39-59.

¹⁵³ Exhibit A, IRC, filed May 13, 2021, pages 7, 9, 97-154.

¹⁵⁴ Exhibit A, IRC, filed May 13, 2021, page 9.

Cal.App.4th 794 in support, where the court declined to apply the Controller’s Contemporaneous Source Documentation Rule (CSDR) to the portion of an audit period that preceded inclusion of the CSDR in the parameters and guidelines, finding that the claimant in that case did not have sufficient notice of the rule.¹⁵⁵

Because the detailed investigation report requirement was not enumerated in the Parameters and Guidelines, the claimant was given no advance notice that reimbursement would be contingent upon maintaining such documentation.¹⁵⁶ Furthermore, the reimbursement period began in 1999 but the Claiming Instructions were not released until 2014.¹⁵⁷ The claimant argues that it therefore would have been impossible to track the eligible investigative activities in the manner now required by the Controller.¹⁵⁸

2. Reduction of indirect costs (Audit Finding 3)

The claimant challenges the Controller’s determination that the public safety dispatcher and evidence technician classifications do not perform any indirect duties and therefore do not account for any indirect costs incurred by the claimant.¹⁵⁹

The claimant argues that the Controller erred in finding that the duties performed by the public safety dispatcher and evidence technician are not administrative or clerical in nature.¹⁶⁰ Asserting that the dispatcher’s primary duty is to serve as a receptionist to the police department, which “clearly is a clerical function,” the claimant cites to a “List of Common Clerical Duties” from the hiring website Indeed.com (claimant’s Exhibit H) and the public safety dispatcher job description (claimant’s Exhibit G) to show that “eight of the twelve ‘clerical’ tasks listed are performed by Police Department Dispatchers.”¹⁶¹ The claimant argues that the evidence technician similarly performs “standard” clerical duties, including: compiling, tracking transactions, and filing important company records.¹⁶² The claimant further argues that excluding these classifications from indirect costs contradicts the Controller’s claiming instructions manual (claimant’s Exhibit I), which specifically identifies “communications” costs as an allowable expense in an example of how to calculate an Indirect Cost Rate Proposal (ICRP) rate.¹⁶³

¹⁵⁵ Exhibit A, IRC, filed May 13, 2021, page 10.

¹⁵⁶ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵⁷ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵⁸ Exhibit A, IRC, filed May 13, 2021, page 9.

¹⁵⁹ Exhibit A, IRC, filed May 13, 2021, page 11.

¹⁶⁰ Exhibit A, IRC, filed May 13, 2021, page 11.

¹⁶¹ Exhibit A, IRC, filed May 13, 2021, pages 11, 252-253, 257-261.

¹⁶² Exhibit A, IRC, filed May 13, 2021, page 12.

¹⁶³ Exhibit A, IRC, filed May 13, 2021, pages 12, 275.

The claimant disagrees with the Controller’s determination that indirect duties are limited to administrative and clerical duties.¹⁶⁴ The claimant points out that the police maintenance worker, a janitorial classification, and the police department’s information technology classifications were claimed and allowed as indirect positions and included in the ICRP rate despite the fact that these classifications do not perform administrative or clerical functions.¹⁶⁵

The claimant also argues that the Controller’s definitions of direct and indirect costs do not adhere to either state or federal guidelines.¹⁶⁶ In the audit report, the Controller defines direct costs as “those which can be identified specifically with particular unit or function (cost objective) and accounted for separately.”¹⁶⁷ In contrast, the claimant maintains, the Claiming Instructions define direct costs as “those costs incurred specifically for the reimbursable activities.”¹⁶⁸ The claimant challenges the Controller’s determination that indirect costs are not attributable to a specific unit, arguing that such an interpretation is unsupported by federal guidelines and directly contradicts the Claiming Instructions, which permit computation of the ICRP costs by division or section.¹⁶⁹ The claimant further asserts that what constitutes an eligible indirect cost “is based on the function or benefit that unit performs or provides to the eligible direct ‘cost objective.’”¹⁷⁰

The claimant challenges the Controller’s reasoning that direct costs are those which can be specifically identified with a unit or function,¹⁷¹ and alleges that neither the dispatcher nor evidence technician positions are direct costs of the *Interagency Child Abuse and Neglect Investigation Reports* program or “cost objective” because they do not directly perform any of the mandated program activities and their costs cannot be specifically identified as part of the mandated program.¹⁷²

Furthermore, the claimant argues that according to the Controller’s claiming instructions manual (claimant’s Exhibit I), costs from outside departments that provide indirect services can

¹⁶⁴ Exhibit A, IRC, filed May 13, 2021, page 12.

¹⁶⁵ Exhibit A, IRC, filed May 13, 2021, page 12.

¹⁶⁶ Exhibit A, IRC, filed May 13, 2021, pages 13-14, citing to pages 414-416 (U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200)), 450 (Claiming Instructions); Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 2.

¹⁶⁷ Exhibit A, IRC, filed May 13, 2021, page 13.

¹⁶⁸ Exhibit A, IRC, filed May 13, 2021, page 13.

¹⁶⁹ Exhibit A, IRC, filed May 13, 2021, pages 13-14, citing to pages 414-416 (U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200)), 450 (Claiming Instructions).

¹⁷⁰ Exhibit A, IRC, filed May 13, 2021, page 13.

¹⁷¹ Exhibit A, IRC, filed May 13, 2021, page 15.

¹⁷² Exhibit A, IRC, filed May 13, 2021, page 13.

constitute eligible indirect costs,¹⁷³ which it argues the Controller allowed here as part of the claimant's city-wide overhead costs when calculating the ICRP rates.¹⁷⁴

The claimant's late comments on the Draft Proposed Decision, which are limited to the issue of reduction of indirect costs, reiterate the same arguments raised in the test claim: that the Controller failed to comply with state and federal guidelines when determining what constitutes indirect costs; and that the Controller made incorrect factual findings as to the nature of the job duties performed by the public safety dispatcher and evidence technician positions, namely whether those positions provide support services to the entire police department, "as well as to the staff performing the direct activities of the mandate," such that they constitute indirect costs for purposes of calculating the ICRP.¹⁷⁵

The claimant agrees that the ICRP rates were calculated based on the police department as a whole, but argues that the public safety dispatcher and evidence technician positions are allowable indirect costs because "those positions provided benefit and support to the entire department. The rates were not calculated based on a specific program – in fact, those same rates were also use[d] to claim indirect costs for all other law enforcement State Mandate claims submitted to the State for reimbursement."¹⁷⁶ The claimant explains that:

The dispatcher is the integral communication link between the public and the officers. The public is not calling to obtain service from a dispatcher - they are calling to contact and obtain service from other members of its staff, typically its sworn staff. Therefore, the dispatchers service as a calling center or central reception function for the entire body of officers and are necessary support of the general business function of the department.

[¶]

... According to the City's job descriptions which were provided to the auditors and are included in our IRC: "Dispatchers ... receive(s) and process(es) incoming 911 calls, nonemergency calls, and voice radios calls." Further they "log *all* calls for service, both for emergency and non-emergencies" (see Public Safety Dispatcher job description, item number 5 included in our IRC).

Therefore, we believe it has been shown that the dispatcher does in fact provide necessary support/services to the entire police department as well as to the staff performing the direct activities of the mandate and the SCO was incorrect in the

¹⁷³ Exhibit A, IRC, filed May 13, 2021, pages 14, 272.

¹⁷⁴ Exhibit A, IRC, filed May 13, 2021, pages 14, 519-633.

¹⁷⁵ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 1-2.

¹⁷⁶ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 1.

complete removal of those position from the City's indirect costs in the overhead/ICRP rate computations.¹⁷⁷

The claimant further argues that “Similarly, Evidence staff must collect, store, maintain and process evidence from child abuse cases, as well as from all other cases that the police department responds to. Both dispatch and evidence staff provide benefit and necessary support to the sworn staff working on the activities of the child abuse mandate program, as well on all types of cases.”¹⁷⁸

In support, the claimant has provided over 300 pages of additional documentation, including email correspondence between the parties pertaining to the ICRP and indirect cost issues addressed in the audit report; audit reports from other jurisdictions, where it contends that the Controller allowed ICRPs from “other similar audits”; claimant’s police department organizational chart; job descriptions for the cities of Fresno and Rialto pertaining to certain dispatcher classifications; and claimant’s other law enforcement-related state mandated reimbursement claims, which it asserts shows that all of its law enforcement claims use the same departmental ICRP rate of 93.4 percent.¹⁷⁹

B. State Controller’s Office

The Controller filed late comments on the IRC, which reiterates the Controller’s position as stated in the final audit report and provides a more detailed explanation of Findings 2 and 3.¹⁸⁰

1. Finding 2 – Unallowable salaries and benefits – Reporting to the State Department of Justice: Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component

The Controller maintains its determination, as stated in the audit report, that \$737,464 in claimed costs for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component is unallowable because the claimant overstated the number of SCARs investigated, estimated time increments, and misstated the productive hourly rates for this cost component.¹⁸¹

a. Ineligibility of all law enforcement agency-generated cases

In stating its disagreement with the claimant’s position that 10 police department-generated SCARs should have been included in the total number of allowable cases, the Controller provides detailed information pertaining to each case to show why those SCARs were not

¹⁷⁷ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2-3.

¹⁷⁸ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4, emphasis in original.

¹⁷⁹ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2, 6, 9-57 (Exhibit A), 58-263 (Exhibit B), 264-274 (Exhibit C), 275-313 (Exhibit D).

¹⁸⁰ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 7-43.

¹⁸¹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 14.

allowed.¹⁸² The Controller rejects the claimant’s contention that documentation in these case files showing that multiple interviews were conducted indicates that the police officers involved were unable to obtain enough information to complete both the Form SS 8572 and Form SS 8583.¹⁸³ As the Commission’s Test Claim Decision explains, a mandated reporter has a preexisting duty under Penal Code section 11166(a) to report suspected child abuse using the Form SS 8572.¹⁸⁴ This preexisting duty to investigate is frequently sufficient to also complete the Form SS 8583, as the “number of information items required to make the SS 8583 Report Form retainable is relatively low. Investigative work performed to identify suspects or gather proof for criminal charges is not necessary to complete the SS 8583 Report Form.”¹⁸⁵

The Controller reiterates that during the audit, the claimant failed to provide supporting documentation for all costs claimed, despite the requirement under the Parameters and Guidelines that all costs claimed be traceable to source documents that evidence the validity of such costs.¹⁸⁶ The claimant argues that requiring it to retain and provide contemporaneous source documentation would violate due process because more than 10 years has passed since the cases occurred and the audit was conducted and there was no prior notice that the claimant had to retain the Form SS 8572 and Form SS 8583 as a condition for reimbursement.¹⁸⁷ In challenging this assertion, the Controller points out that the SCAR case files reviewed during the course of the audit showed that, regardless of the fiscal year, the claimant consistently maintained the same documentation year after year and consistently failed to retain the Form SS 8572 and Form SS 8583 for the SCAR files.¹⁸⁸ Furthermore, the sample of SCAR cases selected by the Controller for testing purposes ended in fiscal year 2010-2011, which is only five years from the date the claimant filed its claims (July 15, 2015) and six years from the date the Controller initiated the audit (October 14, 2016).¹⁸⁹

The claimant has failed to provide any additional documentation to show that allowable costs should be increased. Only one of the 10 SCAR case files included a completed Form SS 8572.¹⁹⁰ Furthermore, because that case file shows that the Form SS 8572 was completed the day *after* the occurrence date and the date of the initial interviews, the Controller was able to confirm that an investigation occurred *prior* to completion of the Form SS 8572, making those costs ineligible for reimbursement.¹⁹¹ In other words, the documentation shows that the level of

¹⁸² Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 15-16.

¹⁸³ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 20-21.

¹⁸⁴ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 21.

¹⁸⁵ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 21.

¹⁸⁶ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

¹⁸⁷ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

¹⁸⁸ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

¹⁸⁹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

¹⁹⁰ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

¹⁹¹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 22.

investigation required to complete the Form SS 8572 was sufficient to complete the necessary information in the Form SS 8583.¹⁹²

Because the remaining nine case files do not contain a Form SS 8572, the Controller is unable to confirm that the Forms SS 8572 were completed and cross-reported to CPS and the District Attorney's Office, or whether an investigation occurred prior to the completion of the Form SS 8572, and therefore cannot determine whether the claimant obtained sufficient information to make a determination and complete the essential information items on Form SS 8583, or whether an investigation was conducted prior to completing the Form SS 8572.¹⁹³ As such, the claimant's argument that the fact that multiple interviews were conducted shows that additional investigatory work was necessary and is therefore reimbursable is irrelevant; "Regardless of the number of interviews conducted, if they occurred prior to the completion of the SCAR Form SS 8572 they are ineligible for reimbursement."¹⁹⁴

Despite the fact that the reimbursable activity for this cost component is to "complete an investigation for purposes of preparing a SS 8583 Report form," only one case file had a completed Form SS 8583.¹⁹⁵ Thus, because the documentation does not show that the claimant prepared the required Forms SS 8583 for these 10 SCAR cases, they were correctly excluded from the sampling analysis, and investigative costs determined to be ineligible for reimbursement for police department-generated SCARs should remain unchanged.¹⁹⁶

b. No investigation for vast majority of cases reported to police department by other agencies

The Controller rejected the claimant's position that four additional preliminary investigative activities, which are not included in the Parameters and Guidelines, are eligible for reimbursement for those SCAR cases referred to claimant's police department by other agencies.¹⁹⁷ The Controller states that as the Commission repeatedly made clear throughout the Decision and Parameters and Guidelines, reimbursement is limited to the activities listed in the Parameters and Guidelines.¹⁹⁸

In conducting the audit, the Controller selected a non-statistical sample of 148 SCAR case files to review, and found that the contents of the files typically included: (1) a referral form completed by the police department, with a summary of the case and comments stating whether the case was inconclusive, unfounded, or closed; (2) a pre-disposition sheet completed by CPS, with general information about the case, included to which agency the case was cross-reported; (3) a disposition sheet completed by CPS, with the case status after CPS review or investigation,

¹⁹² Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

¹⁹³ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

¹⁹⁴ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

¹⁹⁵ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

¹⁹⁶ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

¹⁹⁷ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 24.

