



# County of San Diego

THOMAS E. MONTGOMERY  
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL  
1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101  
(619) 531-4860 Fax (619) 531-6005

**RECEIVED**  
March 13, 2017  
**Commission on  
State Mandates**

**LATE FILING**

LISA M. MACCHIONE  
SENIOR DEPUTY  
Direct Dial: (619) 531-6296  
E-Mail: [lisa.macchione@sdcounty.ca.gov](mailto:lisa.macchione@sdcounty.ca.gov)

VIA E-FILING (<http://csm.ca.gov/dropbox.shtml>)

March 10, 2017

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE:** *Handicapped and Disabled Students (04-RL-4282-10); Handicapped and Disabled Students II(02-TC-40/02-TC-49); and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05) Fiscal Years 2006-2007, 2007-2008, and 2008-2009 15-9705-I-06 County of San Diego, Claimant*

Dear Ms. Halsey:

On behalf of the County of San Diego (County), please accept the following comments to the Draft Proposed Decision regarding the above-referenced matter. The County disagrees with the conclusion and recommendation in the Draft Proposed Decision.

The County asserts that it is entitled to the full amount of costs claimed for reimbursement for the placement of pupils in certain out-of-state residential facilities that are organized and operated on a for-profit basis for the reasons cited in the County's incorrect reduction claim filing.

The County also requests that the Commission find that the State Controller's audit of the County's Fiscal Years 2006-2007 through 2008-2009 annual reimbursement claims is invalid as the State Controller failed to complete the audit within the required two year statutory timeframe. The Controller therefore has no authority to impose findings or disallow costs claimed and the County should be reimbursed for all disallowances.

Government Code Section 17558.5 (a) governs how long the Controller has to complete an audit. In summary, the Controller is required to initiate an audit no later than three years after the claim is filed or last amended, or if no payment is made, within three years of the date of payment. "In any case, an audit shall be completed not later than two

years after the date that the audit is commenced.” Should the Controller fail to complete a timely audit, there is no authority to impose findings or to disallow costs.

The legal analysis in the Proposed Decision is internally inconsistent as to this issue. The rationale and findings found in Section A, is turned on its head in Section B. Section A states that the Commission has already found that Revised Final Audit Report: 1) superseded<sup>1</sup> the Final Audit Report; 2) “constitutes the last essential element of the audit for purposes of the statute of limitations, which puts the claimant on notice of the right to file an IRC with the Commission.”

Section B, however, states that the Controller issued the Final Audit Report on March 7, 2012, before the two-year completion deadline, inferring that the December 18, 2012 Revised Final Audit Report is not really the last essential element of the audit for determining when the audit is complete.<sup>2</sup> The analysis in Section B is premised on an incorrect reading of Government Code Section 17558.5 (c). The Proposed Decision summarizes this section and infers that the legislature added subsection (c) to determine when an audit is to be deemed complete for the purpose of the two-year limitation period. The Proposed Decision states on Page 26:

*An audit is complete under Government Code section 17558.5 (c) when the Controller notifies the claimant of any adjustment to a claim for reimbursement that results from an audit or review. The “notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency . . . , and the reason for the adjustment.” [Emphasis added.]*

The Proposed Decision misstates the meaning of this subsection by omitting the first sentence of subsection (c). But a plain reading of the first omitted sentence in subsection (c) shows that this subsection (c) *has nothing to do with when an audit is complete*. This section only discusses the type of notice that must be issued “*after issuance of a remittance advance*.” Government Code section 17558(c) states in its entirety:

(c) The Controller *shall notify the claimant in writing within 30 days after issuance of a remittance advice* of any adjustment to a claim for reimbursement

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<sup>1</sup> The Proposed Decision cites the Webster’s II New College Dictionary definition of supersede as “1. to replace: supplant; 2. to cause to be set aside or replaced by another.”

<sup>2</sup> Draft Proposed Decision, page 26.

