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September 9, 2013
COMMISSION ON
STATE MANDATES

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September 9, 2013

VIA E-FILING

(<http://www.csm.ca.gov/dropbox.shtml>)

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Audit of the Costs Claimed by County of San Diego in the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program For the Period of July 1, 2005 through June 30, 2006

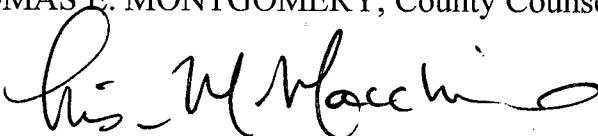
To the Commission on State Mandates:

The County of San Diego (County) hereby submits an Incorrect Reduction Claim (IRC) challenging the State Controller's disallowance of \$647,309.00 in costs claimed by the County for providing legislatively mandated out-of-state mental health services to emotionally disturbed pupils. Please find attached the County's timely filed IRC which includes all supporting documentation.

If you have any questions regarding the County's IRC, please do not hesitate to contact the undersigned Senior Deputy at (619)531-6296.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 
LISA M. MACCHIONE, Senior Deputy

LMM:vs
Encs.

**COMMISSION ON STATE MANDATES
INCORRECT REDUCTION CLAIM FORM**

Authorized by Government Code section 17558

GENERAL INSTRUCTIONS

- To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the Commission. All incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.
- An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.
- Type all responses.
- Complete sections 1 through 12, as indicated. Failure to complete any of these sections will result in this incorrect reduction claim being returned as incomplete.
- Please submit by either of the following methods:
 1. **E-filing.** The claimant shall electronically file the incorrect reduction claim in PDF format to the e-filing system on the Commission's website (<http://www.csm.ca.gov/dropbox.shtml>), consistent with the Commission's regulations (CCR, tit.2, § 1181.2). The requester is responsible for maintaining the paper document with original signature(s) for the duration of the claim process, including any period of appeal. **No additional copies are required when e-filing the request.**
 2. **By hard copy.** Original incorrect reduction claim submissions shall be unbound and double-sided, without tabs, and include a table of contents. Mail, or hand-deliver, **one original and two copies** of your incorrect reduction claim submission to: Commission on State Mandates, 980 9th Street, Suite 300, Sacramento, CA 95814

Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the required sections are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the Commission within 30 days from the date the incomplete claim was returned to the claimant, the Commission shall deem the filing to be withdrawn.

You may download this form from our website at csm.ca.gov.

If you have questions, please contact us:

Website: www.csm.ca.gov

Telephone: (916) 323-3562

E-Mail: csminfo@csm.ca.gov

1. INCORRECT REDUCTION CLAIM TITLE

Controller's Audit of San Diego County's SED: Out-of-State
Mental Health Services Program Costs 2005 through 2006

2. CLAIMANT INFORMATION

The County of San Diego
Name of Local Agency or School District
Alfredo Aguirre
Claimant Contact
Behavioral Health Services Director
Title
3255 Camino Del Rio South
Street Address
San Diego, CA 92108
City, State, Zip
(619) 563-2766
Telephone Number
(619)563-2705
Fax Number
alfredo.aguirre@sdcounty.ca.gov
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Lisa Macchione
Claimant Representative Name
Senior Deputy County Counsel
Title
Office of the County Counsel, County of San Diego
Organization
1600 Pacific Highway, Rm 355
Street Address
San Diego, CA 92101
City, State, Zip
(619)531-6296
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E-Mail Address

For CSM Use Only
Filing Date: RECEIVED
September 9, 2013
COMMISSION ON
STATE MANDATES
REVISED
September 19, 2013
IRC #: 13-9705-I-05

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Please specify the subject statute or executive order that claimant alleges is not being fully reimbursed pursuant to the adopted parameters and guidelines.

Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996), added and amended Government Code Section 7576 and California Code of Regulations section 60100

5. AMOUNT OF INCORRECT REDUCTION

Please specify the fiscal year and amount of reduction. More than one fiscal year may be claimed.

Fiscal Year	Amount of Reduction
2005-2006	\$647,309.00
TOTAL:	\$647,309.00

6. NOTICE OF INTENT TO CONSOLIDATE

Please check the box below if there is intent to consolidate this claim.

Yes, this claim is being filed with the intent to consolidate on behalf of other claimants.

Sections 7 through 11 are attached as follows:

- 7. Written Detailed Narrative: pages 1 to 13.
- 8. Documentary Evidence and Declarations: Exhibit A-1 A-2
- 9. Claiming Instructions: Exhibit B.
- 10. Final State Audit Report or Other Written Notice of Adjustment: Exhibit C.
- 11. Reimbursement Claims: Exhibit D.

Sections 7 through 11 shall be included with each incorrect reduction claim submittal.

7. WRITTEN DETAILED NARRATIVE

Under the heading "7. Written Detailed Narrative," please describe the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

8. DOCUMENTARY EVIDENCE AND DECLARATIONS

If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim under the heading "8. Documentary Evidence and Declarations." All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

9. CLAIMING INSTRUCTIONS

Under the heading "9. Claiming Instructions," please include a copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

10. FINAL STATE AUDIT REPORT OR OTHER WRITTEN NOTICE OF ADJUSTMENT

Under the heading "10. Final State Audit Report or Other Written Notice of Adjustment," please include a copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

11. REIMBURSEMENT CLAIMS

Under the heading "11. Reimbursement Claims," please include a copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

12. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the incorrect reduction claim submission.**

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Tracy M. Sandoval

Print or Type Name of Authorized Local Agency
or School District Official

Dep. Chief Admin. Officer/Auditor & Controller

Print or Type Title



Signature of Authorized Local Agency or
School District Official

9/19/13

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the incorrect reduction claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

TRACY M. SANDOVAL
Deputy Chief Administrative Officer/Auditor and Controller
Tracy.Sandoval@sdcounty.ca.gov
1600 Pacific Highway, Room 166
San Diego, CA 92101
Phone: 619-531-5413
Fax: 619-531-5219

ITEM 7: WRITTEN DETAILED NARRATIVE

TABLE OF CONTENTS

INTRODUCTION..... 1

Summary of State’s Audit and County’s Incorrect Reduction Claim 3

ARGUMENT 4

 I. Summary of Response To Finding 1 - Unallowable Vendor Payments..... 4

 A. California Law In Effect During the Audit Period Prohibiting For-Profit Placements was Inconsistent with Both Federal Law, Which No Longer Has Such a Limitation, and with IDEA’s “Most Appropriate Placement” Requirement. 5

 B. Parents Can be Reimbursed When Placing Students in Appropriate For-Profit Out-of-State Facilities. County Mental Health Agencies Were Subject to Increased Litigation Without the Same Ability to Place Seriously Emotionally Disturbed Students in Appropriate For-Profit Out-of-State Facilities During the Audit Period..... 9

 C. County Contracted with Nonprofit Out-of-State Residential Program For SED Pupils 11

 D. There are No Requirements in Federal or State Law Regarding the Tax Identification Status of Mental Health Treatment Services Providers. Thus, There are No Grounds to Disallow the County’s Treatment Costs..... 12

CONCLUSION 13

ITEM 8: DOCUMENTARY EVIDENCE AND DECLARATIONSExhibits A-1& A-2

ITEM 9: CLAIMING INSTRUCTIONS.....Exhibit B

ITEM 10: FINAL STATE AUDIT REPORT OR OTHER WRITTEN NOTICE OF ADJUSTMENTExhibit C

ITEM 11: REIMBURSEMENT CLAIMSExhibit D

ITEM 7: WRITTEN DETAILED NARRATIVE

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SAN DIEGO
THOMAS E. MONTGOMERY
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Telephone: (619) 531-6296
Facsimile: (619) 531-6005

Attorneys for
COUNTY OF SAN DIEGO

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

In Re:

CALIFORNIA STATE CONTROLLER'S)	INCORRECT
AUDIT OF THE COUNTY OF SAN DIEGO'S)	REDUCTION CLAIM
CLAIMS FOR REIMBURSEMENT PURSUANT)	BY THE COUNTY OF
TO MENTAL HEALTH SERVICES PROVIDED)	SAN DIEGO
IN THE SERIOUSLY EMOTIONALLY)	
DISTURBED PUPILS: OUT-OF-STATE)	
MENTAL HEALTH SERVICES PROGRAM)	
FOR THE PERIOD OF JULY 1, 2005 THROUGH)	
JUNE 30, 2006)	
<hr/>		

Introduction

In 1996 the Legislature amended Section 7576 of the Government Code (AB 2726) to add new fiscal and programmatic responsibilities for counties to provide mental health services to seriously emotionally disturbed ("SED") pupils placed in out-of-state

residential programs. The legislation provided that the fiscal and program responsibilities of counties would be the same regardless of the location of the pupil's placement.

California Code of Regulations, Title 2, sections 60100 and 60200 set forth counties' programmatic and fiscal responsibilities when an SED pupil is placed out-of-state in a residential program. Section 60100 provides that such out-of-state placements may only be made when no in-state facility can meet the pupil's needs and may only be in programs that meet the requirements of Welfare and Institutions Code sections 11460(c)(2) through (c)(3). Section 11460 (c) (3) provides that reimbursement will only be paid to a group home organized and operated on a nonprofit basis.

As summarized in the Parameters and Guidelines attached hereto in Item 9 as Exhibit "B", the Commission on State Mandates ("CSM") adopted its Statement of Decision on the subject test claim and found the following activities to be reimbursable under Government Code section 17561:

- Payment of out-of-state residential placements for SED pupils;
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP); and
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000-60610.

The CSM adopted the parameters and guidelines on October 26, 2000 and these parameters and guidelines define the program and what costs are reimbursable.¹ The State Controller's Office issued claiming instructions on January 2, 2001 and those instructions are attached hereto as Item 9, Exhibit "B". Claiming instructions assist the counties in claiming the mandated program's reimbursable costs.

Summary of State's Audit and County's Incorrect Reduction Claim

The State Controller's Office audited the costs claimed by the County of San Diego ("County") for the legislatively mandated SED Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2005 through June 30, 2006. The State Controller's Office issued a draft audit report on July 8, 2010. (See Page 2 of Item 10 Final State Audit Report attached hereto as Exhibit "C".) The County submitted its Response to the draft SED Pupils: Out Of State Mental Health Services Program for the period of July 1, 2005 through June 30, 2006 on August 10, 2010 and the Final State Audit Report is dated September 10, 2010. (See Attachment -County's Response to Draft Audit Report to Item 10 Final State Audit Report attached hereto as Exhibit "C".)

The County claimed and was paid \$2,462,933 for the mandated program, and the State found \$1,795,238 was allowable and \$667,695 was unallowable. The State alleges that the unallowable costs occurred because the County claimed ineligible vendor

¹ The responsibility for funding and providing mental health services including out-of- state mental health services required by the Individuals with Disabilities Education Act (IDEA) and identified in a pupil's individualized education plan (IEP) was with counties during the subject claim period of July 1, 2005 through June 30, 2006. It should be noted, however, that the Commission on State Mandates adopted the statement of decision and the parameters and guidelines amendment to end reimbursement for the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* programs effective July 1, 2011.

payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit and because the County claimed unallowable travel costs. The State broke down the unallowable costs claimed into two findings. The County disputes only the first finding which alleges the County claimed ineligible vendor payments and asserts that the State has incorrectly reduced the County's claim by \$647,309.