¹⁹⁸ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 24.

to which agency the case was cross-reported, and the final case disposition (no immediate risk, situation stabilized, closed, opened service case, evaluated out); (4) a narrative report completed by the police department; (5) a person profile form completed by the police department, which lists the contact information of the suspected child abuser; (6) CPS investigative report completed by CPS when the SCAR case was investigated by CPS; (7) SCAR Form SS 8572 completed by CPS.¹⁹⁹ The Controller states that it thoroughly reviewed the contents of each file and recorded its findings in a detailed Excel spreadsheet. The claimant provided examples of these documents, as well as the Excel spreadsheet, in support of the IRC.²⁰⁰

The Controller found that the police department investigated very few of the other agency-generated cases, or if the police department did investigate, it failed to document such in the case files.²⁰¹ Based on the Controller's review, most of the referral forms for these SCAR cases showed that CPS was the investigating agency; the others stated that an investigation was unnecessary.²⁰² For those where CPS was the investigating agency, the documentation in the case files showed that CPS cross-reported to the police department, who then made a note of the referral in the file, but did not perform an investigation.²⁰³ The Controller notes that in contrast, for the few cases where the Controller found that the police department performed an investigation, the case files contained detailed written narratives of the investigative activities, including the interviews conducted.²⁰⁴

The Controller rejects the claimant's assertion that the Controller denied all preliminary investigative time for the 90 percent (2,796) of other agency-generated cases that were found not fully investigated.²⁰⁵ The Controller notes that in contrast, the cases in which it found that a full investigation was performed by the claimant's police department, the Controller accepted the claimant's time increments without adjustment and worked with the claimant during the audit to allow time increments for the three partial investigative activities, despite no documentation in the case files.²⁰⁶ The Controller asserts, as it did in the audit report, that it worked with the claimant's detective to find that three preliminary investigative activities may have taken place to confirm the information reported by CPS in order to determine whether a case was unfounded, and allowed 28 minutes per case for those preliminary investigative activities based on the detective's proposal.²⁰⁷ The other preliminary investigative activities proposed by the claimant were also discussed with claimant officials but were found to be outside the scope of the

¹⁹⁹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

²⁰⁰ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

²⁰¹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

²⁰² Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 31-32.

²⁰³ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

²⁰⁴ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

²⁰⁵ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

²⁰⁶ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

²⁰⁷ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

Parameters and Guidelines and therefore not reimbursable.²⁰⁸ Therefore, the claimant's 2015 time study is irrelevant; the purpose of a time study is to approximate the average time needed to perform a specific activity, not whether certain activities are reimbursable under the Parameters and Guidelines.²⁰⁹

In response to the claimant's contention that detailed narrative reports are not necessary for those other agency-generated cases determined to be unfounded or inconclusive, the Controller cites to Section IV.B.3.a.1 of the Parameters and Guidelines. Section IV.B.3.a.1 states that for the complete an investigation cost component, the reimbursable activities are limited to (1) reviewing the initial SCAR (Form SS 8572); (2) conducting initial interviews, where applicable; and (3) making a report of the findings of those interviews, which may be reviewed by a supervisor.²¹⁰ The Controller disputes that the documentation maintained in the SCAR case files at issue, or the claimant's 2015 time studies and assertions by command staff, are sufficient to show that the claimant conducted initial interviews or prepared written reports to document those interviews. The Controller asserts that "although it may not be the City's procedure to write a report to document an interview, doing so is a condition for reimbursement under the mandate," or, put differently, "conducting in-person interviews and writing a report of the findings are necessary to comply with the mandate."²¹¹ Furthermore, the claimant has failed to provide any additional documentation to support its position that the number of other agency-generated SCARs was improperly reduced or that the time spent performing the investigative activities should be changed.²¹²

2. Finding 3: Unallowable indirect costs

In response to the claimant's position that the Controller erred in disallowing the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost rate proposal (ICRP) calculation and that those positions should be allowed at 100 percent indirect labor costs, the Controller notes that of the 21 job classifications the claimant included as 100 percent indirect in its ICRPs, Controller accepted 13 and questioned 8 as potentially not 100 percent indirect.²¹³ The Controller states that it then worked with the claimant "to determine a reasonable allocation of direct and indirect labor for these eight classifications" by analyzing duty statements, holding discussions with claimant officials, and considering their input to determine reasonable allocations, such that six of the eight classifications were ultimately found to be varying combinations of both direct and indirect duties.²¹⁴

The distinction between the Dispatcher and Evidence Technician classifications and the six classifications determined to be a combination of direct and indirect duties is that the Controller

²⁰⁸ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

²⁰⁹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

²¹⁰ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

²¹¹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

²¹² Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 36.

²¹³ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 40.

²¹⁴ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

found that the Dispatcher and Evidence Technician classification did not perform *any* indirect duties: the duty statements for these two positions do not identify general duties benefiting the entire police department, but rather identify duties that benefit a particular unit or function within the police department.²¹⁵ For example, the Public Safety Dispatcher position may serve as a receptionist to a specific unit within the police department but does not provide receptionist services to the *entire* police department.²¹⁶ The claimant appears to be confused on this point, as it interchangeably identifies the cost objective as the “child abuse program” and “child abuse investigations,” arguing that the Dispatcher and Evidence Technician positions benefit more than one cost objective (child abuse investigation, missing persons, theft, DUI, etc.), despite the fact that both the claimant’s claimed rates and the Controller’s audited rates were based on the police department’s expenditures as a whole, meaning that the cost objective is the *entire* police department, not the ICAN program.²¹⁷ Under this rubric, direct labor includes “the overall functions of the Police Department assignable to specific units and functions” and indirect cost rates are department-wide rates.²¹⁸ The Controller contends the claimant has not provided any additional documentation to show otherwise.²¹⁹

The Controller asserts that the Commission should find that its reductions to the claimant’s reimbursement claims are correct.

The Controller filed comments on the Draft Proposed Decision stating its agreement with Commission staff’s conclusion that the Controller’s reduction of costs as challenged by the claimant were correct as a matter of law and were not arbitrary, capricious, or entirely lacking in evidentiary support.²²⁰

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the

²¹⁵ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41.

²¹⁶ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41.

²¹⁷ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 41-42.

²¹⁸ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 42.

²¹⁹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 42.

²²⁰ Exhibit D, Controller’s Comments on the Draft Proposed Decision, filed September 14, 2022, page 1.

context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.²²¹ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²²²

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²²³ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”²²⁴

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²²⁵ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.²²⁶

²²¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²²² *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²²³ *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²²⁴ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²²⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²²⁶ Government Code section 17559(b), which provides that 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 in the record.

A. The Claimant Timely Filed the IRC.

At the time the Controller issued the audit report, section 1185.1(c) of the Commission's regulations required an IRC to be filed no later than three years after the date the claimant receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a reimbursement claim resulting from an audit or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges, and the reason for the adjustment.²²⁷

Here, the Controller issued the final audit report on May 21, 2018.²²⁸ The audit report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments, and therefore complies with the section 17558.5(c) notice requirements.²²⁹ The claimant filed the IRC on May 13, 2021, within three years of the final audit report.²³⁰ The Commission finds that the IRC was timely filed.

B. The Controller's Reduction in Finding 2 of Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Exclusion of 10 Suspected Child Abuse Reports (SCARs) Received by the Claimant's Police Department, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The claimant alleges that the Controller erred by excluding the suspected child abuse reports (SCAR or Form SS 8572) prepared by mandated reporters in the claimant's police department from the total number of SCARs investigated during the audit period.²³¹ According to the audit report, the claimant initially claimed 3,952 total SCARs that were investigated for purposes of preparing the SS 8583 Form, but revised that number to 3,802 during the audit.²³² Based on a sampling of 148 SCAR cases,²³³ the Controller found that the claimant misinterpreted the program's Parameters and Guidelines and as a result, overstated the number of SCARs investigated for purposes of preparing the SS 8583 Form.²³⁴ The Controller concluded, in part,

²²⁷ Government Code section 17558.5(c).

²²⁸ Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

²²⁹ Exhibit A, IRC, filed May 13, 2021, pages 463-508 (Final Audit Report).

²³⁰ Exhibit A, IRC, filed May 13, 2021, page 1.

²³¹ Exhibit A, IRC, filed May 13, 2021, page 3.

²³² Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

²³³ 32 of 163 for fiscal year 2008-2009, 66 of 654 for fiscal year 2009-2010, and 50 of 457 for fiscal year 2010-2011.

²³⁴ Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

that “time spent performing an initial investigation of a SCAR is only reimbursable for those SCARs which were *not* initiated by the Police Department.”²³⁵

In response, the claimant provided the Controller with a list of 10 police department-generated cases from the three sampled fiscal years and argued, as it does again here, that those cases should have been included as eligible cases in the sampling analysis.²³⁶ The claimant argues that the files for those cases show that there were often multiple officers on the scene and multiple parties interviewed to determine whether the cases were unfounded, substantiated, or inconclusive. The claimant contends that this “level of effort” shows that the officers were not able to obtain enough information from completing the SCAR (Form SS 8572) to also complete the Form SS 8583.²³⁷ Thus, the claimant requests that the total number of allowable cases be revised to include the 10 police department-generated cases in which the case file documentation shows that more than one eligible party (victims, witnesses, suspects) was interviewed.²³⁸

The Controller reviewed the documentation provided by the claimant and determined that the documents do not support the claim that the investigation was conducted for purposes of preparing the Form SS 8583 for DOJ.²³⁹

Based on the following analysis, the Commission finds that the Controller’s exclusion of the 10 SCARs prepared by mandated reporters employed by claimant’s police department from the total number of SCARs investigated during the audit period for purposes of preparing the Form SS 8583 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller’s interpretation and application of the Parameters and Guidelines is correct as a matter of law.

- a. The Parameters and Guidelines authorize reimbursement for investigation only after the SCAR (Form SS 8572) is prepared and only to determine whether a case of child abuse is “not unfounded” and a report (Form SS 8583) is required to be forwarded to DOJ.

When the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement. Additional interviews may be reimbursable if conducted before evidence is being gathered for criminal prosecution and solely for the purpose of preparing and submitting Form SS 8583 to DOJ, and if those costs are supported by documentation.

²³⁵ Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

²³⁶ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

²³⁷ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

²³⁸ Exhibit A, IRC, filed May 13, 2021, page 5.

²³⁹ Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

The Parameters and Guidelines authorize reimbursement to “complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state-issued ‘Child Abuse Investigation Report’ Form SS 8583” to DOJ, which includes the following investigative activities:

- Reviewing the initial Suspected Child Abuse Report (SCAR or Form 8572);
- Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Making a report of the findings of those interviews, which may be reviewed by a supervisor.²⁴⁰

The Parameters and Guidelines also specify when reimbursement is *not* required, including:

- Investigative activities conducted by a mandated reporter to complete the SCAR;
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form SS 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.²⁴¹

The scope of reimbursement for investigative activities performed by an agency for purposes of preparing and submitting a child abuse investigation report to DOJ is discussed at length in the Decision and Parameters and Guidelines and the Test Claim Decision.²⁴² The SCAR is the suspected child abuse reporting form adopted by DOJ for use by mandated reporters. Mandated reporters are required to report to “an agency specified in [Penal Code] section 11165.9,” whenever they know or reasonably suspect that a child has been the victim of abuse or severe neglect.²⁴³ This duty is triggered whenever a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.²⁴⁴ “Reasonable suspicion” means “that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position,

²⁴⁰ Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines).

²⁴¹ Exhibit A, IRC, filed May 13, 2021, page 242 (Parameters and Guidelines).

²⁴² Exhibit A, IRC, filed May 13, 2021, pages 180-203 (Decision and Parameters and Guidelines); Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 29-32.

²⁴³ Penal Code section 11166(a).

²⁴⁴ Penal Code section 11166(a)

drawing, when appropriate, on the person’s training and experience, to suspect child abuse or neglect.”²⁴⁵

Notably, the investigative activities conducted by a mandated reporter to complete the SCAR are *not* reimbursable: Only those investigative activities conducted by an agency after receipt of a SCAR to determine whether the Form SS 8583 is required to be submitted to DOJ are reimbursable.²⁴⁶ Furthermore, investigation by law enforcement beyond what is required for all child protective agencies (which include county probation departments, county welfare departments, CPS, and district attorney offices), is not reimbursable.

