Hearing Date: May 26, 2017
J:\MANDATES\IRC\2015\9705 (SED pupils)\15-9705-I-06\IRC\TOC.docx

ITEM 4

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

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

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

TABLE OF CONTENTS

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the statutes and executive orders and the specific sections approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Exhibit E

Exhibit F

Exhibit A

RECEIVED
December 10, 2015
Commission on
State Mandates

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

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

December 10, 2015

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

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

Re: Controller's Audit of San Diego County's Consolidated HDS, HDS II, and SED P Program July 1, 2006-June 30, 2009

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 $1,387,095.00 in costs claimed by the County for providing legislatively mandated Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils Program for the period of July 1, 2006-June 30, 2009. 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) 531-5296.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By L M Macchione

LISA M. MACCHIONE, Senior Deputy

11-01866

1. INCORRECT REDUCTION CLAIM TITLE

Controller's Audit of San Diego County's Consolidated HDS

HDS II, and SED P Program July 1, 2006-June 30, 2009

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)563-2705
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
Organization

1600 Pacific Highway, Rm 355
Street Address

San Diego, CA 92101
City, State, Zip

(619)531-6296
Telephone Number

(619)531-6005
Fax Number

lisa.macchione@sdcounty.ca.gov
E-Mail Address

For CSM Use Only

Filing Date

RECEIVED
December 10, 2015
Commission on
State Mandates

IRC # 15-9705-I-06

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Please specify the subject statute or executive order that claimaint 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 654Statutes 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
2006-2007	$825,099.00
2007-2008	$466,264.00
2008-2009	$95,732.00

TOTAL: $1,387,095.00

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 A1-A5

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

Deputy Chief Admin Officer/ATC
Print or Type Title

Tracy M Sandoval
Signature of Authorized Local Agency or School District Official

12/10/15
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.*

1600 Pacific Highway, Room 166
San Diego, CA 92101
Phone: (619) 531-5413
Fax: (619) 531-5219
E-mail: tracy.sandoval@sdcounty.ca.gov

TABLE OF CONTENTS

ITEM 7: WRITTEN DETAILED NARRATIVE

ITEM 7: WRITTEN DETAILED NARRATIVE

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SAN DIEGO
THOMAS E. MONTGOMERY
LISA M. MACCHIONE (SBN 190642)
1600 Pacific Highway, Room 355
San Diego, CA 92101
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 AUDIT OF THE COUNTY OF SAN DIEGO'S CLAIMS FOR REIMBURSEMENT FOR THE CONSOLIDATED HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SEDP PROGRAM FOR THE PERIOD OF JULY 1, 2006 THROUGH JUNE 30, 2009	)	INCORRECT REDUCTION CLAIM BY THE COUNTY OF SAN DIEGO

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, on January 2,

[1] The responsibility for funding and providing mental health services including out-of- state mental health and residential placement services required by the Individuals with Disabilities Education Act (IDEA) and identified in

2007 and again on January 2, 2009. The 2007 and 2009 instructions are attached hereto as Item 9, Exhibit "B". The most recent Claiming Instructions were issued following the adoption of the Program's Amended Parameters and Guidelines by the Commission on State Mandates and 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 Consolidated Handicapped and Disabled Students (HDS), HDS II, and SED Pupils: Out-of-State Mental Health Services Program (Chapter 1747, Statutes of 1084; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654 Statutes of 1996) for the period of July 1, 2006 through June 30, 2009. The State Controller's Office issued an Audit Report dated March 7, 2012 and subsequently, issued a Revised Audit Report which supersedes the previous Report dated December 18, 2012. (See Page 2 of Item 10 Revised Audit Report attached hereto as Exhibit "C".) The County submitted its Response to the Consolidated HDS, HDS II and SEDP Program Audit for the Period of July 1, 2006 through June 30, 2009 on February 29, 2012.

The County claimed $14,484,766 for the mandated program and $4,106,959 has already been paid by the State. The State found $11,651,891 was allowable and

---

a pupil's individualized education plan (IEP) was the responsibility of counties during the subject claim period of July 1, 2006 through June 30, 2009. 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.

$2,832,875 was unallowable. The State alleges that the unallowable costs occurred because the County overstated mental health services costs, administrative costs, and 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 duplicated due process hearing costs and understated offsetting reimbursements. There were four Findings in the Audit Report and the County disputes only the second Finding which alleges the County overstated residential placement costs by $1,653,904 for the audit period.

The County disputes Finding 2 – Overstated residential placement costs - 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 $1,387,095.00.

Argument

I. Summary of Response To Finding 2 – Overstated Residential Placement Costs

The State's position is that the County overstated residential placement

costs by $1,653,904 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of $1,387,095 (board and care costs of $753,624 and treatment costs of $633,471) 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 less the sum already paid by the State and that its claim was incorrectly reduced by board and care costs of $753,624 and treatment costs of $633,471. Please see Summary of Program Costs for Out-of-State Residential Placements for Profit facilities - July 1, 2006 - June 30, 2009 attached hereto as Item 8 Exhibit A-4. In support of its position, the County provides the following arguments and Exhibits A-1, A-2 and A-3 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

[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.

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 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 7572.55[3]. As 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-5) 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

[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.

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 waivered 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 period of July 1, 2006 through June 30, 2009 was incorrectly reduced by $1,387,095 as set forth in Exhibits A-1 through A-4 and the County should be reimbursed the full amount of these disputed costs.

Dated: 12/10/15

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, A-3, A-4, & A-5

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS:
Exhibits A-1, A-2, A-3, A-4, & A-5

	Actual Costs Claimed	Allowable	Adjustments
Summary of July 01 2006- June 30 2007			
Direct and Indirect Costs:			
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)
Transfers and Interim placements	$ 1,923,625	$ 1,890,217	$ (33,408)
Psychothreapy /other mental health services	$ 7,868,926	$ 7,837,430	$ (31,496)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 5,788,131	$ 4,726,644	$ (1,061,487)
Travel	$ 14,797	$ 14,797	$ -
Participation in due process hearings	$ 5,330	$ -	$ (5,330)
Sub-Total program costs	$ 16,484,971	$ 15,349,258.00	$ (1,135,713)
Less: Other reimbursements	$ (9,887,542)	$ (9,651,932)	$ 235,610
Total claimed amount	$ 6,597,429	$ 5,697,326	$ (900,103)
Less: Late filing penalty	$ (10,000)	$ (10,000)	$ -
Total Program Costs	$ 6,587,429	$ 5,687,326	$ (900,103)
Less: Amount paid by the State		$ (4,106,959)	
Allowable costs claimed in excess of amount paid		$ 1,580,367	
Allowable per State Audit (Residential Placement Costs)		$ 4,726,644.00	
Amount being appealed (Payments to Profit Facility)		$ 825,099.00	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 373,380.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 451,719.00	
Total		$ 825,099.00	

Summary of July 01 2007- June 30 2008	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,040,292	$ 1,032,856	$ (7,436)
Transfers and Interim placements	$ 1,827,332	$ 1,822,587	$ (4,745)
Psychothreapy /other mental health services	$ 8,565,332	$ 8,514,338	$ (50,994)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 6,724,027	$ 6,242,968	$ (481,059)
Travel	$ 14,185	$ 14,185	$ -
Participation in due process hearings	$ 10,071	$ -	$ (10,071)
Sub-Total program costs	$ 18,181,239	$ 17,626,934	$ (554,305)
Less: Other reimbursements	$ (11,589,942)	$ (11,662,369)	$ (72,427)
Total claimed amount	$ 6,591,297	$ 5,964,565	$ (626,732)
Total Program Costs	$ 6,591,297	$ 5,964,565	$ (626,732)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ 5,964,565	
Allowable per State Audit (Residential Placement Costs)		$ 6,242,968.00	
Amount being appealed (Payments to Profit Facility)		$ 466,264.00	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 215,136.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 251,128.00	
Total		$ 466,264.00	

	Actual Costs Claimed	Allowable	Adjustments
Summary of July 01 2008- June 30 2009			
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,625,079	$ 1,207,589	$ (417,490)
Transfers and Interim placements	$ 722,633	$ 548,944	$ (173,689)
Psychothreapy /other mental health services	$ 9,749,679	$ 9,198,502	$ (551,177)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 6,211,566	$ 6,112,890	$ (98,676)
Travel	$ 12,472	$ 12,472	$ -
Participation in due process hearings	$ 46,636	$ 46,636	$ -
Sub-Total program costs	$ 18,368,065	$ 17,127,033	$ (1,241,032)
Less: Other reimbursements	$ (17,062,025)	$ (17,566,899)	$ (504,874)
Total claimed amount	$ 1,306,040	$ (439,866)	$ (1,745,906)
Adjustment to eliminate negative balance	$ -	$ 439,866	$ 439,866
Total Program Costs	$ 1,306,040	$ -	$ (1,306,040)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ -	
Allowable per State Audit (Residential Placement Costs)		$ 6,112,890.00	
Amount being appealed (Payments to Profit Facility)		$ 95,732.00	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 44,955.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 50,777.00	
Total		$ 95,732.00	

	Actual Costs Claimed	Allowable	Adjustments
Summary of July 01 2006- June 30 2009			
Direct and Indirect Costs:			
Referral and mental health assessments	$ 3,549,533	$ 3,120,615	$ (428,918)
Transfers and Interim placements	$ 4,473,590	$ 4,261,748	$ (211,842)
Psychothreapy /other mental health services	$ 26,183,937	$ 25,550,270	$ (633,667)
Authorize/issue payments to providers:			
Vendor Reimbursement	$ 18,723,724	$ 17,082,502	$ (1,641,222)
Travel	$ 41,454	$ 41,454	$ -
Participation in due process hearings	$ 62,037	$ 46,636	$ (15,401)
Sub-Total program costs	$ 53,034,275	$ 50,103,225	$ (2,931,050)
Less: Other reimbursements	$ (38,539,509)	$ (38,881,200)	$ (341,691)
Total claimed amount	$ 14,494,766	$ 11,222,025	$ (3,272,741)
Adjustment to eliminate negative balance		439,866	439,866
Less: Late filing penalty	$ (10,000)	$ (10,000)	
Total Program Costs	$ 14,484,766	$ (4,106,959)	$ (2,832,875)
Less: Amount paid by the State		$ 7,544,932	
Allowable costs claimed in excess of amount paid			
Allowable per State Audit (Residential Placement Costs)		$ 17,082,502.00	
Total amount being appealed (Payments to Profit Facility)		$ 1,387,095.00	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 633,471.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 753,624.00	
Grand Total		$ 1,387,095.00	

Administration

MAY 0 7 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:
877-829-5500
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

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 COST CLAIMING INSTRUCTIONS NO. 2007-03

CONSOLIDATION OF HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SERIOUSLY EMOTIONALLY DISTURBED (SED) PUPILS: OUT OF STATE MENTAL HEALTH SERVICES

JANUARY 2, 2007

In accordance with Government Code (GC) section 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 filing claims for the Consolidation of HDS, HDS II, and SED program. These claiming instructions are issued subsequent to adoption of the program's Amended Parameters and Guidelines (P's & G's) by the Commission on State Mandates (COSM).

On May 26, 2005, the COSM determined that the test claim legislation established costs mandated by the State according to the provisions listed in the Amended P's & G's. For your reference, the Amended P's & G's are included as an integral part of the claiming instructions.

Limitations and Exceptions

Commencing with fiscal year 2006-07, reimbursement claims shall be filed through these consolidated P's and G's.

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

The one-time activity of revising the interagency agreement with each local educational agency is reimbursable only if it was not previously claimed under the P's and G's for HDS II. This is listed as activity "A" on Form 1.

Eligible Claimants

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

Filing Deadlines

A. Reimbursement Claims

Initial reimbursement claims must be filed within 120 days from the issuance date of claiming instructions. Costs incurred for this program are reimbursable for fiscal year 2006-07 and subsequent fiscal years. Estimated claims for fiscal year 2006-07 may be filed with SCO and be delivered or postmarked on or before **May 2, 2007**. Actual claims for fiscal year 2006-07 may be filed by **January 15, 2008**, before a late penalty is assessed.

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. Late Penalty

1. Initial Claims

AB 3000, enacted into law on September 30, 2002, amended the late penalty assessments on initial claims. Late initial claims submitted **on or after September 30, 2002,** are assessed a late penalty of 10% of the total amount of the initial claims **without limitation.**

2. Annual Reimbursement Claims

All late annual reimbursement claims are assessed a late penalty of 10% subject to the $1,000 limitation regardless of when the claims were filed.

C. 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%. Claimants 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 supplemental claim forms must be completed to support the 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. Future estimated claims filed with the SCO must be postmarked by January 15 of the fiscal year in which costs will be incurred. Claims filed timely will be paid before late claims.

Minimum Claim Cost

GC section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such claim exceeds one thousand dollars ($1,000).

Reimbursement of Claims

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs incurred to implement the mandated activities. These costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at, or near, the same time the actual cost was incurred for the event or activity in question.

Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. It may also include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Certification of Claim

In accordance with the provisions of GC section 17561, an authorized representative of the claimant shall be required to provide a certification of claim stating: "I certify, (or declare),

under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of the Code of Civil Procedure section 2015.5, for those costs mandated by the State and contained herein.

Audit of Costs

All claims submitted to the 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 SCO's claiming instructions and the P's & G's adopted by the 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.

Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency for this mandate is subject to the initiation of an audit by the SCO no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the SCO to initiate an audit shall commence to run from the date of initial payment of the claim.

In any case, an audit shall be completed no later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by the SCO during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. On-site audits will be conducted by the SCO as deemed necessary.

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.

Questions, or requests for hard copies of these instructions, should be faxed to Angie Lowi-Teng at (916) 323-6527 or e-mailed to **ateng@sco.ca.gov.** Or, if you wish, you may call Angie of the Local Reimbursements Section at (916) 323-0706.

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.shtml.**

Offsetting Revenues and Other Reimbursements

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the State that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by SCO.

4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the HDS program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Address for Filing Claims

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. **(To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

Use the following mailing addresses:

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

If delivered 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

Adopted: October 26, 2006

CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (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)

Commencing with Fiscal Year 2006-2007

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs

claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable 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 Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure

section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)

1. Renew the interagency agreement every three years, and revise if necessary.
2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))

1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)

11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.

12. If necessary, interview the pupil and family, and conduct collateral interviews.

13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)

14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)

15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)

16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.

2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.

3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)

4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)

5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)

6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)

2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)

3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)
7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)
8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)
9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)
10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)
14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

---

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
6. Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.

7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the

contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

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

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

Cost Report Method

A. Cost Report Method

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUE AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.

---

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(F)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

For State Controller Use Only	PROGRAM
(19) Program Number 00273 (20) Date Filed (21) LRS Input	273

(01) Claimant Identification Number			Reimbursement Claim Data	
(02) Claimant Name			(22) FORM-1, (04)(A)(g)	
Address			(23) FORM-1, (04)(B)(g)	
			(24) FORM-1, (04)(C)(g)	
			(25) FORM-1, (04)(D)(g)	
Type of Claim	Estimated Claim	Reimbursement Claim	(26) FORM-1, (04)(E)(g)	
	(03) Estimated ☐	(09) Reimbursement ☐	(27) FORM-1, (04)(F)(g)	
	(04) Combined ☐	(10) Combined ☐	(28) FORM-1, (04)(G)(g)	
	(05) Amended ☐	(11) Amended ☐	(29) FORM-1, (04)(H)(g)	
Fiscal Year of Cost	(06)	(12)	(30) FORM-1, (04)(I)(g)	
Total Claimed Amount	(07)	(13)	(31) FORM-1, (06)	
Less: 10% Late Penalty		(14)	(32) FORM-1, (07)	
Less: Prior Claim Payment Received		(15)	(33) FORM-1, (09)	
Net Claimed Amount		(16)	(34) FORM-1, (10)	
Due from State	(08)	(17)	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file mandated cost 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 1098, 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 for 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 Officer _____ Date _____

Type or Print Name _____ Title _____

(38) Name of Contact Person for Claim _____ Telephone Number _____

E-mail Address _____

Form FAM-27 (New 01/07)

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing a combined estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete Form-1 and enter the amount from line (08).