The County disputes Finding 1 – unallowable vendor payments - because the California Code of Regulations Title 2 section 60100(h) which was in effect during the audit period and Welfare and Institutions Code section 11460(c)(3) cited by the State is in conflict with requirements of federal law, including the Individuals with Disabilities Education Act (IDEA) and Section 472(c)(2) of the Social Security Act (42 U.S.C.672 (c)(2). The Parameters and Guidelines which are included as an integral part of the Claiming Instructions attached hereto as Item 9, Exhibit B cite the State law referenced above which is in conflict with the requirements of federal law. Please see the following argument in support of County's position that the subject claim was incorrectly reduced by \$647,309.

Argument

I. Summary of Response To Finding 1 - Unallowable Vendor Payments

The State's position is that the County claimed unallowable vendor costs of \$647,309 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of \$647,309 (board and care costs of \$354,153 and treatment costs of \$293,156) for out-of-state residential placement of SED pupils owned and operated for profit. In support of its

position, the State cites the California Code of Regulations, Title 2, section 60100, subdivision (h), which provides that out-of-state residential placements will be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460(c)(2) through (3). Welfare and Institutions Code section 11460(c) (3) provides that reimbursement will only be paid to a group home organized and operated on a nonprofit basis.

The County asserts that it is entitled to the entire amount claimed and that its claim was incorrectly reduced by board and care costs of \$354, 153 and treatment costs of \$293,156. Please see Summary of Program Costs – SED Claims – July 1, 2005 - June 30, 2006 attached hereto as Item 8 Exhibit A-1. In support of its position, the County provides the following arguments and Exhibit A-1 and A-2 attached hereto.

A. California Law in Effect During the Audit Period Prohibiting For-Profit Placements was Inconsistent with Both Federal Law, Which No Longer Has Such a Limitation, and With IDEA’s “Most Appropriate Placement” Requirement.

In 1990, Congress enacted the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.S. § 1400-1487) pursuant to the Spending Clause (U.S. Const., art. I, § 8, cl. 1). According to Congress, the statutory purpose of IDEA is “. . . to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . .” 20 U.S.C. § 1400(d)(1)(A); *County of San Diego v. Cal. Special Educ. Hearing*, 93 F.3d 1458, 1461 (9th Cir. 1996).

To accomplish the purposes and goals of IDEA, the statute “provides federal funds to assist state and local agencies in educating children with disabilities but conditions such funding on compliance with certain goals and procedures.” *Ojai Unified School Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993); see *Ciresoli v. M.S.A.D. No. 22*, 901 F. Supp. 378, 381 (D.Me. 1995). All 50 states currently receive IDEA funding and therefore must comply with IDEA. *County of L.A. v. Smith*, 74 Cal. App. 4th 500, 508 (1999).

IDEA defines “special education” to include instruction conducted in hospitals and institutions. If placement in a public or private residential program is necessary for a student to benefit from their special education program, regulations require that the program must be provided at no cost to the parents of the student. 34 C.F.R. § 300.302 (2000). Thus, IDEA requires that a state pay for a disabled student’s residential placement when necessary. *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F. 3d 769 (8th Cir. 2001). Local educational agencies (LEA) were initially responsible for providing all the necessary services to special education students including required mental health services, however, Assembly Bill 3632 (“3632”) codified in California Government Code sections 7570 *et seq.* , shifted the responsibility for providing special education mental health services to disabled students to counties. That pendulum, however, has shifted back and Assembly Bill 114 repealed and made inoperative the statutes that originally shifted the provision of mental health services to pupils on their IEPs to counties effective July 1, 2011. It should be noted that during the audit period counties were responsible for providing such services.

Federal law originally required residential placements to be in nonprofit facilities. In 1997, however, the federal requirements changed to remove any reference to the tax identification (profit/nonprofit) status of an appropriate residential placement as follows: Section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 states, Section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2) is amended by striking “nonprofit.” That section during the audit period provided as follows:

“The term ‘child-care institution’ means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.”

The California Code of Regulations, Title 2, section 60100, subdivision (h)² and Welfare and Institutions Code section 11460(c)(2) through (3) are therefore inconsistent with and more restrictive than the requirements set forth in the Social Security Act as referenced above, as well as inconsistent with a primary principle of IDEA as described below.

IDEA “was intended to ensure that children with disabilities receive an education that is both appropriate and free.” *Florence County School District Four v. Carter*, 510 U.S. 7, 13, 126 L. Ed. 2d 284, 114 S. Ct. 361 (1993). A “free appropriate public education” (FAPE) includes both instruction and “related services” as may be required to assist a child with a disability. 20 U.S.C. § 1401 (9). Both instruction and related services, including residential placement, must be specially designed to suit the needs of

² All references in this document to the Government Code Chapter 26.5 commencing with section 7570, the corresponding regulations Title 2, sections 60000 et seq.) were in effect during the audit period and counties were mandated to provide the mental health services to pupils on their IEPs.

the individual child. 20 U.S.C. § 1401(26). The most appropriate residential placement specially designed to meet the needs of an individual child may not necessarily be one that is operated on a nonprofit basis. Consequently, to limit the field of appropriate placements for a special education student would be contrary to the FAPE requirement referenced above. Counties and students could not be limited by such restrictions because the most appropriate placement for a student may not have a nonprofit status. This need for flexibility became most pronounced when a county was seeking to place a student in an out-of-state residential facility which is the most restrictive level of care. Such students have typically failed California programs and required a more specialized program that may not necessarily have a nonprofit tax identification status.

In contrast to the restrictions placed on counties with respect to placement in nonprofits, LEAs were not limited to accessing only nonprofit educational programs for special education students. When special education students are placed in residential programs, out-of-state, LEAs may utilize the services provided by certified nonpublic, nonsectarian schools and agencies that have a for-profit tax identification status. See Educ. Code § 56366.1. These nonpublic schools become certified by the state of California because they meet the requirements set forth in Education Code sections 56365 *et seq.* These requirements do not include nonprofit status, but rather, among other things, the ability to provide special education and designated instruction to individuals with exceptional needs which includes having qualified licensed and credentialed staff. LEAs monitor the out-of-state nonpublic schools through the Individualized Education Program (“IEP”) process and are also required to monitor these

schools annually which may include a site visit. Consequently, during the audit period, counties and LEAs could not be subject to different criteria when seeking a placement in out-of state facilities for a special education student. Consistent with federal law, counties needed to have the ability to place students in the most appropriate educational environment out-of state and not be constrained by nonprofit status.

B. Parents Can be Reimbursed When Placing Students in Appropriate For-Profit Out-of-State Facilities. County Mental Health Agencies Were Subject to Increased Litigation Without the Same Ability to Place Seriously Emotionally Disturbed Students in Appropriate For-Profit Out-of-State Facilities During the Audit Period.

In *Florence County School District Four, et al. v. Shannon Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993), the U.S. Supreme Court found that although the parents placed their child in a private school that did not meet state education standards and was not state approved, they were entitled to reimbursement because the placement was found to be appropriate under IDEA. The parents in *Carter* placed their child in a private school because the public school she was attending provided an inappropriate education under IDEA.

In California, during the audit period, if counties were unable to access for-profit out-of-state programs, they may not be able to offer an appropriate placement for a pupil that had a high level of unique mental health needs that may only be treated in a specialized program. If that program was for-profit, that county would have been subject to litigation from parents, who through litigation, may access the appropriate program for their child regardless of the program's tax identification status. For example, *In the Matter of Student v. Riverside Unified School District and Riverside Department of*

Mental Health, OAH Case Number: N 2007090403, the Administrative Law Judge of the Office of Administrative Hearings Special Education Division, State of California (“OAH”) ordered the Riverside Unified School District (“RUSD”) and the Riverside County Department of Mental Health (“RCDMH”) to place a deaf student with very unique needs in a residential program with a for-profit tax identification status. This program is highly specialized, located in Florida and there was no other program available that would meet this pupil’s unique needs. Therefore, both the RUSD and the RCDMH were ordered to “provide Student with compensatory education consisting of immediate placement at the National Deaf Academy and through the 2008-2009 school year.” RUSD and RCDMH were also ordered to continue to fund the placement until the Student “voluntarily terminates his attendance at NDA after his 18th birthday, or student’s placement is terminated by NDA.”

Thus, through litigation and as ordered by the administrative law judge the Student was able to access the most appropriate residential program which met Student’s unique needs consistent with IDEA and which happened to be for-profit; and through litigation, a county and school district were ordered to fund a for-profit residential program.

County Mental Health Agencies recommended out-of state residential programs for special education students only after in state alternatives had been considered and were not found to meet the child’s needs. See Gov’t Code §§ 7572.5 and 7572.55³. As

³ As referenced in prior footnotes, the Government Code Sections commencing with Section 7570 and the implementing regulations were repealed effective July 1, 2011, but were operative during the audit period.

described in 7572.5 and 7572.55, such decisions were not made hastily and required levels of documented review, including consensus from the special education student's IEP team. Further, when students require the most restrictive educational environment, their needs are great and unique. Consistent with IDEA, during the audit period, counties should have been able to place special education students in the most appropriate program that met their unique needs without consideration for the programs for-profit or nonprofit status so that students would be placed appropriately and counties would not be subject to needless litigation as evidenced in the *Riverside* case above.

C. County Contracted with Nonprofit Out-of-State Residential Program for SED Pupils.

During the audit period, the County contracted with Mental Health Systems, Inc. (Provo Canyon School) the provider of the out-of-state residential services that is the subject of the proposed disallowance that the County disputes in this Incorrect Reduction Claim. As referenced in the April 28, 2007 letter from the Internal Revenue Service (attached hereto in Item 8, Exhibit A-2) Mental Health Systems, Inc. (Provo Canyon School) is a nonprofit entity. The County contracted with this provider in a manner consistent with the requirements of the California Code of Regulations and Welfare and Institutions Code referenced above. The State never provided any guidance to counties as to how to access or contract with appropriate out-of-state facilities that meet State criteria or qualifications. The State never provided counties a list of appropriate out-of-state facilities that meet State requirements. County should not be penalized now for fulfilling the requirements of the law with little or no guidance from the State.

D. There Are No Requirements in Federal or State Law Regarding the Tax Identification Status of Mental Health Treatment Services Providers. Thus, There Are No Grounds to Disallow the County's Treatment Costs.

Government Code section 7572 (c), provided that "Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education. . . ." The California Code of Regulations, title 2, division 9, chapter 1, article 1, section 60020 (i) and (j), which were operative during the audit period, further described the type of mental health services to be provided in the program as well as who shall provide those services to special education pupils. There was no requirement that the providers have a nonprofit or for-profit status. The requirements were that the services "shall be provided directly or by contract at the discretion of the community mental health service of the county of origin" and that the services were to be provided by "qualified mental health professionals." Qualified mental health professionals include licensed practitioners of the healing arts such as: psychiatrists, psychologists, clinical social workers, marriage, family and child counselors, registered nurses, mental health rehabilitation specialists and others who have been waived under Section 5751.2 of the Welfare and Institutions Code. The County complied with all of these requirements. Consequently, because there was no legal requirement that treatment services be provided by nonprofit entities the State cannot and shall not disallow the treatment costs.

Conclusion

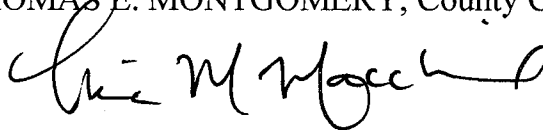
In conclusion, the County asserts that the costs it claimed for the legislatively mandated SED Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2005 through June 30, 2006 was incorrectly reduced by \$647,309 and the County should be reimbursed the full amount of the disputed costs.