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that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

Here, the Controller initiated the audit of the County's fiscal years 2006-2007 through 2008-2009 reimbursement claims on March 29, 2010.<sup>3</sup> Therefore, the Controller must complete a timely audit by March 29, 2012. Instead, the Controller issued the Revised Final Audit Report on December 18, 2012—more than eight months past the completion deadline.<sup>4</sup> As stated in Proposed decision, and as already decided by the Commission, the Revised Final Audit Report it “superseded” the prior report dated March 7, 2012.<sup>5</sup> The draft proposed decision provides that “it constituted the last element of the audit...”<sup>6</sup> Thus, the Controller failed to complete a timely audit pursuant to Government Code Section 17558.5 (a) and has no authority to impose findings or disallow costs.

Accordingly, the County requests that the draft proposed decision be rewritten to conclude that the Controller's reduction incorrect as a matter of law, and any disallowed costs should be refunded to the County.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 

LISA M. MACCHIONE, Senior Deputy

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<sup>3</sup> Attachment A, Entrance Conference Agenda, March 29, 2010.

<sup>4</sup> Exhibit A, IRC, page 76.

<sup>5</sup> Exhibit A, IRC, page 76.

<sup>6</sup> Draft Proposed Decision, page 25.

## Attachment A

### Entrance Conference Agenda

Entrance Conference for Mandate Reimbursement Claim Audit  
Consolidation of Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally  
Disturbed (SED) Pupils: Out of State Mental Health Services  
Fiscal years 2006-07, 2007-08, and 2008-09 Reimbursement Claims

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### Date and Time of the Meeting

Phone conference scheduled for Monday, March 29, 2010 at 9:30 a.m.

### State Controller's Office Audit Contacts

- Ken Cheung (916) 445-0169 [kcheung@sco.ca.gov](mailto:kcheung@sco.ca.gov)
- Chris Ryan (916) 327-0696 [cryan@sco.ca.gov](mailto:cryan@sco.ca.gov)

### Persons Attending

- Ken Cheung, Audit Specialist, State Controller's Office
- Frances Edwards, Chief, Children's Mental Health Services and Special Education
- Marilyn Flores, Principal Accountant, Auditor and Controller's Office
- Laura Hattaway, Foster Care / SED Manager
- Ken Jones, Principal Analyst, HHS Agency
- James Lardy, Finance Officer, Health and Humans Services
- Debbie Ordonez, Principal Accountant, Health and Human Services
- Chona Penalba, Principal Accountant, Health and Human Services
- Chris Ryan, Audit Manager, State Controller's Office

### Audit Authority

- Government Code Section 12410 states that the Controller shall superintend the fiscal concern of the state and audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.
- Government Code 17561 states that the Controller may audit the record of any local agency to verify the actual amount of mandated costs claimed.

### Applicable Laws and Regulation

- Parameters and Guidelines for Consolidation of Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services program
- State Controller's Office claiming instructions for the mandate program.
- Government Code Section 7570-7588
- California Code of Regulation, Title 2, Sections 60000-60610

**Entrance Conference Agenda**  
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**Applicable Laws and Regulation (continued)**

- Underlying Statutes that form the basis of the mandate program including Chapter 1747, Statutes of 1984 (Assembly Bill (AB) 3632), Chapter 1274, Statutes of 1985 (AB 882), Chapter 1128, Statutes of 1994 (AB 1892) and Chapter 654, Statutes of 1996 (AB 2726)
- Commission on State Mandates (CSM) Statement of Decisions (SOD) 04-RL-4282-10, CSM SOD 02-TC-40/02-TC-49 and CSM SOD 97-TC-05

**Audit Period and Claim Summary**

Mandate reimbursement claims filed for fiscal years 2006-07, 2007-08, and 2008-09, totaling \$14,484,768.

The following is a schedule of claimed costs.