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.

(11) If filing an amended reimbursement claim, 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 the reimbursement claim from Form-1, line (08). The total claimed amount must exceed $1,000.

(14) Reimbursement claims for fiscal year 06-07 must be filed by **May 2, 2007,** otherwise the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), not to exceed $1,000.

(15) If filing a reimbursement claim or 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 on 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., Form-1, (04)(A)(g), means the information is located on Form-1, block (04) (A), column (g). 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 district's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS 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

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM 1

(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement ☐ Estimated ☐	20__/20__

(03) Department							
Direct Costs	**Object Accounts**						
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Revise Interagency Agreement							
B. Renew Interagency Agreement							
C. Referral & Mental Health Assessments							
D. Transfers & Interim Placements							
E. Participation as Member of IEP Team							
F. Designation of Lead Case Manager							
G. Authorize/Issue Payments to Providers							
H. Psychotherapy/Other Mental Health Services							
I. Participation in Due Process Hearings							
(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)(g) + line (07)]	
Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements		
(11) Total Claimed Amount	[Line (08) - {line (09) + line (10)}]	

Revised 01/07

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY Instructions	FORM 1

(01) Enter the name of the claimant.

(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 Form-1 must be filed for a reimbursement claim. Do not complete form Form-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 Form-1 must be completed and a statement attached explaining the increased costs. Without this information the estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) Department. If more than one department has incurred costs for this mandate, give the name of each department. A separate form Form-1 should be completed for each department.

(04) Reimbursable Components. For each reimbursable component, enter the totals from form Form-2, line (05), columns (d) through (i), to form Form-1, block (04), columns (a) through (f), in the appropriate row. Total each row.

(05) Total Direct Costs. Total columns (a) through (g).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.

(07) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If an ICRP is submitted and 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). If more than one department is reporting costs, each must have its own ICRP for the program.

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(g), 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. Refer to Offsetting Revenues and Other Reimbursements on page 3 of the Cover Letter.

(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. Refer to Offsetting Revenues and Other Reimbursements on page 3 of the Cover Letter.

(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.

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant		(02) Fiscal Year	

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue Payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessments	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses			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) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel
(05) Total ☐ Subtotal ☐ Page:____of____								

New 01/07

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL Instructions	FORM 2

(01) Claimant. Enter the name of the claimant.

(02) Fiscal Year. Enter the fiscal year for which costs were incurred.

(03) Reimbursable Activities. Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 shall be prepared for each applicable activity.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the 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, and travel expenses. **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 three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be 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 supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
Salaries	Employee Name/Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked						
Benefits	Activities Performed	Benefit Rate			Benefits = Benefit Rate x Salaries					
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used				
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service				Cost = Hourly Rate x Hours Worked			Copy of Contract
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage					Cost = Unit Cost x Usage		
Travel	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	

(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 activity costs, number each page. Enter totals from line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) in the appropriate row.

OFFICE OF THE STATE CONTROLLER

STATE MANDATED COST CLAIMING INSTRUCTIONS NO. 2007-03

CONSOLIDATION OF HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SERIOUSLY EMOTIONALLY DISTURBED (SED) PUPILS: OUT OF STATE MENTAL HEALTH SERVICES

JANUARY 2, 2007

Revised January 30, 2009

In accordance with Government Code (GC) section 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 filing claims for the Consolidation of HDS, HDS II, and SED program. These claiming instructions are issued subsequent to adoption of the program's Amended Parameters and Guidelines (P's & G's) by the Commission on State Mandates (CSM).

On May 26, 2005, the CSM determined that the test claim legislation established costs mandated by the State according to the provisions listed in the Amended P's & G's. For your reference, the Amended P's & G's are included as an integral part of the claiming instructions.

Limitations and Exceptions

Commencing with fiscal year 2006-07, reimbursement claims shall be filed through these consolidated P's and G's.

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

The one-time activity of revising the interagency agreement with each local educational agency is reimbursable only if it was not previously claimed under the P's and G's for HDS II. This is listed as activity "A" on Form 1.

Eligible Claimants

Any city, county, or city and county, which incurs increased costs, as a direct result of this mandate is eligible to claim reimbursement of these costs.

Filing Deadlines

A. Reimbursement Claims

A reimbursement claim is defined in GC Section 17522 as any claim filed with the SCO by a local agency for reimbursement of costs incurred for which an appropriation is made for the purpose of paying the claim.

An actual claim may be filed by February 15 following the fiscal year in which costs were incurred. If the filing deadline falls on a weekend or holiday, the filing deadline will be the next business day. Since the 15th falls on a weekend in 2009 claims for fiscal year 2007-08

will be accepted without penalty if postmarked or delivered on or before February 17, 2009. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed $10,000. A claim filed more than one year after the deadline cannot be accepted for reimbursement.

In order for a claim to be considered properly filed, it must include the Indirect Cost Rate Proposal (ICRP) if the indirect cost rate exceeds 10%. A more detailed discussion of the ICRP may be found in Section 8 of the instructions.

Documentation to support actual costs must be kept on hand by the claimant and made available to the SCO upon request as explained in Section 17 of the instructions.

B. Estimated Claims

Pursuant to AB 8, Chapter 6, Statutes of 2008, the option to file estimated claims has been eliminated. Therefore, estimated claims filed on or after February 16, 2008, will not be accepted for reimbursement.

Minimum Claim Cost

GC section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds one thousand dollars (**$1,000**), provided that a county may submit a combined claim on behalf of direct service districts or special districts within their county if the combined claim exceeds **$1,000**, even if the individual direct service district's or special district's claim does not each exceed **$1,000**. The county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each direct service district or special district. These combined claims may be filed only when the county is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a direct service district or special district provides a written notice of its intent to file a separate claim to the county and to the SCO, at least 180 days prior to the deadline for filing the claim.

Reimbursement of Claims

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.

A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, notices of order of suspension or revocation, sworn reports, arrest reports, notices to appear, employee time records, or time logs, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations.

Declarations must include a certification or declaration stating, "I certify, (or declare), under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of the Code of Civil Procedure section 2015.5.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Certification of Claim

In accordance with the provisions of GC section 17561, an authorized representative of the claimant shall be required to provide a certification of claim stating: "I certify, (or declare), under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of the Code of Civil Procedure section 2015.5, for those costs mandated by the State and contained herein.

Audit of Costs

All claims submitted to the 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 SCO's claiming instructions and the P's & G's adopted by the CSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim activity adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the SCO no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by the SCO during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. Supporting documents shall be made available to the 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.

Questions or requests for hard copies of these instructions should be faxed to Angie Teng at (916) 323-6527, or e-mailed to **LRSDAR@sco.ca.gov.** Or, if you wish, you may call the Local Reimbursements Section at (916) 324-5729.

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

Address for Filing Claims

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. **(To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)** Use the following mailing addresses:

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

If delivered 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

Adopted: October 26, 2006

CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (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)

Commencing with Fiscal Year 2006-2007

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs

claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable 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 Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure

section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)

1. Renew the interagency agreement every three years, and revise if necessary.
2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))

1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)

11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.

12. If necessary, interview the pupil and family, and conduct collateral interviews.

13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)

14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)

15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)

16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)
4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)
2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)

3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)
7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)
8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)
9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)
10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)
14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

---

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
6. Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.

7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the

contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

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

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

Cost Report Method

A. Cost Report Method

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUE AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(F)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES	For State Controller Use Only (19) Program Number 00273 (20) Date Filed (21) LRS Input	PROGRAM 273

(01) Claimant Identification Number			Reimbursement Claim Data	
(02) Claimant Name			(22) FORM-1, (04)(A)(g)	
Address			(23) FORM-1, (04)(B)(g)	
			(24) FORM-1, (04)(C)(g)	
			(25) FORM-1, (04)(D)(g)	
Type of Claim	**Estimated Claim**	**Reimbursement Claim**	(26) FORM-1, (04)(E)(g)	
	(03) Estimated ☐	(09) Reimbursement ☐	(27) FORM-1, (04)(F)(g)	
	(04) Combined ☐	(10) Combined ☐	(28) FORM-1, (04)(G)(g)	
	(05) Amended ☐	(11) Amended ☐	(29) FORM-1, (04)(H)(g)	
Fiscal Year of Cost	(06)	(12)	(30) FORM-1, (04)(I)(g)	
Total Claimed Amount	(07)	(13)	(31) FORM-1, (06)	
Less: **10% Late Penalty** (refer to claiming instructions)		(14)	(32) FORM-1, (07)	
Less: **Prior Claim Payment Received**		(15)	(33) FORM-1, (09)	
Net Claimed Amount		(16)	(34) FORM-1, (10)	
Due from State	(08)	(17)	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file mandated cost 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 1098, 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 for the Reimbursement Claim are hereby claimed from the State for payment of 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 Officer _____ Date _____

Type or Print Name _____ Title _____

(38) Name of Contact Person for Claim _____ Telephone Number _____

E-mail Address _____

Form FAM-27 (Revised 01/09)

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) Leave blank.

(04) Leave blank.

(05) Leave blank.

(06) Leave blank.

(07) Leave blank.

(08) Leave blank.

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.

(11) If filing an amended reimbursement claim, 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 the reimbursement claim from Form-1, line (11). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by **February 15** of the following fiscal year in which costs were incurred or the claims will be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), not to exceed $10,000.

(15) If filing a reimbursement claim or 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 on line (18), Due to State.

(19) to (21) Leave blank.

(22) to (28) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (28) for the reimbursement claim, e.g., Form-1, (04)(A)(g), means the information is located on Form-1, line (04)(A), column (g). 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 an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS 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

Form FAM-27 (Revised 01/09)

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM 1

(01) Claimant	(02) Fiscal Year 20__/20__
(03) Department	

Direct Costs	Object Accounts						
(04) Reimbursable Activities	(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Revise Interagency Agreement							
B. Renew Interagency Agreement							
C. Referral & Mental Health Assessments							
D. Transfers & Interim Placements							
E. Participation as Member of IEP Team							
F. Designation of Lead Case Manager							
G. Authorize/Issue Payments to Providers							
H. Psychotherapy/Other Mental Health Services							
I. Participation in Due Process Hearings							
(05) Total Direct Costs							

Indirect Costs		
(06) Indirect Cost Rate	[From ICRP or 10%]	%
(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)(g) + line (07)]	
Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements		
(11) Total Claimed Amount	[Line (08) - {line (09) + line (10)}]	

Revised 01/09

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY Instructions	FORM 1

(01) Enter the name of the claimant.

(02) Enter the fiscal year of costs.

(03) Department. If more than one department has incurred costs for this mandate, give the name of each department. A separate form Form-1 should be completed for each department.

(04) Reimbursable Activities. For each reimbursable activity, enter the totals from form Form-2, line (05), columns (d) through (i), to form Form-1, block (04), columns (a) through (f), in the appropriate row. Total each row.

(05) Total Direct Costs. Total columns (a) through (g).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.

(07) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If an ICRP is submitted and 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). If more than one department is reporting costs, each must have its own ICRP for the program.

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(g), 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. Refer to Offsetting Revenues and Other Reimbursements on page 3 of the Cover Letter.

(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. Refer to Offsetting Revenues and Other Reimbursements on page 3 of the Cover Letter.

(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 (13) for the Reimbursement Claim.

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01)	Claimant	(02)	Fiscal Year

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue Payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessments	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses			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) Materials and Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel
(05) Total ☐ Subtotal ☐ Page:___of___								

Revised 01/09

Program 273	CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL Instructions	FORM 2

(01) Claimant. Enter the name of the claimant.

(02) Fiscal Year. Enter the fiscal year for which costs were incurred.

(03) Reimbursable Activities. Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 shall be prepared for each applicable activity.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the 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, and travel expenses. **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 three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit will be from the date of initial payment of the claim. Such documents must be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns									Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
Salaries	Employee Name/Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked						
Benefits	Activities Performed	Benefit Rate			Benefits = Benefit Rate x Salaries					
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used				
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Inclusive Dates of Service				Cost = Hourly Rate x Hours Worked			Copy of Contract
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage					Cost = Unit Cost x Usage		
Travel	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	

(05) Total line (04), columns (d) through (i) 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 activity costs, number each page. Enter totals from line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) 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

Revised Audit Report

CONSOLIDATED HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SEDP PROGRAM

Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654 Statutes of 1996

July 1, 2006, through June 30, 2009

JOHN CHIANG
California State Controller

December 2012

JOHN CHIANG
California State Controller

December 18, 2012

Honorable Ron Roberts, Chairman
Board of Supervisors
County Administration Center
San Diego County
1600 Pacific Highway, Room 335
San Diego, CA 92101

Dear Mr. Roberts:

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996) for the period of July 1, 2006, through June 30, 2009.

This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.

The county claimed $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable. The costs are unallowable because the county overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated offsetting reimbursements. The State paid the county $4,106,959. The State will pay allowable costs claimed that exceed the amount paid, totaling $7,544,932, contingent upon available appropriations.

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 website 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,

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/bf

cc: Jim Lardy, Finance Officer
Health and Human Services Agency
San Diego County
Alfredo Aguirre, Deputy Director
Mental Health Services
Health and Human Services Agency
San Diego County
Lisa Macchione, Senior Deputy Counsel
Finance and General Government
County Administration Center
San Diego County
Randall Ward, Principal Program Budget Analyst
Mandates Unit, Department of Finance
Carol Bingham, Director
Fiscal Policy Division
California Department of Education
Erika Cristo
Special Education Program
Department of Mental Health
Chris Essman, Manager
Special Education Division
California Department of Education
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

Contents

Revised Audit Report

Summary

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654 Statutes of 1996) for the period of July 1, 2006, through June 30, 2009.

The county claimed $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable. The costs are unallowable because the county overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated other reimbursements. The State paid the county $4,106,959. The State will pay allowable costs claimed that exceed the amount paid, totaling $7,544,932, contingent upon available appropriations.

Background

Handicapped and Disabled Students (HDS) Program

Chapter 26 of the Government Code, commencing with section 7570, and Welfare and Institutions Code section 5651 (added and amended by Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) require counties to participate in the mental health assessment for "individuals with exceptional needs," participate in the expanded "Individualized Education Program" (IEP) team, and provide case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed." These requirements impose a new program or higher level of service on counties.

On April 26, 1990, the Commission on State Mandates (CSM) adopted the statement of decision for the HDS Program and determined that this legislation imposed a state mandate reimbursable under Government Code section 17561. The CSM adopted the parameters and guidelines for the HDS Program on August 22, 1991, and last amended it on January 25, 2007.

The parameters and guidelines for the HDS Program state that only 10% of mental health treatment costs are reimbursable. However, on September 30, 2002, Assembly Bill 2781 (Chapter 1167, Statutes of 2002) changed the regulatory criteria by stating that the percentage of treatment costs claimed by counties for fiscal year (FY) 2000-01 and prior fiscal years is not subject to dispute by the SCO. Furthermore, this legislation states that, for claims filed in FY 2001-02 and thereafter, counties are not required to provide any share of these costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Welfare and Institutions Code section 17600 et seq. (realignment funds).