Dated:

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By



LISA M. MACCHIONE, Senior Deputy
Attorneys for the County of San Diego

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibits A-1& A-2

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibits A-1& A-2

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibit A-1

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibit A-1

Summary of July 01, 2005 - June 30, 2006

	Actual Costs Claimed	Allowable	Adjustments	Remarks
Summary of July 01, 2005 - June 30, 2006				
Ongoing Costs - Mental Health Service:				
Vendor Reimbursements	\$ 2,446,965.00	\$ 2,442,547.00	\$ (4,418.00)	Placement outside of authorization period
Travel	\$ 15,968.00	-	\$ (15,968.00)	Duplicated cost
Sub-total Program costs	\$ 2,462,933.00	\$ 2,442,547.00	\$ (20,386.00)	
Less: Late filing penalty	-	-	-	
Total Program Costs	<u>\$ 2,462,933.00</u>	<u>\$ 2,442,547.00</u>	<u>\$ (20,386.00)</u>	
Less: Amount paid by the State		<u>\$ (2,462,933.00)</u>		
Overpayment by the State to the County due to unallowable cost		<u>\$ (20,386.00)</u>		
Total Program Costs		\$ 2,442,547.00		
Less: Allowable per State Audit		<u>\$ (1,795,238.00)</u>		
Cost of Treatment Room & Board for profit facilities for appeal		<u>\$ 647,309.00</u>		

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibit A-2

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibit A-2

Administration

MAY 07 2007

Internal Revenue Service

Date: April 28, 2007

MENTAL HEALTH SYSTEMS INC
9465 FARNHAM ST
SAN DIEGO CA 92123

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
T. Buckingham 29-70700
Customer Service Representative
Toll Free Telephone Number:
877-829-5600
Federal Identification Number:

Dear Sir or Madam:

This is in response to your request of April 26, 2007, regarding your organization's tax-exempt status.

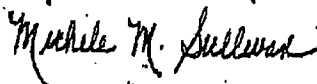
In November 1982 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a public charity under section 509(a)(2) of the Internal Revenue Code.

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations 1

**ITEM 9
CLAIMING INSTRUCTIONS:
Exhibit B**

**ITEM 9
CLAIMING INSTRUCTIONS:
Exhibit B**

OFFICE OF THE STATE CONTROLLER

STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2000-14

SERIOUSLY EMOTIONALLY DISTURBED PUPILS:
OUT-OF-STATE MENTAL HEALTH SERVICES

JANUARY 2, 2001

In accordance with Government Code Section (GC) 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for the filing of claims for Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (SEDP). These claiming instructions are issued subsequent to the adoption of the program's parameters and guidelines (P's & G's) by the Commission on State Mandates (COSM).

On May 25, 2000, COSM determined that the SEDP program establishes costs mandated by the State according to the provisions listed in the attached P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

Government Code Section 7576, as amended by Chapter 654, Statutes of 1996, established new fiscal and programmatic responsibilities for counties to provide mental health services to SED pupils placed in out-of-state residential programs.

Eligible Claimants

Any county that incurs increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

Filing Deadlines

A. Initial Claims

Initial claims must be filed within 120 days from the issuance date of claiming instructions. Reimbursement claims for the period January 1, 1997, through June 30, 1997, and 1997-98 through 1999-00 fiscal years must be filed with SCO and must be delivered or postmarked on or before **May 2, 2001**. Annually thereafter, having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. All initial reimbursement claims will be considered as one claim for the purpose of computing the late claim penalty. If the claims are late, the penalty should be applied to a single fiscal year. The penalty should not be prorated among fiscal years. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. **Claims filed more than one year after the deadline, or without the requested supporting documentation, will not be accepted.**

B. Estimated Claims

Unless otherwise specified in the claiming instructions, local agencies are not required to provide cost schedules and supporting documents with an estimated claim if the estimated

amount does not exceed the previous fiscal year's actual costs by more than 10%. The claimant can simply enter the estimated amount on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, the claimant must complete supplemental claim forms to support their estimated costs as specified for the program to explain the reason for the increased costs. If no explanation supporting the higher estimate is provided with the claim, it will automatically be adjusted to 110% of the previous fiscal year's actual costs.

Estimated claims filed with SCO must be postmarked by January 15 of the fiscal year in which costs will be incurred. However, 2000-01 estimated claims must be filed with SCO and postmarked by **May 2, 2001**. Timely filed claims will be paid before late claims.

Minimum Claim Cost

GC § 17564(a) provides that no claim shall be filed pursuant to § 17561 unless such a claim exceeds \$200 per program per fiscal year. Claims should be rounded to the nearest dollar.

Reimbursement Claims

Initial reimbursement claims will only be reimbursed to the extent that expenditures can be supported and, if such information is unavailable, claims will be reduced. In addition, ongoing reimbursement claims must be supported by documentation as evidence of the expenditures. Examples of documentation may include, but are not limited to, employee time records that identify mandate activities, payroll records, invoices, receipts, contracts, travel expense vouchers, purchase orders, and caseload statistics.

Audit of Costs

All claims submitted to SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the P's & G's adopted by COSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment," specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Claim documentation shall be made available to SCO on request.

Retention of Claiming Instructions

The claiming instructions and forms in this package should be retained permanently in your *Mandated Cost Manual* for future reference and use in filing claims. These forms should be duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at www.sco.ca.gov/ard/local/locreim/index.htm.

Address for Filing Claims

Submit a signed original and a copy of form FAM-27, Claim for Payment, and a copy of all other forms and supporting documents to:

If delivery is by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivery is by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Parameters and Guidelines

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000- 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

II. ELIGIBLE CLAIMANTS

Counties.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment

related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivisions 60100 and 60110.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All

documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's Office claiming instructions, for those costs mandated by the State contained herein.

CLAIM FOR PAYMENT		For State Controller Use Only		Program
Pursuant to Government Code Section 17561		(19) Program Number 00191		191
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		(20) Date Filed ____/____/____		
		(21) LRS Input ____/____/____		
(01) Claimant Identification Number		Reimbursement Claim Data		
(02) Claimant Name		(22) SEDP-1, (03)		
County of Location		(23) SEDP-1, (04)(A)(1)(f)		
Street Address or P.O. Box Suite		(24) SEDP-1, (04)(A)(2)(f)		
City State Zip Code		(25) SEDP-1, (04)(B)(1)(f)		
Type of Claim	Estimated Claim	Reimbursement Claim	(26) SEDP-1, (04)(B)(2)(f)	
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) SEDP-1, (06)	
Fiscal Year of Cost	(06) 20 ___/20___	(12) 20 ___/20___	(30)	
Total Claimed Amount	(07)	(13)	(31)	
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32)	
Less: Prior Claim Payment Received		(15)	(33)	
Net Claimed Amount		(16)	(34)	
Due to Claimant	(08)	(17)	(35)	
Due to State		(18)	(36)	
(37) CERTIFICATION OF CLAIM				
<p>In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 654, Statutes of 1996, certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 654, Statutes of 1996.</p> <p>The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 654, Statutes of 1996, set forth on the attached statements.</p>				
Signature of Authorized Officer		Date		
_____		_____		
Type or Print Name		Title		
(38) Name of Contact Person for Claim		Telephone Number () - Ext.		
_____		E-Mail Address _____		

LABEL HERE

Program 191	SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES Certification Claim Form Instructions	FORM FAM-27
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- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. Affix a label in the space shown. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03), Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04), Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05), Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form SEDP-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.
- (08) Enter the same amount as shown on line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09), Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10), Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11), Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form SEDP-1, line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.
- (14) **Filing Deadline. Initial Claims of Ch. 654/96.** If the reimbursement claims for the period 1/1/97 to 6/30/97 and the fiscal years 1997-98 through 1999-00, are filed after **May 2, 2001**, the claims must be reduced by a late penalty. All initial reimbursement claims will be considered as one claim for the purpose of computing the late claim penalty. Do not prorate the penalty among the fiscal years. It should be applied to a single fiscal year. Enter either the product of multiplying the sum total of line (13) for all applicable FAM-27's by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- In subsequent years, reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17), Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) **Reimbursement Claim Data.** Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., SEDP-1, (04)(A)(1)(a), means the information is located on form SEDP-1, block (04), line (A)(1), column (a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by a signed certification.**
- (38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED, ORIGINAL FORM FAM-27 WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS (NO COPIES NECESSARY) TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY						FORM SEDP-1
(01) Claimant			(02) Type of Claim		Fiscal Year	
			Reimbursement <input type="checkbox"/>			
			Estimated <input type="checkbox"/>		19__/20__	
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						
Direct Costs			Object Accounts			
(04) Reimbursable Components			(a)	(b)	(c)	(d)
			Salaries	Benefits	Services and Supplies	Fixed Assets
			(e)			(f)
					Travel and Training	Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements						
2. Case Management						
3. Travel						
4. Program Management						
(05) Total Direct Costs						
Indirect Costs						
(06) Indirect Cost Rate					[From ICRP]	%
(07) Total Indirect Costs					[Line (06) x line (05)(a)] or [Line (06) x {line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs					[Line (05)(f) + line (07)]	
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount					[Line (08) - {line (09) + line (10)}]	

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY Instructions	FORM SEDP-1
---	------------------------

- (01) Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A separate form SEDP-1 should be completed for each department.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form SEDP-1 must be filed for a reimbursement claim. Do not complete form SEDP-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form SEDP-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the number of pupils placed in out-of-state residential programs in the fiscal year of claim.
- (04) Reimbursable Components. For each reimbursable component, enter the total from form SEDP-2, line (05), columns (d) through (h) to form SEDP-1, block (04), columns (a) through (e) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total columns (a) through (f).
- (06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have its own ICRP for the program.
- (07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings. If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements. If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. From Total Direct and Indirect Costs, line (08), subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10). Enter the remainder on this line and carry the amount forward to form FAM-27, line (07) for the Estimated Claim or line (13) for the Reimbursement Claim.

MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
--	------------------------------

(01) Claimant	(02) Fiscal Year
---------------	------------------

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training

(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: ___ of ___	
--	--

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
Instructions	

- (01) Claimant. Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A separate form SEDP-2 should be completed for each department.
- (02) Fiscal Year. Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form SEDP-2 shall be prepared for each applicable component.
 Mental Health Service Vendor Reimbursements*. This component includes reimbursement for residential costs, i.e., board and care of out-of-state placements.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, travel expenses, etc. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial payment at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked					
Benefits	Title Activities	Benefit Rate			Benefits = Benefit Rate x Salaries				
Services and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Co x Quanti Used			
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed			Invoice
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage				Itemized Cost of Equipment Purchased		Invoice
Travel and Training	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode					Cost = Rate x Days or Miles or Total Travel Cost	
Training	Employee Name/Title Name of Class		Dates Attended					Registration Fee	

- (05) Total line (04), columns (d) through (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component/activity costs, number each page. Enter totals from line (05), columns (d) through (h) to form SEDP-1, block (04), columns (a) through (e) in the appropriate row.