[R]eimbursement is not required for the *full course of investigative activities* performed by law enforcement agencies [when they receive a SCAR], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ.”²⁴⁷

The Commission also recognized that when the mandated reporter is an employee of a child protective agency (i.e., a law enforcement officer), some of the same information obtained in the course of the mandated reporter’s duties, may also satisfy the agency’s requirements to report to DOJ:

[A] mandated reporter’s duty to investigate under section 11166(a) pursuant to the holding in *Alejo* is not reimbursable. The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse to one of the identified child protective agencies. This duty is triggered whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.²⁴⁸ Given that the scope of employment within a law enforcement agency, county probation department, or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of section 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). *Ultimately, some of the same information necessary to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter’s (non-reimbursable)*

²⁴⁵ Penal Code section 11166(a) (Stats. 1990, ch. 1603). The definition was later amended to clarify that “reasonable suspicion” “does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any ‘reasonable suspicion’ is sufficient.” (Pen. Code, § 11166(a)(1), as last amended by Stats. 2013, ch. 76).

²⁴⁶ Exhibit A, IRC, filed May 13, 2021, page 196 (Decision and Parameters and Guidelines).

²⁴⁷ Exhibit A, IRC, filed May 13, 2021, page 183 (Decision and Parameters and Guidelines).

²⁴⁸ Penal Code section 11166(a) (Stats. 2000, ch. 916).

duties under section 11166(a) (as discussed above, section 11169 requires a determination whether a report is unfounded, inconclusive, or substantiated, and Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, requires certain information items in order to complete a “retainable report”).²⁴⁹

The Commission found that a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse and, therefore, in these cases, the test claim statutes “impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse.”²⁵⁰

Because... a mandated reporter is expected to do what is reasonable within the scope of his or her experience and employment, *a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse.*²⁵¹ *Therefore the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter in the employ of a child protective agency, and therefore reimbursement must be limited to only such investigative activity as is necessary to satisfy the mandate of section 11169, but not mandated on the individual employee under section 11166.*

Therefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, or county probation department, prior to the completion of a Form SS 8572 under section 11166(a), is not reimbursable under this mandated program. And, if the Form SS 8572 is completed by an employee of the same agency, and the information contained in the Form SS 8572 is sufficient to make the determination and complete the essential information items required by section 11169 and the regulations, no further investigation is reimbursable.²⁵²

As noted in the Decision and Parameters and Guidelines, while more recent amendments to the regulatory sections pled in the Test Claim require completion of *all* information items in the Form SS 8583, the Test Claim Decision approved California Code of Regulations, title 11, section 903, as added by Register 98, No. 29, which adopted the Form SS 8583, and required that

²⁴⁹ Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines), emphasis added.

²⁵⁰ Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines).

²⁵¹ See *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180 (“duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse”).

²⁵² Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines), emphasis added.

only “*certain* information items... be completed.”²⁵³ California Code of Regulations, title 11, section 903, as approved in the Test Claim Decision, states as follows:

All information items on the standard report form SS 8583 *should* be completed by the investigating CPA [child protective agency]. Certain information items on the SS 8583 *must* be completed by the CPA in order for it to be considered a “retainable report” by DOJ and entered into [the index]. Reports without these items will be returned to the contributor. These information items are:

- (1) The complete name of the investigating agency and type of agency.
- (2) The agency’s report number or case name.
- (3) The action taken by the investigating agency.²⁵⁴
- (4) The specific type of abuse.
- (5) The victim(s) name, birth date or approximate age, and gender.
- (6) Either the suspect(s) name or the notation “unknown.”²⁵⁵

While the Form SS 8583 guidelines specify the other information items that “should be completed” on the Form SS 8583, including the name of the investigating party, the date and location of the incident, the suspect’s address and relationship to the victim, and the victim’s present location, among other items, “the investigation approved in the test claim statement of decision is only that required to comply with Penal Code section 11169 and to complete the Form 8583, as those authorities existed at the time of the test claim decision.”²⁵⁶

Thus, under the Decision and Parameters and Guidelines, when a mandated reporter is employed by the same agency required to investigate and submit the Form SS 8583 to DOJ, reimbursement is *not* required if the investigation necessary to complete the Form SS 8572 is also sufficient to complete the required information items in Form SS 8583. The Decision and Parameters and Guidelines expressly state that:

In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the

²⁵³ Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

²⁵⁴ The Form SS 8583 and accompanying DOJ guidelines explain that “the action taken by the investigating agency” refers to whether the suspected child abuse was substantiated, unsubstantiated, or unfounded. See Exhibit F (1), Form 8583, pages 1-2.

²⁵⁵ California Code of Regulations, title 11, section 903 (Register 98, No. 29), emphasis added. The Form SS 8583 guidelines state that while all shaded information blocks must be completed, exceptions are “victim” and “suspect” blocks, at least one of which must be entered on the form. See Exhibit F (1), Form 8583, page 2.

²⁵⁶ Exhibit A, IRC, filed May 13, 2021, pages 185-186 (Decision and Parameters and Guidelines [citing Penal Code section 11169 (Stats. 2000, ch. 916); California Code of Regulations, title 11, section 903 (Register 98, No. 29)]).

investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement.²⁵⁷

The Decision and Parameters and Guidelines also reasoned that the test claim statutes were not focused on criminal investigation and prosecution, but were instead focused on the protection of children and early intervention in abusive or neglectful situations, and that the investigation mandate specifically arises in the context of early reporting requirements.²⁵⁸ Thus, reimbursement is only allowed for the investigation activities if they are conducted for the sole purpose of determining whether a case is “not unfounded” and a report forwarded to DOJ. “[O]nce evidence is being gathered for *criminal prosecution*, the determination that a report is ‘not unfounded’ has been made, and the investigative mandate approved in the Test Claim Decision has been satisfied.”²⁵⁹ In this respect, the Commission rejected the test claimant’s argument “that a complete report filed with DOJ requires a more extensive investigation than that provided for in the test claim decision.”²⁶⁰ Thus, reimbursement is *not* required for any investigation conducted for purposes of criminal prosecution. The Commission reasoned as follows:

The point at which the decision is made to close the case (an unfounded report), or continue the investigation (an inconclusive or substantiated report), *is the point at which a determination sufficient to control whether a report will be forwarded to DOJ has been made.* The claimant’s evidence demonstrates that an investigation that results in a finding of no child abuse will conclude with the patrol officer’s interviews and the filing of a closure report, which must be approved by a supervisor.²⁶¹

As indicated above, a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has a duty to complete a SCAR (Form 8572) when he or she has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.²⁶² “Reasonable suspicion” means “that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person’s training and experience, to suspect child abuse or neglect.”²⁶³

²⁵⁷ Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

²⁵⁸ Exhibit A, IRC, filed May 13, 2021, pages 190-191 (Decision and Parameters and Guidelines).

²⁵⁹ Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

²⁶⁰ Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

²⁶¹ Exhibit A, IRC, filed May 13, 2021, page 192 (Decision and Parameters and Guidelines), emphasis added.

²⁶² Penal Code section 11166(a).

²⁶³ Penal Code section 11166(a) (Stats. 1990, ch. 1603). The definition was later amended to clarify that “reasonable suspicion” “does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any

Therefore, as applied to cases in which the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to complete the Form SS 8583 and submit it to DOJ), and no further investigation is required. Since a mandated reporter is expected to do what is reasonable within the scope of employment and experience, a mandated reporter employed by a police department necessarily has a greater responsibility to investigate when child abuse or severe neglect is reasonably suspected.²⁶⁴

The Decision and Parameters and Guidelines contemplate, however, that there may be a few circumstances where the receipt of the SCAR may require the police department to conduct additional interviews for the sole purpose of preparing and submitting a retainable report to DOJ (“Conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*”).²⁶⁵ However, once evidence is being gathered for purposes of *criminal prosecution*, the mandate to investigate ends.

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is “not unfounded” has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.²⁶⁶

The Decision and Parameters and Guidelines require documentation to support the costs claimed for investigation after the receipt of the SCAR (Form SS 8572) and before evidence is being gathered for criminal prosecution, and solely for the purpose of preparing and submitting a retainable Form SS 8583 to DOJ when a report of child abuse is not unfounded.²⁶⁷

‘reasonable suspicion’ is sufficient.” (Pen. Code, § 11166(a)(1), as last amended by Stats. 2013, ch. 76).

²⁶⁴ Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines, page 42, footnote 152 (citing *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187 [“duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse”])).

²⁶⁵ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

²⁶⁶ Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

²⁶⁷ Exhibit A, IRC, filed May 13, 2021, pages 236, 249 (Decision and Parameters and Guidelines).

b. The Controller’s interpretation of the Decision and Parameters and Guidelines is correct as a matter of law.

The claimant alleges that the Controller misinterpreted the Decision and Parameters and Guidelines in finding that *all* cases in which an employee of the police department generated the SCAR, or Form SS 8572, are ineligible for reimbursement.²⁶⁸ While some of the language used in the audit report initially appears to categorically reject all police department-generated SCARS (“time spent performing an initial investigation of a SCAR is only reimbursable for those SCARS which were not initiated by the Police Department”),²⁶⁹ the Controller did *not*, in fact, automatically exclude police department-generated SCARS. Rather, the Controller reasoned that a police department’s investigation when completing the SCAR is often enough to also determine whether the report of child abuse is not unfounded and to complete the Form SS 8583.

Per PC section 11166(a), a mandated reporter is already compelled by the nature of his/her duty to report instances of suspected child abuse via the SS 8572 form. There is no higher level of service mandated, and therefore, the duty to investigate under PC section 11166(a) is not reimbursable. Furthermore, the level of investigation performed by the mandated reporter to gather the necessary information for completing the SS 8572 form *is frequently sufficient* to complete form SS 8583.²⁷⁰

Furthermore, in comments on the IRC, the Controller cites extensively to the Decision and Parameters and Guidelines for the point that the mandate imposes very little investigation beyond what a mandated reporter is already required to do under preexisting law because the number of information items required to make the Form SS 8583 retainable impose a “very low standard of investigation” and in fact the “level of information for completing the SS 8572 form is *frequently sufficient* to complete form SS 8583 Report Form.”²⁷¹ Thus, the Controller’s comments make clear that it did not incorrectly interpret the Parameters and Guidelines as *never* permitting reimbursement when the mandated reporter completing the Form SS 8572 is employed by the same child protective agency required to investigate and submit the Form SS 8583, but rather, in such a situation, as is the case with claimant’s police department, the mandated reporter’s investigation preceding completion of the Form SS 8572 is “frequently sufficient” to complete the Form SS 8583, given the low number of information items required for completing the Form SS 8583.

The Controller instead based the reduction on its finding that the claimant provided no documentation showing that police department personnel performed investigative activities “for purposes of” completing the Form SS 8583.

²⁶⁸ Exhibit A, IRC, filed May 13, 2021, page 3.

²⁶⁹ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

²⁷⁰ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report), emphasis added.

²⁷¹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 21-22, emphasis added.

The city's claim that the 10 cases cited should be included as eligible in the sampling analysis is unsupported. For these 10 cases, only one completed SCAR (form SS 8572) was documented in the file, and none of the cases had completed SS 8583 forms documented in the files. For this particular component, the reimbursable activity is to complete an investigation "*for purposes of*" [emphasis added] preparing an SS 8583 report form. The documentation in the case files does not support that the city prepared the required SS 8583 forms.²⁷²

The Controller further explains that because the remaining nine case files do not contain a Form SS 8572, the Controller is unable to confirm that the Forms SS 8572 were completed and cross-reported to CPS and the District Attorney's Office, or whether an investigation occurred prior to the completion of the Form SS 8572, and therefore cannot determine whether the claimant obtained sufficient information to make a determination whether a Form SS 8583 had to be prepared and completed with the essential information items on the form.²⁷³

The claimant nevertheless argues the investigation is reimbursable for the 10 cases because there is a direct correlation between the severity of a case and the scope of investigation required to determine whether the suspected child abuse is "not unfounded" and the Form SS 8583 has to be prepared and submitted to DOJ.²⁷⁴ Specifically, the claimant asserts that while completing the Form SS 8572 requires interviewing one reporting party and takes approximately 15 minutes, completing the Form SS 8583 requires multiple interviews, including "the interviews of 'victim(s), any known suspects, and witnesses' to determine case disposition (substantiated, unfounded or inconclusive)."²⁷⁵

However, there is nothing in the plain language of the Decision and Parameters and Guidelines that requires the investigating agency to conduct multiple interviews to complete the Form SS 8583. In contrast, the Parameters and Guidelines state that "[c]onducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*" in order "to satisfy the DOJ reporting requirement" when a case of child abuse is not unfounded is a reimbursable activity.²⁷⁶ Furthermore, as the Decision and Parameters and Guidelines make clear, "the mandate *only required enough information to determine whether to file a Form 8583, . . . and enough information to render the Form 8583 a "retainable report" under [California Code of Regulations, title 11,] section 903 [(Register 98, No. 29)]."²⁷⁷*

[T]he scope of reimbursable investigative activities is limited by the plain language of the statute, which requires an investigation to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated. In

²⁷² Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

²⁷³ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

²⁷⁴ Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

²⁷⁵ Exhibit A, IRC, filed May 13, 2021, page 4.

