

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT STAFF ANALYSIS

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)

Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)

Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610

(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed
June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and
Emergency regulations effective July 1, 1998 [Register 98, No. 26],
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students

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

09-4282-I-05

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

Overview

This is an incorrect reduction claim filed by the County of Santa Clara regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in fiscal years 2003-2004 through 2005-2006, in the approximate amount of \$8.6 million to provide outpatient mental health rehabilitation services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

The *Handicapped and Disabled Students* program was enacted by the Legislature to implement federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

The State Controller's Office contends that outpatient rehabilitation services are not required by the underlying regulations as a service to be provided to seriously emotionally disturbed pupils, and that providing outpatient rehabilitation services is not identified as a reimbursable activity in the parameters and guidelines. Thus, the State Controller's Office argues that outpatient rehabilitation costs are not reimbursable and that its reduction to the County's reimbursement claims is correct. The Controller's Office also contends that the County provided socialization

and vocational services to pupils as part of the rehabilitation services, which are not reimbursable under the parameters and guidelines.

The County disagrees with the State Controller's Office. The County seeks a determination from the Commission pursuant to Government Code section 17551, subdivision (d), that the State Controller's Office incorrectly reduced the claim, and requests that the Controller reinstate the \$8.6 million reduced for fiscal years 2003-2004 through 2005-2006.

Procedural History

The County filed reimbursement claims for fiscal years 2003-2004 through 2005-2006 with the State Controller's Office from 2005 through 2007. On June 30, 2009, the State Controller's Office issued a final audit report on these reimbursement claims, reducing all costs claimed for rehabilitation services. On January 15, 2010, the County filed a request for reconsideration of the final audit report. On March 10, 2010, the Controller's Office denied the request for reconsideration.

On April 12, 2010, the County filed this incorrect reduction claim, and requested that the Commission expedite this matter. The claim was amended on May 20, 2010. The County's claim was deemed complete and issued to the State Controller's Office for comment on June 8, 2010. Commission staff did not expedite this incorrect reduction claim for hearing. The Controller's Office has not filed comments on this incorrect reduction claim.

When the County's incorrect reduction claim was not expedited by the Commission, the County, on July 7, 2010, filed a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 in Sacramento County Superior Court to challenge reductions made by the State Controller's Office in the amount of \$8,658,336. On November 18, 2010, the court sustained demurrers filed by the Commission and the State Controller's Office on the ground that the County did not exhaust its administrative remedies by resolving this incorrect reduction claim with the Commission. The County subsequently requested that the Commission expedite its claim. When the request was denied, the County filed an amended petition for writ of mandate and complaint for declaratory relief in December 2010.

The parties have since come to an agreement whereby the Commission will hear the County's incorrect reduction claim at its hearing in May 2011, and the County's amended complaint was dismissed without prejudice.

This item is scheduled for the May 26, 2011 Commission hearing.

Position of the Parties

State Controller's Office

The State Controller's Office issued its final audit report on June 30, 2009, reducing the County's reimbursement claims for costs incurred to provide outpatient rehabilitation services to seriously emotionally disturbed pupils. (Audit Finding 1.)¹

The State Controller's Office believes that it properly reduced the claims for outpatient rehabilitation services for the following reasons:

¹ The Final Audit Report is in Exhibit A to the Incorrect Reduction Claim, on pages 50-121.

- The program’s parameters and guidelines do not identify outpatient rehabilitation services as an eligible service.
- Outpatient rehabilitation services are not included in the underlying regulations (Title 2, section 60020, subd. (i)). As noted in the Commission’s decision on reconsideration, a county argued that outpatient rehabilitation services, medication monitoring, and crisis intervention services should be included in the parameters and guidelines. The Commission “refused” to include outpatient rehabilitation services and crisis intervention services, including only medication monitoring in the parameters and guidelines. If the rehabilitation definition was adopted by the Commission, outpatient rehabilitation services would be eligible for reimbursement.
- The outpatient rehabilitation services put forth by the County are not consistent with the day care habilitative (rehabilitation) services. Day care habilitative (rehabilitation) services do not include vocational services or socialization services, as these are separate and distinct services. In contrast, outpatient rehabilitation services is defined by federal and state regulations to include elements of vocational services and socialization services. Furthermore, the County’s Clinical Record Documentation Manual for Outpatient Mental Health Services defines rehabilitation services to include medication education and compliance, grooming and personal hygiene skills, meal preparation skills, money management, leisure skills, social skills, developing and maintaining a support system, maintaining current housing situation. Vocational and socialization services are not reimbursable.
- The rehabilitation services provided by the County are also provided under the Wraparound program, which use non-federal Aid of Families with Dependent Children-Foster Care (AFDC-FC). In claiming rehabilitation services provided by the Wraparound program, the County did not identify any associated AFDC-FC revenues to offset the costs claimed. The Controller did not pursue this issue further since outpatient rehabilitation services are excluded from reimbursement under the mandated cost program.

On March 10, 2010, the State Controller’s Office denied a request by the County to reconsider its audit position, and many of the same points identified in the audit report are raised in the Controller’s letter. The State Controller’s Office further explained the following:

On May 26, 2005, the CSM issued a statement of decision on the reconsideration of the HDS program finding that rehabilitation services, as defined by Title 9, CCR, section 1810.243, are not reimbursable. More recently, the CSM responded to the Department of Mental Health’s (DMH’s) request for clarification on February 27, 2009, stating that rehabilitation services, as defined by Title 9, CCR, section 1810.243, are not reimbursable. The CSM stated that the test claim regulations do not require or mandate counties to perform activities defined by section 1810.243.

Contrary to the county’s position, we believe that rehabilitation services claimed by the county are separate and distinct from day rehabilitation services by definition and in terms of service delivery. The definition of each rehabilitation service in the county’s Clinical Record Documentation Manual for Outpatient Mental Health Services is consistent with the service definitions in Title 9, CCR.

The way in which these services were reported on the county's cost report submitted to DMH and for Medi-Cal Federal Financing Participation funds reimbursement is also consistent with the definition in Title 9, CCR. The county's rehabilitation services definition is consistent with section 1810.243, while the day rehabilitation service definition is consistent with section 1810.212.

...

The State Controller's Office further states that the Department of Mental Health participated in a conference call in August 2009 to discuss the issue of "adding" rehabilitation services to the regulations that form the basis of the state-mandated program.

Claimant's Position

The County contends that the State Controller's Office incorrectly reduced the costs for providing outpatient rehabilitation services to seriously emotionally disturbed pupils. The County asserts that:

- The parameters and guidelines specifically identify "day rehabilitation" as a reimbursable mental health service.
- The Department of Mental Health's exclusion of vocational and socialization services from the definition of "mental health services" under the program is not material, since the County's rehabilitation services do not consist of vocational and socialization services.
- Contrary to the Controller's assertions, the 2005 statement of decision does not define mental health rehabilitation services as non-reimbursable.
- Whether the County's rehabilitation services fall within the broad Medi-Cal definition of "rehabilitation" has no bearing on whether they are covered by section 60020 of the test claim regulations.
- The Department of Mental Health, in a letter dated February 19, 2009, to the Commission's Chief Legal Counsel, has confirmed that mental health rehabilitation services fall within section 60200 of its Title 2 regulations.
- Mental health rehabilitative services are addressed, and found reimbursable, in the Commission's Statements of Decision.
- If section 60020 of the Title 2 regulations excluded mental health rehabilitation services, it would be inconsistent with federal law and the Government Code, and would therefore be invalid.

The County supports its case with a declaration from a mental health service provider (Laura Champion, Executive Director of EMQ Families First). The County has also filed an expert report from Dr. Margaret Rea, an independent psychologist and researcher at the University of California, Davis. Dr. Rea reviewed the patient files and the descriptions of care provided by the County under the label "rehabilitation services" indicated in the progress notes for each session with the child, and the language of the regulations implementing the *Handicapped and Disabled Students* program.

Commission Responsibilities

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

Government Code Section 17551, subdivision (d), requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the State Controller's Office and request that the costs in the claim be reinstated.

Analysis

The *Handicapped and Disabled Students* program has a long and complicated history with several sets of parameters and guidelines that apply to different fiscal years, which is fully summarized in the analysis.

For the reasons provided below, staff finds that the State Controller's Office incorrectly reduced the County's reimbursement claims.

- 1. Providing outpatient rehabilitation services required by a pupil's IEP is a reimbursable activity and, thus, the State Controller's Office incorrectly reduced the costs incurred by the claimant for the provision of these services in fiscal years 2003-2004 through 2005-2006.**

The pleadings identify two issues in dispute. The first issue is whether providing outpatient rehabilitation services are a reimbursable component of the mental health services identified in the regulations and the parameters and guidelines. The second issue is whether the County provided "socialization and vocational services" as part of the mental health treatment to these pupils, which the Commission determined were deleted from the regulatory definition of "mental health treatment services" in 1998.²

Section 60020 of the regulations implementing the *Handicapped and Disabled Students* program governs the provision of psychotherapy and other mental health treatment services and was determined to be reimbursable by the Commission. The plain language of the activities required by section 60020 was incorporated into the parameters and guidelines and, thus, that language must be interpreted to determine this claim.

The parameters and guidelines for the original test claim, *Handicapped and Disabled Students* (CSM 4282), address the costs incurred for psychotherapy and other mental health treatment services through June 30, 2004 and, thus, the interpretation of section 60020 in the original parameters and guidelines applies to this claim for the fiscal year 2003-2004 costs claimed by the

² This analysis does not address allegations that the County's rehabilitation services are also provided under the Wraparound program, which uses non-federal AFDC-FC funding or that the County failed to identify any associated AFDC-FC revenues to offset costs for the *Handicapped and Disabled Students* program in its reimbursement claims because the Controller's reductions were not based on these issues.

County. However, the 90/10 cost sharing formula identified in the parameters and guidelines no longer applies for the mental health services provided under section 60020 of the regulations. Any reimbursement approved for costs incurred under section 60020 is 100 percent reimbursable.³

The costs incurred for psychotherapy and other mental health treatment services under section 60020 for fiscal years 2004-2005 and 2005-2006 are governed by the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and require the interpretation of section 60020 as amended in 1998.

- a) Costs incurred in fiscal year 2003-2004 are reimbursable under the mental health services identified in the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282).

The parameters and guidelines for the original test claim, *Handicapped and Disabled Students* (CSM 4282), applies to this claim for the fiscal year 2003-2004 costs claimed by the County. The original parameters and guidelines authorize reimbursement for psychotherapy and other mental health treatment services as follows:

2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):
 - a. Individual therapy;
 - b. Collateral therapy and contacts;
 - c. Group therapy;
 - d. Day treatment; and
 - e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.

Section 60020 of the regulations, as originally adopted, defined "psychotherapy and other mental health treatment services" as "those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code [Department of Mental Health regulations], and provided by a local mental health program directly or by contract."

Section 542 of the Department of Mental Health's title 9 regulations defined "day services" as those "services that are designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services." Two of the "day services" are defined in section 542 are:

- Day care intensive services are "services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization for patients who need active psychiatric treatment for acute mental, emotional, or behavioral disorders and who are expected, after receiving these services, to be referred to a lower level of treatment, or maintain the ability to live independently or in a supervised residential facility."

³ Statutes 2002, chapter 1167 (AB 2781).

- Day care habilitative services are “services designed and staffed to provide counseling and rehabilitation to maintain or restore personal independence at the best possible functional level for the patient with chronic psychiatric impairments who may live independently, semi-independently, or in a supervised residential facility which does not provide this service.”