ITEM 10
FINAL STATE AUDIT REPORT OR OTHER WRITTEN
NOTICE OF ADJUSTMENT:
Exhibit C

ITEM 10
FINAL STATE AUDIT REPORT OR OTHER WRITTEN
NOTICE OF ADJUSTMENT:
Exhibit C

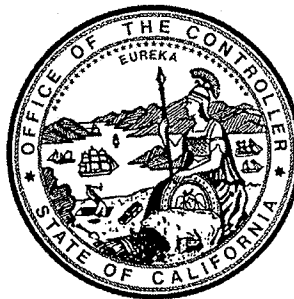
SAN DIEGO COUNTY

Audit Report

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES PROGRAM

Chapter 654, Statutes of 1996

July 1, 2005, through June 30, 2006



JOHN CHIANG
California State Controller

September 2010



JOHN CHIANG
California State Controller

September 10, 2010

Pam Slater-Price, Chairwoman
San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101

Dear Ms. Slater-Price:

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2005, through June 30, 2006.

The county claimed and was paid \$2,462,933 for the mandated program. Our audit disclosed that \$1,795,238 is allowable and \$667,695 is unallowable. The costs are unallowable primarily because the county claimed ineligible vendor payments for seriously emotionally disturbed pupils placed in facilities that are owned and operated for profit. The State will offset \$667,695 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: Tracy M. Sandoval
Assistant Chief Financial Officer/Auditor and Controller
San Diego County
Marilyn Flores, Principal Accountant
San Diego County
Jeff Carosone, Principal Program Budget Analyst
Cor-Gen Unit, Department of Finance
Carol Bingham, Director
Fiscal Policy Division
California Department of Education
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Special Education Program
Department of Mental Health
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State Controller's Office

Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	3
Schedule 1—Summary of Program Costs	4
Findings and Recommendations	5
Attachment—County’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2005, through June 30, 2006.

The county claimed and was paid \$2,462,933 for the mandated program. Our audit disclosed that \$1,795,238 is allowable and \$667,695 is unallowable. The costs are unallowable primarily because the county claimed ineligible vendor payments for seriously emotionally disturbed pupils placed in facilities that are owned and operated for profit. The State will offset \$667,695 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

Background

Chapter 654, Statutes of 1996, added and amended Government Code section 7576 by allowing new fiscal and programmatic responsibilities for counties to provide mental health services to seriously emotionally disturbed (SED) pupils placed in out-of-state residential programs. County fiscal and programmatic responsibilities including those set forth in California Code of Regulations section 60100 provide that residential placements for a SED pupils may be made out-of-state only when no in-state facility can meet the pupil's needs.

On May 25, 2000, the Commission on State Mandates (CSM) determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561 for the following:

- Payment of out-of-state residential placements for SED pupils;
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan; and
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The program's parameters and guidelines establishes the state mandate and defines reimbursement criteria. CSM adopted the parameters and guidelines on October 26, 2000. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies and school districts in claiming mandated program reimbursable costs.

**Objective, Scope,
and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2005, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, San Diego County claimed and was paid \$2,462,933 for costs of the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program. Our audit disclosed that \$1,795,238 is allowable and \$667,695 is unallowable.

For the fiscal year (FY) 2005-06 claim, the State paid the county \$2,462,933. Our audit disclosed that \$1,795,238 is allowable. The State will offset \$667,695 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

**Views of
Responsible
Officials**

We issued a draft audit report on July 8, 2010. Michael Van Mouwerik, Group Finance Director, and Tracy Drager, Deputy Controller, responded by letter dated August 10, 2010 (Attachment), disagreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of San Diego County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

September 10, 2010

**Schedule 1—
Summary of Program Costs
July 1, 2005, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2005, through June 30, 2006</u>				
Ongoing mental health service costs:				
Vendor reimbursements	\$ 2,446,965	\$ 1,795,238	\$ (651,727)	Finding 1
Travel	15,968	—	(15,968)	Finding 2
Total program costs	<u>\$ 2,462,933</u>	1,795,238	<u>\$ (667,695)</u>	
Less amount paid by the State		<u>(2,462,933)</u>		
Allowable costs claimed in excess of (less than) amount paid			<u>\$ (667,695)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Overstated vendor costs

The county overstated vendor service costs by \$651,727 for the audit period.

As in our finding from the prior State Controller's Office audit, the county continued to claim ineligible vendor payments. For the audit period; the ineligible vendor payments totaled \$647,309 (treatment costs of \$293,156 and board-and-care costs of \$354,153) for out-of-state residential placement of seriously emotionally disturbed (SED) pupils in facilities that are owned and operated for profit. The prior audit was issued November 14, 2007, for the period of July 1, 2001, through June 30, 2005. The county also claimed a vendor payment for an SED pupil who was no longer authorized for placement in an out-of-state facility.

The following table summarizes the unallowable vendor costs claimed:

	Fiscal Year 2005-06
Ineligible vendors	\$ (647,309)
Placement outside of authorization period	(4,418)
Total	<u>\$ (651,727)</u>

The program's parameters and guidelines (section IV.C.1) specify that the mandate is to reimburse counties for payments to service vendors providing mental health services and related board-and-care costs, as specified in Government Code section 7576 and Title 2, *California Code of Regulations* (CCR), sections 60100 and 60110.

Title 2, CCR, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivisions (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall be paid only to a group home organized and operated on a nonprofit basis.

The parameters and guidelines also state that all costs claimed must be traceable to source documents that show evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county implement policies and procedures to ensure that out-of-state residential placements are made in accordance with laws regulations. Further, we recommend that the county claim only eligible board-and-care costs corresponding to the authorized placement period each eligible client.

County's Response

The State's position is that the County claimed unallowable vendor costs of \$647,309 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of \$647,309 (board and care costs of \$354,153 and treatment costs of \$293,156) for out-of-state residential placement of SED pupils owned and operated for profit. In support of its position, the State cites the California Code of Regulations, Title 2, section 60100, subdivision (h), which provides that out-of-state residential placements will be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460(c)(2) through (3). Welfare and Institutions Code section 11460(c)(3) provides that reimbursement will only be paid to a group home organized and operated on a nonprofit basis. The State also cites the parameters and guidelines in support of their position.

The County asserts that it is entitled to the entire amount claimed less the sum already paid by the State. Please see Summary of Program Costs SED Claims July 1, 2005 June 30, 2006 attached hereto as Exhibit A. In support of its position, the County provides the following arguments and Exhibits A through C attached hereto.

1. California Law Prohibiting For-Profit Placements is Inconsistent with Both Federal Law, Which No Longer Has Such a Limitation, and With IDEA's "Most Appropriate Placement" Requirement.

In 1990, Congress enacted IDEA (20 U.S.C.S. § 1400-1487) pursuant to the Spending Clause (U.S. Const., art. I, § 8, cl. 1). According to Congress, the statutory purpose of IDEA is "... to assure that all children with disabilities have available to them... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs..." 20 U.S.C. § 1400(d)(1)(A); *County of San Diego v. Cal. Special Educ. Hearing*, 93 F.3d 1458, 1461 (9th Cir. 1996).

To accomplish the purposes and goals of IDEA, the statute "provides federal funds to assist state and local agencies in educating children with disabilities but conditions such funding on compliance with certain goals and procedures." *Ojai Unified School Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993); see *Ciresoli v. M.S.A.D.* No. 22, 901 F. Supp. 378, 281 (D.Me. 1995). All 50 states currently receive IDEA funding and therefore must comply with IDEA. *County of L.A. v. Smith*, 74 Cal. App. 4th 500, 508 (1999).

IDEA defines "special education" to include instruction conducted in hospitals and institutions. If placement in a public or private residential program is necessary to provide special education, regulations require that the program must be provided at no cost to the parents of the child. 34 C.F.R. § 300.302 (2000). Thus, IDEA requires that a state pay for a disabled student's residential placement when necessary. *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F. 3d 769 (8th Cir. 2001). Local educational agencies (LEA) initially were responsible for providing all the necessary services to special education children (including mental health services), but Assembly Bill 3632/882 shifted responsibility for providing special education mental health services to the counties.

Federal law initially required residential placements to be in nonprofit facilities. In 1997, however, the federal requirements changed to remove any reference to the tax identification (profit/nonprofit) status of an appropriate residential placement as follows: Section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 states, Section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2) is amended by striking "nonprofit." That section currently states:

"The term 'child-care institution' means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent."

The California Code of Regulations, title 2, section 60100, subdivision (h) and Welfare and Institutions Code section 11460(c)(2) through (3) are therefore inconsistent with the Social Security Act as referenced above, as well as inconsistent with a primary principle of IDEA as described below.

IDEA "was intended to ensure that children with disabilities receive an education that is both appropriate and free." *Florence County School District Four v. Carter*, 510 U.S. 7, 13, 126 L. Ed. 2d 284, 114 S. Ct. 361 (1993). A "free appropriate public education" (FAPE) includes both instruction and "related services" as may be required to assist a child with a disability. 20 U.S.C. § 1401 (22). Both instruction and related services, including residential placement, must be specially designed to suit the needs of the individual child. 20 U.S.C. §1401(25). The most appropriate residential placement specially designed to meet the needs of an individual child may not necessarily be one that is operated on a nonprofit basis. Consequently, to limit the field of appropriate placements for a special education student would be contrary to the FAPE requirement referenced above. Counties and students cannot be limited by such restrictions because the most appropriate placement for a student may not have a nonprofit status. This need for flexibility becomes most pronounced when a county is seeking to place a student in an out-of-state facility which is the most restrictive level of care. Such students have typically failed California programs and require a more specialized program that may not necessarily be nonprofit.

In contrast to the restrictions placed on counties with respect to placement in nonprofits, LEAs are not limited to accessing only nonprofit educational programs for special education students. When special education students are placed in residential programs, out-of-state LEAs may utilize the services provided by certified nonpublic, nonsectarian schools and agencies that are for profit. See Educ. Code § 56366.1. These nonpublic schools become certified by the state of California because they meet the requirements set forth in Education Code sections 56365 *et seq.* These [sic] requirements do not include nonprofit status, but rather, among other things, the ability to provide special education and designated instruction to individuals with exceptional needs which includes having qualified licensed and credentialed staff. LEAs monitor the out-of-state nonpublic schools

through the Individualized Education Program process and are also required to monitor these schools annually which may include a site visit. Consequently, counties and LEAs should not be subject to different criteria when seeking a placement in out-of-state facilities for a special education student. Consistent with federal law, counties must have the ability to place students in the most appropriate educational environment out-of-state and not be constrained by nonprofit status.

2. Parents Can be Reimbursed When Placing Students in Appropriate For-Profit Out-of-State Facilities. County Mental Health Agencies Will be Subject to Increased Litigation Without the Same Ability to Place Seriously Emotionally Disturbed Students in Appropriate For-Profit Out-of-State Facilities.

In *Florence County School District Four, et al. v. Shannon Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993), the U.S. Supreme Court found that although the parents placed their child in a private school that did not meet state education standards and was not state approved, they were entitled to reimbursement because the placement was found to be appropriate under IDEA. The parents in *Carter* placed their child in a private school because the public school she was attending provided an inappropriate education under IDEA.

In California, if counties are unable to access for profit out-of-state programs, they may not be able to offer an appropriate placement for a child that has a high level of unique mental health needs that may only be treated by a specialized program. If that program is for profit, that county will therefore be subject to potential litigation from parents who through litigation may access the appropriate program for their child regardless of for profit or nonprofit status.

County Mental Health Agencies recommend out-of-state residential programs for special education students only after in state alternatives have been considered and are not found to meet the child's needs. See Gov't Code §§ 7572.5 and 7572.55. As described in Sections 7572.5 and 7275.55, such decisions are not made hastily and require levels of documented review, including consensus from the special education student's individualized education program team. Further, when students require the most restrictive educational environment, their needs are great and unique. Consistent with IDEA, counties should be able to place special education students in the most appropriate program that meets their unique needs without consideration for the programs for profit or nonprofit status so that students are placed appropriately and counties are not subject to needless litigation.