Furthermore, Senate Bill 1895 (Chapter 493, Statutes of 2004) states that realignment funds used by counties for the HDS Program "are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services" and that the finding by the Legislature is "declaratory of existing law" (emphasis added).

The CSM amended the parameters and guidelines for the HDS Program on January 26, 2006, and corrected them on July 21, 2006, allowing reimbursement for out-of-home residential placements beginning July 1, 2004.

Handicapped and Disabled Students (HDS) II Program

On May 26, 2005, the CSM adopted a statement of decision for the HDS II Program that incorporates the above legislation and further identified medication support as a reimbursable cost effective July 1, 2001. The CSM adopted the parameters and guidelines for this new program on December 9, 2005, and last amended them on October 26, 2006.

The parameters and guidelines for the HDS II Program state that "Some costs disallowed by the State Controller's Office in prior years are now reimbursable beginning July 1, 2001 (e.g., medication monitoring). Rather than claimants re-filing claims for those costs incurred beginning July 1, 2001, the State Controller's Office will reissue the audit reports." Consequently, we are allowing medication support costs commencing on July 1, 2001.

Seriously Emotionally Disturbed Pupils (SEDP) Program

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

On May 25, 2000, the CSM adopted the statement of decision for the SEDP Program and determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561. The CSM adopted the parameters and guidelines for the SEDP Program on October 26, 2000. The CSM determined that the following activities are reimbursable:

- Payment of out-of-state residential placements;
- Case management of out-of-state residential placements (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 IEP; and
- Program management, which includes parent notifications as required; payment facilitation; and all other activities necessary to ensure that a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The CSM consolidated the parameters and guidelines for the HDS, HDS II, and SEDP Programs for costs incurred commencing with FY 2006-07 on October 26, 2006, and last amended them on September 28, 2012. On September 28, 2012, the CSM stated that Statutes of 2011, Chapter 43, "eliminated the mandated programs for counties and transferred responsibility to school districts, effective July 1, 2011. Thus, beginning July 1, 2011, these programs no longer constitute reimbursable state-mandated programs for counties." The consolidated program replaced the prior HDS, HDS II, and SEDP mandated programs. The parameters and guidelines establish the state mandate and define reimbursable criteria. In compliance with Government Code section 17558, the SCO issues claiming instructions 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 Consolidated HDS, HDS II, and SEDP Program for the period of July 1, 2006, through June 30, 2009.

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 $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for costs of the Consolidated HDS, HDS II, and SEDP Program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable.

For the FY 2006-07 claim, the State paid the county $4,106,959. Our audit disclosed that $5,687,326 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $1,580,367, contingent upon available appropriations.

For the FY 2007-08 claim, the State made no payment to the county. Our audit disclosed that $5,964,565 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $5,964,565, contingent upon available appropriations.

For the FY 2008-09 claim, the State made no payment to the county. Our audit disclosed that claimed costs are unallowable.

Views of Responsible Officials

We issued a draft audit report on February 6, 2012. Lisa Macchione, Senior Deputy County Counsel, responded by letter dated February 29, 2012 (Attachment), disagreeing with the audit results for Finding 2. The county did not respond to Findings 1, 3, and 4. We issued the final report on March 7, 2012.

Subsequently, we revised our audit report based on finalized Early and Periodic, Screening, Diagnosis and Treatment revenues for FY 2008-09. We recalculated offsetting reimbursements and revised Finding 4. The revision has no effect on allowable total program costs for FY 2008-09. On October 30, 2012, we advised Chona Penalba, Principal Accountant, Fiscal Services Division, of the revisions. This revised final report includes the county's response to our March 7, 2012, final report.

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.

JEFFREY V. BROWNFIELD
Chief, Division of Audits

December 20, 2012

Revised Schedule 1—
Summary of Program Costs
July 1, 2006, through June 30, 2009

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference[1]
July 1 2006, through June 30, 2007				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)	Finding 1
Transfers and interim placements	1,923,625	1,890,217	(33,408)	Findings 1, 2
Authorize/issue payments to providers	5,802,928	4,741,441	(1,061,487)	Finding 2
Psychotherapy/other mental health services	7,868,926	7,837,430	(31,496)	Finding 1
Participation in due process hearings	5,330	-	(5,330)	Finding 3
Total direct and indirect costs	16,484,971	15,349,258	(1,135,713)	
Less offsetting reimbursements	(9,887,542)	(9,651,932)	235,610	Finding 4
Total claimed amount	6,597,429	5,697,326	(900,103)	
Less late claim penalty	(10,000)	(10,000)	-	
Total program cost	$ 6,587,429	5,687,326	$ (900,103)	
Less amount paid by State[3]		(4,106,959)		
Allowable costs claimed in excess of (less than) amount paid		$ 1,580,367		
July 1 2007, through June 30, 2008				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 1,040,292	$ 1,032,856	$ (7,436)	Finding 1
Transfers and interim placements	1,827,332	1,822,587	(4,745)	Findings 1, 2
Authorize/issue payments to providers	6,738,212	6,257,153	(481,059)	Finding 2
Psychotherapy/other mental health services	8,565,332	8,514,338	(50,994)	Finding 1
Participation in due process hearings	10,071	-	(10,071)	Finding 3
Total direct and indirect costs	18,181,239	17,626,934	(554,305)	
Less offsetting reimbursements	(11,589,942)	(11,662,369)	(72,427)	Finding 4
Total claimed amount	6,591,297	5,964,565	(626,732)	
Total program cost	$ 6,591,297	5,964,565	$ (626,732)	
Less amount paid by State[3]		-		
Allowable costs claimed in excess of (less than) amount paid		$ 5,964,565		
July 1 2008, through June 30, 2009				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 1,625,079	$ 1,207,589	$ (417,490)	Finding 1
Transfers and interim placements	722,633	548,944	(173,689)	Findings 1, 2
Authorize/issue payments to providers	6,224,038	6,125,362	(98,676)	Finding 2
Psychotherapy/other mental health services	9,749,679	9,198,502	(551,177)	Finding 1
Participation in due process hearings	46,636	46,636	-	
Total direct and indirect costs	18,368,065	17,127,033	(1,241,032)	
Less offsetting reimbursements	(17,062,025)	(17,382,168)	(320,143)	Finding 4
Total claimed amount	1,306,040	(255,135)	(1,561,175)	
Adjustment to eliminate negative balance	-	255,135	255,135	
Total program cost	$ 1,306,040	-	$(1,306,040)	
Less amount paid by State[3]		-		
Allowable costs claimed in excess of (less than) amount paid		$ -		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference[1]
Summary: July 1 2006 through June 30, 2009				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 3,549,533	$ 3,120,615	$ (428,918)	
Transfers and interim placements	4,473,590	4,261,748	(211,842)	
Authorize/issue payments to providers	18,765,178	17,123,956	(1,641,222)	
Psychotherapy/other mental health services	26,183,937	25,550,270	(633,667)	
Participation in due process hearings	62,037	46,636	(15,401)	
Total direct and indirect costs	53,034,275	50,103,225	(2,931,050)	
Less offsetting reimbursements	(38,539,509)	(38,696,469)	(156,960)	
Total claimed amount	14,494,766	11,406,756	(3,088,010)	
Adjustment to eliminate negative balance	-	255,135	255,135	
Less late claim penalty	(10,000)	(10,000)	-	
Total program cost	$14,484,766	11,651,891	$ (2,832,875)	
Less amount paid by State[3]		(4,106,959)		
Allowable costs claimed in excess of (less than) amount paid		$ 7,544,932		

[1] See the Findings and Recommendations section.

[2] The county incorrectly claimed indirect costs associated with each cost component under the direct cost component.

[3] County received Categorical payment from the California Department of Mental Health from FY 2009-10 budget.

Revised Findings and Recommendations

FINDING 1— Overstated mental health services unit costs and indirect (administrative) costs

The county overstated mental health services unit costs and indirect (administrative) costs by $1,261,745 for the audit period.

The county claimed mental health services costs to implement the mandated program that were not fully based on actual costs. The county determined its service costs based on preliminary units and rates. The county ran unit-of-service reports to support its claims. These reports did not fully support the units of service claimed and contained duplicated units and unallowable costs including crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services.

The county claimed rehabilitation costs for individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services. The services are provided in accordance with a definition that includes a broad range of services, including certain fringe services such as social skills, daily living skills, meal preparation skills, personal hygiene, and grooming. Based on the Commission on State Mandate's (CSM) statement of decision dated May 26, 2011, the portions of rehabilitation services related to socialization are not reimbursable under the parameters and guidelines. The statement of decision relates to an incorrect reduction claim filed by Santa Clara County for the Handicapped and Disabled Students (HDS) Program. In light of the CSM decision, the county must separate the ineligible portions of the service. To date, the county has not provided our office with sufficient documentation to identify the eligible portion of claimed rehabilitation services.

We recalculated mental health services unit costs based on actual, supportable units of service provided to eligible clients using the appropriate unit rates that represented actual cost to the county. We excluded duplicated units and ineligible crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services.

The county incorrectly capped its administrative rates at 15% and applied the rates to costs based on preliminary units and rates. For fiscal year (FY) 2007-08 and FY 2008-09 the county understated its administrative rate by incorrectly capping it at 15%. Additionally, the county incorrectly used FY 2007-08 data when computing its FY 2008-09 administrative rate.

We recalculated administrative cost rates using a method that is consistent with the cost reports submitted to the California Department of Mental Health (DMH) and by not capping the rates at 15%. We applied the rates to eligible direct costs.

The following table summarizes the overstated mental health services unit costs and indirect (administrative) costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Referral and mental health assessments				
Units of service/unit rates	$ (3,406)	$ (10,025)	$ (423,591)	$ (437,022)
Administrative costs	(586)	2,589	6,101	8,104
Total referral and mental health assessments	(3,992)	(7,436)	(417,490)	(428,918)
Transfers and interim placements				
Units of service/unit rates	(18,165)	(9,455)	(178,999)	(206,619)
Administrative costs	(2,561)	4,710	5,310	7,459
Total transfers and interim placements	(20,726)	(4,745)	(173,689)	(199,160)
Psychotherapy/other mental health services				
Rehabilitation costs	-	-	(129,585)	(129,585)
Units of service/unit rates	(27,089)	(52,308)	(425,730)	(505,127)
Administrative costs	(4,407)	1,314	4,138	1,045
Total psychotherapy/other mental health services	(31,496)	(50,994)	(551,177)	(633,667)
Audit adjustment	$ (56,214)	$ (63,175)	$ (1,142,356)	$ (1,261,745)

The program's parameters and guidelines specify that the State will reimburse only actual increased costs incurred to implement the mandated activities that are supported by source documents that show the validity of such costs. The parameters and guidelines do not identify crisis intervention as an eligible service.

The parameters and guidelines (section IV.H.) reference Title 2, *California Code of Regulations* (CCR), section 60020, subdivision (i), for reimbursable psychotherapy or other mental health treatment services. This regulation does not include socialization services. The CSM's May 26, 2011 statement of decision also states that the portion of the services provided that relate to socialization are not reimbursable.

The parameters and guidelines further specify that to the extent the DMH has not already compensated reimbursable administrative costs from categorical funding sources, the costs may be claimed.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

- Ensure that only actual and supported costs for program-eligible clients are claimed in accordance with the mandate program.
- Compute indirect cost rates using a method that is consistent with the cost allocations in the cost report submitted to the DMH and apply administrative cost rates to eligible and supported direct costs.
- Apply all relevant administrative revenues to valid administrative costs.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

FINDING 2— Overstated residential placement costs

The county overstated residential placement costs by $1,653,904 for the audit period.

The county claimed board-and-care costs and mental health treatment "patch" costs for residential placements in out-of-state facilities that are operated on a for-profit basis. Only placements in facilities that are operated on a not-for-profit basis are eligible for reimbursement.

The county claimed board-and-care costs for clients incurred outside of the clients' authorization period. Only payments made for clients with a valid authorization for placement in a residential facility are eligible for reimbursement.

The county claimed board-and-care costs net of the California Department of Social Services reimbursement (40% state share). However, the county did not consider Local Revenue Funds applied to SED costs when computing its net costs.

We adjusted costs claimed for residential placements in out-of-state facilities that are operated on a for-profit basis, as well as costs associated with board-and-care costs for clients incurred outside of the clients' authorization period. Additionally, we applied Local Revenue Funds to eligible board-and-care costs in order to arrive at the county's net cost.

The following table summarizes the overstated residential placement costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Transfers and interim placements				
Local revenue funds	$ (12,682)	$ -	$ -	$ (12,682)
Total transfers and interim placements	(12,682)	-	-	$ (12,682)
Authorize/issue payments to providers				
Ineligible placements				
Board and care	(451,719)	(251,128)	(50,777)	(753,624)
Treatment	(373,380)	(215,136)	(44,955)	(633,471)
Local revenue funds	(217,649)	-	-	(217,649)
Unauthorized payments	(18,739)	(14,795)	(2,944)	(36,478)
Total authorize/issue payments to providers	(1,061,487)	(481,059)	(98,676)	(1,641,222)
Audit adjustment	$(1,074,169)	$(481,059)	$ (98,676)	$(1,653,904)

The parameters and guidelines (section IV.C.1) specify that the mandate is to reimburse counties for payments to vendors providing mental health services to pupils in out-of-state residential placements as specified in Government Code section 7576, and Title 2, 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 be paid only to a group home, organized, and operated on a nonprofit basis.

The parameters and guidelines (section IV.G.) reference Welfare and Institutions Code (WIC), section 18355.5, which prohibits a county from claiming reimbursement for its 60% share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in WIC section 17600 and receives these funds.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county take steps to ensure that:
>
> - Only actual and supported costs for program eligible clients are claimed in accordance with the mandate program.
> - It only claims out-of-state residential placements that are in agencies owned and operated on a non-profit basis.
> - Each residential placement has a valid authorization for placement.
> - Costs claimed are reduced by the portion funded with Local Revenue Funds.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

> The State's position is that the County overstated residential placement costs by $1,653,904 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of $1,387,095 (board and care costs of $753,624 and treatment costs of $633,471) for out-of-state residential placement of SED pupils owned and operated for profit [*sic*]. 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 for Out-of-State Residential Placements for Profit facilities for July 1, 2006 – June 30, 2009 attached hereto as Exhibit A-4. 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*. Theses [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 Are 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 Covet 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 waivered 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 California 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 of 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 comment.

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 was not organized and operated on a nonprofit basis until its Articles of Incorporation as a nonprofit entity in the state of Utah were approved on January 6, 2009. We only allowed costs incurred by the county for residential placements made at the Provo Canyon facility when it became a nonprofit.

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 the finding and our previous response, 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. The unallowable treatment and board-and-care vendor payments claimed result from the county placement of clients in non-reimbursable out-of-state residential facilities. The 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 3— Duplicate due process hearing costs

The county claimed $15,401 in duplicate due process hearing costs for the audit period.

The county claimed allowable due process hearing costs. For FY 2006-07 and FY 2007-08 the county included these costs in the pool of direct costs used to compute the unit rates in the county's cost reports submitted to the DMH. Consequently, due process hearing costs claimed for FY 2006-07 and FY 2007-08 were also allocated through the unit rates to various mental health programs, including the Consolidated HDS, HDS II, and SEDP Program claims. Allowing the FY 2006-07 and FY 2007-08 due process hearing costs would result in duplicate reimbursement.

We did not allow the claimed FY 2006-07 and FY 2007-08 due process hearing costs because they resulted in a duplication of claimed costs.