The plain language definitions of “day care intensive services” and “day care habilitative services” in section 542 are designed to provide an alternative to 24-hour residential counseling (i.e., outpatient care), and include rehabilitation. “Day care intensive services” are “services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization.” “Day care habilitative services” provide “counseling and rehabilitation to maintain or restore personal independence at the best possible functional level.” The word, “day” in the phrase indicates that the services do not consist of 24-hour residential treatment.

Staff finds that the costs incurred by the County in fiscal year 2003-2004 for “outpatient rehabilitation services” fall within the plain meaning of “day care intensive services” and “day care habilitative services.” The outpatient rehabilitation services provided by the County were for acute mental, emotional, or behavioral disorders designed to assist the child to better manage the skills necessary to function independently in an educational environment.

This conclusion is supported by the report prepared by the County’s expert witness, Dr. Rea, who reviewed the pupil files whose treatment costs were claimed by the County. Dr. Rea is of the professional opinion that all of the services provided by the County fall within the definitions of “day care intensive services” and “day care habilitative services” and were designed to assist the child to better manage psychiatric symptoms so that the child could function independently in school. Her report states the following:

23. Based on the definitions described in the regulations, and based on my experience in the mental health field and my familiarity with the terminology used to describe various modes of treatment, “day care habilitative services” is, like “day rehabilitation,” a broad service category that would include all of the therapeutic interventions described in the progress notes. Most certainly, the files I reviewed described interventions that were aimed at restoring functioning at the best possible level for the children involved. The goals of all the interventions described were to assist the children to better manage their psychiatric symptoms so that they could function in the least restrictive environment in school as well as at home. The goals of the interventions were just as described in the above definition – they were designed to provide counseling and rehabilitation so the child could develop more adaptive coping skills to function independently or at least at the best possible level given their chronic psychiatric diagnoses.

The declaration filed by the County from Laura Champion, Executive Director of EMQ Families First, is consistent with Dr. Rea’s report.⁴ Her declaration states in relevant part the following:

Mental health rehabilitation services are targeted, one-on-one mental health interventions incorporating evidence-based practices as Cognitive Behavioral

⁴ Incorrect reduction claim, page 176.

Treatment and Positive Behavioral Intervention and Support. Mental health rehabilitation services are provided in the child's usual environments – typically at home, in school, and in the child's community – consistent with the therapeutic needs of the child. Because mental health rehabilitation services are provided on an individual basis in a variety of settings, they can be tailored to meet the child's unique needs.

¶¶

All of the children receiving mental health rehabilitation services from EMQFF have a demonstrable need for these services documented in their IEPs. Each child's IEP team has determined that the child is at imminent risk of residential placement or other institutional placement. . . . For each of these children, EMQFF was selected to provide mental health rehabilitation services as a cost-effective alternative to the more expensive and restrictive option of out-of-home residential placement.

Accordingly, staff finds that the "outpatient rehabilitation services" provided by the County in fiscal year 2003-2004 fall within the meaning of "day care intensive services" and "day care habilitative services" as defined in section 60020 as originally adopted, and included in the parameters and guidelines for *Handicapped and Disabled Students* (4282) as a reimbursable activity.

- b) Costs incurred in fiscal years 2004-2005 and 2005-2006 are reimbursable under the mental health services identified in the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

The costs incurred for mental health treatment services for fiscal years 2004-2005 and 2005-2006 are governed by the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). The parameters and guidelines authorize reimbursement for the following mental health treatment services pursuant to section 60020 of the regulations as amended by the Departments of Mental Health and Education in 1998:

- 4) Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).) [beginning July 1, 2001.]
- 5) *Beginning July 1, 2004*, provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

Section 60020, as amended in 1998, provides the following:

"Mental health services" means mental health assessment and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and

case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.

In relevant part, the former language requiring “day care intensive services” and “day care habilitative services” was changed to “intensive day treatment” and “day rehabilitation services.” In addition, the amendment to section 60020 deleted the definitions provided by section 542 of the Department of Mental Health’s Title 9 regulations, including the specific definitions of these services.

Although the amendment created a slight wording change with these services, the Commission found that intensive day treatment and day rehabilitation services were not new activities required by the 1998 amendments, but continued to be mandated by section 60020 when required by a pupil’s IEP.

Thus, the Commission treated “intensive day treatment” the same as “day care intensive services” and treated day rehabilitation services” the same as “day care habilitative services.” “Habilitative” services under former section 60020 were expressly defined to include “rehabilitation,” the same term used in the 1998 regulations. Both the original and amended versions of section 60020 specify that the intensive treatment and rehabilitative services are designed to be provided during the “day” as opposed to 24-hour residential care. Moreover, there is no indication in the final statement of reasons supporting the 1998 regulatory amendment to suggest that the purpose of the amendment was to change the requirement imposed on counties to provide rehabilitation services.

Thus, “intensive day treatment” and “day rehabilitation services” continue to include “outpatient rehabilitation services” designed to provide an alternative to 24 hour residential care for acute mental, emotional, or behavioral disorders that includes counseling and rehabilitation. The services are designed to assist the child to better manage the skills necessary to function independently in an educational environment.

Broad interpretation of the phrases “intensive day treatment” and “day rehabilitation services” is supported by the federal and state statutes that govern the *Handicapped and Disabled Students* program. Under the rules of interpretation, the regulatory terms of “intensive day treatment” and “day rehabilitation services” must be construed in the context of the entire statutory and regulatory scheme in which they are a part, so that every provision of the regulation may be harmonized and have effect. Moreover, the requirements of the regulation are presumed to be consistent with the governing statutes, and do not alter, amend, or impair the scope of the governing statutes.

Under the federal IDEA, each public agency must provide special education and related services to a child in accordance with the IEP developed for that child. Section 300.34 of the Code of Federal Regulations defines “related services” to specifically include “psychological services” and “counseling services.” “Psychological services” broadly includes “planning and managing a program of psychological services, including psychological counseling for children and parents, and assisting in developing positive behavioral intervention strategies.” “Counseling services” means “services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.” The list of related services is not exhaustive and must be interpreted broadly. Related services may include other developmental, corrective, or supportive services as long as the service is required to assist a disabled child to benefit from special education.

Thus, under federal law, outpatient rehabilitation services are “related services” required to be provided when identified in a pupil’s IEP for purposes of the pupil’s education.

Section 60020 is presumed to be consistent with the governing law of the federal IDEA. There is nothing in the law to support the conclusion that outpatient rehabilitation services are not included as a service required to be provided under the *Handicapped and Disabled Students* program. Accordingly, staff finds that “outpatient rehabilitation services” are included within the regulatory terms of “day rehabilitation” and “intensive day treatment.”

Finally, the evidence in the record supports the finding that the services provided by the County falls under “day rehabilitation” and “intensive day treatment” as provided in the 1998 amendment to section 60020. The County’s expert witness, Dr. Rea, states that, based on her experience in the mental health field and her familiarity with the terminology used to describe various modes of treatment, ““day rehabilitation” is a broad treatment category that would include any interventions aimed at restoring a child’s previous level of functioning or helping a child develop an age-appropriate level of functioning that would maximize their ability to meet appropriate educational goals.” All of the services described in the patients’ files that she reviewed fall within the category of “day rehabilitation.” She also states that some of the services provided qualify as “intensive day treatment.”

Accordingly, staff finds that the “outpatient rehabilitation services” provided by the County in fiscal years 2004-2005 and 2005-2006 fall within the meaning of “intensive day treatment” and “day rehabilitation services” as defined by the plain language of section 60020 as amended in 1998, and included in the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) as a reimbursable activity.

- c) The County’s services were not designed to provide socialization or vocational services, but fall within the broad definitions of mental health services required by section 60020.

The State Controller’s Office argues that the rehabilitation services provided by the County include vocational and socialization services, which are not reimbursable. The Controller’s audit report contends the following:

Day care habilitative (rehabilitation) services do not include vocational services or socialization services. But the County’s Clinical Record Documentation Manual for Outpatient Mental Health Services defines rehabilitation services to include medication education and compliance, grooming and personal hygiene skills, meal preparation skills, money management, leisure skills, social skills, developing and maintaining a support system, maintaining current housing situation.

The Controller’s Office is correct that section 60020 was amended in 1998 and as part of the amendment, the reference to section 542 and the plain language requiring socialization and vocational services was deleted. “Socialization skills” were defined in section 542 as “services designed to provide life-enrichment and social skill development for individuals who would otherwise remain withdrawn and isolated.” “Vocalization skills” was defined as “services designed to encourage and facilitate individual motivation and focus upon realistic and obtainable vocational goals.” The Commission found that these services, as referenced in section 542, were no longer mandated.

However, the evidence in the record does not support the conclusion that the rehabilitation treatment services provided by the County were designed for socialization and vocational purposes. Both Dr. Rea's report and the County's narrative on its incorrect reduction claim acknowledge that some of the specific interventions described in the pupils' files may develop a child's socialization or vocational skills. But the primary goal of the interventions was not to develop social or vocational skills, but to equip the children in the least restrictive environment with the skills necessary to function independently in an educational environment – as described above, treatment specifically identified in section 60020.

Nor is there evidence that the County's Manual for Outpatient Mental Health Services applies to the treatment provided under the *Handicapped and Disabled Students* program. The County states that

...the Manual's description pertains to general adult and child mental health services and is not specific to the AB 3632 program. Nor has the County ever represented that the Manual describes the scope of services offered under the AB 3632 program, or any other specific program."⁵

Staff finds that the County's Manual for Outpatient Mental Health Services is not relevant to this claim.

Thus, based on the plain language of section 60020 of the regulations, the State Controller's Office incorrectly reduced the County's claim for outpatient rehabilitation services in fiscal years 2003-2004, 2004-2005, and 2005-2006.

2. The footnote in the statement of decision on reconsideration denying reimbursement for providing mental health treatment services based on section 1810.243 of the Department of Mental Health's Title 9 regulations is not relevant to this incorrect reduction claim.

The State Controller's Office contends that outpatient rehabilitation services are not reimbursable and not included in the parameters and guidelines for this program based on an assertion that the Commission specifically denied reimbursement for rehabilitation services in a footnote in the statement of decision on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-04). That footnote states the following:

In comments to the draft staff analysis, the County of Los Angeles asserts that "rehabilitation" should be specifically defined to include the activities identified in section 1810.243 of the regulations adopted by the Department of Mental Health under the Medi-Cal Specialty Mental Health Services Consolidation program. (Cal. Code Regs., tit. 9, § 1810.243.) These activities include "assistance in improving, maintaining, or restoring a beneficiary's or group of beneficiaries' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education."

The Commission disagrees with the County's request. The plain language of [the] test claim regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.) does not require or mandate counties to perform the activities defined by section 1810.243

⁵ Incorrect reduction claim narrative, page 18.

of the Department's title 9 regulations. In addition, the test claim regulations do not reference section 1810.243 of the Department's title 9 regulations for any definition relevant to the program at issue in this case.

The Controller's interpretation of the footnote in the Commission's statement of decision is wrong.

Section 1810.243 is a regulation adopted by the Department of Mental Health to implement the Medi-Cal Specialty Mental Health Services program, which provides managed mental health care for Medi-Cal beneficiaries. It defines rehabilitation services under *that* program as "a service activity, which includes, but is not limited to assistance in improving, maintaining, or restoring a beneficiary's or group of beneficiaries' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education."

Section 1810.243 was not adopted to implement the *Handicapped and Disabled Students* program or the special education provisions of federal law and was not referenced in the plain language of the regulations adopted to implement the *Handicapped and Disabled Students* program. On its face, section 1810.243 has nothing to do with the program at issue here. Moreover, the activities of providing assistance in functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education are not identified in the plain language of the regulations adopted under the *Handicapped and Disabled Students* program.