²⁷⁶ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

²⁷⁷ Exhibit A, IRC, filed May 13, 2021, page 185 (Decision and Parameters and Guidelines).

addition, the scope of investigation is limited to the degree of investigation that DOJ has allowed to constitute a “retainable report;” in other words, the *minimum* degree of investigation that is sufficient to complete the reporting requirement is the *maximum* degree of investigation reimbursable under the test claim statute.²⁷⁸

As stated above, when the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement. Additional interviews after the receipt of the SCAR (Form SS 8572) may be reimbursable if conducted before evidence is being gathered for criminal prosecution and solely for the purpose of determining if the report of child abuse is not unfounded, which triggers the requirement to prepare and submit Form SS 8583 to DOJ. As the Controller correctly notes:

The Commission, when crafting the Statement of Decision, was aware of the potential of over-claiming when a mandated reporter is also the investigating agency. Page 40 of the Statement of Decision states, “the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in a particular case is also an employee of the child protective agency that will complete the investigation under section 11169.”²⁷⁹

Therefore, the Commission finds that the Controller correctly interpreted the Parameters and Guidelines and did not, as a matter of law, wholly exclude police department-generated SCARs from the sample pool. Consistent with the Commission’s Decision and Parameters and Guidelines, the Controller understood that “the level of investigation performed by the mandated reporter [who is an employee of the police department] to gather the necessary information for completing the SS 8572 form *is frequently sufficient* to complete form SS 8583” and that supporting documentation is required to determine if additional investigation conducted by the police department is reimbursable and conducted solely for the purpose of preparing and submitting Form SS 8583 to DOJ.²⁸⁰

Thus, the issue becomes whether the Controller’s review of the audit records and reduction of the total number of SCARs by disallowing those generated by the claimant’s police department is arbitrary, capricious, or entirely lacking in evidentiary support.

²⁷⁸ Exhibit A, IRC, filed May 13, 2021, page 189 (Decision and Parameters and Guidelines), emphasis in original.

²⁷⁹ Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

²⁸⁰ Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

2. The Controller’s reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the exclusion of 10 Suspected Child Abuse Reports (SCARs, Form SS 8572) generated by mandated reporters employed by the claimant’s police department, is not arbitrary, capricious, or entirely lacking in evidentiary support.

When reviewing an audit decision of the Controller, the Commission’s scope of review is limited to whether the decision was arbitrary, capricious or entirely lacking in evidentiary support.²⁸¹

“[T]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.]” When making that inquiry, the “ ‘ ‘ ‘ court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]”²⁸²

The Commission may *not* reweigh the evidence or substitute its own judgment for that of the Controller. Instead, the Commission’s inquiry is limited to whether the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.²⁸³ Furthermore, the claimant bears the initial burden of providing evidence for a reimbursement claim, and any assertions of fact by the claimant must be supported by documentary evidence.²⁸⁴

Based on the evidence in the record, the Commission finds that the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made and, thus, the reduction of costs in Finding 2 based on the exclusion of the 10 SCARs (Form SS 8572) generated by the claimant’s police department is not arbitrary, capricious, or entirely lacking in evidentiary support.

The audit report states that the claimant computed claimed costs based on estimated average time increments. For each fiscal year of the audit period, the city estimated that it took, on average, four hours and 18 minutes (4.3 hours) to perform the initial investigation activities for each SCAR received. The city multiplied the estimated average time increments for different employee classifications by the total number of SCARs to calculate the claimed hours.²⁸⁵ The

²⁸¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁸² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁸³ See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁸⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275; Government Code section 17559; California Code of Regulations, title 2, sections 1185.1(f)(3) and 1185.2(d), (e).

²⁸⁵ Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

claimant initially claimed 3,952 SCARs investigated during the audit period, which it revised to 3,802 during the audit fieldwork.²⁸⁶ The claimant did not exclude SCARs initiated by mandated reporters employed by its police department, nor did the claimant exclude the SCARs that had not been investigated.²⁸⁷

The Controller then requested a representative sample of 148 cases for the three-year period, from fiscal year 2008-2009 through fiscal year 2010-2011, to review.²⁸⁸

We sampled and thoroughly reviewed the contents of 148 cases (32 out of 163 in FY 2008-09; 66 out of 654 in FY 2009-10; and 50 out of 457 in FY 2010-11). In reviewing the case files, we made note of those SCARs generated by another mandated reporter (other agency-generated) and those generated by the Police Department (LEA-generated).²⁸⁹

Following the Controller's initial determination to exclude all SCARs generated by the claimant's police department from the sample pool, the claimant asserted that for 10 police department-generated cases,²⁹⁰ "the reports and call histories show that there were often multiple officers on the scene and multiple parties being interviewed" to determine whether the cases were unfounded, substantiated, or inconclusive, evidencing that a higher level of effort beyond that needed to complete the Form SS 8572 was necessary for purposes of preparing Form SS 8583 and requested that the cases be reassessed and included in the percentage of eligible SCAR cases.²⁹¹

The Controller reexamined the case file documentation for each of the 10 cases and summarized the documentation as follows:

FY 2008-09 . . .

- Case Number 0810-0181: LEA [Law Enforcement Agency]-generated SCAR case. *No SCAR on file*. Father accused of hitting his daughter. The LEA spoke with victim, mother, and suspect. Allegations of child abuse was unfounded.
- Case Number 0810-1766 (Case Number 0801-1766 was transposed in the auditee's response identified in the final audit report and should be as noted): LEA-generated SCAR case. *No SCAR on file*. Father accused of beating his son. The LEA spoke with victim, suspect, and witness. Allegations of child abuse were unfounded.

²⁸⁶ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

²⁸⁷ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

²⁸⁸ Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

²⁸⁹ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

²⁹⁰ Four cases from fiscal year 2008-2009, two cases from fiscal year 2009-2010, and four cases from fiscal year 2010-2011. Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 15.

²⁹¹ Exhibit A, IRC, filed May 13, 2021, pages 491-492 (Final Audit Report).

- Case Number 0904-0493: LEA-generated SCAR case. *No SCAR on file.* Father accused of child abuse. The LEA spoke to the victim, suspect, victim's mother, and victim's sister. Supplemental report written at the request of the DA's Office. Allegations of child abuse were not confirmed.

- Case Number 1003-1190: LEA-generated SCAR case. *No SCAR on file.* Grandfather touched granddaughter's private parts. The LEA spoke with a Women's Center Advocate, mother, victim, and suspect. Allegations of sexual abuse were substantiated. *The SS 8583 Report Form was on file.*

FY 2009-10 . . .

- Case Number 0907-2506: LEA-generated SCAR case. *No SCAR on file.* Male accused of hitting stepsons. The LEA spoke to mother, victim (1 and 2), siblings, and suspect. Arrest made. *The SS 8583 Report Form was not on file.*

- Case Number 0909-2714: LEA-generated SCAR case. *No SCAR on file.* A father reported that his daughter and a female cousin may have been sexually abused by a male cousin. LEA spoke to mother, mother's sister, father, victim (1 and 2), and suspect. Allegations of sexual abuse substantiated. *The SS 8583 Report Form was not on file.*

FY 2010-11 . . .

- Case Number 1009-1848: LEA-generated SCAR case. *No SCAR on file.* Father who lives out of jurisdiction requests welfare check on his children. LEA checks residence and school and children are not located. Case is forwarded to CPS for follow up.

- Case Number 1010-0549: LEA-generated SCAR case occurrence date October 7, 2010. *SCAR on file* completed on October 8, 2010. Older brother sexually assaulted younger brother. The LEA spoke to the mother, father, victim, suspect, and older sister. Allegations of sexual abuse substantiated. *No SS 8583 Report Form on file.*

- Case Number 1104-1560: LEA-generated SCAR case. *No SCAR on file.* Father reported that mother physically abused son. Allegations of child abuse were substantiated. *No SS 8583 Report Form on file.*

- Case Number 1106-2117: LEA-generated SCAR case. *No SCAR on file.* Mother reported daughter was victim of sexual abuse by daughter's boyfriend. The LEA spoke to victim, mother, father, and suspect. Allegations of sexual abuse were unfounded.²⁹²

The Controller found that one out of the 10 LEA-generated SCAR cases listed above, Case Number 1010-0549 (FY 2010-2011), included a completed SCAR Form SS 8572.²⁹³ As the

²⁹² Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 16; Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

²⁹³ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 22-23.

Controller found, the SCAR for Case Number 1010-0549 is dated October 8, 2010, and was prepared by the same officer that initially responded to the report of child abuse on October 7, 2010 (“Date time and day of occurrence, 10/07/10 21:25 Thursday”).²⁹⁴ Interviews with the mother, the victim, the brother, the father, and the suspect were conducted by the police on October 7, 2010,²⁹⁵ and beginning at 12:50 a.m. on October 8, 2010,²⁹⁶ and the suspect was arrested and booked into juvenile hall on October 8, 2010.²⁹⁷ The SCAR was completed on October 8, 2010.²⁹⁸ Thus, the evidence in the record supports the Controller’s review of this case and finding that the interviews occurred before the completion of the SCAR and, therefore, reimbursement for the investigation alleged for Case Number 1010-0549 is not reimbursable. Under the Parameters and Guidelines, the investigative activities conducted by a mandated reporter to complete the SCAR are *not* reimbursable: only those investigative activities conducted by an agency *after* receipt of a SCAR to determine whether the Form SS 8583 is required to be submitted to DOJ are reimbursable.²⁹⁹

For the remaining nine cases summarized above, the Controller states that no SCAR Forms SS 8572 were on file.³⁰⁰ In addition, only one case file contained a Form SS 8583: Case Number 1003-1190 from fiscal year 2008-2009.³⁰¹ And the claimant only provided the Commission with documentation pertaining to one of these 10 cases, Case Number 1003-1190, which is the same case that the Controller determined had a Form SS 8583 was on file. The documentation provided with the IRC for Case Number 1003-1190 consists of one, one-page document: the revised Form SS 8583 (BCIA 8583).³⁰² The Controller’s review of the case file documentation found as follows:

- Case Number 1003-1190: LEA-generated SCAR case. No SCAR on file. Grandfather touched granddaughter’s private parts. The LEA spoke with a Women’s Center Advocate, mother, victim, and suspect. Allegations of sexual abuse were substantiated. The SS 8583 Report Form was on file.³⁰³

²⁹⁴ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 156, 175.

²⁹⁵ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 156-161.

²⁹⁶ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 161 (“At approximately 0050 (12.50 a.m.) we returned and I interviewed ... The interview took place in his room.”)

²⁹⁷ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 174.

²⁹⁸ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, pages 156-160.

²⁹⁹ Exhibit A, IRC, filed May 13, 2021, page 196 (Decision and Parameters and Guidelines).

³⁰⁰ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 23.

³⁰¹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 16; Exhibit A, IRC, filed May 13, 2021, page 102.

³⁰² Exhibit A, IRC, filed May 13, 2021, page 102.

³⁰³ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 16.

The revised Form SS 8583 in Case Number 1003-1190 is not sufficient to support the finding that the claimant was required to perform additional investigative activities for purposes of completing Form SS 8583 beyond those necessary to complete the Form SS 8572. For example, there is no indication in the record when the interviews were conducted, or when the SS 8572 and SS 8583 were prepared, or what information was available to the officer when preparing the SS 8583, or whether the interviews were conducted within the limited scope of the mandate (i.e., solely for purpose of preparing the SS 8583 for DOJ).

Furthermore, there is no mention by either the claimant or the Controller as to whether any of these 10 files contained original investigative reports, beyond the Controller's detailed descriptions of the case file documentation as quoted above. The descriptions of the case files show that for at least seven of the nine cases, police department personnel conducted interviews with more than one party.³⁰⁴ However, there is no evidence to show that the interviews in these seven cases took place *as a result of* the police department being unable to obtain enough information when completing the SCAR (Form SS 8572) to also complete the Form SS 8583.

Additionally, the claimant's contention that "Actual documentation (See Exhibit A) showed the number of eligible interviews performed per case as required by SS 8583" is puzzling.³⁰⁵ Claimant's Exhibit A consists of time studies, police department-generated time reports, time analysis, and correspondence related to the computation of time for the reimbursement claims, all of which were provided to the Controller during the audit.³⁰⁶ The claimant does not point to which of these documents show that eligible interviews were conducted, nor do the documents speak for themselves. The only documents in claimant's Exhibit A that make any reference to interviews are police department detective time logs from 2015, with a handwritten note stating "2015 time studies not used in claim[,] done for verification in case of audit."³⁰⁷ While six of the 12 pages of time logs contain entries showing that interviews were conducted, they do not "show the number of eligible interviews performed per case": the time logs simply state the date that an interview was performed and on occasion, who was interviewed, along with the time spent on the activity. The time logs do not consistently reference case numbers, making it impossible to know whether multiple interviews were conducted in the same case, or whether the interviews listed were conducted prior to completion of the Form SS 8572.³⁰⁸

Therefore, the claimant has not satisfied its initial burden of providing evidence that the Controller's exclusion of police-department generated cases from the total number of SCARs for which an investigation was completed for purposes of filing the Form SS 8583 is wrong, or arbitrary, capricious, or entirely lacking in evidentiary support.

³⁰⁴ Case numbers 0810-0181; 0810-1766; 0904-0493; 0907-2506; 0909-2714; 1010-0549; and 1106-2117.

³⁰⁵ Exhibit A, IRC, filed May 13, 2021, page 4.