3. The State of California Office of Administrative Hearings Special Education Division (OAH) has Ordered a County Mental Health Agency to Fund an Out-of-State For-Profit Residential Facility When no Other Appropriate Residential Placement is Available to Provide Student a FAPE.

In *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, OAH Case No. N 2007090403, OAH ordered the Riverside County Department of Mental Health (RCDMH) and the Riverside Unified School District to fund the placement of a student with a primary disability of emotional disturbance with a secondary disability of deafness in an ou-of-state for-profit residential facility because there was no other appropriate facility available to

provide the Student a FAPE. A copy of *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, OAH Case No. N 2007090403 is attached hereto as Exhibit B for your convenience. In the *Riverside* case, the Administrative Law Judge (ALJ) concluded that Section 60100 subdivision (h) of title 2 of the California Code of Regulations is "inconsistent with the federal statutory and regulatory law by which California has chosen to abide." The ALJ further concluded in her opinion that:

"California education law itself mandates a contrary response to Welfare and Institutions code section 11460, subdivision (c) (3), where no other placement exists for a child. Specifically, "It is the further intent of the legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act." (Ed.Code § 56000, subd. (e) (Feb. 2007).) A contrary result would frustrate the core purpose of the IDEA and the companion state law, and would prevent student from accessing educational opportunities."

Consequently, it is clear the ALJ agrees that there is a conflict that exists between state and federal law when there are no appropriate residential placements for a student that are nonprofit and that the right of the student to access a FAPE must prevail.

4. County Contracted with Nonprofit Out-of-State Residential Program for SED Pupils.

During the audit period, the County contracted with Mental Health Systems, Inc. (Provo Canyon School) the provider of the out-of-state residential services that are the subject of the proposed disallowance that the county disputes in this Response. As referenced in the April 28, 2007 letter from the Internal Revenue Service (attached hereto as Exhibit C) Mental Health Systems, Inc. (Provo Canyon School) is a nonprofit entity. The County contracted with this provider in a manner consistent with the requirements of the California Code of Regulations and Welfare and Institutions Code referenced above. The State never provided any guidance to counties as to how to access or contract with appropriate out-of-state facilities that meet State criteria or qualifications. The State never provided counties a list of appropriate out-of-state facilities that meet State requirements. County should not be penalized now for fulfilling the requirements of the law with little or no guidance from the State.

5. There are no Requirements in Federal or State Law Regarding the Tax Identification Status of Mental Health Treatment Services Providers. Thus, There are No Grounds to Disallow the County's Treatment Costs.

Government Code section 7572 (c) provides that "Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education. . . ." The California Code of Regulations, title 2, division 9, chapter 1, article 1, section 60020 (i) and (j) further describe the type of mental health services to be provided in the program as well as who shall provide those services to special education pupils. There is no mention that the providers have a nonprofit or for profit status. The requirements are that the services "shall be provided directly or by

contract at the discretion of the community mental health service of the county of origin” and that the services are provided by “qualified mental health professionals.” Qualified mental health professionals include licensed practitioners of the healing arts such as: psychiatrists, psychologists, clinical social workers, marriage, family and child counselors, registered nurses, mental health rehabilitation specialists and others who have been waived under Section 5751.2 of the Welfare and Institutions Code. The County has complied with all these requirements. Consequently, because there is no legal requirement that treatment services be provided by nonprofit entities the State cannot and shall not disallow the treatment costs.

SCO's Comment

The finding remains unchanged. The residential placement issue is not unique to this county; other counties are concerned about it as well. In 2008 the proponents of Assembly Bill (AB) 1805 sought to change the regulations and allow payments to for-profit facilities for placement of SED pupils. This legislation would have permitted retroactive application, so that any prior unallowable claimed costs identified by the SCO would be reinstated. However, the Governor vetoed this legislation on September 30, 2008. In the next legislative session, AB 421, a bill similar to AB 1805, was introduced to change the regulations and allow payments to for-profit facilities for placement of SED pupils. On January 31, 2010, AB 421 failed passage in the Assembly. Absent any legislative resolution, counties must continue to comply with the governing regulations cited in the SED Pupils: Out-of-State Mental Health Services Program's parameters and guidelines. Our response addresses each of the five arguments set forth by the county in the order identified above.

1. California law prohibiting for-profit placements is inconsistent with both federal law, which no longer has such a limitation, and with IDEA's "most appropriate placement" requirement.

The parameters and guidelines (section IV.C.1.) specify that the mandate is to reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, *California Code of Regulations* (CCR), sections 60100 and 60110. Title 2, CCR, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall only be paid to a group home organized and operated on a nonprofit basis. The program's parameters and guidelines do not provide reimbursement for out-of-state residential placements made outside the regulation.

We agree that there is inconsistency between the California law and federal law related to IDEA funds. Furthermore, we do not dispute the assertion that California law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils;

however, the fact remains that this is a state-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100.

We also agree that Education Code sections 56366.1 and 56365 do not restrict local educational agencies (LEAs) from contracting with for-profit schools for educational services. These sections specify that educational services must be provided by a school certified by the California Department of Education.

2. **Parents can be reimbursed when placing students in appropriate for-profit out-of-state facilities. County mental health agencies will be subject to increased litigation without the same ability to place seriously emotionally disturbed students in appropriate for-profit out-of-state facilities.**

Refer to previous response.

3. **The State of California Office of Administrative Hearings Special Education Division (OAH) has ordered a county mental health agency to fund an out-of-state for-profit residential facility when no other appropriate residential placement is available to provide student a FAPE.**

Office of Administrative Hearings (OAH) Case No. N 2007090403 is not precedent-setting and has no legal bearing. In this case, the administrative law judge found that not placing the student in an appropriate facility (for-profit) was to deny the student a free appropriate public education (FAPE) under federal regulations. The issue of funding residential placements made outside of the regulation was not specifically addressed in the case. Nevertheless, the fact remains that this is a state-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100, and Welfare and Institutions Code section 11460, subdivision (c)(3). Residential placements made outside of the regulation are not reimbursable under the state-mandated cost program.

4. **County contracted with nonprofit out-of-state residential program for SED pupils.**

As noted in the finding, the mandate reimburses counties for payments to service vendors (group homes) providing mental health services to SED pupils in out-of-state residential placements that are organized and operated on a nonprofit basis. Based on documents the county provided us in the course of the audit, we determined that Mental Health Systems, Inc., a California nonprofit corporation, contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide out-of-state residential placement services. The referenced Provo Canyon, Utah, residential facility is not organized and operated on a nonprofit basis.

- 5. **There are no requirements in federal or state law regarding the tax identification status of mental health treatment services providers. Thus, there are no grounds to disallow the county's treatment costs.**

We do not dispute that Government Code section 7572 requires mental health services to be provided by qualified mental health professionals. As noted in our previous response, the county is prohibited from placing a client in a for-profit facility and the residential placement vendor payments shall be made only to a group home organized and operated on a nonprofit basis. The unallowable treatment and board-and-care vendor payments claimed result from the county placement of clients in prohibited out-of-state residential facilities. Again, the state-mandated program's parameters and guidelines do not include a provision for the county to be reimbursed for vendor payments made to out-of-state residential placements outside of the regulation.

**FINDING 2—
Overstated travel
costs**

The county overstated travel costs by \$15,968 for the audit period.

As discussed in our finding from the prior audit, the county continues to claim travel costs that are also included in the pool of direct costs used to compute the unit rates in the county's cost report submitted to the California Department of Mental Health. Consequently, travel costs claimed on the SED pupils mandate claim were also allocated through the unit rates to various mental health programs, including the Handicapped and Disabled Students mandate claim. Allowing the travel costs would result in duplicate reimbursement.

The following table summarizes the unallowable vendor costs claimed:

	Fiscal Year 2005-06
Travel	<u>\$ (15,968)</u>

The parameters and guidelines (section IV.C.3.) specify that the mandate reimburses counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as specified in the Title 2, CCR, section 60110.

The parameters and guidelines also state that all costs claimed must be traceable to source documents that show evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county use a consistent cost allocation methodology to minimize any potential duplication with other mental health programs.

County's Response

The county agreed with the finding.

**Attachment—
County's Response to
Draft Audit Report**

At the county's request, we excluded private vendor information from the county's attachments to its response. The following excerpt excludes the entire Exhibit C.



County of San Diego

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August 10, 2010

Jim L. Spano, Chief
Mandated Cost Audits Bureau
California State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

Dear Mr. Spano:

RESPONSE TO SED PUPILS: OUT OF STATE MENTAL HEALTH SERVICES PROGRAM AUDIT FOR THE PERIOD OF JULY 1, 2005 THROUGH June 30, 2006

The County of San Diego (County) is in receipt of the State Controller's Office draft audit report of the costs claimed by County for the legislatively mandated Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services Program for the period of July 1, 2005 through June 30, 2006. The County received the draft report on July 12, 2010 and received an extension from Mr. Jim L. Spano, Chief, Mandated Cost Audits Bureau to submit its response to the report on or before August 11, 2010. The County is submitting this response in compliance with that extension on August 10, 2010.

As directed in the draft report, the County's response will address the accuracy of the audit findings. There were two Findings in the above-referenced Draft Report and the County disputes Finding 1 - Unallowable Vendor Costs and does not dispute Finding 2 - Unallowable Travel Costs. The County claimed \$2,462,933 for the mandated programs for the audit period and \$2,462,933 has already been paid by the State. The State Controller's Office's audit found that \$1,795,238 is allowable and \$667,695 is unallowable. The unallowable costs as determined by State Controller's Office occurred primarily because the State alleges the County claimed ineligible vendor payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit. As stated above, the County disputes this Finding 1 and submits the attached response in support of its position. Thus, the County asserts that \$2,442,547 are allowable costs for the audit period.

Response to SED Pupils: Out of State Mental Health Services Program Audit for the
Period of JULY 1, 2005 through June 30, 2006
Page Two
August 10, 2010

If you have any questions please contact Lisa Macchione, Senior Deputy County Counsel at
(619) 531-6296.

Sincerely,


MICHAEL VAN MOUWERIK
Group Finance Director
Health and Human Services Agency


TRACY DRAGER
Deputy Controller
Auditor and Controller

PRGA:TD:lr

**COUNTY OF SAN DIEGO'S RESPONSE TO
SED PUPILS: OUT OF STATE MENTAL HEALTH SERVICES PROGRAM AUDIT
FOR THE PERIOD OF JULY 1, 2005 THROUGH JUNE 30, 2006**

Summary

The State Controller's Office audited the costs claimed by County for the legislatively mandated SED Pupils: Out of State Mental Health Services Program for the period of July 1, 2005 through June 30, 2006. The County claimed \$2,462,933 for the mandated program, and the State found \$1,795,238 is allowable and \$667,695 is unallowable. The State alleges that the unallowable costs occurred because the County claimed ineligible vendor payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit and because the County claimed unallowable travel costs. The State has broken down the unallowable costs claimed into two findings. The County disputes the first finding regarding the alleged ineligible vendor payments and does not dispute the second finding regarding unallowable travel costs.

The County disputes Finding 1 – unallowable vendor payments – because the California Code of Regulations section 60100(h) and Welfare and Institutions Code section 11460(c)(3) cited by the State are in conflict with provisions of federal law, including the Individuals with Disabilities Education Act (IDEA) and Section 472(c)(2) of the Social Security Act (42 U.S.C.672 (c)(2)).