Cost Component	2006-07	Fiscal Year 2007-08	2008-09	Total
Revise Interagency Agreement	\$ -	\$ -	\$ -	\$ -
Renew Interagency Agreement	-	-	-	-
Referral & Mental Health Assessments	884,162	1,040,292	1,625,079	3,549,533
Transfers and Interim Placements	1,923,625	1,827,332	722,633	4,473,590
Participation as member of IEP Team	-	-	-	-
Designation of Lead Case Manager	-	-	-	-
Authorize/Issue Payments to Providers	5,802,929	6,738,212	6,224,039	18,765,180
Psychotherapy/Other Mental Health Services	7,868,926	8,565,332	9,749,679	26,183,937
Participation in Due Process Hearings	5,330	10,071	46,636	62,037
<b>Total</b>	<b>\$ 16,484,972</b>	<b>\$ 18,181,239</b>	<b>\$ 18,368,066</b>	<b>\$ 53,034,277</b>
Less: Late Penalty	(10,000)	-	-	(10,000)
Less: Other Reimbursements	(9,887,542)	(11,589,942)	(17,062,025)	(38,539,509)
<b>Total Claimed</b>	<b>\$ 6,587,430</b>	<b>\$ 6,591,297</b>	<b>\$ 1,306,041</b>	<b>\$ 14,484,768</b>
Less: Payments for claims	-	-	-	-
Less: DMH Categorical Funding	(4,058,334)	-	-	(4,058,334)
<b>Total Unreimbursed Claim</b>	<b>\$ 2,529,096</b>	<b>\$ 6,591,297</b>	<b>\$ 1,306,041</b>	<b>\$ 10,426,434</b>

**Entrance Conference Agenda**  
Entrance Conference for Mandate Reimbursement Claim Audit  
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### **Audit Objective**

The objective of the audit is to determine whether claimed costs represent increased costs resulting from the legislatively mandated Consolidation of Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services program for the period July 1, 2006 through June 30, 2009.

### **Audit Scope and Methodology**

The scope of the audit work will be limited to planning and performing procedures to obtain reasonable assurance that claimed costs are allowable by law for reimbursement. Accordingly, transactions will be examined, on a test basis, to determine whether the amounts claimed for reimbursement are supported. The auditor will perform the following procedures:

1. Trace the costs claimed to supporting documentation to determine whether the costs are incurred,
2. Review the costs claimed to determine whether they are increased costs resulting from the legislative mandate,
3. Confirm that the costs claimed are not funded by another source, and
4. Review claimed costs to determine whether the costs are unreasonable and/or excessive.

In addition, the county's internal controls will be reviewed. The review will be limited to documenting the claim preparation process, identifying internal controls by way of a questionnaire, and performing a walk-through of transactions, as necessary, to assist in developing appropriate auditing procedure.

### **Records Request**

- In addition to an engagement letter to be sent to the county, the auditor may request additional documentation throughout the audit process.
- We strive to ensure the confidentiality of any private or privileged information obtained in the course of the audit.
- We will not disclose any confidential or sensitive information obtained in the course of the audit. (HIPAA requirements)
- We consider the draft report a confidential document between the SCO and the county (draft report including audit findings would be marked "Draft" and clearly indicate that it is not a public document).

**Entrance Conference Agenda**  
Entrance Conference for Mandate Reimbursement Claim Audit  
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Fiscal years 2006-07, 2007-08, and 2008-09 Reimbursement Claims

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**Records Request (continued)**

- The audit does not become public until the issuance of the final report. The final report will include the county's response.

**Common Issues**

- Handicapped and Disabled Students
- Handicapped and Disabled Students II
- Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services

**Audit Protocol**

- Contact person for additional record requests \_\_\_\_\_
- Contact person for program related questions \_\_\_\_\_
- Pre-exit discussions if there are problem areas \_\_\_\_\_, \_\_\_\_\_

**Audit Outcomes**

- Conduct exit conference
- Draft report (issued approximately 6-8 weeks after the exit)
- Auditee response (15 days) / Management Representation Letter
  - The county may submit a written time extension request to the SCO Mandated Costs Audits Bureau Chief, Jim Spano.
- Final report (issued approximately 6-8 weeks after the SCO receives the county's response)

**Other Notes**

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**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 13, 2017, I served the:

**Claimant Late Comments on the Draft Proposed Decision**

*Handicapped and Disabled Students (04-RL-4282-10); Handicapped and Disabled Students II, (02-TC-40/02-TC-49); and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05), 15-9705-I-06*