The following table summarizes the duplicated due process hearing costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Participation in due process hearings	$ (5,330)	$ (10,071)	$ -	$ (15,401)
Audit adjustment	$ (5,330)	$ (10,071)	$ -	$ (15,401)

The parameters and guidelines specify that the State will reimburse only actual increased costs incurred to implement the mandated activities and supported by source documents that show the validity of such costs.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county ensure that only actual and supported costs for program-eligible clients are claimed in accordance with the mandate program. Furthermore, we recommend that the county only claim reimbursement for allowable direct costs that are not included as a part of its total cost used to compute the unit rates.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

FINDING 4— Understated offsetting reimbursements

The county understated other reimbursements by $156,960 for the audit period.

The county understated Individuals with Disabilities Education Act (IDEA) grant reimbursements for the audit period, and DMH Categorical grant reimbursements for FY 2008-09, by claiming preliminary grant amounts.

The county overstated Short-Doyle/Medi-Cal Federal Financing Participation Funds (SD/MC FFP), and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) reimbursements by applying the funding shares to service costs not fully based on actual costs. The county determined its service costs based on preliminary units and rates. The county ran unit-of-service reports to support its claims. These reports did not fully support the units of service claimed and contained duplicate units and unallowable costs including crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation-evaluation services.

The county claimed costs for individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation-evaluation services that may include ineligible socialization services that are not reimbursable under the parameters and guidelines. Based on the CSM's statement of decision dated May 26, 2011, the portions of rehabilitation services related to socialization are not reimbursable under the parameters and guidelines. The county must separate the ineligible portions of the rehabilitation service. To date, the county has not provided our office with any documentation to identify the eligible portion of claimed rehabilitation services. Therefore, we are excluding the portion of reimbursements that relate to claimed rehabilitation services.

The following table summarizes the overstated offsetting reimbursements claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
IDEA	$ 202,469	$ (90,847)	$ (487,781)	$ (376,159)
DMH Categorical payment	-	-	(406,984)	(406,984)
SD/MC FFP:				
Rehabilitation costs			48,090	48,090
Units of service/unit rates	(11,373)	(17,438)	11,132	(17,679)
EPSDT:				
Rehabilitation costs			24,326	24,326
Units of service/unit rates	44,514	35,858	491,074	571,446
Total other reimbursements	$ 235,610	$ (72,427)	$ (320,143)	$ (156,960)

The parameters and guidelines specify that any direct payments (Categorical funds, SD/MC FFP, EPSDT, IDEA, and other offsets such as private insurance) received from the State that are specifically allocated to the program, and/or any other reimbursement received as a result of the mandate, must be deducted from the claim.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county ensure that appropriate revenues are identified and applied to valid costs.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

SCO's Comment

Subsequent to the issuance of our final report on March 7, 2012, the DMH issued its EPSDT settlement for FY 2008-09. We recalculated offsetting reimbursements and revised Finding 4 to reflect the actual funding percentage. As a result, the finding was reduced by $184,731.

Attachment—
County's Response to
Draft Audit Report

THOMAS E. MONTGOMERY
COUNTY COUNSEL

DEBORAH A. McCARTHY
ASSISTANT COUNTY COUNSEL

NATHAN C. NORTHUP
CLAUDIA ANZÚRES
C. ELLEN PILSECKER
CHIEF DEPUTIES

County of San Diego
OFFICE OF COUNTY COUNSEL

COUNTY ADMINISTRATION CENTER
1600 PACIFIC HIGHWAY, ROOM 355
SAN DIEGO, CALIFORNIA 92101-2469
(619) 531-4860 FAX (619) 531-6005

February 29, 2012

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

Re: Response to Consolidated Handicapped and Disabled Students (HDS), HDS II, and SEDP Program Audit for the Period of July 1, 2006 through June 30, 2009

Dear Mr. Spano:

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 Consolidated Handicapped and Disabled Students (HDS), HDS II, and SEDP Program Audit for the Period of July 1, 2006 through June 30, 2009. The County received the report on February 7, 2012 and received an extension from Mr. Jim L. Spano, Chief, Mandated Audits Bureau to submit its response to the report on or before February 29, 2012. The County is submitting this response and its management representation letter in compliance with that extension on February 29, 2012.

As directed in the draft report, the County's response will address the accuracy of the audit findings. There were four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs. The County claimed $14,484,766 for the mandated programs for the audit period and $4,106,959 has already been paid by the State. The State Controller's Office's audit found that $11,651,891 is allowable and $2,832,875 is unallowable. The unallowable costs as determined by State Controller's Office occurred primarily because the State alleges the County overstated residential placement costs by $1,653,904 (the County disputes

$1,387,095) for the audit period. As stated above, the County disputes Finding 2 and asserts that $1,387,095 are allowable costs that are due the County for the audit period.

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

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By L. M. Macchione

LISA M. MACCHIONE, Senior Deputy

LMM:vf
11-01866
Encs.

COUNTY OF SAN DIEGO'S RESPONSE TO LEGISLATIVELY MANDATED CONSOLIDATED HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SERIOUSLY EMOTIONALLY DISTURBED PUPILS (SEDP) PROGRAM AUDIT FOR THE PERIOD OF JULY 1, 2006 THROUGH JUNE 30, 2009

Summary

The State Controller's Office audited the costs claimed by County for the legislatively mandated Consolidated handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program for the period of July 1, 2006 through June 30, 2009. The County claimed $14,484,766 for the mandated program, and the State found $11,651,891 is allowable and $2,832,875 is unallowable. The State alleges that the unallowable costs occurred because the County overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated other reimbursements. The State has broken down the unallowable costs claimed into four findings. The County disputes the second finding regarding the alleged overstated residential placement costs and does not dispute the first finding relating to overstated mental health services unit costs and indirect (administrative) costs, the third finding relating to duplicate due process hearing costs or the fourth finding relating to understated other reimbursements.

The County disputes Finding 2 – overstated residential placement costs - 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).

Response To Finding 2 – Overstated Residential Placement Costs

The State's position is that the County overstated residential placement costs by $1,653,904 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of $1,387,095.00 (board and care costs of $753,624 and treatment costs of $633,471) 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 for Out-of-State Residential Placements for Profit facilities for July 1, 2006 - June 30, 2009 attached hereto as Exhibit A-4.

In support of its position, the County provides the following arguments and Exhibits A through C attached hereto.[1]

1. **California Law Prohibiting For-Profit Placements is Inconsistent with Both Federal Law, Which Does Not Have 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:

[1] County acknowledges that as of July 1, 2011 the various sections of the Government Code, Welfare and Institutions Code, Education Code and Family Code mandating that counties provide educationally related mental health services to students on individualized education plans ("IEP") became inoperative and as of January 1, 2012 these sections were repealed. It should be made clear, however, that counties were still mandated to provide educationally related mental health services to eligible students on IEPs during the audit period and therefore, all arguments made within this audit response are relevant and valid for the audit period.

"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(o)(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*. Theses 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 Are 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 is therefore 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 waivered 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 $1,387,095.00 as set forth in Exhibits A-1 through A-4 should be allowed.

Dated: February 29, 2012

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By

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

Summary of July 01 2006- June 30 2007	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)
Transfers and interim placements	$ 1,923,825	$ 1,890,217	$ (33,408)
Psychotherapy /other mental health services	$ 7,868,926	$ 7,837,430	$ (31,496)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 5,788,131	[redacted]	$ (1,061,487)
Travel	$ 14,797	$ 14,797	$ -
Participation in due process hearings	$ 5,330	$ -	$ (5,330)
Sub-Total program costs	$ 16,484,971	$ 15,349,258.00	$ (1,135,713)
Less: Other reimbursements	$ (9,887,542)	$ (9,651,932)	$ 235,610
Total claimed amount	$ 6,597,429	$ 5,697,326	$ (900,103)
Less: Late filing penalty	$ (10,000)	$ (10,000)	$ -
Total Program Costs	$ 6,587,429	$ 5,687,326	$ (900,103)
Less: Amount paid by the State		$ (4,106,959)	
Allowable costs claimed in excess of amount paid		$ 1,580,367	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 373,360.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 461,719.00	
Total		[redacted]	

Summary of July 01 2007- June 30 2008	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,040,292	$ 1,032,856	$ (7,436)
Transfers and interim placements	$ 1,827,332	$ 1,822,587	$ (4,745)
Psychotherapy /other mental health services	$ 8,565,332	$ 8,514,338	$ (50,994)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 8,724,027	[redacted]	$ (481,059)
Travel	$ 14,185	$ 14,185	$ -
Participation in due process hearings	$ 10,071	$ -	$ (10,071)
Sub-Total program costs	$ 18,181,239	$ 17,626,934	$ (864,306)
Less: Other reimbursements	$ (11,589,942)	$ (11,662,369)	$ (72,427)
Total claimed amount	$ 6,591,297	$ 6,964,565	$ (928,732)
Total Program Costs	$ 6,591,297	$ 6,964,565	$ (928,732)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ 6,964,565	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 218,136.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 251,128.00	
Total		[redacted]	

108

FY0709

Exh. A-2

Summary of July 01 2008- June 30 2009	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,825,079	$ 1,207,589	$ (617,490)
Transfers and interim placements	$ 722,833	$ 549,944	$ (173,889)
Psychotherapy /other mental health services	$ 9,749,879	$ 9,198,602	$ (551,177)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 8,211,566	[redacted]	$ (98,676)
Travel	$ 12,472	$ 12,472	$ -
Participation in due process hearings	$ 46,636	$ 46,636	$ -
Sub-Total program costs	$ 18,368,086	$ 17,127,033	$ (1,241,032)
Less: Other reimbursements	$ (17,062,025)	$ (17,566,899)	$ (504,874)
Total claimed amount	$ 1,306,040	$ (439,866)	$ (1,745,906)
Adjustment to eliminate negative balance	$ -	$ 439,866	$ 439,866
Total Program Costs	$ 1,306,040	$ -	$ (1,306,040)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ -	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#508325		$ 44,955.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#508325		$ 50,777.00	
Total		[redacted]	

Summary of July 01 2006- June 30 2009	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 3,549,533	$ 3,120,615	$ (428,918)
Transfers and interim placements	$ 4,473,890	$ 4,261,748	$ (211,842)
Psychotherapy /other mental health services	$ 26,183,937	$ 25,550,270	$ (633,667)
Authorize/issue payments to providers:			
Vendor Reimbursement	$ 18,723,724	$ 17,082,502	$ (1,641,222)
Travel	$ 41,454	$ 41,454	$ -
Participation in due process hearings	$ 82,037	$ 66,636	$ (15,401)
Sub-Total program costs	$ 53,034,275	$ 50,103,225	$ (2,931,050)
Less: Other reimbursements	$ (38,539,509)	$ (38,881,200)	$ (341,691)
Total claimed amount	$ 14,494,766	$ 11,222,025	$ (3,272,741)
Adjustment to eliminate negative balance		439,866	439,866
Less: Late filing penalty	$ (10 000)	$ (10,000)	
Total Program Costs	$ 14,484,766	$ 11,651,891	$ (2,832,875)
Less: Amount paid by the State		$ (4,106,959)	
Allowable costs claimed in excess of amount paid		$ 7,544,932	

Allowable per State Audit (Residential Placement Costs)	$ 17,082,502.00
Total amount being appealed (Payments to Profit Facility)	$ 1,387,095.00
Breakdown:	
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325	$ 633,471.00
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325	$ 753,624.00
Grand Total	$ 1,387,095.00

Administration

MAY 0 7 2007

Internal Revenue Service

Date: April 26, 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:
877-829-5500
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

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

EXHIBIT B

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVSION
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 C

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 FACTS[1]

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 requirement 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.

ITEM 11
REMIBURSEMENT CLAIMS:
Exhibit D

ITEM 11
REIMBURSEMENT CLAIMS:
Exhibit D

State Controller's Office | Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

For State Controller Use Only
(19) Program Number 00191
(20) Date File ____/____/____
(21) LRS Input ____/____/____
Program 273

(01) Claimant Identification Number: 9937

(02) Claimant Name

Address:
AUDITOR AND CONTROLLER
COUNTY OF SAN DIEGO
1600 PACIFIC HIIGHWAY RM 166
SAN DIEGO CA 92101

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended_3.2008 ☒
Fiscal Year of Cost	(06) 2007 - 2008	(12) 2006 - 2007
Total Claimed Amount	(07)	(13) 6,597,429
Less: 10% Late Penalty		(14)
Less:Prior Claim Payment Received		(15)
Net Claimed Amount		(16) 6,597,429
Due from State	(08)	(17) 6,597,429
Due to State		(18)

Reimbursement Claim Data	
(22) FORM-1, (04)(A)(g)	-
(23) FORM-1, (04)(B)(g)	
(24) FORM-1, (04)(C)(g)	884,162
(25) FORM-1, (04)(D)(g)	1,923,625
(26) FORM-1, (04)(E)(g)	
(27) FORM-1, (04)(F)(g)	
(28) FORM-1, (04)(G)(g)	5,882,928
(29) FORM-1, (04)(H)(g)	7,868,926
(30) FORM-1, (04)(I)(g)	5,330
(31) FORM-1, (06)	
(32) FORM-1, (07)	
(33) FORM-1, (09)	
(34) FORM-1, (10)	(9,887,542)
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

A

In accordance with provisions of Government Code S 17561, I certify that I am the officer authorized by the local agency to file mandated cost 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 1098, 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 for 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 F.

Date: 4/9/08

MARILYN F. FLORES
Type or Print Name

Cost Analyst
Title

4/9/08

(39) Name of Contact Person for Claim: LINDA TATE

Telephone Number (619) 531-4825 Ext. ____

E-mail Address Linda.Tate@sdcounty.ca.gov

Form FAM-27 (New 1/01) | Chapter 654/96

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM 1

(01) Claimant	(02) Type of Claim		Fiscal Year
COUNTY OF SAN DIEGO	Reimbursement	X	2006/2007
	Estimated		

(03) Department	HEALTH AND HUMAN SERVICES AGENCY						
Direct Costs	**Object Accounts**						
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Revise Interagency Agreement							
B. Renew Interagency Agreement							
C. Referral & Mental Health Assessments			884,162				884,162
D. Transfers & Interim Placements			1,923,625				1,923,625
E. Participation as Member of IEP Team							
F. Designation of Lead Case Manager							
G. Authorize/Issue Payments to Providers				5,788,132		14,797	5,802,928
H. Psychotherapy/Other Mental Health Services			7,868,926				7,868,926
I. Participation in Due Process Hearings			5,330				5,330
(05) Total Direct Costs			10,682,043	5,788,132		14,797	16,484,971

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)(g) + (07))	16,484,971
Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements		(9,887,542)
(11) Total Claimed Amount	(Line (08) - (line (09) + line (10)))	6,597,429

Revised 01/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2006 - 2007_amended_3.2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☒	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	30	215,158	2.97	639,019
Children's Hospital	00130	30	35,065	2.02	70,831
Union of Pan Asian Communities	00131	30	1,225	1.81	2,217
San Diego Center for Children	00132	30	4,020	2.11	8,482
San Ysidro Health Center	00141	30	430	1.68	722
Community Research Foundation	00142	30	24,508	2.13	52,202
Adventist Health System/West	00432	30	390	2.11	823
Providence Community Services	00709	30	1,243	2.61	3,244
Vista Hill Foundation	00736	30	190	1.30	247
Family Health Center of SD	00796	30	240	1.95	468
Palomar Family Counseling Services	00844	30	360	1.31	472
San Diego Youth & Community Services	00966	30	556	2.61	1,451
SD School Unified School District	01059	30	4,855	1.71	8,302
Total					788,481
Add: MH Assessment-Administrative Cost					95,680
(05) Total ☒ Subtotal ☐ Page 1 of 1					884,162