³⁰⁶ See Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn), pages 20-38.

³⁰⁷ Exhibit A, IRC, filed May 13, 2021, page 27.

³⁰⁸ Only two time logs contain some case numbers, and none of the interviews listed therein pertain to the same case number. Exhibit A, IRC, filed May 13, 2021, pages 28, 32.

In response, the claimant argues that the Form SS 8572 and Form SS 8583 are not available because the Form SS 8572 was not always retained for each suspected child abuse case, and no Form SS 8583 was prepared if a case was determined to be unfounded. The claimant also argues that because approximately 10 years passed between when the cases occurred and the audit was conducted, with no prior notice that reimbursement would be conditioned upon retention of these forms, it would violate due process to retroactively require so now.³⁰⁹

The Parameters and Guidelines, adopted in 2013, require that claims for actual costs be traceable and supported by contemporaneous source documentation (i.e., documents created at or near the same time the actual cost was incurred) that show the validity of such costs, when they were incurred, and their relationship to reimbursable activities.³¹⁰ Source documents include employee time records or time logs, sign-in sheets, invoices, and receipts.³¹¹ Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.³¹² Here, the claimant was not on notice of the contemporaneous source document rule (CSDR) when costs were incurred in fiscal years 1999-2000 through 2011-2012 because the Parameters and Guidelines were not adopted until December 2013.

The Controller, however, is *not* strictly enforcing the CSDR. The Controller did not reduce costs because contemporaneous documents were not provided or reduce the salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component to \$0. Instead, the Controller found that the documentation provided by the claimant to support the inclusion of 10 police department-generated cases from the sample pool as eligible SCAR cases investigated was insufficient to support the claimant's position that extensive investigative work was performed by the agency for purposes of Form SS 8583 beyond that required of the mandated reporter to complete the initial Form SS 8572. Government Code section 17561(d) authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs and under Section VI. of the Parameters and Guidelines, the claimant is responsible for maintaining documentation for the time period during which the claims were subject to audit.³¹³

Moreover, regardless of the CSDR, the claimant was on notice of the legal requirement in Penal Code sections 11169 and 11170 to retain Form SS 8572 and Form SS 8583 with the initial investigative reports for a 10-year period, whenever a Form SS 8583 is filed with DOJ. Statutes

³⁰⁹ Exhibit A, IRC, filed May 13, 2021, page 5.

³¹⁰ Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

³¹¹ Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

³¹² *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

³¹³ Exhibit A, IRC, filed May 13, 2021, page 249 (Decision and Parameters and Guidelines). See also, *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335, and Government Code section 12410, which states: "The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

1997, chapter 842 added the 10-year minimum records retention requirement to Penal Code sections 11169 and 11170,³¹⁴ meaning the claimant was required to maintain the specified documentation for all cases determined “not unfounded” (and thus, reported to DOJ), and was on notice of that requirement long before the Parameters and Guidelines were adopted in 2013. The Commission found that the costs for the last eight years of retention of those records were new state-mandated costs and thus eligible for reimbursement.³¹⁵ This is reflected in Section IV.B.5. of the Parameters and Guidelines, which provides as follows:

City and county police or sheriff’s departments, and county probation departments if designated by the county to receive mandated reports shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice *for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).)* If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.³¹⁶

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.³¹⁷

As such, the claimant’s duty to retain the suspected child abuse case forms (Form SS 8572 and Form SS 8583) and original investigative reports for all cases reported to DOJ exists irrespective of the enforceability of the CSDR. Given that the 10 cases the claimant seeks to add occurred during fiscal years 2008-2009 through 2010-2011, and the Controller initiated the audit in December 2017 and issued the final audit report in May 2018, the claimant was required to retain the two state-issued forms and the original investigative report for any of these cases determined to be “not unfounded.”

The documentation provided by the claimant shows that the claimant retained the Form SS 8583 for only one of the ten cases (Case Number 1003-1190). Because the allegations of child abuse were determined to be “substantiated,” the claimant retained the Form SS 8583 as required.

³¹⁴ Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 38.

³¹⁵ Exhibit A, IRC, filed May 13, 2021, pages 208-209 (Decision and Parameters and Guidelines [discussing the Test Claim Decision’s approval of reimbursement for record retention by law enforcement agencies, pursuant to Penal Code sections 11169 and 11170, Statutes 1997, chapter 842]).

³¹⁶ Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

³¹⁷ Exhibit A, IRC, filed May 13, 2021, page 246 (Decision and Parameters and Guidelines), emphasis in original.

Therefore, since the claimant did not retain a completed Form SS 8583 for the other nine cases, and it is presumed the claimant complied with the retention requirements imposed by the Penal Code,³¹⁸ then it must be presumed that the nine remaining cases of suspected child abuse for which the claimant seeks reimbursement for “extensive investigative work,” were *all* determined to be unfounded, even though the cases were reported by the claimant’s law enforcement employees, who have a duty to investigate and must have had “knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.”³¹⁹ Yet the case file documentation shows that of these nine remaining cases, only three were unfounded.³²⁰ Therefore, for the six remaining cases that were determined to be “not unfounded,” the claimant was required to report to DOJ and was required to retain the Form SS 8572 and Form SS 8583 with the original investigation report. As stated above, the claimant was on notice of this records retention requirement long before the adoption of the Parameters and Guidelines in 2013.

The claimant also cites to a 2005 version of the DOJ’s child abuse reporting guidelines, which includes discussion of the regulations and requirements that were amended *after* the Test Claim was filed, to assert that even where a case was determined to be “not unfounded,” the Form SS 8583 was only prepared if a suspect was contacted.³²¹ The claimant refers to the following language in the 2005 guidelines:

What Not to Report

11169(a) PC identifies what may not be reported to DOJ.

[¶]...[¶]

If you have not contacted the suspect

This does not apply if you were unable to locate the suspect or another agency (i.e., law enforcement) has asked you not to notify the suspect. Please use the Comment field to identify the reason suspect was not contacted.³²²

However, neither the test claim statutes nor the 2005 guidelines and later versions of the Form SS 8583 and DOJ regulations add an additional requirement that the suspect be contacted before the Form SS 8583 is required to be filed. While the test claim statutes require written notice to a suspect when the suspect has been reported to the Child Abuse Central Index (CACI), filing the

³¹⁸ Evidence Code section 664 states that “It is presumed that official duty has been regularly performed.”

³¹⁹ Penal Code section 11166(a).

³²⁰ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 16 (case numbers 1106-2117; 0810-0181; and 0810-1766).

³²¹ Exhibit A, IRC, filed May 13, 2021, page 4.

³²² Exhibit A, IRC, filed May 13, 2021, page 84 (Department of Justice, A Guide to Reporting Child Abuse to the California Department of Justice).

Form SS 8583 does not require the identification of the suspect.³²³ The Test Claim Decision approved only California Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, which adopted the Form SS 8583, and required that only “certain information items...must be completed,”³²⁴ including – as is relevant here – either the suspect’s name *or the notation “unknown.”*³²⁵ Furthermore, Section IV.B.3.a. of the Parameters and Guidelines, which enumerates the reimbursable activities for reporting to DOJ, makes clear that the investigating agency is required to file the Form SS 8583 with DOJ once it has determined that the allegations of child abuse are “not unfounded.”³²⁶ There is no additional requirement that the suspect also be contacted for the Form SS 8583 to be filed. In contrast, the Parameters and Guidelines expressly state that completing an investigation for purposes of preparing the Form SS 8583 “includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*, and making a report of the findings of those interviews, which may be reviewed by a supervisor.”³²⁷ Even under the 2005 guidelines, there is no requirement to first contact the suspect before submitting Form SS 8583 if the agency is “unable to locate the suspect or another agency (i.e., law enforcement) has asked you not to notify the suspect.”³²⁸

Accordingly, the claimant’s assertion that the requirement to complete the Form SS 8583 is contingent upon making contact with a suspect is at odds with the requirements of the test claim statutes and regulations, and is inconsistent with the Parameters and Guidelines.

The claimant also argues that because each of the 10 cases at issue required multiple police officers to conduct multiple interviews with various parties before a determination could be made whether the cases were “not unfounded,” they are necessarily reimbursable.³²⁹ At the core of the claimant’s argument is the *assumption* that evidence of multiple interviews is alone sufficient to show that the investigative effort required of the police department exceeded that needed for a mandated reporter, employed by the police department, to complete the Form SS 8572. That assumption is not legally correct. As indicated above, when a SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the reporter determines “in his or her professional capacity or within the scope of his or her employment” that the report of suspected child abuse or severe neglect is “not unfounded,” the reporter has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to complete the Form SS 8583 and submit to DOJ), and no further investigation is required.

³²³ Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 32-33.

³²⁴ Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

³²⁵ California Code of Regulations, title 11, section 903 (Register 98, No. 29), emphasis added.

³²⁶ Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

³²⁷ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

³²⁸ Exhibit A, IRC, filed May 13, 2021, page 84 (Department of Justice, *A Guide to Reporting Child Abuse to the California Department of Justice*).

³²⁹ Exhibit A, IRC, filed May 13, 2021, page 4.

A mandated reporter employed by a police department has a “greater responsibility to investigate” when child abuse or severe neglect is reasonably suspected.³³⁰ The Parameters and Guidelines contemplate that there *may* be some circumstances where the receipt of the SCAR may require the police department to conduct additional interviews for the sole purpose of preparing and submitting a retainable report to DOJ (“Conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*”).³³¹ However, documents or evidence supporting that claim are required to be provided by the claimant to show that the costs incurred were within the scope of reimbursement.³³²

The record shows that the Controller reviewed all available documentation provided by the claimant, and determined that it did not support a finding that the claimant performed extensive investigative work for the purpose of completing the Form SS 8583. The claimant has not submitted any additional documentation with this IRC beyond what it provided to the Controller during the audit.³³³

Based on this record, the Commission finds that the Controller’s reduction and recalculation in Finding 2 of the total number of SCARs investigated for fiscal years 1999-2000 through 2011-2012, based on its exclusion of the claimant’s police department-generated cases, is not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller’s Reduction in Finding 2 for the Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Reduction to the Number of Suspected Child Abuse Reports (SCARs) Referred to the Claimant’s Police Department by Other Agencies, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As discussed above, when auditing the costs claimed to complete an investigation for purposes of preparing Form SS 8583, the Controller performed a sampling analysis of 148 randomly selected cases from fiscal years 2008-2009 through 2010-2011.³³⁴ The Controller determined based on the documentation provided that the claimant investigated very few of the other agency generated SCARs that had been cross-reported to them, as no additional follow-up was deemed

³³⁰ Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines, footnote 152 (citing *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187 [“duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse”])).

³³¹ Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

³³² Exhibit A, IRC, filed May 13, 2021, page 236 (Decision and Parameters and Guidelines); Government Code section 17561(d); California Code of Regulations, title 2, sections 1185.1(f)(3), 1185.2(d), (e).

³³³ See Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

³³⁴ Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

necessary”³³⁵ and that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases.³³⁶

A vast majority of other agency-generated SCARs were referred from Child Protective Services (CPS), and very few came from other mandated reporters. For other agency-generated SCARs, we searched for documentation supporting that the Police Department had conducted an initial investigation. *Our review of the 148 sampled cases revealed that very few other agency-generated SCARs were investigated by the Police Department or no investigation was documented in these cases.*

The files showed that CPS regularly and systematically cross-reported SCARs to the Police Department. The Police Department received these CPS referrals and made notes of the referrals in their files, but typically did not perform an investigation on these cases before closing the files. For the vast majority of SCARs referred from CPS, *the Police Department identified CPS as the investigating agency* and closed the cases if no further investigation was deemed necessary.

For the few cases in which the Police Department did in fact perform an investigation, the SCAR files contained clear evidence and support that an investigation had been performed. For these SCARs, the files contained very detailed written narratives of the investigation(s) performed and of the interviews conducted. These narratives identified the officers involved, the type of investigative work performed, the type of crimes committed, any follow-up investigations needed, who had been interviewed, and dates and times of the interviews, etc.³³⁷

Nonetheless, during the course of the audit, the Controller accepted the claimant’s position that for cases where a full initial investigation was not completed, initial investigative activities may have been performed but not documented in the case files in order to corroborate information reported by CPS.³³⁸ The Controller determined, with input from the claimant, that the following activities comprised a partial initial investigation, despite the claimant’s lack of supporting evidence, and were reimbursable for all the 90 percent of the cases not fully investigated by the claimant: (1) review the initial SCAR; (2) approve closing the case; and (3) document and file the closed case.³³⁹

The claimant proposes here, as it did during the audit, that the time to conduct the following four investigative activities, which takes an additional 74-84 minutes per case, should also be reimbursable:

³³⁵ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

³³⁶ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

³³⁷ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report), emphasis added.

³³⁸ Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

³³⁹ Exhibit A, IRC, filed May 13, 2021, pages 484, 497 (Final Audit Report).