The County does not dispute Finding 2 – unallowable travel costs.

Response To Finding 1 - Unallowable Vendor Payments

The State's position is that the County claimed unallowable vendor costs of \$647,309 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of \$647,309 (board and care costs of \$354,153 and treatment costs of \$293,156) for out-of-state residential placement of SED pupils owned and operated for profit. In support of its position, the State cites the California Code of Regulations, Title 2, section 60100, subdivision (h), which provides that out-of-state residential placements will be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460(c)(2) through (3). Welfare and Institutions Code section 11460(c) (3) provides that reimbursement will only be paid to a group home organized and operated on a nonprofit basis. The State also cites the parameters and guidelines in support of their position.

The County asserts that it is entitled to the entire amount claimed less the sum already paid by the State. Please see Summary of Program Costs – SED Claims – July 1, 2005 - June 30, 2006 attached hereto as Exhibit A. In support of its position, the County provides the following arguments and Exhibits A through C attached hereto.

1. California Law Prohibiting For-Profit Placements is Inconsistent with Both Federal Law, Which No Longer Has Such a Limitation, and With IDEA's "Most Appropriate Placement" Requirement.

In 1990, Congress enacted IDEA (20 U.S.C.S. § 1400-1487) pursuant to the Spending Clause (U.S. Const., art. I, § 8, cl. 1). According to Congress, the statutory purpose of IDEA is "... to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A); *County of San Diego v. Cal. Special Educ. Hearing*, 93 F.3d 1458, 1461 (9th Cir. 1996).

To accomplish the purposes and goals of IDEA, the statute "provides federal funds to assist state and local agencies in educating children with disabilities but conditions such funding on compliance with certain goals and procedures." *Ojai Unified School Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993); see *Ciresoli v. M.S.A.D. No. 22*, 901 F. Supp. 378, 381 (D.Me. 1995). All 50 states currently receive IDEA funding and therefore must comply with IDEA. *County of L.A. v. Smith*, 74 Cal. App. 4th 500, 508 (1999).

IDEA defines "special education" to include instruction conducted in hospitals and institutions. If placement in a public or private residential program is necessary to provide special education, regulations require that the program must be provided at no cost to the parents of the child. 34 C.F.R. § 300.302 (2000). Thus, IDEA requires that a state pay for a disabled student's residential placement when necessary. *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F. 3d 769 (8th Cir. 2001). Local educational agencies (LEA) initially were responsible for providing all the necessary services to special education children (including mental health services), but Assembly Bill 3632/882 shifted responsibility for providing special education mental health services to the counties.

Federal law initially required residential placements to be in nonprofit facilities. In 1997, however, the federal requirements changed to remove any reference to the tax identification (profit/nonprofit) status of an appropriate residential placement as follows: Section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 states, Section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2) is amended by striking "nonprofit." That section currently states:

"The term 'child-care institution' means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent."

The California Code of Regulations, title 2, section 60100, subdivision (h) and Welfare and Institutions Code section 11460(c)(2) through (3) are therefore inconsistent with the Social Security Act as referenced above, as well as inconsistent with a primary principle of IDEA as described below.

IDEA "was intended to ensure that children with disabilities receive an education that is both appropriate and free." *Florence County School District Four v. Carter*, 510 U.S. 7, 13, 126 L. Ed. 2d 284, 114 S. Ct. 361 (1993). A "free appropriate public education" (FAPE) includes both instruction and "related services" as may be required to assist a child with a disability. 20 U.S.C. § 1401 (22). Both instruction and related services, including residential placement, must be specially designed to suit the needs of the individual child. 20 U.S.C. § 1401(25). The most appropriate residential placement specially designed to meet the needs of an individual child may not necessarily be one that is operated on a nonprofit basis. Consequently, to limit the field of appropriate placements for a special education student would be contrary to the FAPE requirement referenced above. Counties and students cannot be limited by such restrictions because the most appropriate placement for a student may not have a nonprofit status. This need for flexibility becomes most pronounced when a county is seeking to place a student in an out-of-state facility which is the most restrictive level of care. Such students have typically failed California programs and require a more specialized program that may not necessarily be nonprofit.

In contrast to the restrictions placed on counties with respect to placement in nonprofits, LEAs are not limited to accessing only nonprofit educational programs for special education students. When special education students are placed in residential programs, out-of-state LEAs may utilize the services provided by certified nonpublic, nonsectarian schools and agencies that are for profit. See Educ. Code § 56366.1. These nonpublic schools become certified by the state of California because they meet the requirements set forth in Education Code sections 56365 *et seq.* These requirements do not include nonprofit status, but rather, among other things, the ability to provide special education and designated instruction to individuals with exceptional needs which includes having qualified licensed and credentialed staff. LEAs monitor the out-of-state nonpublic schools through the Individualized Education Program process and are also required to monitor these schools annually which may include a site visit. Consequently, counties and LEAs should not be subject to different criteria when seeking a placement in out-of-state facilities for a special education student. Consistent with federal law, counties must have the ability to place students in the most appropriate educational environment out-of state and not be constrained by nonprofit status.

2. Parents Can be Reimbursed When Placing Students in Appropriate For-Profit Out-of-State Facilities. County Mental Health Agencies Will be Subject to Increased Litigation Without the Same Ability to Place Seriously Emotionally Disturbed Students in Appropriate For-Profit Out-of-State Facilities.

In *Florence County School District Four, et al. v. Shannon Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993), the U.S. Supreme Court found that although the parents placed their child in a private school that did not meet state education standards and was not state approved, they were entitled to reimbursement because the placement was found to be appropriate under IDEA. The parents in *Carter* placed their child in a private school because the public school she was attending provided an inappropriate education under IDEA.

In California, if counties are unable to access for profit out-of-state programs, they may not be able to offer an appropriate placement for a child that has a high level of unique mental health needs that may only be treated by a specialized program. If that program is for profit, that county will therefore be subject to potential litigation from parents who through litigation may access the appropriate program for their child regardless of for profit or nonprofit status.

County Mental Health Agencies recommend out-of state residential programs for special education students only after in state alternatives have been considered and are not found to meet the child's needs. See Gov't Code §§ 7572.5 and 7572.55. As described in Sections 7572.5 and 7275.55, such decisions are not made hastily and require levels of documented review, including consensus from the special education student's individualized education program team. Further, when students require the most restrictive educational environment, their needs are great and unique. Consistent with IDEA, counties should be able to place special education students in the most appropriate program that meets their unique needs without consideration for the programs for profit or nonprofit status so that students are placed appropriately and counties are not subject to needless litigation.

3. The State of California Office of Administrative Hearings Special Education Division (OAH) has Ordered a County Mental Health Agency to Fund an Out-of-State For-Profit Residential Facility When no Other Appropriate Residential Placement is Available to Provide Student a FAPE.

In *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, OAH Case No. N 2007090403, OAH ordered the Riverside County Department of Mental Health (RCDMH) and the Riverside Unified School District to fund the placement of a student with a primary disability of emotional disturbance with a secondary disability of deafness in an out-of-state for-profit residential facility because there was no other appropriate facility available to provide the Student a FAPE. A copy of *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, OAH Case No. N 2007090403 is attached hereto as Exhibit B for your convenience. In the *Riverside* case, the Administrative Law Judge (ALJ) concluded that Section 60100 subdivision (h) of title 2 of the California Code

of Regulations is "inconsistent with the federal statutory and regulatory law by which California has chosen to abide." The ALJ further concluded in her opinion that:

"California education law itself mandates a contrary response to Welfare and Institutions code section 11460, subdivision (c) (3), where no other placement exists for a child. Specifically, "It is the further intent of the legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act." (Ed.Code § 56000, subd. (e) (Feb. 2007).) A contrary result would frustrate the core purpose of the IDEA and the companion state law, and would prevent student from accessing educational opportunities."

Consequently, it is clear the ALJ agrees that there is a conflict that exists between state and federal law when there are no appropriate residential placements for a student that are nonprofit and that the right of the student to access a FAPE must prevail.

4. County Contracted with Nonprofit Out-of-State Residential Program for SED Pupils.

During the audit period, the County contracted with Mental Health Systems, Inc. (Provo Canyon School) the provider of the out-of-state residential services that are the subject of the proposed disallowance that the County disputes in this Response. As referenced in the April 28, 2007 letter from the Internal Revenue Service (attached hereto as Exhibit C) Mental Health Systems, Inc. (Provo Canyon School) is a nonprofit entity. The County contracted with this provider in a manner consistent with the requirements of the California Code of Regulations and Welfare and Institutions Code referenced above. The State never provided any guidance to counties as to how to access or contract with appropriate out-of-state facilities that meet State criteria or qualifications. The State never provided counties a list of appropriate out-of-state facilities that meet State requirements. County should not be penalized now for fulfilling the requirements of the law with little or no guidance from the State.

5. There are no Requirements in Federal or State Law Regarding the Tax Identification Status of Mental Health Treatment Services Providers. Thus, There are No Grounds to Disallow the County's Treatment Costs.

Government Code section 7572 (c) provides that "Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education. . . ." The California Code of Regulations, title 2, division 9, chapter 1, article 1, section 60020 (i) and (j) further describe the type of mental health services to be provided in the program as well as who shall provide those services to special education pupils. There is no mention that the providers have a nonprofit or for profit status. The requirements are that the services "shall be provided directly or by contract at the discretion of the community mental health service of the county of origin" and that the services are provided by "qualified

mental health professionals." Qualified mental health professionals include licensed practitioners of the healing arts such as: psychiatrists, psychologists, clinical social workers, marriage, family and child counselors, registered nurses, mental health rehabilitation specialists and others who have been waived under Section 5751.2 of the Welfare and Institutions Code. The County has complied with all these requirements. Consequently, because there is no legal requirement that treatment services be provided by nonprofit entities the State cannot and shall not disallow the treatment costs.

Conclusion

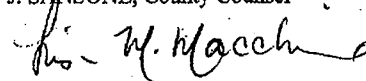
In conclusion, the County asserts that the costs of \$2,442,547 as set forth in Exhibit A should be allowed.

Dated: August 10, 2010

Respectfully submitted,

JOHN J. SANSONE, County Counsel

By



LISA M. MACCHIONE, Senior Deputy
Attorneys for the County of San Diego

Summary of July 01 2005 - June 30 2006
 Ongoing Costs - Mental Health Service:

	Actual Costs Claimed	Allowable	Adjustments	Remarks
Vendor Reimbursements	\$ 2,446,965.00	\$ 2,442,547.00	\$ (4,418.00)	Placement outside of authorization period
Travel	\$ 15,968.00	\$ -	\$ (15,968.00)	Duplicated cost
Sub-Total program costs	\$ 2,462,933.00	\$ 2,442,547.00	\$ (20,386.00)	
Less: Late filing penalty	\$ -	\$ -	\$ -	
Total Program Costs	\$ 2,462,933.00	\$ 2,442,547.00	\$ (20,386.00)	
Less: Amount paid by the State	\$ (2,462,933.00)	\$ (2,462,933.00)	\$ -	
Overpayment by the State to the County due to unallowable costs	\$ -	\$ (20,386.00)	\$ (20,386.00)	
Total Program Costs	\$ 2,442,547.00	\$ 2,442,547.00	\$ -	
Less: Allowable per State Audit	\$ (1,795,238.00)	\$ (1,795,238.00)	\$ -	
Cost of Treatment Room & Board for profit facilities for appeal	\$ 647,309.00	\$ 647,309.00	\$ -	

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT and RIVERSIDE COUNTY
DEPARTMENT of MENTAL HEALTH,

Respondents.