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2006 - 2007_amended_3.2008

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

☐	Revise Interagency Agreement	☒	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	01-08	528,283	2.15	1,135,808
Children's Hospital	00130	01-08	3,471	2.02	7,011
Union of Pan Asian Communities	00131	01-08	11,800	1.60	18,880
San Diego Center for Children	00132	01-08	13,315	1.35	17,975
San Ysidro Health Center	00141	01-08	75	0.64	48
Community Research Foundation	00142	01-08	9,150	2.02	18,483
Providence Community Services	00709	01-08	254	2.02	513
Vista Hill Foundation	00736	01-08	4,680	1.20	5,616
Family Health Center of San Diego	00796	01-08	70	2.00	140
Palomar Family Counseling Services	00844	01-08	166	0.26	43
San Diego Youth & Community Services	00966	01-08	1,140	2.00	2,280
San Diego Unified School District	01059	01-08	954	1.41	1,345
Prime Healthcare	01502	01-08	110	1.80	198
Out-of-County In-State Residential Placements					
Mental Health Patch Treatment Costs (Various Vendors)					310,362
Room and Board Costs (Various Vendors)					234,857
Total					1,753,561
Add: MH Residential Placement -Administrative Cost					170,064
(05) Total ☒ Subtotal ☐ Page 1 of 1					1,923,625

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2006 - 2007_amended_3.2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☒	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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	(g) Fixed Assets	(h) Travel and Training
Out of State Contracted Services:							
Contracted Services	Per Day	No. of Days					
Contract No.45418	$ 80.00	2,175			174,000		
Daystar Residential, Inc.							
Contract No. 45420	$ 119.34	2,984			356,120		
Devereux Foundation							
Contract No. 507477	$ 118.45	91			10,779		
Devereux Foundation							
Contract No. 45422	$ 84.72	191			16,182		
Excelsior Youth Center, Inc							
Contract No. 510631	$ 121.11	174			21,073		
Griffith Centers for Children							
Contract No. 506325	$ 70.00	5,334			373,380		
Mental Health Systems-Provo Canyon							
Contract No. 507962	$ 73.50	4,566			335,601		
Yellowstone Boys & Girls Ranch							
					1,287,135		
Contracted Services:							
Various Vendors-Room and Board costs-Out-of-State					1,593,856		
Various Vendors-Room and Board costs-In-of-State					2,907,141		
(05) Total ☒ Subtotal ☐ Page 1 of 1					5,788,132		

New 1/07

Program 273

MANDATED COSTS
CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES
ACTIVITY COST DETAIL

FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2006 - 2007

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
ASKARI, GITI Lic. MH Clinician, Air fare, car rental and travel expenses							963
BEAUCHAMP, LAUREN Lic. MH Clinician, Air fare, car rental and travel expenses							366
BLEIWEISS, SHELDON Lic. MH Clinician, Air fare, car rental and travel expenses							1,655
BRONDELL, SUSAN MH Case Mgmt Clinician, Air fare, car rental and travel expenses							709
CHEE, VIVIAN Lic. MH Clinician, Air fare, car rental and travel expenses							1,591
COLLIGAN, LAURA MH Program Manager, Air fare, car rental and travel expenses							1,840
CONCELLOSI, JOE MH Program Manager, Air fare, car rental and travel expenses							361
(05) Total ☐ Subtotal ☒ Page 1 of 2							7,485

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2006 - 2007

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
Balance from page 1							7,485
EDWARDS, FRANCES MH Program Manager, Air fare, car rental and travel expenses							686
GORMAN, JANE ELLEN MH Program Manager, Air fare, car rental and travel expenses							594
HEFFERNAN, ELAINE ANN Lic. MH Clinician, Air fare, car rental and travel expenses							589
MARTIN, WALTER PATRICK Lic. MH Clinician, Air fare, car rental and travel expenses							1,638
MASSOTH, SHARON Lic. MH Clinician, Air fare, car rental and travel expenses							629
MURPHY, TAMMY T. Lic. MH Clinician, Air fare, car rental and travel expenses							641
QUATTRO, ELAINE Lic. MH Clinician, Air fare, car rental and travel expenses							2,535
(05) Total ☒ Subtotal Page 2 of 2							14,797

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2006 - 2007_amended_3.2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services(Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	10,40-50	387,254	2.97	1,150,144
San Diego County Mental Health	00037	60	17,295	5.29	91,491
Victor Treatment Center	00118	60	615	4.46	2,743
Victor Treatment Center	00118	10/85	528	181.74	95,959
Children's Hospital	00130	60	36,612	3.78	138,393
Children's Hospital	00130	10,40-50	818,183	2.02	1,652,730
Union of Pan Asian Communities	00131	10,40-50	29,422	1.81	53,254
Union of Pan Asian Communities	00131	60	1,610	2.82	4,540
San Diego Center for Children	00132	10/85	11,635	138.95	1,616,719
San Diego Center for Children	00132	10,40-50	46,259	2.11	97,606
San Diego Center for Children	00132	60	71,902	2.87	206,359
New Alternatives	00136	10,40-50	1,260	1.97	2,482
New Alternatives	00136	60	3,790	2.94	11,143
Mental Health Systems	00138	10/85	3,678	151.02	555,452
Mental Health Systems	00138	60	24,585	4.65	114,320
San Ysidro Health Center	00141	10/85	1,962	113.27	222,236
San Ysidro Health Center	00141	10,40-50	11,020	1.68	18,514
San Ysidro Health Center	00141	60	7,765	1.93	14,986
Community Research Foundation	00142	10,40-50	435,938	2.13	928,548
Community Research Foundation	00142	60	39,301	4.24	166,636
(05) Total ☐ Subtotal ☒ Page 1 of 2					7,144,255

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2006 - 2007_amended_3.2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services (Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
Total from Page 01					**7,144,255**
Providence Community Services	00709	10,40-50	4,466	2.61	11,656
Vista Hill Foundation	00736	10,40-50	78,826	1.30	102,474
Vista Hill Foundation	00736	60	6,906	2.69	18,577
Family Health Center	00796	60	405	4.04	1,636
Family Health Center	00796	10,40-50	4,705	1.95	9,175
Palomar Family Counseling Services	00844	10,40-50	7,337	1.31	9,611
Palomar Family Counseling Services	00844	60	90	2.76	248
San Diego Youth & Community Services	00966	10,40-50	11,000	2.61	28,710
San Diego Youth & Community Services	00966	60	1,045	3.85	4,023
San Diego Unified School District	01059	10,40-50	175,138	1.71	299,486
San Diego Unified School District	01059	60	5,350	4.50	24,075
Prime Healthcare	01502	10,40-50	920	2.11	1,941
Prime Healthcare	01502	60	95	1.98	188
Oak Grove Institute		10/96	337	80.00	26,960
Total					**7,683,016**
Add: MH Treatment - Administrative Cost					185,910
(05) Total ☒ Subtotal ☐ Page 2 of 2					7,868,926

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2006 - 2007

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☒	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Payee's Name	(b) Case Number	(c) Services/ Attorney's Fees	(d)	(e)	(f) Total
JOY LAMARRE	M005-00260	830.00			830.00
ERIC FREEDUS	N2006060383	1,500.00			1,500.00
ELLEN DOWD	N2005-07-0377	3,000.00			3,000.00
(05) Total ☒ Subtotal ☐ Page 1 of 1					5,330.00

New 1/07

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

For State Controller Use Only
(19) Program Number 00273
(20) Date Filed ___/___/___
(21) LRS Input ___/___/___
Program 273

LABEL HERE

(01) Claimant Identification Number: 9937
(02) Claimant Name: AUDITOR & CONTROLLER
County of Location: COUNTY OF SAN DIEGO
Street Address or P.O. Box: 1600 PACIFIC HIGHWAY RM 166 Suite:
City: SAN DIEGO State: CA Zip Code: 92101

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(06) Reimbursement ☑
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐

				Reimbursement Claim Data	
				(22) FORM-1, (04)(A)(g)	
				(23) FORM-1, (04)(B)(g)	
				(24) FORM-1, (04)(C)(g)	1,040,292
				(25) FORM-1, (04)(D)(g)	1,827,332
				(26) FORM-1, (04)(E)(g)	
				(27) FORM-1, (04)(F)(g)	
				(28) FORM-1, (04)(G)(g)	6,738,212
				(29) FORM-1, (04)(H)(g)	8,565,332
Fiscal Year of Cost	(06)	(12)	2007/2008	(30) FORM-1, (04)(I)(g)	10,071
Total Claimed Amount	(07)	(13)	6,591,297	(31) FORM-1, (06)	
Less: 10% Late Penalty, not to exceed $1,000		(14)		(32) FORM-1, (07)	
Less: Prior Claim Payment Received		(15)		(33) FORM-1, (09)	
Net Claimed Amount		(16)	6,591,297	(34) FORM-1, (10)	(11,589,942)
Due from State	(08)	(17)	6,591,297	(35)	
Due to State		(18)		(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost 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 1098, 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 for this 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 Officer: Marilyn Flores
Date: February 10, 2009
MARILYN FLORES (Type or Print Name)
COST ANALYST (Title)

(38) Name of Contact Person for Claim: Raul Carrillo
Telephone Number: (619) 531 - 5585 Ext.
E-Mail Address: raul.carrillo@sdcounty.ca.gov

Form FAM-27 (Revised 9/03)

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

(19) Program Number 00191
(20) Date File ____/____/____
(21) LRS Input ____/____/____

273

(01) Claimant Identification Number 9937

(02) Claimant Name: COUNTY OF SAN DIEGO

Address:
AUDITOR AND CONTROLLER
COUNTY OF SAN DIEGO
1600 PACIFIC HIIGHWAY RM 166
SAN DIEGO CA 92101

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated [X]	(09) Reimbursement [X]
	(04) Combined [ ]	(10) Combined [ ]
	(05) Amended [ ]	(11) Amended [ ]
Fiscal Year of Cost	(06) 2008 - 2009	(12) 2007 - 2008
Total Claimed Amount	(07) 6,591,297	(13) 6,591,297
Less: 10% Late Penalty		(14)
Less:Prior Claim Payment Received		(15)
Net Claimed Amount		(16) 6,591,297
Due from State	(08) 6,591,297	(17) 6,591,297
Due to State		(18)

Reimbursement Claim Data

(22) FORM-1, (04)(A)(g)	
(23) FORM-1, (04)(B)(g)	
(24) FORM-1, (04)(C)(g)	1,040,292
(25) FORM-1, (04)(D)(g)	1,827,332
(26) FORM-1, (04)(E)(g)	
(27) FORM-1, (04)(F)(g)	
(28) FORM-1, (04)(G)(g)	6,738,212
(29) FORM-1, (04)(H)(g)	8,565,332
(30) FORM-1, (04)(I)(g)	10,071
(31) FORM-1, (06)	
(32) FORM-1, (07)	
(33) FORM-1, (09)	
(34) FORM-1, (10)	(11,589,942)
(35)	
(36)	

(38) 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 cost 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 1098, 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 for 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 Officer — Date

MARILYN F. FLORES — Cost Analyst

Type or Print Name — Title

(39) Name of Contact Person for Claim: LINDA TATE

Telephone Number (619) 531-5336 Ext. ____

E-mail Address Linda.Tate@sdcounty.ca.gov

Form FAM-27 (New 1/07)

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM 1

(01) Claimant	(02) Type of Claim		Fiscal Year
COUNTY OF SAN DIEGO	Reimbursement	X	2007/2008
	Estimated		

(03) Department	HEALTH AND HUMAN SERVICES AGENCY						
Direct Costs	**Object Accounts**						
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Various Services	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Revise Interagency Agreement							
B. Renew Interagency Agreement							
C. Referral & Mental Health Assessments			1,040,292				1,040,292
D. Transfers & Interim Placements			1,827,332				1,827,332
E. Participation as Member of IEP Team							
F. Designation of Lead Case Manager							
G. Authorize/Issue Payments to Providers				6,724,027		14,185	6,738,212
H. Psychotherapy/Other Mental Health Services (Treatment costs)			8,565,332				8,565,332
I. Participation in Due Process Hearings			10,071				10,071
(05) Total Direct Costs							18,181,239

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)(g) + (07))	18,181,239
Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements		(11,589,942)
(11) Total Claimed Amount	(Line (08) - (line (09) + line (10)))	6,591,297

Revised 01/07

Program 273

MANDATED COSTS
CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES
ACTIVITY COST DETAIL

FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☒	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	30	242,077	3.131206	757,993
Children's Hospital	00130	30	39,453	2.269992	89,558
Union of Pan Asian Communities	00131	30	2,210	1.919910	4,243
San Diego Center for Children	00132	30	2,110	1.019905	2,152
Mental Health Systems Inc	00138	30	370	2.129730	788
Community Research Foundation	00142	30	26,908	1.870001	50,318
Providence Community Services	00709	30	3,780	2.129894	8,051
Vista Hill Foundation	00736	30	753	1.410359	1,062
Family Health Center of SD	00796	30	975	2.070769	2,019
San Diego Youth & Community Services	00966	30	815	2.646626	2,157
SD School Unified School District	01059	30	3,381	1.979888	6,694
Prime Healthcare Paradise Valley	01502	30	1,060	1.469811	1,558
Total			323,892		926,593
Add: MH Assessment-Administrative Cost					113,699
(05) Total ☒ Subtotal ☐ Page 1 of 1					1,040,292

1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☒	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	01-08	488,082	2.285221	1,115,375
Children's Hospital	00130	01-08	1,550	2.054839	3,185
Union of Pan Asian Communities	00131	01-08	4,640	1.353448	6,280
San Diego Center for Children	00132	01-08	18,533	0.309988	5,745
Mental Health Systems Inc	00138	01-08	1,435	1.589547	2,281
Community Research Foundation	00142	01-08	4,030	1.760050	7,093
Providence Community Services	00709	01-08	2,754	1.330065	3,663
Vista Hill Foundation	00736	01-08	2,468	1.519854	3,751
Family Health Center of San Diego	00796	01-08	130	1.376923	179
Palomar Family Counseling Services	00844	01-08	55	1.200000	66
San Diego Youth & Community Services	00966	01-08	546	1.760073	961
San Diego Unified School District	01059	01-08	1,181	1.659610	1,960
Prime Healthcare	01502	01-08	31	2.064516	64
			525,435		1,150,603
Out-of-County In-State Residential Placements					
Mental Health Patch Treatment Costs (Various Vendors)					307,831
Room and Board Costs (Various Vendors)					201,592
Add: MH Residential Placement -Administrative Cost					167,306
(05) Total ☒ Subtotal ☐ Page 1 of 1					1,827,332

..ow 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☒	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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	(g) Fixed Assets	(h) Travel and Training
Out of State Contracted Services:							
Contracted Services:	Per Day	Days					
Contract No.45418	$ 80.00	3,144			251,520		
Daystar Residential, Inc.							
Contract No. 45420	$ 155.42	3,415			530,760		
Devereux Foundation							
Contract No. 507477	$ 149.00	9			1,341		
Devereux Foundation							
Contract No. 45422	$ 86.41	1,057			91,335		
Excelsior Youth Center, Inc							
Contract No. 510631	$ 123.53	386			47,683		
Griffith Centers for Children							
Contract No. 506325	$ 72.00	2,988			215,136		
Mental Health Systems-Provo Canyon							
Contract No. 507962	$ 73.50	5,031			369,779		
Yellowstone Boys & Girls Ranch							
			Total		1,507,554		
Various Vendors-Room and Board costs (Out-of-State)					1,660,036		
Various Vendors-Room and Board costs (In-State)					3,556,437		
(05) Total ☐ Subtotal ☐ Page 1 of 1					6,724,027		