Thus, the Commission's footnote in the statement of decision on reconsideration simply finds that section 1810.243 of the regulations adopted under a completely different program is not relevant to the *Handicapped and Disabled Students* program.

Rather, the analysis here requires the interpretation of the regulations adopted to implement the *Handicapped and Disabled Students* program that address the mental health treatment services provided to seriously emotionally disturbed pupils, and whose activities were identified as reimbursable services in the parameters and guidelines. As indicated above, the mental health treatment services defined in section 60020 of the regulations that implement the *Handicapped and Disabled Students* program include the outpatient rehabilitation services provided by the County.

Conclusion

For the foregoing reasons, staff concludes that the State Controller's Office incorrectly reduced the costs incurred by the County of Santa Clara to provide outpatient rehabilitation services in the approximate amount of \$8.6 million for fiscal years 2003-2004, 2004-2005, and 2005-2006 for the *Handicapped and Disabled Student* program.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to approve the incorrect reduction claim filed by the County of Santa Clara and request the State Controller's Office to reinstate the full amount reduced.

STAFF ANALYSIS

Claimant

County of Santa Clara

Chronology

- 03/07/05 County files amended reimbursement claim for fiscal year 2003-2004⁶
- 01/12/06 County files reimbursement claim for fiscal year 2004-2005⁷
- 01/10/07 County files reimbursement claim for fiscal year 2005-2006⁸
- 03/13/09 State Controller's Office issues initial draft audit report on County's reimbursement claims for fiscal years 2003-2004 through 2005-2006⁹
- 05/22/09 State Controller's Office issues revised draft audit report stating that the County claimed "ineligible" rehabilitation services for fiscal years 2003-2004 through 2005-2006¹⁰
- 06/19/09 County sends letter to State Controller's Office disagreeing with proposed reduction of rehabilitation services¹¹
- 06/30/09 State Controller's Office issues final audit report, reducing all costs claimed for rehabilitation services¹²
- 01/15/10 County requests reconsideration of final audit report¹³
- 03/10/10 State Controller's Office responds to County's request for reconsideration¹⁴
- 04/12/10 County files incorrect reduction claim¹⁵
- 05/20/10 County amends incorrect reduction claim¹⁶
- 06/08/10 Incorrect reduction claim deemed complete and issued for comment¹⁷

⁶ Exhibit A. (Exhibit D to incorrect reduction claim, page 434.)

⁷ Exhibit A. (Exhibit D to incorrect reduction claim, page 534.)

⁸ Exhibit A. (Exhibit D to incorrect reduction claim, page 598.)

⁹ Exhibit A. (Exhibit A to incorrect reduction claim, page 3.)

¹⁰ Exhibit A. (Exhibit A to incorrect reduction claim, page 27.)

¹¹ Exhibit A. (Exhibit A to incorrect reduction claim, page 40.)

¹² Exhibit A. (Exhibit A to incorrect reduction claim, page 50.)

¹³ Exhibit A. (Exhibit A to incorrect reduction claim, page 122.)

¹⁴ Exhibit A. (Exhibit A to incorrect reduction claim, page 181.)

¹⁵ Exhibit A.

¹⁶ Exhibit A.

¹⁷ Exhibit A.

I. Background

This is an incorrect reduction claim filed by the County of Santa Clara regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in fiscal years 2003-2004 through 2005-2006 in the approximate amount of \$8.6 million to provide outpatient mental health rehabilitation services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

The *Handicapped and Disabled Students* program was enacted by the Legislature to implement federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

The State Controller's Office contends that outpatient rehabilitation services are not required by the underlying regulations as a service to be provided to seriously emotionally disturbed pupils and that providing outpatient rehabilitation services is not identified as a reimbursable activity in the parameters and guidelines. Thus, the State Controller's Office argues that outpatient rehabilitation costs are not reimbursable and that its reduction to the County's reimbursement claims is correct. The Controller's Office also contends that the County provided socialization and vocational services to pupils, which are not reimbursable under the parameters and guidelines.

The County disagrees with the State Controller's Office. The County seeks a determination from the Commission pursuant to Government Code section 17551, subdivision (d), that the State Controller's Office incorrectly reduced the claim, and requests that the Controller reinstate the \$8.6 million reduced for fiscal years 2003-2004 through 2005-2006.

The *Handicapped and Disabled Students* program has a long and complicated history, a summary of which is provided below.

Federal Special Education Law

The *Handicapped and Disabled Students* program (also known as the "AB 3632" program) was initially enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.

Special education is defined under the IDEA as "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions."¹⁸ To be eligible for services under the IDEA, a child must be between the ages of three and twenty-one and have a qualifying disability.¹⁹ If it is suspected that a pupil has a

¹⁸ Former Title 20 United States Code section 1401(a)(16). The definition can now be found in Title 20 United States Code section 1401(25).

¹⁹ Title 20 United States Code section 1412.

qualifying disability, the Individual Education Program, or IEP, process begins. The IEP is a written statement for a disabled child that is developed and implemented in accordance with federal IEP regulations.²⁰ Pursuant to federal regulations on the IEP process, the child must be evaluated in all areas of suspected handicaps by a multidisciplinary team. Parents also have the right to obtain an independent assessment of the child by a qualified professional. Local educational agencies are required to consider the independent assessment as part of their educational planning for the child.

If it is determined that the child is disabled within the meaning of IDEA, an IEP meeting must take place. Participants at the IEP meeting include a representative of the local educational agency, the child's teacher, one or both of the parents, the child if appropriate, other individuals at the discretion of the parent or agency, and evaluation personnel for children evaluated for the first time. The local educational agency must take steps to insure that one or both of the parents are present at each meeting or are afforded the opportunity to participate, including giving the parents adequate and timely notice of the meeting, scheduling the meeting at a mutually convenient time, using other methods to insure parent participation if neither parent can attend, and taking whatever steps are necessary to insure that the parent understands the proceedings. The IEP document must include the following information:

- A statement of the child's present levels of educational performance;
- A statement of annual goals, including short term instructional objectives;
- A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- The projected dates for initiation of services and the anticipated duration of the services; and
- Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.²¹

Each public agency must provide special education and related services to a disabled child in accordance with the IEP.²² In addition, each public agency must have an IEP in effect at the beginning of each school year for every disabled child who is receiving special education from that agency. The IEP must be in effect before special education and related services are provided, and special education and related services set out in a child's IEP must be provided as soon as possible after the IEP is finalized. Each public agency shall initiate and conduct IEP meetings to periodically review each child's IEP and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

²⁰ Title 20 United States Code section 1401; Title 34 Code of Federal Regulations section 300.320 et seq.

²¹ Title 34 Code of Federal Regulations section 300.324.

²² Title 34 Code of Federal Regulations section 300.323.

A child that is assessed during the IEP process as “seriously emotionally disturbed” has a qualifying disability under the IDEA.²³ “Seriously emotionally disturbed” children are children who have an inability to learn that cannot be explained by intellectual, sensory, or health factors; who are unable to build or maintain satisfactory interpersonal relationships with peers and teachers; who exhibit inappropriate types of behavior or feelings under normal circumstances; who have a general pervasive mood of unhappiness or depression; or who have a tendency to develop physical symptoms or fears associated with personal or school problems. One or more of these characteristics must be exhibited over a long period of time and to a marked degree, and must adversely affect educational performance in order for a child to be classified as “seriously emotionally disturbed.” Schizophrenic children are included in the “seriously emotionally disturbed” category. Children who are socially maladjusted are not included unless they are otherwise determined to be emotionally disturbed.²⁴

Related services designed to assist the handicapped child to benefit from special education are defined to include “transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.”²⁵ Federal regulations define “psychological services” to include the following:

- Administering psychological and educational tests, and other assessment procedures;
- Interpreting assessment results;
- Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
- Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- Assisting in developing positive behavioral intervention strategies.²⁶

The comments to the federal regulations further state that “[t]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services . . . if they are required to assist a handicapped child to benefit from special education.”

²³ The phrase “serious emotionally disturbed” has been changed to “serious emotional disturbance.” (See, 20 U.S.C. § 1401(3)(A)(i).)

²⁴ Title 34 Code of Federal Regulations section 300.7.

²⁵ Title 20 United States Code section 1401; Title 34 Code of Federal Regulations section 300.34.

²⁶ *Ibid.*

Commission's Decision on *Handicapped and Disabled Students* (CSM 4282)

Before the enactment of the *Handicapped and Disabled Students* program, the state adopted a plan to comply with federal law. Under prior law, the state adopted a comprehensive statutory scheme in the Education Code to govern the special education and related services provided to disabled children.²⁷ Among the related services, called “designated instruction and services” in California, the following mental health services are identified: counseling and guidance, psychological services other than the assessment and development of the IEP, parent counseling and training, health and nursing services, and social worker services.²⁸ This definition was amended in 2005 to clarify that “designated instruction and services” means “related services” as that term is defined in the federal IDEA.²⁹

Under prior law, the state and the local educational agencies (school districts and county offices of education) provided all related services, including mental health services, to children with disabilities. The responsibility for supervising special education and related services was delegated to the Superintendent of Public Instruction. Local educational agencies (LEAs) were financially responsible for the provision of mental health services required by a pupil's IEP.³⁰

The *Handicapped and Disabled Students* program became effective on July 1, 1986 and shifted the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments. A test claim on *Handicapped and Disabled Students* (CSM 4282) was filed on Government Code section 7570 et seq., as added and amended by Statutes 1984 and 1985, and on the initial emergency regulations adopted by the Departments of Mental Health and Education to implement this program.³¹

In 1990, the Commission adopted a statement of decision approving the *Handicapped and Disabled Students* test claim (CSM 4282) as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the reimbursement period beginning July 1, 1986. The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was subject to the Short Doyle Act. In addition to adding sections 7570 et seq. to the Government Code, the 1985 test claim statute (Stats. 1985, ch. 1274) also amended Welfare and Institutions Code section 5651 to require that the annual Short-Doyle plan for each county include a description of the services required by Government Code sections 7571 and 7576 (psychotherapy or other mental health treatment services), including the cost of the services. Section 60200 of the regulations required the county to be financially responsible for the provision of mental health treatment services and that reimbursement to the provider of the services shall be based on a negotiated net amount or rate approved by the Director of Mental

²⁷ Education Code section 56000 et seq. (Stats. 1980, ch. 797.)

²⁸ Education Code section 56363.

²⁹ Statutes 2005, chapter 653.

³⁰ Education Code sections 56000 et seq.

³¹ California Code of Regulations, title 2, division 9, sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28).

Health as provided in Welfare and Institutions Code section 5705.2, or the provider's reasonable actual cost. Welfare and Institutions Code section 5705.2 imposed a cost-sharing ratio for mental health treatment services between the state and the counties, with the state paying 90 percent and the counties paying 10 percent of the total costs.

In 1993, the Sixth District Court of Appeal in the *County of Santa Clara* case upheld the Commission's finding that psychotherapy or other mental health treatment services were to be funded as part of the Short-Doyle Act and, thus, only 10 percent of the total costs for treatment were reimbursable under article XIII B, section 6. The court interpreted the test claim legislation as follows:

County entered into an NNA [negotiated net amount] contract with the state in lieu of the Short-Doyle plan and budget. (Welf. & Inst. Code, § 5705.2.) The NNA contract covers mental health services in the contracting county. The amount of money the state provides is the same whether the county signs a NNA contract or adopts a Short-Doyle plan.... By adding subdivision (g) to Welfare and Institutions Code section 5651, the legislature designated that the mental health services provided pursuant to Government Code section 7570 et seq. were to be funded as part of the Short-Doyle program. County's NNA contract was consistent with this intent. Accordingly, the fact that County entered into an NNA contract rather than a Short-Doyle plan and budget is not relevant.