1. For a Detective to verify if a report was already written (6 minutes)
2. For a Records Technician to verify if a report was already written (6 minutes)
3. For a Detective to check prior history and “determine if the case is actually in the agencies [sic] jurisdiction and determine that the case is not a duplicate and has not already been investigated by the department. This often requires phone calls to other involved agencies and also may work with internal staff such as records and dispatch to determine the history of the case to determine what action is required” (36 minutes)
4. “Then the Detective and/or Sergeant must contact the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary. Detective and/or Lieutenant must decide on how to proceed on each case” (26-36 minutes).³⁴⁰

The claimant also alleges that the Controller erred in its finding that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases since the Controller conditioned reimbursement on whether a case file contained a detailed narrative in the police report.³⁴¹

Based on the following analysis, the Commission finds that the Controller’s reduction of costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the number of SCARs referred to the claimant’s police department by other agencies, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller’s reduction of costs for the additional investigation activities proposed by the claimant is correct as a matter of law since the activities were not approved by the Commission as eligible for reimbursement.

Under the Parameters and Guidelines, reimbursement for the Complete an Investigation cost component is limited to three activities: (1) review the initial SCAR; (2) conduct initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) make a report of the findings of those interviews, which may be reviewed by a supervisor.³⁴²

The claimant proposes, however, that four additional investigative activities be included for the 90 percent of other agency-generated cases in which the police department did not complete a full initial investigation: (1) detective to verify if a report was already written; (2) records technician to verify if a report was already written; (3) detective to check prior history and determine jurisdiction and whether case is a duplicate; and (4) detective to contact at least one adult with information regarding the allegations to obtain more details to determine if in-person interviews are necessary.³⁴³

³⁴⁰ Exhibit A, IRC, filed May 13, 2021, pages 5-6, 498 (Final Audit Report).

³⁴¹ Exhibit A, IRC, filed May 13, 2021, page 9.

³⁴² Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines).

³⁴³ Exhibit A, IRC, filed May 13, 2021, pages 5-6.

The claimant asserts that contacting the reporting agency or a person with information about the case to determine whether to conduct in-person interviews, falls under the eligible investigative activity of “conduct initial interview with involved parties,” as listed in the Parameters and Guidelines.³⁴⁴ Furthermore, the claimant argues these additional activities are reasonably necessary to determine whether the allegations are unfounded (and thus, to close the case) or whether to proceed with the investigation by conducting in-person interviews.³⁴⁵ The claimant alleges that without performing these additional activities, it would be unable to determine “whether or not the allegations were founded and a SS 8583 report was required to be sent to DOJ.”³⁴⁶

The claimant cites to the California Department of Social Services’ (CDSS) position, as summarized in the Decision and Parameters and Guidelines, to support its argument that prior to actual interviews, it is necessary to first determine whether an in-person investigation is required.³⁴⁷ The claimant alleges that its proposed additional preliminary activities are nearly identical to the activities CDSS stated it performs before determining whether to find the SCAR unfounded and close the case or conduct an in-person investigation.³⁴⁸ The claimant asserts that, similarly, the police department must perform these additional preliminary activities to determine whether a SCAR is founded, unfounded, or inconclusive.³⁴⁹

The Controller denied the claimant’s request because the proposed activities are not identified as reimbursable in the Parameters and Guidelines:

During the audit, the city proposed that it also be allowed to claim additional time for the four activities listed above. At that time, we discussed the matter, at length, with city officials and informed them that these activities are not reimbursable per the parameters and guidelines. We agree that Detectives and other staff perform many activities necessary to complete child abuse investigations. However, not all activities within the investigation process (whether for partial or full initial investigations) are reimbursable, even when they appear reasonably necessary. For example, items 1 and 2 above [detective and records technician to verify if a report was already written] can be described as overlapping internal procedures. Although the department may view these activities as necessary, they do not qualify as preliminary investigative activities and are not mandated. As explained, Section IV.B.3.1 of the program’s parameters and guidelines allow reimbursement of the actual costs incurred to 1) review the initial SCARs, 2)

³⁴⁴ Exhibit A, IRC, filed May 13, 2021, pages 6-7.

³⁴⁵ Exhibit A, IRC, filed May 13, 2021, page 7.

³⁴⁶ Exhibit A, IRC, filed May 13, 2021, pages 6-7.

³⁴⁷ Exhibit A, IRC, filed May 13, 2021, page 7.

³⁴⁸ Exhibit A, IRC, filed May 13, 2021, page 8.

³⁴⁹ Exhibit A, IRC, filed May 13, 2021, page 8.

conduct initial interviews with involved parties, and 3) make a report of the findings of those interviews.³⁵⁰

The Commission finds that the Controller’s reduction of costs based on its finding that reimbursement is not required for these activities is correct as a matter of law.

Whether additional activities beyond those approved in the Test Claim Decision are reasonably necessary to comply with the mandate is a determination that must be made by the Commission when adopting the Decision and Parameters and Guidelines.³⁵¹ The Commission’s regulations define “reasonably necessary activities” as “activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program” and specifies that “Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible.”³⁵² It is up to the claimant or other interested parties to propose the inclusion of reasonably necessary activities, and the proposal “shall be supported by documentary evidence in accordance with section 1187.5 of these regulations.”³⁵³ The Commission’s decision on whether proposed reasonably necessary activities are eligible for reimbursement must be based on substantial evidence in the record.³⁵⁴ The Commission’s parameters and guidelines are regulatory in nature and once adopted, are binding on the parties.³⁵⁵

In this case, the activities proposed by the claimant were *not* requested as reasonably necessary activities during the parameters and guidelines phase, and were not approved as reimbursable by the Commission. The proposed activity to contact the reporting agency or a person with information about the case to determine whether to conduct in-person interviews is *not* the same as what the Commission approved: “conduct initial interviews with parents, victims, suspects, or witnesses, where applicable.” In addition, although the claimant alleges that the proposed activities are consistent with activities performed by CDSS when complying with the test claim statutes, CDSS did not request that the Commission approve reimbursement for any activity. Instead, it urged the Commission to not adopt the parameters and guidelines proposed by the test claimant, and provided comments to clarify the scope of the mandate for all child protective agencies. As summarized by the Commission, the CDSS’ position was as follows:

CDSS urges the Commission to reject claimant’s proposed parameters and guidelines, including the proposed law enforcement RRM, “because the activities

³⁵⁰ Exhibit A, IRC, filed May 13, 2021, page 498 (Final Audit Report).

³⁵¹ Government Code section 17557(a); California Code of Regulations, title 2, section 1183.7(d).

³⁵² California Code of Regulations, title 2, section 1183.7.

³⁵³ California Code of Regulations, title 2, sections 1183.7(d), 1183.8(a), 1183.9(a).

³⁵⁴ Government Code section 17559(b).

³⁵⁵ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

described in it are not related to or required by CANRA.” CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant’s revised proposed parameters and guidelines reach deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA.³⁵⁶

Furthermore, CDSS made clear that many activities required in its Manual of Policies and Procedures are not required by the test claim statutes, but instead are required by the Welfare and Institutions Code.³⁵⁷

Therefore, the Controller’s reduction of costs related to the additional activities proposed by the claimant, which have not been approved by the Commission as reimbursable, is correct as a matter of law.

2. The Controller’s reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant’s police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

As indicated above, the Controller determined based on the documentation provided that the claimant investigated very few of the other agency generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary³⁵⁸ and that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases.³⁵⁹

The claimant alleges that the Controller has erroneously conditioned reimbursement on whether a case file contains a detailed narrative report, a position which the claimant contends is unsupported by the Decision and Parameters and Guidelines and violates due process because the claimant was not given prior notice of such a requirement at or near the time costs were incurred.³⁶⁰ As concluded in the section above, the claimant was not on notice of the contemporaneous source document rule (CSDR) when costs were incurred in fiscal years 1999-2000 through 2011-2012 because the Parameters and Guidelines were not adopted until December 2013.

The Controller, however, is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous source documentation and did not reduce the salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component to \$0. Instead, the Controller exercised its audit authority and found that the

³⁵⁶ Exhibit A, IRC, filed May 13, 2021, page 170 (Decision and Parameters and Guidelines).

³⁵⁷ Exhibit A, IRC, filed May 13, 2021, page 190 (Decision and Parameters and Guidelines).

³⁵⁸ Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

³⁵⁹ Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

³⁶⁰ Exhibit A, IRC, filed May 13, 2021, page 9.

documentation provided by the claimant established that some (about 10 percent) of the other agency-generated SCARs were fully investigated by the police department. Furthermore, the Controller worked with the claimant to determine that partial initial investigation activities were also reimbursable *for the remaining 90 percent of other agency-generated cases*, despite a lack of supporting documentation.³⁶¹

The claimant argues that because the police department's procedures do not require detailed written reports for cases that are deemed unfounded or inconclusive, the fact that the claimant maintained "short form" reports rather than detailed narrative reports for those cases should not preclude reimbursement.³⁶²

As described below, the Commission finds that the Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant's police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller requested and reviewed a sample selection of 148 case files for fiscal years 2008-2009 through 2010-2011.³⁶³ The Controller reviewed each case file and recorded its findings in a detailed spreadsheet, which the claimant submitted with the IRC (claimant's Exhibit C).³⁶⁴ According to the Controller, the case files identified in the spreadsheet typically consisted of the following seven documents and contained the following information:

1. **South Lake Tahoe Police Department 11166 PC Referral Form.** This form was completed by the Police Department; it provided a summary of the case that was referred, using check boxes, with the following information: type of abuse, investigating agency, type of investigation, assigned social worker, case status, and comments...

Most of the referral forms identified that CPS was the investigating agency. Those that did not identify CPS as the investigating agency, stated that an investigation was not necessary. "Type of investigation" refers to the type of investigation performed by CPS. The comments on the referral forms included: inconclusive, unfounded, or closed.

2. **Pre-Disposition Sheet.** This sheet was completed by CPS; it provided general information about a newly opened case, including date, assigned social worker, and to which agency who the case was cross-reported....
3. **Disposition Sheet.** This sheet was completed by CPS. It provided a status of the case after CPS performed a review or investigation. Information on this sheet included date, name of social worker, which agency the social

³⁶¹ Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

³⁶² Exhibit A, IRC, filed May 13, 2021, page 9.

³⁶³ Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

³⁶⁴ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31; Exhibit A, IRC, filed May 13, 2021, pages 60-70.

worker cross-reported to, and the final disposition of the case (no immediate risk, situation stabilized, closed, opened service case, evaluated out)...

4. **Narrative Report.** This was completed by the Police Department; it stated: "See PC 11166 in file," which is the referral form completed by [the Police Department]³⁶⁵ (see item 1 above)....
5. **Person Profile.** This form was completed by the Police Department; it lists the contact information of the suspected child abuser....
6. **CPS Investigative Report.** This report was completed by CPS when the SCAR case was investigated by CPS.
7. **SCAR Form SS 8572.** This form was completed by CPS....³⁶⁶

Based on these documents, the Controller found that for most case files, the South Lake Tahoe Police Department 11166 PC Referral Form either identified CPS as the investigating agency or stated that CPS determined no investigation was necessary.³⁶⁷

The case files also showed that CPS regularly cross-reported SCARs to the Police Department. The Police Department received the CPS referrals and, made notes of the referral in the files, but did not perform an investigation on the referrals received from CPS.³⁶⁸

In contrast, the few case files where the Controller determined that claimant's police department conducted an investigation "contained detailed written narratives of the investigations performed and the interviews conducted" and "identified the officers involved, type of investigative work performed, type of crime committed, whether a follow-up investigation was needed, who was interviewed, date of interviews, and time of interviews."³⁶⁹

The claimant asserts that investigative activities occurred in the unfounded and inconclusive cases even where it was not the claimant's practice to prepare detailed written reports.³⁷⁰

South Lake Tahoe Police Department procedures do not require detailed narrative write ups for cases that were deemed unfounded or inconclusive. The narrative in

³⁶⁵ The Controller's description of the Narrative Report states that Item 1, the South Lake Police Department 11166 PC Referral Form, was completed by CPS, which is incorrect. The description of the 11166 PC Referral Form states that it was completed by the claimant's police department.

³⁶⁶ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

³⁶⁷ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32; Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

³⁶⁸ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

³⁶⁹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32; Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

³⁷⁰ Exhibit A, IRC, filed May 13, 2021, page 9.

the “Comments” section of these reports might simply state, “Inconclusive. Unable to contract/locate family”, or “Case closed by CPS” or “Situation stabilized”. These brief descriptions and the identification of the assigned officer shown in the “Reviewed By” section of the report indicates investigative activities took place in order for the officer to make those assessments and close the case. (see South Lake Tahoe Police Department 11166 PC Referral Form in Exhibit E).

All of the documentation submitted by the claimant with the IRC was previously provided to the Controller during the course of the audit.³⁷¹ Nonetheless, the claimant points to the South Lake Tahoe Police Department 11166 PC Referral Forms in Exhibit E to the IRC to show that reimbursable investigative activities were performed in those cases referred to the police department by other agencies which the police department determined to be either unfounded or inconclusive.³⁷² Exhibit E to the IRC consists of redacted child abuse reports (Form SS 8583 or BCIA 8583) and supporting documents provided to the Controller during the audit.³⁷³ While the redaction and photocopy quality of some of these documents make them difficult to decipher, the records appear to pertain to approximately 20 suspected child abuse cases, with varying degrees of supporting documentation: Some of the cases contain only one document, usually the Form SS 8583, while others contain variations on the seven documents described above (i.e., 11166 PC referral form, pre-disposition sheet, disposition sheet, narrative report, person profile, CPS investigative report, SCAR (Form SS 8572)).³⁷⁴ Notably, however, only six of the cases have the 11166 PC Referral Form cited by the claimant to show an investigation was performed by the claimant’s police department.³⁷⁵ Furthermore, each of these six cases lists CPS as the investigating agency on the referral form, meaning that CPS, *not the police department*, would have performed the investigation necessary to make the determination whether the case was unfounded, substantiated, or inconclusive, and whether to file the Form SS 8583. Exhibit C to the IRC, which consists of a spreadsheet prepared by the Controller during the audit, detailing

³⁷¹ Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

³⁷² Exhibit A, IRC, filed May 13, 2021, page 9.