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
Balance from page 1							9,302
MASSOTH, SHARON MH Program Manager, Air fare, car rental and travel expenses							1,113
MURPHY, TAMMY T. Lic. MH Clinician, Air fare, car rental car rental and travel expenses							991
NOLTA, ROBERTA Lic. MH Clinician, Air fare, car rental and travel expenses							746
QUATTRO, ELAINE Lic. MH Clinician, Air fare, car rental and travel expenses							1,018
SOTELO RAMOS, ARACELI Lic. MH Clinician, Air fare, car rental and travel expenses							1,015
(05) Total ☒ Subtotal ☐ Page 2 of 2							14,185

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
BEAUCHAMP, LAUREN Lic. MH Clinician, Air fare, car rental and travel expenses							1,298
BLEIWEISS, SHELDON Lic. MH Clinician, Air fare, car rental and travel expenses							1,263
BRONDELL, SUSAN MH Program Manager, Air fare, and travel expenses							1,783
CHEE, VIVIAN Lic. MH Clinician, Air fare, car rental car rental and travel expenses							1,558
CONCELLOSI, JOSEPH MH Program Manager, Air fare, and travel expenses							559
GORMAN, JANE-ELLEN MH Program Manager, Air fare, car rental and travel expenses							1,213
MARTIN II, WALTER PATRICK MH Case Mgmt Clinician, Air fare, car rental and travel expenses							1,628
(05) Total ☐ Subtotal ☒ Page 1 of 2							9,302

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services (Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
Total from Page 02			2,004,790		7,963,689
Palomar Family Counseling Services	00844	10,40-50	4,290	1.230070	5,277
Palomar Family Counseling Services	00844	60	85	2.835294	241
San Diego Youth and Community Services	00966	10,40-50	15,082	2.644477	39,884
San Diego Youth and Community Services	00966	60	1,040	4.550962	4,733
YMCA of San Diego Youth and Family	01013	60	110	4.118182	453
San Diego Unified School District	01059	10,40-50	160,207	1.980001	317,210
San Diego Unified School District	01059	60	11,235	3.289987	36,963
Prime Healthcare Paradise Valley	01502	10,40-50	9,000	1.470000	13,230
			2,205,839		8,381,680
Add: MH Treatment -Administrative Cost					183,652
(05) Total ☒ Subtotal ☐ Page 3 of 3			2,205,839		8,565,332

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services (Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
Total from Page 01			1,435,496		5,965,579
Mental Health Systems Inc	00138	10/85	4,469	156.289998	698,460
Mental Health Systems Inc	00138	10,40-50	1,668	2.129496	3,552
Mental Health Systems Inc	00138	60	20,390	3.940020	80,337
San Ysidro Health Center	00141	10/85	819	163.439560	133,857
San Ysidro Health Center	00141	10,40-50	16,645	1.700030	28,297
San Ysidro Health Center	00141	60	3,815	3.030144	11,560
Community Research Center	00142	10,40-50	404,223	1.870000	755,897
Community Research Center	00142	60	35,063	4.110002	144,109
Providence Community Services	00709	10,40-50	9,239	2.129992	19,679
Providence Community Services	00709	60	697	3.299857	2,300
Vista Hill Foundation	00736	10,40-50	58,175	1.410004	82,027
Vista Hill Foundation	00736	60	3,505	4.089872	14,335
Family Health Center of San Diego (Logan Heights)	00796	10,40-50	9,731	2.069983	20,143
Family Health Center of San Diego (Logan Heights)	00796	60	855	4.160234	3,557
(05) Total ☐ Subtotal ☒ Page 2 of 3			2,004,790		7,963,689

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services(Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	10,40-50	373,442	3.138774	1,172,150
San Diego County Mental Health	00037	60	9,370	5.570331	52,194
Victor Treatment Center	00118	10/85	621	190.088567	118,045
Victor Treatment Center	00118	60	840	4.470238	3,755
Children's Hospital	00130	10,40-50	832,995	2.269999	1,890,898
Children's Hospital	00130	60	41,360	4.119995	170,403
Union of Pan Asian Communities	00131	10,40-50	13,330	1.919955	25,593
Union of Pan Asian Communities	00131	60	405	3.140741	1,272
San Diego Center for Children	00132	10/85	15,078	137.731919	2,076,722
San Diego Center for Children	00132	10,40-50	47,982	1.019987	48,941
San Diego Center for Children	00132	60	87,836	2.890000	253,846
New Alternatives	00136	10/84	1,191	98.490344	117,302
New Alternatives	00136	10/85	26	146.346154	3,805
New Alternatives	00136	10,40-50	2,600	1.880000	4,888
New Alternatives	00136	60	8,420	3.059976	25,765
(05) Total ☐ Subtotal ☒ Page 1 of 3			1,435,496		5,965,579

1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☒	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Payee's Name	(b) Case Number	(c) Cost	(d)	(e)	(f) Total
San Deguito Union High School District	N2007050090	2,241.00			2,241
Susan Huntington-Bishop	N2007030270	1,350.00			1,350
Grossmont Union High School District		6,480.00			6,480
(05) Total ☒ Subtotal ☐ Page 1 of 1					10,071

New 1/07

CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

CONSOLIDATION OF HDS I, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

For State Controller Use Only

(19) Program Number 00273

(20) Date Filed ___/___/___

(21) LRS Input ___/___/___

Program 273

LABEL HERE

(01) Claimant Identification Number: 9937

(02) Claimant Name: AUDITOR & CONTROLLER

County of Location: COUNTY OF SAN DIEGO

Street Address or P.O. Box: 1600 PACIFIC HIGHWAY RM 166 Suite:

City: SAN DIEGO State: CA Zip Code: 92101

Type of Claim		Reimbursement Claim		Reimbursement Claim Data	
	(03)	(09) Reimbursement	☑	(22) FORM-1, (04)(A)(g)	
	(04)	(10) Combined	☐	(23) FORM-1, (04)(B)(g)	
	(05)	(11) Amended	☐	(24) FORM-1, (04)(C)(g)	1,625,079
				(25) FORM-1, (04)(D)(g)	722,633
				(26) FORM-1, (04)(E)(g)	
				(27) FORM-1, (04)(F)(g)	
				(28) FORM-1, (04)(G)(g)	6,224,038
				(29) FORM-1, (04)(H)(g)	9,749,679
Fiscal Year of Cost	(06)	(12)	2008/2009	(30) FORM-1, (04)(I)(g)	46,636
Total Claimed Amount	(07)	(13)	1,306,040	(31) FORM-1, (06)	
Less: 10% Late Penalty, not to exceed $1,000		(14)		(32) FORM-1, (07)	
Less: Prior Claim Payment Received		(15)		(33) FORM-1, (09)	
Net Claimed Amount		(16)	1,306,040	(34) FORM-1, (10)	(17,062,025)
Due from State	(08)	(17)	1,306,040	(35)	
Due to State		(18)		(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file mandated cost 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 Article 4, Chapter 1 of Division 4 of the Title Government Code.

I further certify that there was no application other than from the claimant, nor any grants or payments received, for reimbursement of costs claimed herein, and claimed 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 for this reimbursement is hereby claimed from the State for payment of 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 Officer — Date

Marilyn Flores — February 8, 2010

MARILYN FLORES — PRINCIPAL ACCOUNTANT

Type or Print Name and Title of Authorized Signatory — Title

(38) Name of Agency Contact Person for Claim: Linda Tate

Telephone Number: (619) 531 - 5336 Ext.

E-Mail Address: linda.tate@sdcounty.ca.gov

Form FAM-27

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CONSOLIDATION OF HDS, HDS II, AND SED: OUT OF STATE MENTAL HEALTH SERVICES

(19) Program Number 00191
(20) Date File ____/____/____
(21) LRS Input ____/____/____

Program 273

(01) Claimant Identification Number 9937

(02) Claimant Name: COUNTY OF SAN DIEGO

Address:
AUDITOR AND CONTROLLER
COUNTY OF SAN DIEGO
1600 PACIFIC HIIGHWAY RM 166
SAN DIEGO CA 92101

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated [X]	(09) Reimbursement [X]
	(04) Combined [ ]	(10) Combined [ ]
	(05) Amended [ ]	(11) Amended [ ]
Fiscal Year of Cost	(06) 2008 - 2009	(12) 2008-2009
Total Claimed Amount	(07) 1,306,040	(13) 1,306,040
Less: 10% Late Penalty		(14)
Less:Prior Claim Payment Received		(15)
Net Claimed Amount		(16) 1,306,040
Due from State	(08) 1,306,040	(17) 1,306,040
Due to State		(18)

Reimbursement Claim Data	
(22) FORM-1, (04)(A)(g)	
(23) FORM-1, (04)(B)(g)	
(24) FORM-1, (04)(C)(g)	1,625,079
(25) FORM-1, (04)(D)(g)	722,633
(26) FORM-1, (04)(E)(g)	
(27) FORM-1, (04)(F)(g)	
(28) FORM-1, (04)(G)(g)	6,224,038
(29) FORM-1, (04)(H)(g)	9,749,679
(30) FORM-1, (04)(I)(g)	46,636
(31) FORM-1, (06)	
(32) FORM-1, (07)	
(33) FORM-1, (09)	
(34) FORM-1, (10)	(17,062,025)
(35)	
(36)	

(38) 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 cost 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 1098, 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 for 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 Officer — Date

MARILYN F. FLORES — Type or Print Name

Cost Analyst — Title

(39) Name of Contact Person for Claim: LINDA TATE

Telephone Number (619) 531-5336 Ext. ____

E-mail Address Linda.Tate@sdcounty.ca.gov

Form FAM-27 (New 1/07)

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDS II AND SED: OUT OF STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM 1

(01) Claimant	(02) Type of Claim		Fiscal Year
COUNTY OF SAN DIEGO	Reimbursement	X	2007/2008
	Estimated		

(03) Department	HEALTH AND HUMAN SERVICES AGENCY

Direct Costs	Object Accounts						
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Various Services	(d) Contract Services	(e) Fixed Assets	(f) Travel	(g) Total
A. Revise Interagency Agreement							
B. Renew Interagency Agreement							
C. Referral & Mental Health Assessments			1,625,079				1,625,079
D. Transfers & Interim Placements			722,633				722,633
E. Participation as Member of IEP Team							
F. Designation of Lead Case Manager							
G. Authorize/Issue Payments to Providers				6,211,567		12,472	6,224,038
H. Psychotherapy/Other Mental Health Services (Treatment costs)			9,749,679				9,749,679
I. Participation in Due Process Hearings			46,636				46,636
(05) Total Direct Costs							18,368,065

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)(g) + (07))	18,368,065
Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements		(17,062,025)
(11) Total Claimed Amount	(Line (08) - (line (09) + line (10)))	1,306,040

Revised 01/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008 - 2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☒	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	30	369,334	3.128906	1,155,611
Children's Hospital	00130	30	64,105	2.210000	141,672
Union of Pan Asian Communities	00131	30	3,355	1.920000	6,442
San Diego Center for Children	00132	30	1,575	1.020000	1,607
Mental Health Systems Inc	00138	30	380	2.130000	809
San Ysidro Health Center	00141	30	1,370	1.620000	2,219
Community Research Foundation	00142	30	35,553	1.870000	66,484
Providence Community Services	00709	30	352	2.130000	750
Vista Hill Foundation	00736	30	5,178	1.410000	7,301
Family Health Center of SD	00796	30	625	2.070000	1,294
San Diego Youth & Community Services	00966	30	11,806	2.639029	31,156
South Bay community Services	00967	30	5,309	2.420000	12,848
San Diego Unified School District	01059	30	9,571	1.980000	18,951
Prime Healthcare Paradise Vallley Hospital	01502	30	3,125	1.470000	4,594
Total			**511,638**		**1,451,737**
Add: MH Assessment-Administrative Cost					173,342
(05) Total ☒ Subtotal ☐ Page 1 of 1					**1,625,079**

Rev. 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008 - 2009

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

☐	Revise Interagency Agreement	☒	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	01-08	223,202	2.292899	511,780
Children's Hospital	00130	01-08	2,230	2.068430	4,613
Union of Pan Asian Communities	00131	01-08	775	1.346839	1,044
San Diego Center for Children	00132	01-08	2,395	0.310000	742
San Ysidro Health Center	00141	01-08	20	1.360000	27
Community Research Foundation	00142	01-08	7,831	1.760000	13,783
Providence Community Services	00709	01-08	1,932	1.330000	2,570
Vista Hill Foundation	00736	01-08	14,290	1.520000	21,721
San Diego Youth & Community Services	00966	01-08	119	1.760000	209
San Diego Unified School District	01059	01-08	600	1.630000	978
Prime Healthcare Paradise Valley Hospital	01502	01-08	400	2.038750	816
Sub Totals			253,794		558,282
Out-of-County In-State Residential Placements					
Mental Health Patch Treatment Costs (Various Vendors)					48,960
Room and Board Costs (Various Vendors)					38,624
Add: MH Residential Placement -Administrative Cost					76,767
(05) Total ☒ Subtotal ☐ Page 1 of 1					722,633

1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY ~~2007 - 2008~~ 2007-2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☒	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses

(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	(g) Fixed Assets	(h) Travel and Training
Out of State Contracted Services:							
Contracted Services:	Per Day	Days					
Contract No. 512372	$ 80.00	4,763			381,040		
Daystar Residential, Inc.							
Contract No. 518465	$ 158.90	2,700			429,026		
Devereux Foundation							
Contract No. 503326	$ 59.00	49			2,891		
Heritage Schools							
Contract No. 527569	$ 127.92	149			19,060		
Colorado Boys Ranch							
Contract No.518467	$ 86.59	1,134			98,197		
Excelsior Youth Center							
Contract No. 510631	$ 85.95	701			60,251		
Griffith Centers for Children							
Contract No. 528696	$ 81.00	135			10,935		
MHS-Provo Canyon							
Contract No. 506325	$ 81.00	581			47,061		
MHS-Provo Canyon							
Contract No. 507962	$ 73.50	4,431			325,679		
Yellowstone Boys & Girls Ranch							
			Total		1,374,140		
Various Vendors-Room and Board costs (Out-of-State)					1,556,848		
Various Vendors-Room and Board costs (In-State)					3,280,579		
(05) Total ☒ Subtotal ☐ Page 1 of 1					6,211,567		

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008-2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
Balance from page 1							7,644
MURPHY, TAMMY Lic. MH Clinician, Air fare, car rental car rental and travel expenses							871
PEDDIE MUSSER, TAMI Lic. MH Clinician, Air fare, car rental car rental and travel expenses							578
QUATTRO, ELAINE Lic. MH Clinician, Air fare, car rental and travel expenses							2,691
RAPPAPORT, ANDREW Lic. MH Clinician, Air fare, car rental and travel expenses							688
(05) Total ☒ Subtotal ☐ Page 2 of 2							12,472

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008 - 2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — 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
CHADSEY, KRISTINE Lic. MH Clinician, Air fare, car rental and travel expenses							2,873
DEININGER, SUSAN Lic. MH Clinician, Air fare, car rental and travel expenses							850
GORMAN, JANE MH Program Manager, Air fare, and travel expenses							1,343
HOBBS, ANN Lic. MH Clinician, Air fare, car rental and travel expenses							339
JONES, MELANIE Lic. MH Clinician, Air fare, car rental and travel expenses							668
MARTIN, WALTER P Lic. MH Clinician, Air fare, car rental and travel expenses							708
MASSOTH, SHARON MH Program Manager, Air fare, and travel expenses							864
(05) Total ☐ Subtotal ☒ Page 1 of 2							7,644