Based on these findings, the court concluded that only 10 percent of the costs were "costs mandated by the state" and, thus, reimbursable under article XIII B, section 6. The court held as follows:

By placing these services within Short-Doyle, however, the legislature limited the extent of its mandate for these services to the funds provided through the Short-Doyle program. A Short-Doyle agreement or NNA contract sets the maximum obligation incurred by a county for providing the services listed in the agreement or contract. "Counties may elect to appropriate more than their 10 per cent share, but in no event can they be required to do so." (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 450.) Since the services were subject to the Short-Doyle formula under which the state provided 90 per cent of the funds and the county 10 per cent, that 10 per cent was reimbursable under section 6, article XIII B of the California Constitution. (Emphasis in original.)

In 1991, the Commission adopted parameters and guidelines for CSM 4282 for the reimbursement period beginning July 1, 1986, and authorized reimbursement for mental health treatment services as follows:

Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act:

1. The scope of the mandate is ten (10) percent reimbursement.
2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):

- a. Individual therapy;
 - b. Collateral therapy and contacts;
 - c. Group therapy;
 - d. Day treatment; and
 - e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

Subsequent changes in the law with respect to funding mental health treatment services

In 1991, the Legislature enacted realignment legislation that repealed the Short Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89.) The realignment legislation became effective on June 30, 1991, but the state and the counties disputed whether the Bronzan-McCorquodale Act kept the cost-sharing ratio for mental health treatment services provided under the *Handicapped and Disabled Students* program. In 2002, the Legislative Analyst’s Office issued a budget analysis that described “significant controversy” regarding the program, which included information that counties were claiming 100 percent of the cost of providing mental health treatment services to special education pupils, rather than the 10 percent required under the parameters and guidelines.³²

Before audits could be completed on the reimbursement claims for *Handicapped and Disabled Students* program, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41) to provide that counties were not required to provide any share of costs from the Bronzan-McCorquodale realignment funds to fund the mental health treatment services required by the *Handicapped and Disabled Students* program beginning in the 2001-02 fiscal year and thereafter. The statute further directed the State Controller’s Office to not dispute the reimbursement claims that had been submitted for reimbursement for mental health treatment services. Thus, beginning July 1, 2001, the 90 percent-10 percent cost sharing ratio for the costs incurred for psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.

Commission’s Decision on Reconsideration of Handicapped and Disabled Students (04-RL-4282-10)

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students* (CSM 4282). (Stats. 2004, ch. 493 (SB 1895).) In May 2005, the Commission adopted a statement of decision on reconsideration (04-RL-4282-10), and determined that the original statement of decision correctly concluded that the 1984 and 1985 test claim statutes and the original regulations adopted by the Departments of Mental Health and Education impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 statement of decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for

³² See statement of decision, *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), pages 5, 49.

costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services. The Commission further concluded that, based on the plain language of the statute directing reconsideration, the period of reimbursement for its decision on reconsideration would begin July 1, 2004.

On reconsideration, the Commission agreed with its earlier decision that Government Code section 7576 and the initial regulations adopted by the Departments of Mental Health and Education required counties to provide psychotherapy or other mental health treatment services to a pupil, either directly or by contract, when required by the pupil's IEP. The Commission further found that the regulations defined "psychotherapy and other mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health title 9 regulations.³³ These services included day care intensive services, day care habilitative (counseling and rehabilitative) services, vocational services, socialization services, collateral services, assessment, individual therapy, group therapy, medication (including the prescribing, administration, or dispensing of medications, and the evaluation of side effects and results of the medication), and crisis intervention. The Commission also found that the activities of providing vocational services, socialization services, and crisis intervention services to pupils, and dispensing medications necessary to maintain individual psychiatric stability during the treatment process were deleted from the regulations in 1998. Thus, the Commission continued to approve reimbursement for providing mental health treatment services, but incorporated the plain language of the regulations governing the provision of these services beginning July 1, 2004, as follows:

Provide psychotherapy or other mental health treatment services, as defined in regulations, when required by the IEP (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60020, subd. (a), 60200, subds. (a) and (b).)

- Providing psychotherapy or other mental health services identified in a pupil's IEP, as defined in sections 542 and 543 of the Department of Mental Health regulations. However, the activities of providing vocational services, socialization services, and crisis intervention to pupils, and dispensing medications necessary to maintain individual psychiatric stability during the treatment process, do not constitute a state-mandated new program or higher level of service.

In addition, footnote 96 in the statement of decision on reconsideration addresses comments filed by the County of Los Angeles asserting that "rehabilitation" should be defined to include the activities identified in section 1810.243 of the regulations adopted by the Department of Mental Health under the Medi-Cal Specialty Mental Health Services Consolidation Program. (Cal. Code Regs., tit. 9, §1810.243.) These services are intended to be provided to all Medi-Cal beneficiaries. The Commission denied the request because the plain language of the test claim regulations (Cal. Code Regs., tit., 2, § 60020) did not reference the Medi-Cal regulations. Footnote 96 states the following:

³³ Former California Code of Regulations, title 2, section 60020, subdivision (a).

In comments to the draft staff analysis, the County of Los Angeles asserts that “rehabilitation” should be specifically defined to include the activities identified in section 1810.243 of the regulations adopted by the Department of Mental Health under the Medi-Cal Specialty Mental Health Services Consolidation program. (Cal. Code Regs., tit. 9, § 1810.243.) These activities include “assistance in improving, maintaining, or restoring a beneficiary’s or group of beneficiaries’ functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education.”

The Commission disagrees with the County’s request. The plain language of test claim regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.) does not require or mandate counties to perform the activities defined by section 1810.243 of the Department’s title 9 regulations. In addition, the test claim regulations do not reference section 1810.243 of the Department’s title 9 regulations for any definition relevant to the program at issue in this case.

Commission’s Decision on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)

In May 2005, the Commission also adopted a statement of decision on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), a test claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health. The period of reimbursement for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) began July 1, 2001.

In *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), the Commission found that the regulatory definition of “mental health services” changed as follows:

“Mental health services” means mental health assessment and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.

The Commission further found that section 60020 of the test claim regulations continued to include mental health assessments, collateral services, intensive day treatment, and day rehabilitation within the definition of “mental health services.”³⁴

Thus, in *Handicapped and Disabled Services II*, the Commission approved reimbursement beginning July 1, 2001, for the following activity newly mandated by the 1998 regulations:

Provide individual or group therapy psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil’s IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal.Code Regs., tit. 2, § 60020, subd. (i).)

³⁴ Statement of decision, *Handicapped and Disabled Students II* (02-TC-40/49), pages 35-36.

Relevant Parameters and Guidelines on the Program

A number of parameters and guidelines and parameters and guidelines amendments were adopted in 2005 and 2006 to reflect the different reimbursement periods for the program, and to ultimately consolidate all of the statements of decision into one set of parameters and guidelines for costs incurred beginning in fiscal year 2006-2007. As relevant to this incorrect reduction claim, the Commission took the following actions on this program:

- Amended the existing parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by ending the period of reimbursement for costs incurred through and including June 30, 2004. Except for the costs of providing psychotherapy and other mental health treatment services, the costs incurred under the original mandate beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).³⁵
- The costs to provide psychotherapy and other mental health treatment services, as approved on reconsideration of the original claim were placed in the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) so that the original and amended requirements could be in one place.³⁶ To reflect the Commission's decision on reconsideration, the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) identified the costs incurred beginning July 1, 2004, to provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP, either directly or by contract. These services were mandated by the original regulations (as determined on reconsideration) and continued to be mandated in the 1998 amended regulations (as determined in *Handicapped and Disabled Students II*).

The parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) also identified the new psychotherapy services mandated by the 1998 regulations as reimbursable beginning July 1, 2001 as follows: "Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code 2903, when required by the pupil's IEP."³⁷

- The parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) and *Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services* (97-TC-05)³⁸ were then consolidated for costs incurred under these programs

³⁵ See analysis adopted on January 26, 2006, for the parameters and guidelines on the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10).

³⁶ *Ibid.*

³⁷ Parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) adopted in December 9, 2005, and corrected July 21, 2006.

³⁸ *Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services* (97-TC-05) addresses special education services to "seriously emotionally disturbed" students placed in out-of-state residential facilities.

beginning July 1, 2006. The consolidated parameters and guidelines continue to authorize reimbursement to perform the following activities:

1. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
2. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (j).)

Subsequent Actions and Inquiries of the Department of Mental Health Regarding Mental Health Rehabilitation Services

After the parameters and guidelines were adopted, the Department of Mental Health issued several documents regarding mental health rehabilitation services with respect to the *Handicapped and Disabled Students* program.

On June 23, 2008, the Department issued an all county letter (DMH Information Notice No. 08-15) to clarify the funding of mental health rehabilitation services for children in the "AB 3632" program. The letter states that "Mental health services may include mental health rehabilitation services when such services are determined to be the most appropriate in meeting a student's specialized needs." The letter further identifies funding sources for the provision of mental health rehabilitation services, including Medi-Cal, IDEA funds, and state general funds distributed by the Department of Mental Health.³⁹

On February 19, 2009, the Department of Mental Health sent a letter to the Commission's Chief Legal Counsel seeking clarification on the Commission's "basis for excluding rehabilitation as a mental health service eligible for reimbursement. . . ." The letter states in relevant part the following:

In February 2005, Los Angeles County Department of Mental Health (County) submitted a declaration to the Commission after reviewing a January 20, 2005 Commission Staff Analysis regarding a Reconsideration of the HDS Program (04-RL-4282-10). [Footnote omitted.] In that declaration, the County asserted that "Rehabilitation," as defined in Section 1810.243 of the Title 9 of the California Code of Regulations [footnote omitted], should be included in the array of mental health services available to children served through the HDS program. [Footnote omitted.]

On May 26, 2005, the Commission on State Mandates issued a Final Staff Analysis that addressed the County's assertion. In footnote #103, beginning on page SA-39 of the Final Staff Analysis, Commission Staff disagreed with the County's request. In part, footnote #103 reads:

³⁹ Exhibit A. (Exhibit A to incorrect reduction claim, page 183.)

... The plain language of test claim regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.) does not require or mandate counties to perform the activities defined by section 1810.243 of the Department's title 9 regulations. In addition, the test claim regulations do not reference section 1810.243 of the Department's title 9 regulations for any definition relevant to the program at issue in this case.

On October 26, 2006, the Commission on State Mandates adopted consolidated Parameters and Guidelines for the HDS, HDS II, and SED Pupils: Out-of-State Mental Health Services consolidated program, which identifies reimbursable activities under this program. However, the Parameters and Guidelines do not specifically exclude rehabilitation, as a mental health service, from the list of reimbursable activities. Page 9 of the Parameters and Guidelines states "*When providing psychotherapy or other mental health services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable*" but makes no mention of rehabilitation. Rehabilitation services are also not mentioned in the list of mental health services eligible for reimbursement. However, DMH questions the need to specifically identify rehabilitation as a particular type of mental health service allowable under this program. Pursuant to the Final Statement of Reasons for Section 1810.242 of Title 9 of the California Code of Regulations, rehabilitation is an essential component of many mental health services.⁴⁰

The Commission's Chief Legal Counsel responded to the Department's letter on February 27, 2009, informing the Department that the Commission no longer had jurisdiction over the test claims for *Handicapped and Disabled Students*, and that the statement of decision on reconsideration was adopted and was not challenged by the parties. Thus, the statement of decision on reconsideration was a final decision of the Commission and the Commission no longer had authority to consider it. The letter informed the Department that a local agency or the State could file a written request with the Commission to amend the parameters and guidelines as a way to get clarification of the issue presented.⁴¹ To date, there has not been a request filed with the Commission to amend the parameters and guidelines.