Government Code Sections 7571, 7572, 7572.5, 7572.55, 7576, 7581, and 7586 as added by Statutes 1984, Chapter 1747 (AB 3632); and as amended by Statutes 1985, Chapter 1274 (AB 882); Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200, and 60550

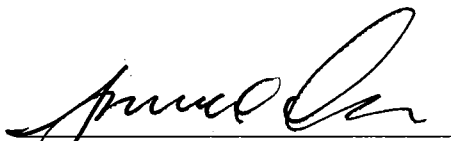
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and refiled June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26]; final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years: 2006-2007, 2007-2008, and 2008-2009

County of San Diego, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 13, 2017 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/9/17

**Claim Number:** 15-9705-I-06

**Matter:** Handicapped and Disabled Students (04-RL-4282-10); Handicapped and Disabled Students II (02-TC-40/02-TC-49); Seriously Emotionally Disturbed Pupils (SED); Out-of-State Mental Health Services (97-TC-05)

**Claimant:** County of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

**Alfredo Aguirre**, Director, *County of San Diego*  
Behavioral Health Services, 3255 Camino Del Rio South, San Diego, CA 92108  
Phone: (619) 563-2766  
alfredo.aguirre@sdcountry.ca.gov

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Lacey Baysinger**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Julia Blair**, Senior Commission Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
julia.blair@csm.ca.gov

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831  
Phone: (916) 203-3608  
allanburdick@gmail.com

**Gwendolyn Carlos**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-0706  
gcarlos@sco.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcs@aol.com

**Marieta Delfin**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

**Dillon Gibbons**, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dillong@csda.net

**Heather Halsey**, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

heather.halsey@csm.ca.gov

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Hill@dof.ca.gov

**Justyn Howard**, Program Budget Manager, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-1546

justyn.howard@dof.ca.gov

**Edward Jewik**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

**Jill Kanemasu**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

**Anne Kato**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-5919

akato@sco.ca.gov

**Jay Lal**, *State Controller's Office (B-08)*

Division of Accounting &amp; Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0256  
JLal@sco.ca.gov

**Lisa Macchione**, *County of San Diego*

**Claimant Representative**

Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Phone: (619) 531-6296

[lisa.macchione@sdcountry.ca.gov](mailto:lisa.macchione@sdcountry.ca.gov)

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500

[gneill@counties.org](mailto:gneill@counties.org)

**Andy Nichols**, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819

Phone: (916) 455-3939

[andy@nichols-consulting.com](mailto:andy@nichols-consulting.com)

**Christian Osmena**, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

[christian.osmena@dof.ca.gov](mailto:christian.osmena@dof.ca.gov)

**Arthur Palkowitz**, *Artiano Shinoff*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

[apalkowitz@as7law.com](mailto:apalkowitz@as7law.com)

**Steven Pavlov**, Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

[Steven.Pavlov@dof.ca.gov](mailto:Steven.Pavlov@dof.ca.gov)

**Keith Petersen**, *SixTen & Associates*

P.O. Box 340430, Sacramento, CA 95834-0430

Phone: (916) 419-7093

[kbsixten@aol.com](mailto:kbsixten@aol.com)

**Jai Prasad**, *County of San Bernardino*

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8854

[jai.prasad@atc.sbcounty.gov](mailto:jai.prasad@atc.sbcounty.gov)

**Kyle Sand**, Senior Deputy, *County of San Diego*

Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Phone: (619) 531-4894

[kyle.sand@sdcountry.ca.gov](mailto:kyle.sand@sdcountry.ca.gov)

**Tracy Sandoval**, *County of San Diego*

1600 Pacific Highway, Room 166, San Diego, CA 92101

Phone: (619) 531-5413

[tracy.sandoval@sdcountry.ca.gov](mailto:tracy.sandoval@sdcountry.ca.gov)

**Carla Shelton**, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 327-6490  
carla.shelton@csm.ca.gov

**Camille Shelton**, Chief Legal Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849  
jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254  
DSpeciale@sco.ca.gov