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008 - 2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services (Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
Total from Page 02			2,067,864		8,265,743
San Diego Youth and Community Services	00966	10,40-50	32,455	2.659322	86,308
San Diego Youth and Community Services	00966	60	1,020	4.550000	4,641
South Bay Community Services	00967	60	2,360	4.710000	11,116
South Bay Community Services	00967	10,40-50	51,724	2.420000	125,172
YMCA of San Diego Youth and Family	01013	10,40-50	880	1.500000	1,320
San Diego Unified School District	01059	10/85	3,540	153.190000	542,293
San Diego Unified School District	01059	10,40-50	198,617	1.980000	393,262
San Diego Unified School District	01059	60	30,020	3.290000	98,766
Prime Healthcare Paradise Valley	01502	60	305	1.980000	604
Prime Healthcare Paradise Valley	01502	10,40-50	14,444	1.470000	21,233
Oak Grove		96	408	80.000000	32,640
			2,403,637		9,583,098
Add: MH Treatment -Administrative Cost					166,581
(05) Total ☒ Subtotal ☐ Page 3 of 3			2,403,637		9,749,679

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2008 - 2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services (Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
Total from Page 01			**1,388,043**		**6,484,126**
Mental Health Systems Inc	00138	10/85	3,402	156.290000	531,699
Mental Health Systems Inc	00138	10,40-50	725	2.130000	1,544
Mental Health Systems Inc	00138	60	12,274	3.190000	39,154
San Ysidro Health Center	00141	10,40-50	17,872	1.620000	28,953
San Ysidro Health Center	00141	60	1,465	2.930000	4,292
Community Research Center	00142	10,40-50	397,485	1.870000	743,297
Community Research Center	00142	60	30,258	3.330000	100,759
Providence Community Services	00709	10,40-50	8,976	2.130000	19,119
Providence Community Services	00709	60	386	3.300000	1,274
Vista Hill Foundation	00736	10,40-50	192,096	1.410000	270,856
Vista Hill Foundation	00736	60	4,765	4.090000	19,489
Family Health Center of San Diego (Logan Heights)	00796	10,40-50	9,896	2.070000	20,485
Family Health Center of San Diego (Logan Heights)	00796	60	220	3.170000	697
(05) Total ☐ Subtotal ☒ Page 2 of 3			**2,067,864**		**8,265,743**

New 1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant: COUNTY OF SAN DIEGO

(02) Fiscal Year Costs Were Incurred: FY 2008 - 2009

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placeme	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☒	Psychotherapy/Other Mental Health Services(Treatment)
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☐	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Providers Name	(b) Provider I.D. Numbers	(c) Service Function Code	(d) Units of Service	(e) Rate Per Unit	(f) Total
San Diego County Mental Health	00037	10,40-50	331,112	3.134149	1,037,754
San Diego County Mental Health	00037	60	13,183	5.521217	72,786
Fred Finch Youth Center	00113	10/85	84	177.520000	14,912
Victor Treatment Center	00118	10/85	482	51.452656	24,800
Victor Treatment Center	00118	60	547	47.566417	26,019
Children's Hospital	00130	10,40-50	804,588	2.210000	1,778,140
Children's Hospital	00130	60	52,204	4.050000	211,426
Union of Pan Asian Communities	00131	10,40-50	24,130	1.920000	46,330
Union of Pan Asian Communities	00131	60	1,480	2.930000	4,336
San Diego Center for Children	00132	10/85	19,313	137.890000	2,663,070
San Diego Center for Children	00132	10/85	869	171.000000	148,599
San Diego Center for Children	00132	10,40-50	28,530	1.020000	29,101
San Diego Center for Children	00132	60	97,267	2.890000	281,102
New Alternatives	00136	10/84	1,123	98.490000	110,604
New Alternatives	00136	10,40-50	4,190	1.880000	7,877
New Alternatives	00136	60	8,941	3.050000	27,270
(05) Total ☐ Subtotal ☒ Page 1 of 3			1,388,043		6,484,126

1/07

Program 273	MANDATED COSTS CONSOLIDATION OF HDS, HDSII, AND SED: OUT OF STATE MENTAL HEALTH SERVICES ACTIVITY COST DETAIL	FORM 2

(01) Claimant	(02) Fiscal Year Costs Were Incurred
COUNTY OF SAN DIEGO	FY 2007 - 2008

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

☐	Revise Interagency Agreement	☐	Transfers & Interim Placements	☐	Authorize/Issue payments to Providers
☐	Renew Interagency Agreement	☐	Participation as Member of IEP Team	☐	Psychotherapy/Other Mental Health Services
☐	Referral & Mental Health Assessements	☐	Designation of Lead Case Manager	☒	Participation in Due Process Hearings

(04) Description of Expenses — Object Accounts

(a) Payee's Name	(b) Case Number	(c) Cost	(d)	(e)	(f) Total
San Deguito Union High School District	N2009050530	46,636			46,636
(05) Total ☒ Subtotal ☐ Page 1 of 1					46,636

Rev 1/07

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On November 4, 2016, I served the:

> **Notice of Granting of Appeal, Notice of Complete Filing, Schedule for Comments, and Notice of Tentative Hearing Date**
> Incorrect Reduction Claim
> *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 November 4, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/2/16

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@sdcounty.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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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
achinncrs@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

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
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

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

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@sdcounty.ca.gov

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.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

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

Exhibit B

RECEIVED
December 05, 2016
Commission on State Mandates

BETTY T. YEE
California State Controller

December 2, 2016

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

Re: Incorrect Reduction Claim (IRC)
Handicapped and Disabled Students; Handicapped and Disabled Students II; and Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services,
15-9705-I-06
Government Code Sections 7571, 7572, 7572.5, 7572.55, 7576, 7581, and 7586 as added by Statutes 1984, Chapter 1747; and as amended by Statutes 1985, Chapter 1274; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200, and 60550
Fiscal Years: 2006-07, 2007-08, and 2008-09
San Diego County, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named IRC.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/am

17656

RESPONSE BY THE STATE CONTROLLER'S OFFICE TO THE INCORRECT REDUCTION CLAIM BY SAN DIEGO COUNTY

Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed Pupils Program

Table of Contents

Note: References to Exhibits relate to the city's IRC filed on December 10, 2015, as follows:

- Exhibit A – SCO Costs Claiming Instructions (January 2, 2007) – PDF pg. 26
- Exhibit B – SCO Costs Claiming Instructions (January 30, 2009) – PDF pg. 50
- Exhibit C – SCO Audit Report (December 18, 2012) – PDF pg. 75
- Exhibit D – Office of Administrative Hearings, Student v. Riverside Unified School District and Riverside County Department of Mental Health, Case No. N2007090403 – PDF pg. 112
- Exhibit E – Claim for Payment (FY 2006-07) – PDF pg. 123
- Exhibit F – Claim for Payment (FY 2007-08) – PDF pg. 133
- Exhibit G – Claim for Payment (FY 2008-09) – PDF pg. 146

Tab 1

OFFICE OF THE STATE CONTROLLER
300 Capitol Mall, Suite 1850
Sacramento, CA 94250
Telephone No.: (916) 445-6854

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

INCORRECT REDUCTION CLAIM ON: Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils Program Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996 SAN DIEGO COUNTY, Claimant	No.: IRC 15-9705-I-06 AFFIDAVIT OF BUREAU CHIEF

I, Jim L. Spano, make the following declarations:

1) I am an employee of the State Controller's Office (SCO) and am over the age of 18 years.

2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000. Before that, I was employed as an audit manager for two years and three months.

3) I am a California Certified Public Accountant.

4) I reviewed the work performed by the SCO auditor.

5) Any attached copies of records are true copies of records, as provided by San Diego County or retained at our place of business.

6) The records include claims for reimbursement, along with any attached supporting documentation, explanatory letters, or other documents relating to the above-entitled Incorrect Reduction Claim.

7) An audit of the claims for fiscal year (FY) 2006-07, FY 2007-08, and FY 2008-09 commenced on April 14, 2010, and was completed on March 7, 2012. The report was subsequently released on December 20, 2012.

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: December 2, 2016

OFFICE OF THE STATE CONTROLLER

By: _____

Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 2

STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE TO THE INCORRECT REDUCTION CLAIM BY SAN DIEGO COUNTY
For Fiscal Year (FY) 2006-07, FY 2007-08, and FY 2008-09

Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed Pupils Program
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that San Diego County filed on December 10, 2015. On December 18, 2015, the Commission staff notified the claimant that the IRC was deemed untimely filed. On December 28, 2015, the claimant filed an appeal. On October 28, 2016, the Commission granted the appeal and determined that the filed IRC is complete and retains the original filing date of December 10, 2016, per Title 2, *California Code of Regulation*, section 1185.2(a). The SCO audited the county's claims for costs of the legislatively mandated Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II and Seriously Emotionally Disturbed Pupils Program for the period of July 1, 2006, through June 30, 2009. The SCO issued its final report on December 20, 2012 (**Exhibit C**).

The county submitted reimbursement claims totaling $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claims)—$6,587,429 for FY 2006-07 ($6,597,429 less a $10,000 penalty for filing a late claim) (**Exhibit E**); $6,591,297 for FY 2007-08 (**Exhibit F**); and $1,306,040 for FY 2008-09 (**Exhibit G**). Subsequently, the SCO audited these claims and determined that $11,651,891 is allowable and $2,832,875 is unallowable. The county claimed unallowable costs because it claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed (SED) pupils in facilities that are owned and operated for profit, overstated mental health services and administrative costs, duplicated due process hearing costs, and understated offsetting reimbursements.

The following table summarizes the audit results:

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2006, through June 30, 2007			
Direct and indirect costs:			
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)
Transfers and interim placements	1,923,625	1,890,217	(33,408)
Authorize/issue payments to providers	5,802,928	4,741,441	(1,061,487)
Psychotherapy/other mental health services	7,868,926	7,837,430	(31,496)
Participation in due process hearings	5,330	-	(5,330)
Total direct and indirect costs	16,484,971	15,349,258	(1,135,713)
Less other reimbursements	(9,887,542)	(9,651,932)	235,610
Total claimed amount	6,597,429	5,697,326	(900,103)
Less late claim penalty	(10,000)	(10,000)	-
Total program cost	$ 6,587,429	5,687,326	$ (900,103)
Less amount paid by State		(4,106,959)	
Allowable costs claimed in excess of (less than) amount paid		$ 1,580,367	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2007, through June 30, 2008			
Direct and indirect costs:			
Referral and mental health assessments	$ 1,040,292	$ 1,032,856	$ (7,436)
Transfers and interim placements	1,827,332	1,822,587	(4,745)
Authorize/issue payments to providers	6,738,212	6,257,153	(481,059)
Psychotherapy/other mental health services	8,565,332	8,514,338	(50,994)
Participation in due process hearings	10,071	-	(10,071)
Total direct and indirect costs	18,181,239	17,626,934	(554,305)
Less other reimbursements	(11,589,942)	(11,662,369)	(72,427)
Total claimed amount	6,591,297	5,964,565	(626,732)
Total program cost	$ 6,591,297	5,964,565	$ (626,732)
Less amount paid by State		-	
Allowable costs claimed in excess of (less than) amount paid		$ 5,964,565	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2008, through June 30, 2009			
Direct and indirect costs:			
Referral and mental health assessments	$ 1,625,079	$ 1,207,589	$ (417,490)
Transfers and interim placements	722,633	548,944	(173,689)
Authorize/issue payments to providers	6,224,038	6,125,362	(98,676)
Psychotherapy/other mental health services	9,749,679	9,198,502	(551,177)
Participation in due process hearings	46,636	46,636	-
Total direct and indirect costs	18,368,065	17,127,033	(1,241,032)
Less other reimbursements	(17,062,025)	(17,566,899)	(504,874)
Total claimed amount	1,306,040	(439,866)	(1,745,906)
Adjustment to eliminate negative balance	-	439,866	439,866
Total program cost	$ 1,306,040	-	$ (1,306,040)
Less amount paid by State		-	
Allowable costs claimed in excess of (less than) amount paid		$ -	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
Summary: July 1, 2006, through June 30, 2009			
Direct and indirect costs:			
Referral and mental health assessments	$ 3,549,533	$ 3,120,615	$ (428,918)
Transfers and interim placements	4,473,590	4,261,748	(211,842)
Authorize/issue payments to providers	18,765,178	17,123,956	(1,641,222)
Psychotherapy/other mental health services	26,183,937	25,550,270	(633,667)
Participation in due process hearings	62,037	46,636	(15,401)
Total direct and indirect costs	53,034,275	50,103,225	(2,931,050)
Less other reimbursements	(38,539,509)	(38,696,469)	(156,960)
Total claimed amount	14,494,766	11,406,756	(3,088,010)
Adjustment to eliminate negative balance	-	255,135	255,135
Less late claim penalty	(10,000)	(10,000)	-
Total program cost	$ 14,484,766	11,651,891	$ (2,832,875)
Less amount paid by State		(4,106,959)	
Allowable costs claimed in excess of (less than) amount paid		$ 7,544,932	

[1] Payment information as of November 30, 2016.

In its discussion, the county contests the portion of Finding 2 that relates to the out-of-state residential placement of SED pupils in facilities that are organized and operated for profit. The ineligible placement costs include board and care ($753,624) and treatment costs ($633,471). The county contests $1,387,095 for the audit period—$825,099 for FY 2006-07, $466,264 for FY 2007-08, and $95,732 for FY 2008-09—as follows:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Finding 2				
Ineligible placements:				
Board and care	$ (451,719)	$ (251,128)	$ (50,777)	$ (753,624)
Treatment	(373,380)	(215,136)	(44,955)	(633,471)
Local revenue funds	(230,331)	-	-	(230,331)
Unauthorized payments	(18,739)	(14,795)	(2,944)	(36,478)
Audit adjustment	$(1,074,169)	$ (481,059)	$ (98,676)	$(1,653,904)

I. SCO REBUTTAL TO STATEMENT OF DISPUTE – CLARIFICATION OF REIMBURSABLE ACTIVITIES, CLAIM CRITERIA, AND DOCUMENTATION REQUIREMENTS

Parameters and Guidelines

The parameters and guidelines consolidate the Commission on State Mandate's (Commission) decisions on the Reconsideration of the Handicapped and Disabled Students (**Tab 3**), Handicapped and Disabled Students II (**Tab 4**), and Seriously Emotionally Disturbed Pupils (**Tab 5**) Programs. The Commission adopted the consolidated program's parameters and guidelines on October 26, 2006 (**Tab 6**), amended them on July 29, 2010 (**Tab 7**), and amended them on September 28, 2012 (**Tab 8**). Based on the adoption of consolidated parameters and guidelines, reimbursement for the program began in FY 2006-07. The amendment in 2010 related to a record retention requirement omitted from the original parameters and guidelines regarding the number of pupils placed in out-of-state residential facilities. The amendment in 2012 related to the closing out of the program after FY 2010-11.

SCO Claiming Instructions

In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs in order to assist local agencies and school districts in claiming reimbursable costs. The SCO issued claiming instructions for Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996 in January 2007 (**Exhibit A**), and amended them January 2009 (**Exhibit B**). The county used these versions of the claiming instructions to file its reimbursement claims.

II. COUNTY OVERSTATED COSTS BY CLAIMING UNALLOWABLE OUT-OF-STATE RESIDENTIAL PLACEMENT COSTS

Issue

The county claimed $1,387,095 in unallowable costs resulting from the out-of-state residential placement of SED pupils in for-profit facilities, consisting of board and care costs of $753,624 and treatment costs of $633,471.

The county believes that residential placement costs resulting from the placement of SED pupils in facilities owned and operated for profit are eligible and reimbursable under the state-mandated cost program. We disagree. The parameters and guidelines allow only vendor payments for SED pupils placed in a group home organized and operated on a non-profit basis.

SCO Analysis

The county claimed $1,387,095 in unallowable costs resulting from the out-of-state residential placement of SED pupils in for-profit facilities. These costs are not reimbursable under the Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed Pupils Program.