On April 15, 2009, the Department of Mental Health issued Information Notice No. 09-04, stating that effective April 6, 2009, the Department rescinds its earlier Notice No. 08-15 (dated June 23, 2008). The notice states the following:

Certain rehabilitation service activities allowable for reimbursement under the AB 3632 program continue to be under dispute based on rulings by the Commission on State Mandates. DMH is working to resolve these issues with county mental health departments, the California Department of Education, the Commission on State Mandates, and the Office of the State Controller to ensure consistency in the provision of mental health services required by a pupil's

⁴⁰ Exhibit ____.

⁴¹ Exhibit A. (Exhibit A to incorrect reduction claim, pages 185-186.)

Individualized Education Plan (IEP) and the identification of appropriate funding sources.

This rescission notices does not change existing Federal and State requirements governing the AB 3632 program nor does it change existing funding sources. All existing laws and regulations are still applicable when administering the AB 3632 program. The county mental health departments' obligations and responsibilities under Sections 7570 et seq. of Chapter 26.5 of the California Government Code and Sections 60000 et seq. of Division 9 of Title 2 of the California Code of Regulations have not changed. For further guidance on allowable service activities under the AB 3632 program, please see the Consolidated Parameters and Guidelines adopted by the Commission on State Mandates on October 26, 2006 ...

Pursuant to Section 300.101 of the Code of Federal Regulations (CFR), a Free Appropriate Public Education (FAPE) must be available to all children residing in the State between the ages of 3 and 21. The mental health services of an IEP must constitute an offer of FAPE. Pursuant to Section 300.103(c) of the CFR, there should be no delay in implementing the child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.⁴²

Reimbursement Claims Filed for Costs Incurred in Fiscal Years 2003-2004 through 2005-2006, and the Responses of the State Controller's Office

For fiscal years 2003-2004 through 2005-2006, the County of Santa Clara claimed reimbursement for costs to provide outpatient mental health rehabilitation services to children with disabilities pursuant to the pupils' IEPs through the following contractors: Gardner Family Care Corporations; AchieveKids; EMQ FamiliesFirst; Rebekah Childrens' Services; and Asian Americans for Community Involvement. The costs were claimed under the "treatment services" category of the claim and, according to the County, total approximately \$8.6 million for the three fiscal years in question.⁴³ The County describes its services as follows:

Among the services provided by the County, for those children who need them, are "mental health rehabilitation services," which consist of one-on-one mental health interventions individually tailored to equip children with the skills they need to benefit from their education and to avoid a more restrictive placement,

⁴² Exhibit A. (incorrect reduction claim, pages 187-188.)

⁴³ Incorrect reduction claim, pages 174-175, letter dated March 11, 2010, from the County to the State Controller's Office. The County's letter states the following:

... I write to confirm the amount of the disallowance attributable to the mental health rehabilitation services for which reimbursement was denied in the June 2009 audit decision, as those costs were not separately identified in the audit decision or in other communications received from the State Controller's Office. The County has calculated those amounts as follows: \$3,145,054 for fiscal year 2004, \$2,776,529 for fiscal year 2005, and \$2,684,779 for fiscal year 2006.

such as institutional or group home placement. [Citations to County exhibits and declarations omitted.]

The County's mental health rehabilitation services are provided by a counselor who has been trained in cognitive behavioral interventions. The counselor typically meets with the child in familiar, everyday environments – at home, in school, or in other community settings – to provide targeted, behaviorally focused counseling interventions designed to address the mental health goals identified in the child's IEP. The counselor works with the child by redirecting, role-modeling, and supporting the development of coping mechanisms to teach, reinforce, and support positive behavioral change. These interventions are tailored to achieve the child's specified IEP goals – such as managing anger, impulsivity, anxiety, or oppositional behavior -- and to ameliorate the symptoms of the child's mental health diagnosis that would otherwise make it difficult or impossible for the child to function in an educational environment. [Citations to County exhibits and declarations omitted.]

The mental health rehabilitation services provided by the County represent common, effective, research-based modes of mental health treatment for seriously emotionally disturbed children. [Citations to County exhibits and declarations omitted.] These services offer the children an alternative to the traumatic experience of institutionalization, group-home placement, or other similarly restrictive placements. [Citations to County exhibits and declarations omitted.]⁴⁴

Reductions by the State Controller's Office

The State Controller's Office issued its final audit report on June 30, 2009, reducing the County's reimbursement claims for costs incurred to provide outpatient rehabilitation services to seriously emotionally disturbed pupils. (Audit Finding 1.)⁴⁵

In the final audit report, the State Controller's Office states that it does not dispute the following issues raised by the County:

We do not dispute the following assertions in the county's response:

- The Individuals with Disabilities Education Act (IDEA) entitles qualifying students to a free appropriate public education (FAPE) in the least restrictive environment. FAPE includes special education and related services to meet the needs of a child with a disability.
- California Education Code section 56363 defines "related services" and includes "psychological services, physical and occupational therapy, recreation ... and counseling services, including rehabilitation counseling."
- Under federal regulations (... , section 300.34), rehabilitation counseling services "means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving

⁴⁴ The County's written narrative on its incorrect reduction claim, pages 8-9.

⁴⁵ The Final Audit Report is in Exhibit A to the incorrect reduction claim, on pages 50-121.

independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act.”

- Regarding the discussion of the shift in responsibilities from local educational agencies (LEAs) to county mental health departments, we agree that Chapter 26 of the Government Code, commencing with section 7570, and Welfare and Institutions Code section 5651 (added and amended by Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) requiring counties to participate in the mental health assessment for “individuals with exceptional needs,” participate in the expanded “Individualized Educational Program “ (IEP) team, and provide case management services for “individuals with exceptional needs” who are designated as “seriously emotionally disturbed.” The Commission on State Mandates (CSM) determined that these requirements impose a new program or higher level of service on counties.
- Title 2, section 60020, subdivision (i), provides the basis for the services in the state mandated cost program. This section includes “mental health assessments and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychology as defined in Section 2903 of the Business and Profession Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly to by contract at the discretion of the community mental health service of the county of origin.”
- Title 9, CCR, section 542, defines day services. These services are designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services, and include day care intensive services, day care habilitative services, vocational services and socialization services. The CSM determined that the state-mandated cost program includes only day care intensive services and day care habilitative (rehabilitation) services as eligible services.
- Title 9, CCR, section 543, defines outpatient services. These services are designed to provide short-term or sustained therapeutic intervention for individuals experiencing acute or ongoing psychiatric distress, and include collateral services, assessment, individual therapy, group therapy, medication and crisis intervention. The CSM determined that the state-mandated cost program includes all services with the exception of crisis intervention. Outpatient services do not include rehabilitation services.
- On May 26, 2005, CSM adopted the statement of decision on the reconsideration of Handicapped and Disabled Students program, refusing to include a definition of rehabilitation services consistent with Title 9, CCR, section 1810.243.

However, the State Controller’s Office believes that it properly reduced the claims for outpatient rehabilitation services for the following reasons:

- The program’s parameters and guidelines do not identify outpatient rehabilitation services as an eligible service.

- Outpatient rehabilitation services are not included in the underlying regulations (Title 2, section 60020, subd. (i)). As noted in the Commission’s decision on reconsideration, a county argued that outpatient rehabilitation services, medication monitoring, and crisis intervention services should be included in the parameters and guidelines. The Commission “refused” to include outpatient rehabilitation services and crisis intervention services, including only medication monitoring in the parameters and guidelines. If the rehabilitation definition was adopted by the Commission, outpatient rehabilitation services would be eligible for reimbursement.
- The outpatient rehabilitation services put forth by the County are not consistent with the day care habilitative (rehabilitation) services. Day care habilitative (rehabilitation) services do not include vocational services or socialization services, as these are separate and distinct services. In contrast, outpatient rehabilitation services is defined by federal and state regulations to include elements of vocational services and socialization services. Furthermore, the County’s Clinical Record Documentation Manual for Outpatient Mental Health Services defines rehabilitation services to include medication education and compliance, grooming and personal hygiene skills, meal preparation skills, money management, leisure skills, social skills, developing and maintaining a support system, maintaining current housing situation. Vocational and socialization services are not reimbursable.
- The rehabilitation services provided by the County are also provided under the Wraparound program, which use non-federal Aid of Families with Dependent Children-Foster Care (AFDC-FC). In claiming rehabilitation services provided by the Wraparound program, the County did not identify any associated AFDC-FC revenues to offset the costs claimed. The Controller did not pursue this issue further since outpatient rehabilitation services are excluded from reimbursement under the mandated cost program.

On March 10, 2010, the State Controller’s Office denied a request by the County to reconsider its audit position, and many of the same points identified in the audit report are raised in the Controller’s letter. The State Controller’s Office further explained the following:

On May 26, 2005, the CSM issued a statement of decision on the reconsideration of the HDS program finding that rehabilitation services, as defined by Title 9, CCR, section 1810.243, are not reimbursable. More recently, the CSM responded to the Department of Mental Health’s (DMH’s) request for clarification on February 27, 2009, stating that rehabilitation services, as defined by Title 9, CCR, section 1810.243, are not reimbursable. The CSM stated that the test claim regulations do not require or mandate counties to perform activities defined by section 1810.243.

Contrary to the county’s position, we believe that rehabilitation services claimed by the county are separate and distinct from day rehabilitation services by definition and in terms of service delivery. The definition of each rehabilitation service in the county’s Clinical Record Documentation Manual for Outpatient Mental Health Services is consistent with the service definitions in Title 9, CCR. The way in which these services were reported on the county’s cost report submitted to DMH and for Medi-Cal Federal Financing Participation funds

reimbursement is also consistent with the definition in Title 9, CCR. The county's rehabilitation services definition is consistent with section 1810.243, while the day rehabilitation service definition is consistent with section 1810.212.

...

The State Controller's Office further states that the Department of Mental Health participated in a conference call in August 2009 to discuss the issue of "adding" rehabilitation services to the regulations that form the basis of the state-mandated program.

II. Position of the Parties

Claimant's Position

The County contends that the State Controller's Office incorrectly reduced the costs for providing outpatient rehabilitation services to seriously emotionally disturbed pupils. The County asserts that:

- The parameters and guidelines specifically identify "day rehabilitation" as a reimbursable mental health service.
- The Department of Mental Health's exclusion of vocational and socialization services from the definition of "mental health services" under the program is not material, since the County's rehabilitation services do not consist of vocational and socialization services.
- Contrary to the Controller's assertions, the 2005 statement of decision does not define mental health rehabilitation services as non-reimbursable.
- Whether the County's rehabilitation services fall within the broad Medi-Cal definition of "rehabilitation" has no bearing on whether they are covered by section 60020 of the test claim regulations.
- The Department of Mental Health, in a letter dated February 19, 2009, to the Commission's Chief Legal Counsel, has confirmed that mental health rehabilitation services fall within section 60200 of its Title 2 regulations.
- Mental health rehabilitative services are addressed, and found reimbursable, in the Commission's Statements of Decision.
- If section 60020 of the Title 2 regulations excluded mental health rehabilitation services, it would be inconsistent with federal law and the Government Code, and would therefore be invalid.