³⁷³ Exhibit A, IRC, filed May 13, 2021, pages 96-154.

³⁷⁴ Exhibit A, IRC, filed May 13, 2021, pages 96-154. Excluding pages 110 and 111, for which the case numbers are unknown, there appear to be 20 cases.

³⁷⁵ Exhibit A, IRC, filed May 13, 2021, pages 115 (Case Number 0811-0952), 119 (Case Number 0811-0940), 129 (Case Number 0810-1398), 136 (Case Number 0810-1386), 145 (Case Number 0809-2434), 150 (Case Number 0809-2463).

the contents of each case file, includes notes for these six cases,³⁷⁶ which show that all of these cases were closed by CPS, not the police department.³⁷⁷

The test claim statutes require county welfare departments to cross report to the police department any time CPS received a SCAR (Form 8572), even if CPS closed the case as unfounded.³⁷⁸ Under Section IV.B.2.b.2. of the Parameters and Guidelines, county welfare departments shall:

i. Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code [such as a child protective services department],³⁷⁹ and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

Reimbursement is not required for making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."

³⁷⁶ Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn ["Attached hereto as Exhibit C are true and correct copies of the reports from State Controller auditors provided to the City to explain how they determined Child Abuse case eligibility and to determine the percentage of allowable of cases"]), 60-70; Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31 ("During audit fieldwork, we judgmentally selected a non-statistical sample of 148 SCAR case files (32 out of 163 in FY 2008-09; 66 out of 654 in FY 2009-10; and 50 out of 457 in FY 2010-11) to review. We thoroughly reviewed the contents of each file, and recorded our findings in detail in an Excel spreadsheet").

³⁷⁷ Exhibit A, IRC, filed May 13, 2021, page 62 (Case Number 0811-0952, "evaluated out to Washoe County"; Case Number 0811-0940, "Unfounded. Closed by CPS"; Case Number 0810-1398, "Closed by CPS. Evaluated out to family court"; Case Number 0810-1386, "Inconclusive/stabilized. Closed by CPS"; Case Number 0809-2434, "Inconclusive. Closed by CPS"; Case Number 0809-2463, "Unfounded. Closed by CPS").

³⁷⁸ Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 24-25; Penal Code section 11166(h), now subdivision (j), as added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

³⁷⁹ Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 23.

ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under Penal Code section 11166. As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.³⁸⁰

As discussed in the Test Claim Decision, *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 258-260 provides an overview of the Child Abuse and Neglect Reporting Act and states in relevant part:

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).)³⁸¹

Thus, CPS was required to cross-report cases to the police department any time CPS received a SCAR (Form 8572), even if CPS closed the case as unfounded. All six of the cases containing the 11166 PC Referral Form are cases that CPS was required under the test claim statutes to cross-report to the police department, not cases where CPS referred a SCAR to the police department for further investigation.³⁸² In contrast, the other agency-generated cases where the Controller found that a full investigation was completed by the police department all list the police department, not CPS, as the investigating agency.³⁸³

Because these cases were evaluated for inclusion in the sampling of cases for the Complete an Investigation cost component, the Controller had to assess whether the claimant's documentation showed that the police department: (1) reviewed the initial SCAR; (2) conducted initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) made a report of the findings of those interviews, which may be reviewed by a supervisor.³⁸⁴

For this cost component, the reimbursable activity is to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a SS 8583 Report Form to the DOJ. Reimbursable activities are limited to reviewing the SCAR, conducting initial interviews, and writing a report about the interviews that may be reviewed by a supervisor. The documentation maintained in the SCAR case files, as well as the documentation the City references, including the 11166 PC Report Form prepared and maintained by the

³⁸⁰ Exhibit A, IRC, filed May 13, 2021, pages 238-239 (Parameters and Guidelines).

³⁸¹ Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 9.

³⁸² Exhibit A, IRC, filed May 13, 2021, pages 60-70, 96-154.

³⁸³ Exhibit A, IRC, filed May 13, 2021, pages 62-70.

³⁸⁴ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

LEA, the SCAR Form SS 8572, the City's 2015 time studies, and assertions by command staff [that short form reports] are standard LEA practice for these types of cases do not support that the City prepared a written report nor do they support that the LEA conducted initial interviews with parents, victims, suspects, or witnesses, where applicable. Therefore, although it may not be the City's procedure to write a report to document an interview, doing so is a condition for reimbursement under the mandate.³⁸⁵

While the Controller is incorrect in stating that writing a report to document an interview is a condition for reimbursement under the test claim statutes,³⁸⁶ the Controller did *not* in fact condition reimbursement on whether a detailed written narrative report was completed. Rather, the Controller pointed to the presence of detailed written narrative reports to constitute "clear evidence and support" of a *full* initial investigation, meaning that the evidence established that all three reimbursable activities comprising the Conduct an Investigation cost component were completed in those cases: (1) reviewing the initial SCAR; (2) conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) making a report of the findings of those interviews, which may be reviewed by a supervisor.³⁸⁷

In the Decision and Parameters and Guidelines, the Commission acknowledged that where the mandated reporter is not employed by the investigating agency, the investigating agency may need to verify the information contained in the SCAR (Form SS 8572).

[T]he agency maintains an independent and reimbursable duty to investigate in order to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583. *If necessary, the investigating agency may need to verify the information reported on the Form SS 8572.*³⁸⁸

For the 90 percent of other agency-generated SCARs where the Controller determined that the evidence did not support that the police department completed all three reimbursable activities (reviewing the SCAR, conducting initial interviews, and making a report of the findings of those interviews, which may be reviewed by a supervisor), the Controller accepted the claimant's position that "some preliminary activities might have taken place," despite the fact that they were not documented in the case files, and found that certain investigative activities were reimbursable for *all* 2,796 cases in which a full initial investigation was not completed.³⁸⁹

³⁸⁵ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

³⁸⁶ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

³⁸⁷ Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

³⁸⁸ Exhibit A, IRC, filed May 13, 2021, pages 198-199 (Decision and Parameters and Guidelines), emphasis added.

³⁸⁹ Exhibit A, IRC, filed May 13, 2021, pages 483, 498 (Final Audit Report).

We agreed with the city that the review of the initial SCAR is a necessary and reimbursable activity. Not all cases reported by CPS had an initial SCAR documented on file, but the majority did. Therefore, we concluded that it was reasonable to expect a review of the initial SCAR as part of the necessary process to determining whether the case was unfounded. Additionally, the time it took a supervisor to approve closing a case, and the time a records technician spent documenting the case in the system, might be reimbursable as part of an initial investigation.³⁹⁰

The record shows that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to the number of other agency-generated SCARs investigated by the police department as claimed. The Controller reviewed all available documentation provided by the claimant, and determined that the documentation established that some, but not all, of the other agency-generated SCARs were fully investigated by the police department. The Controller also determined that certain partial initial investigation activities were reimbursable, despite the lack of supporting documentation.³⁹¹ The claimant has not satisfied its initial burden of providing evidence that the Controller's reduction to the number of other agency-generated SCARs with a full investigation by the police department, is wrong, arbitrary, or capricious.

Based on this record, the Commission finds that the Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant's police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction of Indirect Costs in Finding 3 Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

In Finding 3, the Controller determined that the claimant overstated its indirect cost rates for the audit period and then applied those overstated rates to overstated salaries.³⁹² The claimant's challenge to Finding 3 is limited to the Controller's determination that two positions – the public safety dispatcher and evidence technician – do not perform any *indirect* job duties and the resulting exclusion of those salaries and benefits from indirect costs.³⁹³ The claimant contends that these job classifications should be allowable as 100 percent indirect labor costs in its Indirect Cost Rate Proposal (ICRP).³⁹⁴

For the reasons below, the Commission finds that the Controller's reduction of indirect costs is correct as a matter of law and its determination that the two positions do not perform indirect duties is not arbitrary, capricious, or entirely lacking in evidentiary support.

³⁹⁰ Exhibit A, IRC, filed May 13, 2021, pages 484 (Final Audit Report).

³⁹¹ Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

³⁹² Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

³⁹³ Exhibit A, IRC, filed May 13, 2021, page 11.

³⁹⁴ Exhibit A, IRC, filed May 13, 2021, page 11.

When an indirect cost rate claimed exceeds 10 percent, the claimant has the option under the Parameters and Guidelines of preparing an ICRP.³⁹⁵ The Parameters and Guidelines require that an ICRP be calculated using one of two methodologies: the one cited below, in which a department's total costs are classified as either direct or indirect, or one in which the department is separated into groups and each group's total costs are classified as either direct or indirect. The parties agree that the claimant calculated the ICRP using the total departmental costs method, described in Section V.B.1. of the Parameters and Guidelines as follows:

The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) ***classifying a department's total costs for the base period as either direct or indirect***; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.³⁹⁶

The Parameters and Guidelines define direct costs within the context of preparing an ICRP by reference to 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B),³⁹⁷ which defines direct costs as “those that can be identified specifically with a particular final cost objective.”³⁹⁸ The Parameters and Guidelines define indirect costs as “costs that are incurred for a common or joint purpose, benefiting more than one program, and are *not directly assignable to a particular department or program* without efforts disproportionate to the result achieved,”³⁹⁹ which closely mirrors the definition in OMB Circular A-87 Attachments A and B: costs “incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.”⁴⁰⁰ A “cost objective” is defined in OMB Circular A-87 Attachments A and B as a “function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.”⁴⁰¹

As the Controller explains:

³⁹⁵ Exhibit A, IRC, filed May 13, 2021, page 248 (Parameters and Guidelines).

³⁹⁶ Exhibit A, IRC, filed May 13, 2021, pages 248-249 (Parameters and Guidelines, Section V.B.1.), emphasis added.

³⁹⁷ Exhibit A, IRC, filed May 13, 2021, page 248 (Parameters and Guidelines).

³⁹⁸ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 186 (Tab 7).

³⁹⁹ Exhibit A, IRC, filed May 13, 2021, pages 247-248 (Parameters and Guidelines), emphasis added.

⁴⁰⁰ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 186 (Tab 7).

⁴⁰¹ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 185 (Tab 7).

The indirect cost rate is typically computed as an arithmetical calculation that allocates expenses between direct and indirect. The pool of expenses (numerator) identified as indirect is then divided by an allocation base (denominator), which in most cases is direct labor. Generally speaking, *direct costs are those which can be identified specifically with particular unit or function* (“cost objective”) and accounted for separately. Indirect costs, on the other hand, are those *costs incurred in support of general business functions and which are not attributable to a specific project or unit*. Both the city’s claimed rates (as shown in its ICRPs) and our audited rates were based on Police Department expenditures as a whole. Therefore, *the cost objective is the entire Police Department and not the ICAN program*. As such, *direct labor includes the overall functions of the Police Department assignable to specific units and functions*; and the calculated indirect cost rates are considered to be department-wide rates.⁴⁰²

Because the claimant chose to calculate its indirect cost rate based on police department expenditures as a whole, the cost objective is the entire police department, and not the ICAN program. Thus, direct costs are those that are specifically identified with a particular unit or function within the police department, and indirect costs are those that are *not* directly assignable to a particular department or program within the police department. “Telephone services, local and long distant [sic] calls, telegrams, postage, messenger, electronic or computer transmittal services and the like,” are examples of indirect costs that benefit the entire police department, and are not linked to any particular unit in the department.⁴⁰³

Here, the parties dispute whether the public safety dispatcher and evidence technician positions perform duties that benefit the entire police department, allowing their salaries to be categorized as indirect; or whether they perform duties that directly benefit a particular department or program within the police department, making their salaries a direct cost.

The claimant asserts that it included the public safety dispatcher and evidence technician positions as indirect costs because “those positions provided benefit and support to the entire department” and the indirect cost rates “were not calculated based on a specific program.”⁴⁰⁴ The claimant states that the dispatchers serve “as a calling center or central reception function for the entire body of officers and are necessary support of the general business function of the department”; and the evidence technician “must collect, store, maintain and process evidence from child abuse cases, as well as from all other cases that the police department responds to.”⁴⁰⁵ The claimant also asserts that the public safety dispatcher position serves as the department’s receptionists. The claimant provided a listing of common clerical duties obtained from

⁴⁰² Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

⁴⁰³ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41.

⁴⁰⁴ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 1-2.

⁴⁰⁵ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2, 4.