OAH CASE NO. N 2007090403

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, Special Education Division, State of California (OAH), heard this matter by written stipulation and joint statement of facts presented by the parties, along with written argument and closing briefs submitted by each party.

Heather D. McGunigle, Esq., of Disability Rights Legal Center, and Kristelia Garcia, Esq., of Quinn Emanuel Urquhart Oliver & Hedges, represented Student (Student).

Ricardo Soto, Esq., of Best Best & Krieger, represented Riverside Unified School District (District).

Sharon Watt, Esq., of Filarsky & Watt, represented Riverside County Department of Mental Health (CMH).

Student filed his first amended Request for Due Process Hearing on September 25, 2007. At the pre-hearing conference on December 7, 2007, the parties agreed to submit the matter on a written Joint Stipulation of Facts, and individual written closing arguments. The documents were received, the record closed, and matter was submitted for decision on December 31, 2007.

EXHIBIT B

ISSUE

May the educational and mental health agencies place Student in an out-of-state for-profit residential center under California Code of Regulations section 60100, subdivision (h), and California Welfare and Institutions Code section 11460, subdivision (c)(2) and (3), when no other appropriate residential placement is available to provide Student a FAPE?

CONTENTIONS

All parties agree that Student requires a therapeutic residential placement which will meet his mental health and communication needs pursuant to his October 9, 2007 Individual Educational Plan (IEP). The District and CMH have conducted a nation-wide search and have been unable to locate an appropriate non-profit residential placement for Student.

Student contends that, as the District and CMH's searches for an appropriate non-profit residential placement have been exhausted, the District and CMH are obligated to place Student in an appropriate out-of-state for-profit residential program in order to provide Student with a free and appropriate public education (FAPE).

Both the District and CMH contend that they do not have the authority to place Student at an out-of-state for-profit residential program.

JOINT STIPULATION OF FACTS¹

1. Student is 17 years old and resides with his Mother (Mother) within the District in Riverside County, California. Student's family is low-income and meets Medi-Cal eligibility requirements.
2. Student is deaf, has impaired vision and an orthopedic condition known as legg-perthes. Student has been assessed as having borderline cognitive ability. His only effective mode of communication is American Sign Language (ASL). Student also has a long history of social and behavioral difficulties. As a result, Student is eligible for special education and related services and mental health services through AB2726/3632 under the category of emotional disturbance (ED), with a secondary disability of deafness.
3. Student requires an educational environment in which he has the opportunity to interact with peers and adults who are fluent in ASL. Student attended the California

¹ The parties submitted a Stipulated Statement of Undisputed Facts and Evidence which is admitted into evidence as Exhibit 67, and incorporated herein. The stipulated facts have been consolidated and renumbered for clarity in this decision. As part of the same document, the parties stipulated to the entry of the joint Exhibits 1 through 66, which are admitted into evidence.

School for the Deaf, Riverside (CSDR) between January 2005 and September 2006, while a resident of the Monrovia Unified School District.

4. CSDR does not specialize in therapeutic behavior interventions. In January 2005, CSDR terminated Student's initial review period due to his behaviors. CSDR removed Student from school as suicide prevention because Student physically harmed himself. At that time, both CSDR and Monrovia USD believed Student to be a danger to himself and others. They, therefore, placed him in home-hospital instruction.

5. Between June 2005 and October 2005, Student's behaviors continued to escalate. Student was placed on several 72-hour psychiatric holds for which he missed numerous days of school. On one occasion, Student was hospitalized for approximately two weeks. On another occasion, he was hospitalized at least a week.

6. Pursuant to a mental health referral, on September 14, 2006, Monrovia USD and Los Angeles County Department of Mental Health (LACDMH) met, and determined that Student had a mental disturbance for which they recommended residential placement.² At that time, Amy Kay, Student's ASL-fluent therapist through LACDMH's AB2726 program, recommended a residential placement at the National Deaf Academy (NDA). Ms. Kay specifically recommended that Student be placed in a residential placement at NDA due to his need for a higher level of care to address his continuing aggressive and self-injurious behaviors. Additionally, the rehabilitation of these behaviors would be unsuccessful without the ability for Student to interact with deaf peers and adults. Ms. Kay further indicated that the use of an interpreter did not provide an effective method for Student to learn due to his special needs.

7. On August 5, 2006, NDA sent Student a letter of acceptance into its program. Monrovia USD and LACDMH, however, placed Student at Willow Creek/North Valley Non-public School. This placement failed as of March 2007, at which time both Monrovia USD and LACDMH indicated they were unable to find a residential placement for Student that could meet his mental health and communication needs. They did not pursue the residential treatment center at NDA because of its for-profit status.

8. Student and his mother moved to the District and Riverside County in April 2007.

9. On April 20, 2007, the District convened an IEP meeting to develop Student's educational program. The District staff, CMH staff, staff from CSDR, Student, his mother and attorney attended and participated in the IEP meeting. The IEP team changed Student's primary disability classification from emotional disturbance to deafness with social-emotional overlay. The parties agreed to this change in eligibility as CSDR required that

² As noted in Student's prior IEP, Student also required an educational environment which provided instruction in his natural language and which facilitated language development in ASL.

deafness be listed as a student's primary disability in order to be admitted and no other appropriate placements were offered. The IEP team offered placement at CSDR for a 60-day assessment period, individual counseling, speech and language services through CSDR, and individual counseling through CMH. The IEP team also proposed to conduct an assessment to determine Student's current functioning and to make recommendations concerning his academic programming based upon his educational needs.

10. CSDR suspended Student within its 60-day assessment period. CSDR subsequently terminated Student when, during his suspension, Student was found in the girl's dormitory following an altercation with the staff.

11. On May 23, 2007, the District convened another IEP meeting to discuss Student's removal from CSDR. The IEP team recommended Student's placement at Oak Grove Institute/Jack Weaver School (Oak Grove) in Murrieta, California, with support from a deaf interpreter pending the assessment agreed to at the April 2007 IEP meeting. CMH also proposed conducting an assessment for treatment and residential placement for Student.

12. On August 3, 2007, the District convened an IEP meeting to develop Student's annual IEP, and to review the assessments from CSDR and CMH. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. Based upon the information reviewed at the meeting, the IEP team proposed placement at Oak Grove with a signing interpreter, deaf and hard of hearing consultation and support services from the District, and individual counseling with a signing therapist through CMH. Mother and her attorney agreed to implementation of the proposed IEP, but disagreed that the offer constituted an offer of FAPE due to its lack of staff, teachers and peers who used ASL.

13. On October 9, 2007, the District convened another IEP meeting to review Student's primary disability. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. At this meeting, the IEP team once again determined Student's primary special education eligibility category as emotional disturbance with deafness as a secondary condition. The IEP team recommended placement in a residential treatment program, as recommended by CMH. Placement would remain at Oak Grove with a signing interpreter pending a residential placement search by CMH. Mother consented to the change in eligibility and the search for a residential placement. Mother also requested that Student be placed at NDA.

14. CMH made inquiries and pursued several leads to obtain a therapeutic residential placement for Student. CMH sought placements in California, Florida, Wyoming, Ohio and Illinois. All inquiries have been unsuccessful, and Student has not been accepted in any non-profit residential treatment center. At present CMH has exhausted all leads for placement of Student in a non-profit, in-state or out-of-state residential treatment center.

15. Student, his mother and attorney have identified NDA as an appropriate placement for Student. NDA, located in Mount Dora, Florida, is a residential treatment center for the treatment of deaf and hard-of-hearing children with the staff and facilities to

accommodate Student's emotional and physical disability needs. NDA also accepts students with borderline cognitive abilities. In addition, nearly all of the service providers, including teachers, therapists and psychiatrists are fluent in ASL. The residential treatment center at NDA is a privately owned limited liability corporation, and is operated on a for-profit basis. The Charter School at NDA is a California certified non-public school. All parties agree that NDA is an appropriate placement which would provide Student a FAPE.

16. Student currently exhibits behaviors that continue to demonstrate a need for a residential treatment center. Student has missed numerous school days due to behaviors at home. As recently as December 11, 2007, Student was placed in an emergency psychiatric hold because of uncontrollable emotions and violence to himself and others.

LEGAL CONCLUSIONS

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528], the party who files the request for due process has the burden of persuasion at the due process hearing. Student filed this due process request and bears the burden of persuasion.

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. Special education is defined as specially designed instruction provided at no cost to parents and calculated to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.)

3. In *Board of Education of the Hendrick Hudson Central School District, et. al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L. Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to a child with special needs." *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Court concluded that the standard for determining whether a local educational agency's provision of services substantively provided a FAPE involves a determination of three factors: (1) were the services designed to address the student's unique needs, (2) were the services calculated to provide educational benefit to the student, and (3) did the services conform to the IEP. (*Id.* at p.176; *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F. 2d 1307, 1314.) Although the IDEA does not require that a student be provided with the best available education or services or that the services maximize each child's potential, the "basic floor of opportunity"

of specialized instruction and related services must be individually designed to provide some educational benefit to the child. De minimus benefit or trivial advancement is insufficient to satisfy the *Rowley* standard of "some" benefit. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d at 130.)

4. Under California law, "special education" is defined as specially designed instruction, provided at no cost to parents, that meets the unique needs of the child. (Ed. Code, § 56031.) "Related services" include transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. State law refers to related services as "designated instruction and services" (DIS) and, like federal law, provides that DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).) Included in the list of possible related services are psychological services other than for assessment and development of the IEP, parent counseling and training, health and nursing services, and counseling and guidance. (Ed. Code, § 56363, subd. (b).) Further, if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. (34 C.F.R. § 300.104.) Thus, the therapeutic residential placement and services that Student requests are related services/DIS that must be provided if they are necessary for Student to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).) Failure to provide such services may result in a denial of a FAPE.

5. A "local educational agency" is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (Ed. Code, § 48200.)

6. Federal law provides that a local educational agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. (20 U.S.C. § 1412(a)(10)(C)(i).)

7. Under California law, a residential placement for a student with a disability who is seriously emotionally disturbed may be made outside of California only when no in-state facility can meet the student's needs and only when the requirements of subsections (d) and (e) have been met. (Cal. Code Regs., tit. 2, § 60100, subd. (h).) An out-of-state placement shall be made only in residential programs that meet the requirements of Welfare and Institutions Code sections 11460, subdivisions (c)(2) through (c)(3).

8. When a school district denies a child with a disability a FAPE, the child is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Comm. of the Town of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996].) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief which may be granted for the denial of appropriate

special education services to help overcome lost educational opportunity. (*See e.g. Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The purpose of compensatory education is to “ensure that the student is appropriately educated within the meaning of the IDEA.” (*Id.* at p. 1497.) The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent Sch. Dist. v. State Bd. of Educ.* (6th Cir. 1986) 790 F.2d 1153, 1161.) However, the parents’ placement still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child’s needs and provide him educational benefit. (*Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14 [114 S.Ct. 361].)