In support of its position, the County has submitted a declaration from Laura Champion, Executive Director of EMQ Families First.⁴⁶ EMQ Families First has contracted with the County since 1995 to provide mental health services pursuant to the pupil's IEP under the *Handicapped and Disabled Students* program. Her declaration states the following:

Since 1995, EMQFF has been under contract with the Santa Clara County Mental Health Department to provide mental health services to children eligible for such

⁴⁶ Incorrect reduction claim, page 176.

services pursuant to their IEPs. One type of mental health services [sic] EMQFF provides is “mental health rehabilitation services.”

Mental health rehabilitation services are targeted, one-on-one mental health interventions incorporating evidence-based practices as Cognitive Behavioral Treatment and Positive Behavioral Intervention and Support. Mental health rehabilitation services are provided in the child’s usual environments – typically at home, in school, and in the child’s community – consistent with the therapeutic needs of the child. Because mental health rehabilitation services are provided on an individual basis in a variety of settings, they can be tailored to meet the child’s unique needs.

Contemporary, peer reviewed research shows that the mental health rehabilitation services treatment model – in which the service provider works with the child in the settings in which his or her mental health symptoms actually arise and coaches the child on how to deal with those symptoms safely and appropriately – tends to be more effective for many children than traditional therapy provided by a licensed therapist in his or her office. My clinical experience and my experience managing clinical care bear this out. Through mental health rehabilitation services, children learn to cope with their environments and to modify their behavior experientially, and they generally learn these new skills more quickly and in a more lasting way than they would through a therapy-only treatment plan. In addition, the provision of services in the child’s usual environments enables the counselor providing these services to model, for the child’s parents, caregivers, and/or teachers, how to respond when the child is demonstrating the symptoms associated with his or her mental health diagnosis, which helps to effect a transfer of skills to the child’s parents, caregivers, or teachers. When a child receives only therapy or out-of-home care, this comprehensive, coordinated service delivery does not typically occur, and there is a lower likelihood that the therapeutic gains made in treatment will be sustained.

[¶]

All of the children receiving mental health rehabilitation services from EMQFF have a demonstrable need for these services documented in their IEPs. Each child’s IEP team has determined that the child is at imminent risk of residential placement or other institutional placement. . . . For each of these children, EMQFF was selected to provide mental health rehabilitation services as a cost-effective alternative to the more expensive and restrictive option of out-of-home residential placement.

In addition, the County has submitted letters from the following contract service providers describing the “rehabilitation services” they provided pursuant to a pupil’s IEP and required by the *Handicapped and Disabled Students* program: Miguel Valencia, Ph.D., Mental Health Director of Gardner Family Care Organization; AchieveKids; Jerry Doyle, Chief Executive Officer of EMQ FamiliesFirst; Mary Kaye Gerski, Executive Director of Rebekah Children’s

Serves; and Sarita Kohli, Director of Mental Health Programs of Asian Americans for Community Involvement.⁴⁷

The County has also retained an expert witness, Dr. Margaret Rea, an independent psychologist and researcher at the University of California at Davis who specializes in child and adolescent psychology, to review a representative sample of 53 patient files for children who received mental health rehabilitation services from the County under the *Handicapped and Disabled Students* program during the fiscal years in question and to prepare a report.⁴⁸ The 53 patient files were chosen at random from the files of children not enrolled in Medi-Cal. Each file contained the child's "Chapter 26.5 Mental Health Assessment," the mental health goals and objectives, the intake and update assessments, the child's treatment plan, and progress notes. The County asked Dr. Rea to determine, based on her professional experience and expertise, whether the services provided by the County aligned with the mental health services identified in section 60020 of the Title 2 test claim regulations. Dr. Rea reviewed the patient files and the description of the care being provided under the label "rehabilitation services" indicated in the progress notes for each session with the child, the language of section 60020 of the Title 2 regulations and the amendments to that regulation.

Dr. Rea's report, dated January 14, 2009, describes the range of diagnoses identified in the files that interfered with the ability to function in school and at home, and the mental health rehabilitation services provided by the County as follows:

10. The mental health rehabilitation services being provided to these patients can be described, at a general level, as behavioral interventions designed to maximize the children's ability to function in the classroom as well as at home. The focus of the interventions was to assist the children in developing more adaptive coping skills that would help them in better managing their clinical symptoms with the ultimate goal of reaching their educational goals and developing an age-appropriate level of independent functioning. The interventions I reviewed were necessary because the children's mental health impairments precluded them from functioning independently without behavioral intervention. They were receiving interventions addressing such issues as anger management, communication skills, impulse control, and emotional regulation. The children's mental health issues required that they receive a behaviorally focused intervention that would help them function safely and adaptively within their school and home environments. All of the patients whose files I reviewed would be unable to function in any educational environment without this level of behavioral intervention.

11. The interventions described in the progress notes were consistent with what is known in clinical and research arenas as behavioral evidence-based practices. The interventions described were generally consistent with cognitive behavioral interventions for depression, anxiety, PTSD, and impulse control, the typical mental health issues that were barriers to the children functioning in school. . . . For example, the files described interventions such as:

⁴⁷ Incorrect reduction claim, supporting documentation, pages 15-26.

⁴⁸ Incorrect reduction claim, pages 155-173.

- Cognitive Restructuring: helping children to think in more constructive ways, these interventions focus on decreasing the number of negative thoughts, increasing the number of positive thoughts, learning to challenge unhelpful thoughts, and questioning unrealistic thoughts.
- Communication Training: helping children to improve the manner in which they express themselves; improving eye contact; using active listening; learning to give both positive and negative feedback; making requests of others in a more productive and appropriate manner.
- Behavioral Activation: activity scheduling which involves helping children engage in both pleasing and success-oriented activities.
- Emotional Regulation: helping children to identify the triggers that can lead them to emotional dysregulation (anger outbursts, self-harm, violent acts, anxiety) and to develop alternative healthier responses.
- Problem-Solving: children are taught strategies that can empower them to approach problems with adaptive skills, to brainstorm and fully consider their options, and to implement and evaluate solutions.
- Relaxation Training: these techniques are offered to children to help them manage emotional lability and anxiety as an alternative to maladaptive behaviors.
- Safety Planning: developing structured cognitive and behavioral plans to insure safety for the child.
- Social Skills Training: using cognitive behavioral techniques to expand and improve interpersonal interactions and to broaden the child's social support circle.

12. All of the patients whose files I reviewed would be unable to function in any educational environment without this level of behavioral intervention. For many of the children whose files I reviewed, this level of intervention was necessary in order for these children to avoid a more restrictive level of placement – such as an inpatient hospital, residential treatment facility or group home -- as well as to maintain school attendance.

Dr. Rea acknowledges that some of the specific interventions described in the files may develop a child's socialization or vocational skills. But the primary goal of the interventions was to equip the children with the skills necessary to function in an educational environment. She states in paragraph 20 the following:

20. Although some of the specific interventions described in the progress notes may develop children's "socialization" or "vocational" skills, it was clear that the primary goal of these interventions was to equip these children with the skills necessary to enable them to behave appropriately in the least restrictive manner in an educational setting by enabling them to behave appropriately in interactions with teachers and peers – e.g. teaching them anger management, management of emotional impulses, etc. Indeed, it was clear that the ultimate goal of the treatment in such cases was to assist the child in managing their symptoms in order to enable the child to meaningfully participate in an educational setting; it was not to develop social or vocational skills for their own sake. . . .

Dr. Rea states that all of these services fall within the categories of “day rehabilitation” and in some cases, within the category of “intensive day treatment,” which are included in the 1998 amendment to section 60200 of the test claim regulations.

13. All of the services described in the patients’ files that I reviewed would fall within the category of “day rehabilitation,” which is among the categories of “mental health services” listed in the amended version of Cal. Admin. Code, tit. 1, § 60020. No definition of the term “day rehabilitation” is included in the relevant regulations. Based on my experience in the mental health field and my familiarity with the terminology used to describe various modes of treatment, “day rehabilitation” is a broad treatment category that would include any interventions aimed at restoring a child’s previous level of functioning or helping a child develop an age-appropriate level of functioning that would maximize their ability to meet appropriate educational goals. The use of the word “day” implies that the treatment is not a continuous 24-hour intervention.

[¶]

21. In addition to all qualifying as “day rehabilitation,” some of the services provided also qualify as “intensive day treatment.” In some of the cases, the interventions described in the progress notes were designed to improve the child’s ability to function in school and at home in order to avoid the need for an out-of-home placement. For example, in the case of ____, whose aggression and lack of impulse and emotional regulation interfered with her ability to function at home and school, her provider instituted a structured behavioral intervention to help ____ moderate her anxiety and aggression so she could function in the least restrictive environment. Another child, ____, demonstrated oppositional and aggressive behavior which made it difficult for the adults in his school and home environment to manage him. His provider assisted him through cognitive and behavioral interventions to develop more acceptable interpersonal skills so that an out-of-home placement could be avoided and participation in a regular school environment would be possible.

Dr. Rea also opines that the services provided by the County fall within the definition of “day care intensive services” and “day care habilitative services” as originally included in section 60020 regulations.

22. I also considered whether the services described in the files would fit within the definition of “mental health services” included in Cal. Admin. Code, tit. 2, § 60020 prior to the time the statute was amended. One of the service functions included in the pre-amendment definition is “day services” which is defined in Cal. Admin. Code, tit. 9, §542 as “services designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services.” Section 542 further defines “day care habilitative services,” a subset of day services, as “services designed and staffed to provide counseling and rehabilitation to maintain or restore personal independence at the best possible functional level for the patient with chronic psychiatric impairments who may live independently, semi-independently, or in a supervised residential facility, which does not provide this service.”

23. Based on the definitions described in the regulations, and based on my experience in the mental health field and my familiarity with the terminology used to describe various modes of treatment, “day care habilitative services” is, like “day rehabilitation,” a broad service category that would include all of the therapeutic interventions described in the progress notes. Most certainly, the files I reviewed described interventions that were aimed at restoring functioning at the best possible level for the children involved. The goals of all the interventions described were to assist the children to better manage their psychiatric symptoms so that they could function in the least restrictive environment in school as well as at home. The goals of the interventions were just as described in the above definition – they were designed to provide counseling and rehabilitation so the child could develop more adaptive coping skills to function independently or at least at the best possible level given their chronic psychiatric diagnoses.

Dr. Rea concludes that the services provided by the County under the label “mental health rehabilitation services” fit within the definition of “mental health services” under both the pre-amendment and post-amendment versions of section 60020 of the Title 2 regulations. (Paras. 26 and 27.)

Position of the State Controller’s Office

The State Controller’s Office has not filed comments on the incorrect reduction claim. The State Controller’s reductions are explained in the final audit report and letter dated March 10, 2010, denying the County’s request for reconsideration.

III. Discussion

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

Government Code Section 17551, subdivision (d), requires the Commission to hear and decide a claim that the State Controller’s Office has incorrectly reduced payments to the local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission’s regulations requires the Commission to send the statement of decision to the State Controller’s Office and request that the costs in the claim be reinstated.

A. Providing outpatient rehabilitation services required by a pupil’s IEP is a reimbursable activity and, thus, the State Controller’s Office incorrectly reduced the costs incurred by the claimant for the provision of these services in fiscal years 2003-2004 through 2005-2006.