Indeed.com's website to show that the duties performed by the public safety dispatcher positions are clerical functions.⁴⁰⁶

However, despite these assertions, the claimant repeatedly defines the "cost objective" as the *ICAN* program, and not the police department as a whole.⁴⁰⁷ As the Controller noted in the audit report, the claimant's erroneous assumption that the cost objective is the *ICAN* program, and not the entire police department, leads the claimant to misapprehend the manner in which direct and indirect costs are allocated.⁴⁰⁸

The city interchangeably identifies the cost objective as the "child abuse program" and "child abuse investigations." The city argues that the Public Safety Dispatcher and the Evidence Technician classifications benefit more than one cost objective (child abuse investigation, missing persons, theft, DUI, etc.). For this reason, the city concludes that these positions are indirect. We disagree.⁴⁰⁹

This can be seen throughout the record. The claimant's IRC argues that neither position contributes to direct costs of the *ICAN* program because they do not directly perform any of the *ICAN* program activities and their costs cannot be specifically identified as part of the *ICAN* program.⁴¹⁰ In support, the claimant cites to a number of sources, including:

- Declaration of Patrol Lieutenant Shannon Laney, which states: "Dispatch staff/division is the communications center for the entire police department and provide necessary support to the officers working on child abuse investigations *as well as to the entire sworn staff for all departmental matters*. Dispatch staff take all calls from the public, assign and track the case, and monitor officers in the field. The officer would not be able to *obtain the call for assistance or initiate the case* without the efforts of the dispatch staff."⁴¹¹
- Public Safety Dispatcher Job Description, which states that a dispatcher "receives and processes incoming 911 calls, non-emergency calls, and voice radio calls; secures and records information as to the exact location and circumstances, and uses radio *to dispatch necessary units, including police, fire department, and*

⁴⁰⁶ Exhibit A, IRC, filed May 13, 2021, page 11.

⁴⁰⁷ Exhibit A, IRC, filed May 13, 2021, pages 12 ("the overall police department as well as the cost objective/mandate program"), 13 ("neither the dispatcher nor the evidence staff positions are the direct costs of this programs or 'Cost objective'"), 505 ("The cost objective in this claim for the Child Abuse program or project is the costs of the Child Abuse Investigative program").

⁴⁰⁸ Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

⁴⁰⁹ Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

⁴¹⁰ Exhibit A, IRC, filed May 13, 2021, page 13.

⁴¹¹ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4 (citing Exhibit A, IRC, filed May 13, 2021, page 17 [Declaration of Lieutenant Shannon Laney]), emphasis added.

ambulance personnel and equipment as well as other resources that may be necessary” and “Logs all police, fire, and medical *calls for service*.”⁴¹²

- Claimant’s Audit Response, which states: “Dispatch staff is a support/clerical division - functioning primarily as the receptionists for all the sworn staff of the department and they benefit more than one “cost-objective.” *They answer for all types of calls for service*.”⁴¹³
- Claimant’s Audit Response, which states that these two positions provide indirect support to not “only one cost objective – but a multitude of programs including Drunk Driving, Domestic Violence, Homicides, Sexual Assaults, Missing Persons, etc.”⁴¹⁴

However, pursuant to the Parameters and Guidelines, for job duties performed by the public safety dispatcher and evidence technician to be classified as indirect, they must benefit the general business functions of the entire police department, and not be attributable to any specific program within the department. Thus, the claimant is incorrect in concluding that because the duties performed by the public safety dispatcher and evidence technician positions serve more than one specific program within the department, they are necessarily indirect in nature. Again, under the Parameters and Guidelines, because the police department is the applicable cost objective, direct duties are those which are “specifically identified with a particular unit or function” and “benefited the direct functions of the police department,” regardless of whether they provide a support function like clerical or receptionist duties.⁴¹⁵

The Commission finds that the Controller correctly interpreted the Parameters and Guidelines when determining the issue. The Controller found that the public safety dispatcher and evidence technician classifications perform duties that can be specifically identified with a particular unit or function within the police department, and do not perform general business functions that benefit the entire police department.⁴¹⁶ As the Controller points out:

Employees in the Public Safety Dispatcher classification may serve as receptionists; however, *they do not provide receptionist services to the entire Police Department. Employees in the Public Safety Dispatcher classification*

⁴¹² Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 2 (referencing Exhibit A, IRC, filed May 13, 2021, page 252 [Exhibit G]), emphasis added.

⁴¹³ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 3 (citing Exhibit A, IRC, filed May 13, 2021, page 505 [Final Audit Report]), emphasis added.

⁴¹⁴ Exhibit A, IRC, filed May 13, 2021, page 505 (Final Audit Report).

⁴¹⁵ Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report).

⁴¹⁶ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 42; Exhibit A, IRC, filed May 13, 2021, page 508 (Final Audit Report).

serve as receptionists that benefit specific units within the Police Department.
Therefore, we believe that this classification should be classified as direct.⁴¹⁷

The Commission further finds that the Controller's determination and audit decision to exclude these positions from the ICRP is not arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, the general inquiry is limited to whether the Controller adequately considered all relevant factors, and has demonstrated a rational connection between those factors and the decisions made. In addition, the Commission's review of the Controller's audit decisions is limited, out of deference to the agency's authority and presumed expertise: The Commission may not reweigh the evidence or substitute its judgement for that of the Controller.⁴¹⁸

Here, the claimant categorized 21 positions within the police department as performing 100 percent direct duties, 13 of which the Controller accepted, six of which the Controller determined performed varying combinations of direct and indirect duties, and two of which (the public safety dispatcher and evidence technician positions) the Controller determined did not perform any indirect duties.⁴¹⁹ In reaching this conclusion, the Controller "analyzed the representative duties listed in the city's duty statements, held multiple discussions with city officials, and considered their input to determine a reasonable allocation."⁴²⁰

The claimant's own statements and supporting documentation support the Controller's determination. They show that the duties performed by the public safety dispatcher and evidence technician benefited the direct functions of the police department, namely sworn staff responding to calls for service, and not its general business functions. The claimant describes the dispatcher position as follows:

The dispatcher is the integral communication link between the public and the officers. The public is not calling to obtain service from a dispatcher - they are calling to contact and obtain service from other members of its staff, typically its sworn staff. Therefore, *the dispatchers service [sic] as a calling center or central reception function for the entire body of officers* and are necessary support of the general business function of the department.⁴²¹

The declaration of Lieutenant Laney describes dispatch staff as providing necessary support "to the entire sworn staff for all departmental matters" so that the police officers can "obtain the call for assistance or initiate the case."⁴²² According to the job description, the public safety dispatcher's duties include receiving and processing both emergency and non-emergency calls;

⁴¹⁷ Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41, emphasis added.

⁴¹⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁴¹⁹ Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

⁴²⁰ Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

⁴²¹ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2-3, emphasis added.

⁴²² Exhibit A, IRC, filed May 13, 2021, page 17 (Declaration of Lieutenant Shannon Laney).

using radio to dispatch police, fire department, and ambulance personnel; and logging calls for police, fire, and medical service.⁴²³ In regard to the evidence technician, the claimant asserts that employees in the classification “must collect, store, maintain and process evidence from child abuse cases, as well as from *all other cases that the police department responds to.*”⁴²⁴

The claimant nevertheless asserts that the Controller incorrectly limited indirect costs to administrative or clerical duties.⁴²⁵ In reviewing eight of the police department positions that the claimant initially categorized as performing 100 percent indirect duties, the Controller concluded as follows:

Of the eight classifications, we determined that six performed a combination of both direct and indirect duties to different extents.

*The duties that we identified as indirect were either administrative or clerical in nature. The duties that we identified as direct were readily assignable to a specific function and benefited the direct functions of the police department. The city is not contesting our assessment of these six classifications. Rather, the city is contesting the two classifications that we determined do not perform any indirect duties and are therefore 0% indirect: Public Safety Dispatcher and Evidence Technician. The respective duty statements do not identify any duties that are administrative or clerical in nature.*⁴²⁶

However, the Controller is not, as the claimant argues, restricting allowable indirect costs to administrative and clerical duties. In fact, as the claimant points out, non-clerical positions, including the information services manager and the information services technicians, “were claimed and were correctly allowed for inclusion in the ICRP/Overhead rate by the SCO even though they did not provide ‘administrative or clerical’ functions.”⁴²⁷ Instead, the Controller used administrative and clerical duties as valid examples of allowable indirect costs to distinguish the six classifications where it found some percentage of the duties performed were indirect from the two at issue, where it found that none of the duties performed were indirect in nature.

Nor is the Controller stating that the public safety dispatcher and evidence technician never perform administrative or clerical duties. The Controller agrees with the claimant that the public safety dispatcher *does* work as a receptionist.⁴²⁸ The important distinction, however, is that public safety dispatchers “do not provide receptionist services to the entire Police Department.

⁴²³ Exhibit A, IRC, filed May 13, 2021, page 252 (Exhibit G).

⁴²⁴ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4, emphasis added.

⁴²⁵ Exhibit A, IRC, filed May 13, 2021, page 12.

⁴²⁶ Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

⁴²⁷ Exhibit A, IRC, filed May 13, 2021, page 12.

⁴²⁸ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41.

Employees in the Public Safety Dispatcher classification serve as receptionists that benefit *specific units within the Police Department.*”⁴²⁹

Here, the Controller based its determination that the public safety dispatcher and evidence technician positions did not perform any indirect duties on “discussions with staff as well as on actual duty statements” and by “work[ing] extensively with both Police Department and city staff” to perform an analysis.⁴³⁰ The record shows that the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to indirect costs as claimed.

The claimant has not shown otherwise. By contrast, the claimant’s factual assertions and supporting documentation show that the job duties performed by the public safety dispatcher and evidence technician positions benefit the direct functions of the police department by providing necessary support to the department’s sworn staff “in the commission of law enforcement duties.”⁴³¹ These direct duties are unlike “telephone services, local and long distant [sic] calls, telegrams, postage, messenger, electronic or computer transmittal services and the like,” which are examples of indirect costs that benefit the entire police department, and are not linked to any particular unit in the department.⁴³²

The additional documentation submitted by the claimant with the IRC⁴³³ does not demonstrate that the Controller erred in concluding that the public safety dispatcher and evidence technicians perform duties that are direct in nature because they are specifically identified with a particular unit or function within the police department. Nor does the additional documentation submitted with the claimant’s comments on the Draft Proposed Decision demonstrate that the Controller erred in its decision.⁴³⁴ These documents include audit reports issued by the Controller to other

⁴²⁹ Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41, emphasis added.

⁴³⁰ Exhibit A, IRC, filed May 13, 2021, page 508 (Final Audit Report).

⁴³¹ Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 11 (Exhibit A).

⁴³² Exhibit B, Controller’s Late Comments on the IRC, filed February 16, 2022, page 41.

⁴³³ The claimant submitted the following documentation with Exhibit A, IRC, filed May 13, 2021: job descriptions for the Public Safety Dispatcher and Property/Evidence Technician positions (pages 251-256 [Exhibit G]); a list of “common clerical duties” from the website Indeed.com (pages 257-261 [Exhibit H]); excerpts from the Controller’s claiming instructions manual (pages 262-282 [Exhibit I]); and federal OMB guidance (pages 282-428 [Exhibit J]).

⁴³⁴ The claimant submitted the following documentation with Exhibit E, Claimant’s Late Comments on the Draft Proposed Decision, filed October 4, 2022: emails between the parties pertaining to the audit (pages 9-57 [Exhibit A]); audit reports from other local governments, where it contends that the Controller allowed ICRPs from “other similar audits” (pages 58-263 [Exhibit B]); claimant’s police department organizational chart and the public safety dispatcher job description, and job descriptions for certain dispatcher classifications for the cities of Fresno and Rialto (pages 264-274 [Exhibit C]); and claimant’s other law enforcement-related state

local government entities that have no bearing on the matter at hand, reimbursement claims submitted by the claimant in other matters, and job postings from other jurisdictions.⁴³⁵ Emails between the claimant and its claim representative are similarly irrelevant. The emails between the parties do not show anything different from what is already contained in the record: that the parties disagree whether positions that provide necessary support to sworn staff in the commission of law enforcement duties constitute indirect costs.⁴³⁶

The claimant has not satisfied its initial burden of providing evidence that the Controller's determination, that the public safety dispatcher and evidence technician positions do not perform indirect duties, is wrong, arbitrary, or capricious. Absent evidence from the claimant that the Controller acted arbitrarily, capriciously, or entirely without evidentiary support in making those factual determinations, the Commission is prohibited from disturbing the Controller's decision on the issue.

Accordingly, the Commission finds that the Controller's reduction of indirect costs in Finding 3 is correct as a matter of law and, based on this record, is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRC was timely filed.

The Commission concludes:

- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the exclusion of 10 suspected child abuse reports (SCARs) received by the claimant's police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the reduction to the number of suspected child abuse reports (SCARs) referred to the claimant's police department by other agencies, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction of indirect costs in Finding 3 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this IRC.

mandated reimbursement claims, which it asserts shows that all of its law enforcement claims use the same departmental ICRP rate of 93.4 percent (pages 275-313 [Exhibit D]).

⁴³⁵ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 58-263 (Exhibit B), 275-313 (Exhibit D).

⁴³⁶ Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 9-57 [Exhibit A].

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.


On November 16, 2022, I served the:

- **Proposed Decision issued November 16, 2022**

Interagency Child Abuse and Neglect Investigation Reports (ICAN), 20-0022-I-02
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7),
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,
Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes
1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997,
Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000,
Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number
29);² “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005,
2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012
City of South Lake Tahoe, Claimant

By making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 16, 2022 at Sacramento, California.



Jill L. Magee
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¹ Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

² The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/10/22

Claim Number: 20-0022-I-02

Matter: Interagency Child Abuse and Neglect Reports (ICAN)

Claimant: City of South Lake Tahoe

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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