Determination of Issues

9. In summary, based upon Factual Findings 2, 3, and 6 through 16, all parties agree that the placement in the day program at Oak Grove NPS with an interpreter cannot meet Student’s unique educational needs because it does not sufficiently address his mental health and communication needs and does not comport with his current IEP. All parties agree that Student requires a therapeutic residential placement in order to benefit from his education program. Further, all parties agree that the nationwide search by the District and CMH for an appropriate non-profit residential placement with a capacity to serve deaf students has been exhausted, and Student remains without a residential placement. Lastly, all parties agree that the National Deaf Academy can meet both Student’s mental health and communication needs. Further, the charter school at NDA is a California certified NPS.

10. The District and CMH rely upon Legal Conclusion 7 to support their contentions that they are prohibited from placing Student in an out-of-state for-profit residential placement, even if it represents the only means of providing Student with a FAPE.

11. As administrative law precedent, CMH cites *Yucaipa-Calimesa Joint Unified School District and San Bernardino County Department of Behavioral Health (Yucaipa)*, OAH Case No. N2005070683 (2005), which determined that the District and County Mental Health were statutorily prohibited from funding an out-of-state for-profit placement. The *Yucaipa* case can be distinguished from the one at hand. Clearly, the ruling in *Yucaipa*, emphasized that the regulation language used the mandatory term “shall,” and consequently there was an absolute prohibition from funding a for-profit placement. The ALJ, however, did not face a resulting denial of FAPE for Student. In *Yucaipa*, several non-profit placement options were suggested, including residential placement in California, however, the parent would not consider any placement other than the out-of-state for-profit placement. In denying Student’s requested for-profit placement, the ALJ ordered that the parties continue to engage in the IEP process and diligently pursue alternate placements. In the current matter, however, pursuant to Factual Findings 12 through 14, CMH has conducted an extensive multi-state search, and all other placement possibilities for Student have been exhausted. Pursuant to Factual Finding 15, NDA is the only therapeutic residential placement remaining, capable of providing a FAPE for Student.

12. "When Congress passed in 1975 the statute now known as the Individuals with Disabilities Act (IDEA or Act), it sought primarily to make public education available to handicapped children. Indeed, Congress specifically declared that the Act was intended to assure that all children with disabilities have available to them. . . appropriate public education and related services designed to meet their unique needs, to assure the rights of children with disabilities and their parents or guardians are protected. . . and to assess and assure the effectiveness of efforts to educate children with disabilities." (*Hacienda La Puente Unified School District v. Honig* (1992) 976 F.2d 487, 490.) The Court further noted that the United States Supreme Court has observed that "in responding to these programs, Congress did not content itself with passage of a simple funding statute. . . Instead, the IDEA confers upon disabled students an enforceable substantive right to public education in participating States, and conditions federal financial assistance upon a State's compliance with the substantive and procedural goals of the Act." (*Id.* at p. 491.)

13. California maintains a policy of complying with IDEA requirements in the Education Codes, sections 56000, et seq. With regard to the special education portion of the Education Code, the Legislature intended, in relevant part, that every disabled child receive a FAPE. Specifically, "It is the further intent of the Legislature to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act." (Ed. Code, § 56000.)

14. California case law explains further, "although the Education Code does not explicitly set forth its overall purpose, the code's primary aim is to benefit students, and in interpreting legislation dealing with our educational systems, it must be remembered that the fundamental purpose of such legislation is the welfare of the children." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App. 4th 47, 63.)

15. Pursuant to Legal Conclusion 6, a district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district made a free appropriate public education available to the child. All parties concur, in Factual Findings 12 through 15, that the District has been unable to provide a FAPE to Student because no appropriate placement exists except in an out-of-state for-profit residential program.

16. Assuming the District's interpretation of section 60100, subdivision (h) of Title 2 of the California Code of Regulations is correct, it is inconsistent with the federal statutory and regulatory law by which California has chosen to abide. California education law itself mandates a contrary response to Welfare and Institutions Code section 11460, subdivision (c)(3), where no other placement exists for a child. Specifically, "It is the further intent of the Legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act." (Ed. Code, § 56000, subd. (e) (Feb. 2007).) A contrary result

would frustrate the core purpose of the IDEA and the companion state law, and would prevent Student from accessing educational opportunities.³

17. Regardless of whether the District and CMH properly interpreted Legal Conclusion 7, Student has ultimately been denied a FAPE since May 23, 2007, when he was terminated from attending CSDR, as indicated in Factual Findings 10 through 16. Pursuant to Factual Findings 6 and 16, Student's need for therapeutic residential placement with ASL services continues. As a result of this denial of FAPE, Student is entitled to compensatory education consisting of immediate placement at the National Deaf Academy through the 2008-2009 school years. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

ORDER

The District has denied Student a free appropriate public education as of May 23, 2007. The District and CMH are to provide Student with compensatory education consisting of immediate placement at the National Deaf Academy and through the 2008-2009 school year. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

PREVAILING PARTY


Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student has prevailed on the single issue presented in this case.

³ Further, there appears to be no argument that had Mother completely rejected the District's IEP offer, and privately placed Student at NDA, she would be entitled to reimbursement of her costs from the District, if determined that the District's offer of placement did not constitute a FAPE. By all accounts, Student's low income status prevented placement at NDA, and therefore precluded Student from receiving a FAPE via reimbursement by the District.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: January 15, 2008


JUDITH L. PASEWARK
Administrative Law Judge
Special Education Division
Office of Administrative Hearings.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

ITEM 11
REIMBURSEMENT CLAIMS:
Exhibit D

ITEM 11
REIMBURSEMENT CLAIMS:
Exhibit D

COPY

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		For State Controller Use Only (19) Program Number 00191 (20) Date File _____/_____/_____ (21) LRS Input _____/_____/_____	Program 191
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L A B E L H E R E	(01) Claimant Identification Number 9337
	Claimant Name AUDITOR AND CONTROLLER
	County of Location COUNTY OF SAN DIEGO
	Street Address or P.O. Box 1600 PACIFIC HIGHWAY RM 166
	City SAN DIEGO
	State CA
	Zip Code 92101

Reimbursement Claim Data	
(22) SEDP-1, (03)	
(23) SEDP-1, (04)(A)(1)(f)	
(24) SEDP-1, (04)(A)(2)(f)	
(25) SEDP-1, (04)(B)(1)(f)	2,446,965
(26) SEDP-1, (04)(B)(2)(f)	
(27) SEDP-1, (04)(B)(3)(f)	15,968
(28) SEDP-1, (04)(B)(4)(f)	
(29) SEDP-1, (06)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

Type of Claim	Estimated Claim	Reimbursement Claim
(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	
(06) 2006 - 2007	(12) 2005 - 2006	
(07) 2,462,933	(13) 2,462,933	
Less: 10% Late Penalty, not to exceed \$ 1,000	(14)	
Less: Estimated Claim Payment Received	(15) 1,125,708	
Net Claimed Amount	(16) 1,337,225	
Due to Claimant (08) 2,462,933	(17) 1,337,225	
Due to State	(18)	

(37) **CERTIFICATION OF CLAIM**

In accordance with provisions of Government Code S 17561, I certify that I am the officer authorized by the local agency to file mandated costs claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program, or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts of Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Representative: Marilyn Flores
MARILYN F FLORES

Date: 1/10/07
Cost Analyst

Type or Print Name: _____ Title: _____

(38) Name of Contact Person for Claim: **LINDA TATE** Telephone Number: **(619) 531-5336** Ext. _____
E-mail Address: **ltatexac@co.san-diego.ca.us**

MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS OUT-OF-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY						FORM SEDP-1
(01) Claimant COUNTY OF SAN DIEGO			(02) Type of Claim Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>			Fiscal Year 2005 - 2006
Claims Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						73
Direct Costs			Object Accounts			
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements			2,446,965			2,446,965
2. Case Management						
3. Travel					15,968	15,968
4. Program Management						
(05) Total Direct Costs						2,462,933
Indirect Costs						
(06) Indirect Cost Rate	(From ICRP)					%
(07) Total Indirect Costs	(Line (06) x line (05)(a)) or (Line (06) x (line (05)(a) + line (05)(b)))					
(08) Total Direct and Indirect Costs	(Line (05)(f) + (07))					2,462,933
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount	(Line (08) - (line (09) + line (10)))					2,462,933

MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT / ACTIVITY COST DETAIL							FORM SEDP-2
(01) Claimant COUNTY OF SAN DIEGO			(02) Fiscal Year Costs Were Incurred FY 2005 - 2006				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-time Costs :							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs :							
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements *			<input type="checkbox"/> Travel				
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h).							
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly rate or Unit Costs	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Contracted Services	Per Day	Days					
Contract No.45418 Daystar Residential, Inc.	\$ 80.00	755			60,400		
Contract No. 512372-2 Daystar Residential, Inc.	\$ 80.00	934			74,720		
Contract No. 45420 Devereux Foundation	\$ 107.33	1,508			161,856		
Contract No. 507477 Devereux Foundation	\$ 118.45	1,016			120,345		
Contract No. 45422 Excelsior Youth Center, Inc	\$ 83.05	38			3,156		
Contract No. 506837 La Familia	\$ 215.00	360			77,400		
Contract No. 506325 Mental Health Systems-Provo Canyon	\$ 54.51	5,378			293,156		
Contract No. 507962 Yellowstone Boys & Girls Ranch	\$ 70.00	3,949			276,430		
Contract No. 510631 Griffith Centers for Children Inc	\$ 117.30	270			31,671		
Various Vendors - Room and Board costs					1,347,832		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> Page <u>1</u> of <u>1</u>					2,446,965		

MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT / ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant <p style="text-align: center;">COUNTY OF SAN DIEGO</p>	(02) Fiscal Year Costs Were Incurred <p style="text-align: center;">FY 2005 - 2006</p>
--	--

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-time Costs :

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs :

Mental Health Service Vendor Reimbursements * Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly rate or Unit Costs	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Beauchamp, Lauren Lic. MH Clinician, Air fare, car rental and travel expenses							335
Bleiweiss, Sheldon Lic. MH Clinician, Air Fare and travel expenses							550
Colligan, Laura Chief, Child & Adolescent Services Air fare, car rental & travel expenses							3,454
Concellosi, Joseph Mental Health Program Manager Air fare and travel expenses							385
Dempsey, Donna Sr. Psychiatric Social Worker Air fare and travel expenses							1,806
Edwards, Frances Mental Health Program Manager Air fare, car rental and travel expenses							950
Gorman, Jane Mental Health Program Manager Air fare, car rental and travel expenses							1,372
Martin, Walter Patrick MH Case Management Clinician Air fare, car rental and travel expenses							2,101

(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/> Page <u>1</u> of <u>2</u>	10,954
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MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT / ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant <p style="text-align: center;">COUNTY OF SAN DIEGO</p>	(02) Fiscal Year Costs Were Incurred <p style="text-align: center;">FY 2005 - 2006</p>
--	--

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-time Costs :

Develop Policies, Procedures, and Contractual Arrangements
 Conduct County Staff Training

Ongoing Costs :

Mental Health Service Vendor Reimbursements *
 Travel
 Case Management
 Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly rate or Unit Costs	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
<i>Balance forwarded from Page 1</i>							10,954
Massoth, Sharon Licensed MH Clinician Air fare, car rental and travel expenses							525
Mertins, Karl Licensed MH Clinician Air fare, car rental and travel expenses							603
Quattro, Elaine Lic. Mental Health Clinician Air fare, car rental and travel expenses							2,315
Rappaport, Andrew MH Case Management Clinician Air fare, car rental and travel expenses							459
Ross, Shelley Lic. Mental Health Clinician Air fare, car rental and travel expenses							1,111

(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> Page <u>2</u> of <u>2</u>	15,968
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