This incorrect reduction claim addresses costs incurred in fiscal years 2003-2004, 2004-2005, and 2005-2006 for providing outpatient rehabilitation services pursuant to IEP’s approved for

seriously emotionally disturbed pupils. The pleadings identify two issues in dispute. The first issue is whether providing outpatient rehabilitation services is a reimbursable component of the mental health services identified in the regulations and the parameters and guidelines. The second issue is whether the County provided “socialization and vocational services” as part of the mental health treatment to these pupils, which the Commission determined were deleted from the regulatory definition of “mental health treatment services” in 1998.⁴⁹

Section 60020 of the regulations implementing the *Handicapped and Disabled Students* program governs the provision of psychotherapy and other mental health treatment services and was determined to be reimbursable by the Commission. The plain language of the activities required by section 60020 was incorporated into the parameters and guidelines and, thus, that language must be interpreted to determine this claim.

As described in the background, the parameters and guidelines for the original test claim, *Handicapped and Disabled Students* (CSM 4282), address the costs incurred for psychotherapy and other mental health treatment services through June 30, 2004 and, thus, the interpretation of section 60020 in the original parameters and guidelines applies to this claim for the fiscal year 2003-2004 costs claimed by the County. However, the 90/10 cost sharing formula no longer applies for the mental health services provided under section 60020 of the regulations. Any reimbursement approved for costs incurred under section 60020 are 100 percent reimbursable.⁵⁰

The costs incurred for psychotherapy and other mental health treatment services under section 60020 for fiscal years 2004-2005 and 2005-2006 are governed by the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and require the interpretation of section 60020 as amended in 1998.

- 1) Costs incurred in fiscal year 2003-2004 are reimbursable under the mental health services identified in the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282.)

The parameters and guidelines for the original test claim, *Handicapped and Disabled Students* (CSM 4282), applies to this claim for the fiscal year 2003-2004 costs claimed by the County. The original parameters and guidelines authorize reimbursement for psychotherapy and other mental health treatment services as follows:

2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child’s individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):
 - a) Individual therapy;
 - b) Collateral therapy and contacts;
 - c) Group therapy;

⁴⁹ This analysis does not address allegations that the County’s rehabilitation services are also provided under the Wraparound program, which uses non-federal AFDC-FC funding or that the County failed to identify any associated AFDC-FC revenues to offset costs for the *Handicapped and Disabled Students* program in its reimbursement claims because the Controller’s reductions were not based on these issues.

⁵⁰ Statutes 2002, chapter 1167 (AB 2781).

- d) Day treatment; and
- e) Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.

Section 60020 of the regulations, as originally adopted, defined “psychotherapy and other mental health services” as “those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code [Department of Mental Health regulations], and provided by a local mental health program directly or by contract.”

Section 542 of the Department of Mental Health’s title 9 regulations defined “day services” as those “services that are designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services.” Day services are defined in section 542 of the regulations as follows:

- Day care intensive services are “services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization for patients who need active psychiatric treatment for acute mental, emotional, or behavioral disorders and who are expected, after receiving these services, to be referred to a lower level of treatment, or maintain the ability to live independently or in a supervised residential facility.”
- Day care habilitative services are “services designed and staffed to provide counseling and rehabilitation to maintain or restore personal independence at the best possible functional level for the patient with chronic psychiatric impairments who may live independently, semi-independently, or in a supervised residential facility which does not provide this service.”
- “Socialization skills” are “services designed to provide life-enrichment and social skill development for individuals who would otherwise remain withdrawn and isolated. Activities should be gauged for multiple age groups, be culturally relevant, and focus upon normalization.”
- “Vocalization skills” are “services designed to encourage and facilitate individual motivation and focus upon realistic and obtainable vocational goals. To the extent possible, the intent is to maximize individual client involvement in skill seeking and skill enhancement, with the ultimate goal of meaningful productive work.”

Section 543 of the Department of Mental Health regulations defines “outpatient services,” which are defined as “services designed to provide short-term or sustained therapeutic intervention for individuals experiencing acute or ongoing psychiatric distress.” Outpatient services are defined in section 543 as follows:

- Collateral services, which are “sessions with significant persons in the life of the patient, necessary to serve the mental health needs of the patient.”
- Assessment, which is defined as “services designed to provide formal documented evaluation or analysis of the cause or nature of the patient’s mental, emotional, or behavioral disorder. Assessment services are limited to an intake examination, mental health evaluation, physical examination, and laboratory testing necessary for the evaluation and treatment of the patient’s mental health needs.”

- Individual therapy, which is defined as “services designed to provide a goal directed therapeutic intervention with the patient which focuses on the mental health needs of the patient.”
- Group therapy, which is defined as “services designed to provide a goal directed, face-to-face therapeutic intervention with the patient and one or more other patients who are treated at the same time, and which focuses on the mental health needs of the patient.”
- Medication, which is defined to include “the prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process. This service shall include the evaluation of side effects and results of medication.”
- Crisis intervention, which means “immediate therapeutic response which must include a face-to-face contact with a patient exhibiting acute psychiatric symptoms to alleviate problems which, if untreated, present an imminent threat to the patient or others.”

The Controller’s Office suggests that the only outpatient services required under the original program are those identified in section 543.⁵¹ The Controller’s Office misinterprets the regulations.

The plain language definitions of “day care intensive services” and “day care habilitative services” in section 542 are designed to provide an alternative to 24-hour residential counseling (i.e., outpatient care), and include rehabilitation. “Day care intensive services” are “services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization.” “Day care habilitative services” provide “counseling and rehabilitation to maintain or restore personal independence at the best possible functional level.” The word, “day” in the phrase indicates that the services do not consist of 24-hour residential treatment.

Staff finds that the costs incurred by the County in fiscal year 2003-2004 for “outpatient rehabilitation services” fall within the plain meaning of “day care intensive services” and “day care habilitative services.” The outpatient rehabilitation services provided by the County were for acute mental, emotional, or behavioral disorders designed to assist the child to better manage the skills necessary to function independently in an educational environment.

This conclusion is supported by the report prepared by the County’s expert witness, Dr. Rea, who reviewed the pupil files whose treatment costs were claimed by the County. Dr. Rea is of the professional opinion that all of the services provided by the County fall within the definitions of “day care intensive services” and “day care habilitative services” and were designed to assist the child to better manage psychiatric symptoms so that the child could function independently in school. Her report states the following:

⁵¹ Audit finding 1, which states that “Title 9, CCR, section 543, defines outpatient service. These services are designed to provide short-term or sustained therapeutic intervention for individuals experiencing acute or ongoing psychiatric distress, and include collateral services, assessment, individual therapy, group therapy, medication and crisis intervention. The CSM determined that the state-mandated cost program includes all services with the exception of crisis intervention. *Outpatient services do not include rehabilitation services.*” (Emphasis added.)

23. Based on the definitions described in the regulations, and based on my experience in the mental health field and my familiarity with the terminology used to describe various modes of treatment, “day care habilitative services” is, like “day rehabilitation,” a broad service category that would include all of the therapeutic interventions described in the progress notes. Most certainly, the files I reviewed described interventions that were aimed at restoring functioning at the best possible level for the children involved. The goals of all the interventions described were to assist the children to better manage their psychiatric symptoms so that they could function in the least restrictive environment in school as well as at home. The goals of the interventions were just as described in the above definition – they were designed to provide counseling and rehabilitation so the child could develop more adaptive coping skills to function independently or at least at the best possible level given their chronic psychiatric diagnoses.

The declaration filed by the County from Laura Champion, Executive Director of EMQ Families First, is consistent with Dr. Rea’s report.⁵² Her declaration states in relevant part the following:

Mental health rehabilitation services are targeted, one-on-one mental health interventions incorporating evidence-based practices as Cognitive Behavioral Treatment and Positive Behavioral Intervention and Support. Mental health rehabilitation services are provided in the child’s usual environments – typically at home, in school, and in the child’s community – consistent with the therapeutic needs of the child. Because mental health rehabilitation services are provided on an individual basis in a variety of settings, they can be tailored to meet the child’s unique needs.

[¶¶]

All of the children receiving mental health rehabilitation services from EMQFF have a demonstrable need for these services documented in their IEPs. Each child’s IEP team has determined that the child is at imminent risk of residential placement or other institutional placement. . . . For each of these children, EMQFF was selected to provide mental health rehabilitation services as a cost-effective alternative to the more expensive and restrictive option of out-of-home residential placement.

Accordingly, staff finds that the “outpatient rehabilitation services” provided by the County in fiscal year 2003-2004 fall within the meaning of “day care intensive services” and “day care habilitative services” as defined in section 60020 as originally adopted, and included in the parameters and guidelines for *Handicapped and Disabled Students* (4282) as a reimbursable activity.

- 2) Costs incurred in fiscal years 2004-2005 and 2005-2006 are reimbursable under the mental health services identified in the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

The costs incurred for mental health treatment services for fiscal years 2004-2005 and 2005-2006 are governed by the parameters and guidelines for *Handicapped and Disabled*

⁵² Incorrect reduction claim, page 176.

Students II (02-TC-40/02-TC-49). The parameters and guidelines authorize reimbursement for the following mental health treatment services pursuant to section 60020 of the regulations as amended by the Departments of Mental Health and Education in 1998:

- Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).) [beginning July 1, 2001]
- *Beginning July 1, 2004*, provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

As indicated above, section 60020 was amended in 1998 to provide the following:

“Mental health services” means mental health assessment and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.

In relevant part, the former language requiring “day care intensive services” and “day care habilitative services” was changed to “intensive day treatment” and “day rehabilitation services.” In addition, the amendment to section 60020 deleted the definitions provided by section 542 of the Department of Mental Health's Title 9 regulations, including the specific definitions of these services.

Although the amendment created a slight wording change with these services, the Commission found that intensive day treatment and day rehabilitation services were not new activities required by the 1998 amendments, but continued to be mandated by section 60020 when required by a pupil's IEP.⁵³

Thus, the Commission treated “intensive day treatment” the same as “day care intensive services” and treated day rehabilitation services” the same as “day care habilitative services.” “Habilitative” services under former section 60020 were expressly defined to include “rehabilitation,” the same term used in the 1998 regulations. Both the original and amended versions of section 60020 specify that the intensive treatment and rehabilitative services are designed to be provided during the “day” as opposed to 24-hour residential care. Moreover, there is no indication in the final statement of reasons supporting the 1998 regulatory amendment

⁵³ Statement of decision, *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), page 36.

to suggest that the purpose of the amendment was to change the requirement imposed on counties to provide rehabilitation services.⁵⁴

Thus, “intensive day treatment” and “day rehabilitation services” continue to include “outpatient rehabilitation services” designed to provide an alternative to 24 hour residential care for acute mental, emotional, or behavioral disorders that includes counseling and rehabilitation. The services are designed to assist the child to better manage the skills necessary to function independently in an educational environment.

Broad interpretation of the phrases “intensive day treatment” and “day rehabilitation services” is supported by the federal and state statutes that govern the *Handicapped and Disabled Students* program. Under the rules of interpretation, the regulatory terms of “intensive day treatment” and “day rehabilitation services” must be construed in the context of the entire statutory and regulatory scheme in which they are a part, so that every provision of the regulation may be harmonized and have effect.⁵⁵ Moreover, the requirements of the regulation are presumed to be consistent with the governing statutes, and do not alter, amend, or impair the scope of the governing statutes.⁵⁶

In this case, the regulations adopted to implement the *Handicapped and Disabled Students* program, including section 60020, are intended to “assure conformity” with the federal IDEA and “shall be construed as supplemental to, and in the content of federal and state laws and regulations relating to interagency responsibilities for providing services to pupils with disabilities.”⁵⁷ This purpose is consistent with the governing statutes, Government Code sections 7570 et seq., which were enacted to ensure the maximum utilization of state and federal resources available to provide a child with a disability with a free appropriate public education in accordance with the federal IDEA.

Under federal law, the IDEA guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, specially designed to meet the pupil’s unique educational needs in the least restrictive environment. Each public agency must provide special education and related services to a child in accordance with the IEP developed for that child.⁵⁸ Section 300.34 of the Code of Federal Regulations defines “related services” to specifically include “psychological services” and “counseling services.”⁵⁹ “Psychological services” broadly includes “planning and

⁵⁴ See statement of decision in *Handicapped and Disabled Students II*, pages 34-39; Final Statement of Reasons for the 1998 regulation package that amended section 60020 and the other regulations under the program, pages 55-56.

⁵⁵ *People v. Simon* (1995) 9 Cal.4th 493, 514.

⁵⁶ Government Code section 11342.2; *Morris v. Williams* (1967) 67 Cal.2d 733, 748.

⁵⁷ California Code of Regulations, Title 2, section 60000.

⁵⁸ Title 34 Code of Federal Regulations section 300.323.

⁵⁹ “Related services” is also defined to include “rehabilitation counseling services,” defined as “services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation programs funded under the Rehabilitation Act of 1973” (34 C.F.R. § 300.34

managing a program of psychological services, including psychological counseling for children and parents, and assisting in developing positive behavioral intervention strategies.”

“Counseling services” means “services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.”

The list of related services is not exhaustive and must be interpreted broadly. Related services may include other developmental, corrective, or supportive services as long as the service is required to assist a disabled child to benefit from special education.⁶⁰ Thus, under federal law, outpatient rehabilitation services are “related services” required to be provided when identified in a pupil’s IEP for purposes of the pupil’s education.

In 2005, the Legislature amended Education Code section 56363, the statute that defines “designated instruction and services” for purposes of the special education services provided under the federal IDEA, to clarify that “designated instruction and services” means “related services” as that term is defined in the [IDEA] and section 300.34 of the Code of Federal Regulations.⁶¹ All assessments of pupils that are placed in the *Handicapped and Disabled Students* program under the Government Code are made in accordance with “Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code,” which includes section 56363.⁶² Thus, under state law, outpatient rehabilitation services are “related services” required to be provided when identified in a pupil’s IEP.

Section 60020 was implemented to address the “related services” of psychotherapy and other mental health treatment services required to be provided to a pupil. By law, section 60020 is required to be consistent with state and federal special education law and to be construed in the context of state and federal law. There is nothing in the law to support the conclusion that outpatient rehabilitation services are not included as a service required to be provided under the *Handicapped and Disabled Students* program.

Thus, staff finds that “outpatient rehabilitation services” are included within the meaning of “day rehabilitation” and “intensive day treatment.”

Finally, the evidence in the record supports the finding that the services provided by the County falls under “day rehabilitation” and “intensive day treatment” as provided in the 1998 amendment to section 60020. The County’s expert witness, Dr. Rea, states the following:

(c)(12.) The Controller’s audit finding recognizes this definition and suggests that “rehabilitation counseling” is limited to vocational rehabilitation. For the reasons in the analysis, staff disagrees with the Controller’s Office.

⁶⁰ Federal Department of Education comments to former Code of Federal Regulations, section 300.13 that defined “related services;” *Clovis Unified School Dist. v. California Office of Administrative Hearings* (1990) 903 F.2d 635, 638, fn. 1; *Cedar Rapids Cmty. Sch. Dist. v. Garrett F.* (1999) 526 U.S.66, 73 (“The text of the ‘related services’ definition . . . broadly encompasses those supportive services that ‘may be required to assist a child with a disability to benefit from special education.’”).

⁶¹ Statutes 2005, chapter 653 (AB 1662).

⁶² Government Code section 7572.

13. All of the services described in the patients' files that I reviewed would fall within the category of "day rehabilitation," which is among the categories of "mental health services" listed in the amended version of Cal. Admin. Code, tit. 1, § 60020. No definition of the term "day rehabilitation" is included in the relevant regulations. Based on my experience in the mental health field and my familiarity with the terminology used to describe various modes of treatment, "day rehabilitation" is a broad treatment category that would include any interventions aimed at restoring a child's previous level of functioning or helping a child develop an age-appropriate level of functioning that would maximize their ability to meet appropriate educational goals. The use of the word "day" implies that the treatment is not a continuous 24-hour intervention.

[¶]

21. In addition to all qualifying as "day rehabilitation," some of the services provided also qualify as "intensive day treatment." In some of the cases, the interventions described in the progress notes were designed to improve the child's ability to function in school and at home in order to avoid the need for an out-of-home placement. For example, in the case of ____, whose aggression and lack of impulse and emotional regulation interfered with her ability to function at home and school, her provider instituted a structured behavioral intervention to help ____ moderate her anxiety and aggression so she could function in the least restrictive environment. Another child, ____, demonstrated oppositional and aggressive behavior which made it difficult for the adults in his school and home environment to manage him. His provider assisted him through cognitive and behavioral interventions to develop more acceptable interpersonal skills so that an out-of-home placement could be avoided and participation in a regular school environment would be possible.

Therefore, the requirement to provide "intensive day treatment" and "day rehabilitation services" under section 60020 of the regulations includes the provision of outpatient rehabilitation services when required by a pupil's IEP, and that the services provided by the County fall within the requirements of section 60020.

Accordingly, staff finds that the "outpatient rehabilitation services" provided by the County in fiscal years 2004-2005 and 2005-2006 fall within the meaning of "intensive day treatment" and "day rehabilitation services" as defined by the plain language of section 60020 as amended in 1998, and included in the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) as a reimbursable activity.

- 3) The County's services were not designed to provide socialization or vocational services, but fall within the broad definitions of mental health services required by section 60020.

The State Controller's Office argues, however, that the rehabilitation services provided by the County include vocational and socialization services, which are not reimbursable. The Controller's audit report contends the following:

Day care habilitative (rehabilitation) services do not include vocational services or socialization services. But the County's Clinical Record Documentation Manual for Outpatient Mental Health Services defines rehabilitation services to include

medication education and compliance, grooming and personal hygiene skills, meal preparation skills, money management, leisure skills, social skills, developing and maintaining a support system, maintaining current housing situation.

The Controller's Office is correct that section 60020 was amended in 1998 and as part of the amendment, the reference to section 542 and the plain language requiring socialization and vocational services was deleted. "Socialization skills" were defined in section 542 as "services designed to provide life-enrichment and social skill development for individuals who would otherwise remain withdrawn and isolated. "Vocalization skills" was defined as "services designed to encourage and facilitate individual motivation and focus upon realistic and obtainable vocational goals. The Commission found that these services, as referenced in section 542, were no longer mandated.

However, the evidence in the record does not support the conclusion that the rehabilitation treatment services provided by the County were designed for socialization and vocational purposes. Both Dr. Rea's report and the County's narrative on its Incorrect Reduction Claim acknowledge that some of the specific interventions described in the pupils' files may develop a child's socialization or vocational skills. But the primary goal of the interventions was not to develop social or vocational skills, but to equip the children in the least restrictive environment with the skills necessary to function independently in an educational environment – as described above, treatment specifically identified in section 60020.⁶³

Nor is there evidence that the County's Manual for Outpatient Mental Health Services applies to the treatment provided under the *Handicapped and Disabled Students* program. The County states that:

...the Manual's description pertains to general adult and child mental health services and is not specific to the AB 3632 program. Nor has the County ever represented that the Manual describes the scope of services offered under the AB 3632 program, or any other specific program."⁶⁴

Staff finds that the County's Manual for Outpatient Mental Health Services is not relevant to this claim.

Thus, based on the plain language of section 60020 of the regulations, the State Controller's Office incorrectly reduced the County's claim for outpatient rehabilitation services in fiscal year 2003-2004, 2004-2005, and 2005-2006.

B. The footnote in the statement of decision on reconsideration denying reimbursement for providing mental health services based on section 1810.243 of the Department of Mental Health's title 9 regulations is not relevant and has no bearing on this incorrect reduction claim.

The State Controller's Office contends that outpatient rehabilitation services are not reimbursable based on an assertion that the Commission specifically denied reimbursement for

⁶³ Incorrect reduction claim narrative, page 19-21; Dr. Rea's report, page 162, paragraph 20.

⁶⁴ Incorrect reduction claim narrative, page 18.

rehabilitation services in a footnote in the statement of decision on reconsideration (04-RL-4282-04). That footnote states the following:

In comments to the draft staff analysis, the County of Los Angeles asserts that “rehabilitation” should be specifically defined to include the activities identified in section 1810.243 of the regulations adopted by the Department of Mental Health under the Medi-Cal Specialty Mental Health Services Consolidation program. (Cal. Code Regs., tit. 9, § 1810.243.) These activities include “assistance in improving, maintaining, or restoring a beneficiary’s or group of beneficiaries’ functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education.”

The Commission disagrees with the County’s request. The plain language of [the] test claim regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.) does not require or mandate counties to perform the activities defined by section 1810.243 of the Department’s title 9 regulations. In addition, the test claim regulations do not reference section 1810.243 of the Department’s title 9 regulations for any definition relevant to the program at issue in this case.

The Controller’s interpretation of the footnote in the Commission’s statement of decision is wrong.

Section 1810.243 is a regulation adopted by the Department of Mental Health to implement the Medi-Cal Specialty Mental Health Services program, which provides managed mental health care for Medi-Cal beneficiaries. It defines rehabilitation services under *that* program as “a service activity, which includes, but is not limited to assistance in improving, maintaining, or restoring a beneficiary’s or group of beneficiaries’ functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education.”

Section 1810.243 was not adopted to implement the *Handicapped and Disabled Students* program or the special education provisions of federal law and was not referenced in the plain language of the regulations adopted to implement the *Handicapped and Disabled Students* program. On its face, section 1810.243 has nothing to do with the program at issue here. Moreover, the activities of providing assistance in functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources and/or medication education are not identified in the plain language of the regulations adopted under the *Handicapped and Disabled Students* program.

Thus, the Commission’s footnote in the statement of decision on reconsideration simply finds that section 1810.243 of the regulations adopted under a completely different program is not relevant to the *Handicapped and Disabled Students* program.

Moreover, there is no evidence that the Commission excluded outpatient rehabilitation services from the parameters and guidelines, as suggested by the State Controller’s Office. The same rules of construction and interpretation that apply to statutes will govern the construction and interpretation of an administrative agency’s rules, such as the parameters and guidelines.⁶⁵

⁶⁵ *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 344.

Under these rules, where exceptions to a general rule are specified in the statute or agency rule, other exceptions are not to be implied or presumed.⁶⁶ In this case, the Commission adopted statements of decision and parameters and guidelines in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) that specifically excluded from reimbursement the following treatment services defined by section 542 of the Department of Mental Health's Title 9 regulations: crisis intervention, vocational services, and socialization services. These definitions, which were incorporated by reference in section 60020, were deleted from section 60020 in 1998. However, "outpatient rehabilitation services" were not specifically excluded.

Thus, outpatient rehabilitation services cannot be presumed excluded from the parameters and guidelines as a reimbursable cost. Rather, as indicated above, the determination of this incorrect reduction claim must be based on an interpretation of section 60020 of the regulations that implement the *Handicapped and Disabled Students* program.

IV. Conclusion

For the foregoing reasons, staff concludes that the State Controller's Office incorrectly reduced the costs incurred by the County of Santa Clara to provide outpatient rehabilitation services in the approximate amount of \$8.6 million for fiscal years 2003-2004, 2004-2005, and 2005-2006 for the *Handicapped and Disabled Student* program.

V. Staff Recommendation

Staff recommends that the Commission adopt this analysis to approve the incorrect reduction claim filed by the County of Santa Clara and request the State Controller's Office to reinstate the full amount reduced.

⁶⁶ *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 410.