The majority of the unallowable costs relates to vendor payments for residential placement of clients in a for-profit facility located in Provo, Utah. The county claimed vendor payments to Mental Health Systems, Inc., a California nonprofit corporation. However, Mental Health Systems, Inc. contracted with Charter Provo Canyon School (later identified as UHS of Provo Canyon), a Delaware for-profit limited liability company, to provide the out-of-state residential placement services (**Tabs 9 and 10**). The Provo Canyon School's Utah residential facility is not organized and operated on a non-profit basis. We allowed vendor payments for residential placements at the Provo Canyon School, Inc. from the point that it became organized and operated as a non-profit, January 6, 2009 (**Tab 11**).

The program's parameters and guidelines, Reimbursable Activities section IV. G., applicable to the time period specify the following services eligible for reimbursement (**Tab 6**):

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

The parameters and guidelines, as noted in item G above, provides reimbursement to 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 7581 and Title 2, California Code of Regulations, section 60200. The latter code section provides the financial responsibilities of counties and references Title 2, *California Code of Regulations*, section 60100 relative to pupils placed in residential facilities.

Title 2, *California Code of Regulations*, 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(c)(2) through (3) (**Tab 12**). 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 non-profit basis (**Tab 13**).

The parameters and guidelines do not provide reimbursement for out-of-state residential placement of SED pupils in facilities that are organized and operated for profit.

County's Narrative

Below is the summary and an outline of the county's argument regarding the eligibility of out-of-state residential placement of SED pupils in facilities owned and operated for profit. For the complete analysis, refer to the narrative for the county's IRC.

Summary

The County disputes Finding 2 – Overstated residential placement costs – because the California Code of Regulations Title 2 section 60100(h) which was in effect during the audit period and Welfare and Institutions Code 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 $1,387,095.00.

Outline

A. 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.

B. 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.

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

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.

SCO's Comment

Objective

Our objective was to determine whether the costs of county-filed claims are reimbursable under the program's parameters and guidelines adopted by the Commission. We did not assess the appropriateness or need for services provided in light of federal regulations.

Parameters and Guidelines

We maintain that the parameters and guidelines do not provide reimbursement for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit (**Tab 7**). The underlying regulation, Title 2, *California Code of Regulations*, 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(c)(2) through (3) (**Tab 12**). 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 (**Tab 13**).

Conclusion

The county is not eligible to receive reimbursement for vendor payments made to ineligible out-of-state residential facilities for the placement of SED pupils. The underlying regulations do not provide for reimbursement of out-of-state residential placements made outside of the regulation. As such, vendor payments to for-profit facilities are not eligible for reimbursement under the state-mandated cost program.

SCO's Rebuttal Comment

Our response to each of the county's arguments appears in italics below:

A. 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, subsections D. and G.) 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 be paid only 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.

B. 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.

*Office of Administrative Hearings (OAH) Case No. N 2007090403 (**Exhibit D**) 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 was to deny the student a free and appropriate public education under federal regulations. The issue of funding residential placements made outside of the regulation was not specifically addressed in the case.*

*Alternatively, in OAH Case No. N 2005070683 (**Tab 14**) the administrative law judge found that the county Department of Behavioral Health could not place a student in an out-of-state residential facility that is owned and operated for profit. Basically, the judge found that the county is statutorily prohibited from funding a residential placement in a for-profit facility. Further, the administrative law judge opined that the business relationship between Aspen Solutions, a nonprofit entity, and Youth Care, a for-profit residential facility, did not grant the latter nonprofit status.*

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 state-mandated cost program.

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

*As previously noted, 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 (later identified as UHS of Provo Canyon), a Delaware for-profit limited liability company, to provide out-of-state residential placement services (**Tabs 9 and 10**). The referenced Provo Canyon, Utah, residential facility is not organized and operated on a nonprofit basis.*

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.

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 regulations.

III. CONCLUSION

The SCO audited San Diego County's claims for costs of the legislatively mandated Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II and Seriously Emotionally Disturbed Pupils Program (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996) for the period of July 1, 2006, through June 30, 2009. The county claimed $14,484,766 for the mandated program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable. The county claimed unallowable costs because it claimed ineligible out-of-state residential placement of SED pupils in facilities that are organized and operated for profit, overstated mental health services and administrative costs, duplicated due process hearing costs, and understated offsetting reimbursements.

The county is challenging the SCO's adjustment totaling $1,387,095, for the ineligible out-of-state residential placement of SED pupils in facilities that are organized and operated for profit.

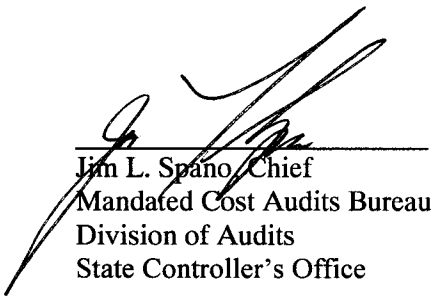
The county is not eligible to receive reimbursement for vendor payments made to ineligible out-of-state residential facilities for the placement of SED pupils. The underlying regulations do not provide for reimbursement of out-of-state residential placements made outside of the regulation. As such, vendor payments to for-profit facilities are not eligible for reimbursement under the state-mandated cost program.

In conclusion, the Commission should find that: (1) the SCO correctly reduced the county's FY 2006-07 claim by $900,103; (2) the SCO correctly reduced the county's FY 2007-08 claim by $626,732; and (3) the SCO correctly reduced the county's FY 2008-09 claim by $1,306,040.

IV. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on December 2, 2016, at Sacramento, California, by:



Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274; California Code of Regulations, Tit. 2, Div. 9, §§ 60000-60610 (Emergency Regulations filed December 31, 1985, Designated Effective January 1, 1986 (Register 86, No. 1) and Refiled June 30, 1986, Designated Effective July 12, 1986 (Register 86, No. 28)) CSM 4282 Directed By Statutes 2004, Chapter 493, Section 7, (Sen. Bill No. 1895) Effective September 13, 2004.	**Case No.: 04-RL-4282-10** ***Handicapped & Disabled Students*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted on May 26, 2005*)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274; California Code of Regulations, Tit. 2, Div. 9, §§ 60000-60610 (Emergency Regulations filed December 31, 1985, Designated Effective January 1, 1986 (Register 86, No. 1) and Refiled June 30, 1986, Designated Effective July 12, 1986 (Register 86, No. 28)) CSM 4282 Directed By Statutes 2004, Chapter 493, Section 7, (Sen. Bill No. 1895) Effective September 13, 2004.	**Case No.: 04-RL-4282-10** ***Handicapped & Disabled Students*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted on May 26, 2005*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2005. Leonard Kaye and Paul McIver appeared on behalf of the County of Los Angeles. Pam Stone represented and appeared on behalf of the County of Stanislaus. Linda Downs appeared on behalf of the County of Stanislaus. John Polich appeared on behalf of the County of Ventura. Patricia Ryan appeared on behalf of the California Mental Health Directors' Association. Jeannie Oropeza and Dan Troy appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis at the hearing by a vote of 4-0.

BACKGROUND

Statutes 2004, chapter 493 (Sen. Bill No. 1895 ("SB 1895")) directs the Commission to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program. Section 7 of the bill states the following:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with

Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

Commission Decisions

The Commission adopted the Statement of Decision on the *Handicapped and Disabled Students* program in 1990 (CSM 4282). Generally, the test claim legislation implements federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.[1] The mechanism for providing special education services under federal law is the individualized education program, or IEP. An IEP is a written statement developed after an evaluation of the pupil in all areas of suspected disability and may provide for related services including mental health and psychological services.[2]

Before the enactment of the test claim legislation, the state adopted a plan to comply with federal law. The responsibility for supervising special education and related services was delegated to the Superintendent of Public Instruction. Local educational agencies (LEAs) were financially responsible for the provision of mental health services required by a pupil's IEP.[3]

The test claim legislation, which became effective on July 1, 1986, shifted the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments.

The Commission approved the test claim and found that the activities of providing mental health assessments, participation in the IEP process, psychotherapy, and other mental health services were reimbursable under article XIII B, section 6 of the California Constitution. Activities related to assessments and IEP responsibilities were found to be 100% reimbursable. Psychotherapy and other mental health treatment services were found to be 10% reimbursable due to the funding methodology in existence under the Short-Doyle Act for local mental health services.

The parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282) were adopted in August 1991, and amended in 1996, and have a reimbursement period beginning July 1, 1986. The parameters and guidelines authorize reimbursement for the following activities:

A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:

   1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing

---

[1] See federal Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[2] Title 20 United States Code sections 1400 et seq.

[3] Education Code sections 56000 et seq.

Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, § 7572, subd. (d)(1)):

   a. Whenever an LEA refers an individual suspected of being an "individual with exceptional needs" to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:

      i. interview with the child and family,

      ii. collateral interviews, as necessary,

      iii. review of the records,

      iv. observation of the child at school, and

      v. psychological testing and/or psychiatric assessment, as necessary.

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Gov. Code, § 7572, subd. (d)(1).)

   c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Gov. Code, § 7572, subd. (d)(1).)

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

   e. When the written mental health assessment report provided by the local mental health program determines that an "individual with special needs" is "seriously emotionally disturbed," and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.

   f. When the IEP prescribes residential placement for an "individual with exceptional needs" who is "seriously emotionally disturbed," claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Gov. Code, § 7572.5.)

   g. Required participation in due process hearings, including but not limited to due process hearings.

3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.

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

1. The scope of the mandate is ten (10) percent reimbursement.

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

a. Individual therapy,

b. Collateral therapy and contacts,

c. Group therapy,

d. Day treatment, and

e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.

3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. Commission on State Mandates*, issued an unpublished decision that upheld the Commission's decision, including the percentage of reimbursements, on the *Handicapped and Disabled Students* program.[4]

In May 2000, the Commission approved a second test claim relating to the test claim legislation, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (CSM 97-TC-05). The test claim on *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) was filed on Government Code section 7576, as amended by Statutes 1996, chapter 654, the corresponding regulations, and on a Department of Mental Health Information Notice Number 86-29. The test claim in *Seriously Emotionally Disturbed Pupils* addressed only the counties' responsibilities for *out-of-state* residential placements for seriously emotionally disturbed pupils, and has a reimbursement period beginning January 1, 1997.

In addition, there are two other matters currently pending with the Commission relating to the test claim legislation. In 2001, the Counties of Los Angeles and Stanislaus filed requests to amend the parameters and guidelines on the original test claim decision, *Handicapped and Disabled Students* (CSM 4282). The counties request that the parameters and guidelines be amended to delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services; to add

[4] *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993.

an activity to provide reimbursement for room and board for in-state placement of pupils in residential facilities; and to amend the language regarding the reimbursement of indirect costs. The request to amend the parameters and guidelines was scheduled on the Commission's March 2002 hearing calendar. But at the request of the counties, the item was taken off calendar, and is still pending. If the Commission approves the Counties' requests on this matter, the reimbursement period for the new amended portions of the parameters and guidelines would begin on July 1, 2000.[5]

The second matter currently pending with the Commission is a consolidated test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), filed by the Counties of Los Angeles and Stanislaus on all of the amendments to the original test claim legislation from 1986 to the present. The test claims in *Handicapped and Disabled Students II* were filed in June 2003 and, if approved by the Commission, will have a reimbursement period beginning July 1, 2001.

Documented Problems with the Test Claim Legislation

There have been funding and implementation problems with this program, which have been well documented. In 2002, the Legislative Analyst's Office issued a budget analysis that described "significant controversy" regarding the program. The report states in relevant part the following:

> Over the last two years, the State Controller's Office (SCO) has audited county AB 3632 mandate reimbursement claims dating back to 1997 (three years of claims for each audited county). Based on information provided by counties and professional mandate claim preparers, we understand that SCO auditors have found that many counties are claiming reimbursements for 100 percent of the cost of providing mental health treatment services to special education pupils, rather than the 10 percent specified under the terms of this mandate. In addition, some counties are not reporting revenues that auditors indicate should be included as mandate cost "offsets." The magnitude of these auditing concerns is unknown, but could total as much as $100 million statewide for the three-year period.[6]

Before the audits could be completed, Statutes 2002, chapter 1167, section 41 (Assem. Bill No. 2851) was enacted directing the State Controller's Office to not dispute the percentage of reimbursement claimed for mental health services provided by counties prior to and through fiscal years 2000-2001. According to the State Controller's Office, however, audits continue for this program to identify unallowable costs. To date,

---

[5] California Code of Regulations, title 2, section 1183.2.

[6] Report by Legislative Analyst's Office, *2002 Budget Analysis: Health and Social Services, Department of Mental Health (4440)*, dated February 20, 2002. The *Handicapped and Disabled Students* program is often referred to as the "AB 3632" program.

seventeen audits have been completed, three final reports are in the process, and five audits are in the fieldwork stage.[7]

In addition, the legislative history of SB 1895 refers to a report issued by Stanford Law School in May 2004 on the program that describes the history of the test claim legislation, and addresses the policy and funding issues.[8] According to legislative history, SB 1895 was an attempt to address the issues and recommendations raised in the report.[9]

Accordingly, this reconsideration presents the following issues:

- What is the scope of the Commission's jurisdiction directed by SB 1895?
- Does the test claim legislation constitute a state-mandated new program or higher level of service?
- Does the test claim legislation impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[10] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[11] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[12] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school

---

[7] E-mail from State Controller's Office dated January 19, 2005.

[8] The report is entitled "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004.

[9] Assembly Committee on Education, analysis of SB 1895 as introduced on March 3, 2004, dated June 23, 2004.

[10] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[11] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[12] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

district to engage in an activity or task.[13] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[14]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[15] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[16] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[17]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[18]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[19] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[20]

I. What is the scope of the Commission's jurisdiction directed by SB 1895?

Statutes 2004, chapter 493, section 7 (Sen. Bill No. 1895, eff. Sept. 13, 2004), requires the Commission on State Mandates, on or before December 31, 2005, "notwithstanding

---

[13] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[14] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[15] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[16] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[18] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

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

[20] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

any other law" to "reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs."

As described in the Background, the Commission has issued two decisions relating to Chapter 26.5 of the Government Code. The first decision, *Handicapped and Disabled Students* (CSM 4282), was adopted on April 26, 1990. The test claim on *Handicapped and Disabled Students* (CSM 4282) was filed on Government Code section 7570 and following, as added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter 1274, and on California Administrative Code, title 2, division 9, sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

The second decision, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), was adopted on May 25, 2000. The test claim on *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) was filed on Government Code section 7576, as amended by Statutes 1996, chapter 654, the corresponding regulations, and on a Department of Mental Health Information Notice Number 86-29. The test claim in *Seriously Emotionally Disturbed Pupils* addressed only the counties' responsibilities for *out-of-state* residential placements for seriously emotionally disturbed pupils. This test claim did not address the mental health services provided by counties to pupils in the state of California.

A third test claim is pending with the Commission, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and has been filed by the Counties of Los Angeles and Stanislaus on all of the amendments to the statutes in Chapter 26.5 of the Government Code and to their corresponding regulations from 1986 up to the current date. The test claims in *Handicapped and Disabled Students II* were filed in June 2003 and, if approved by the Commission, will have a reimbursement period beginning July 1, 2001.

For purposes of this reconsideration, the Counties of Los Angeles and Stanislaus contend that SB 1895 requires the Commission to reconsider not only the Commission's original decision in *Handicapped and Disabled Students* (CSM 4282), but also on *all* the subsequent amendments to the statutes and regulations up to the current date that were pled in *Handicapped and Disabled 11*. In this regard, the County of Stanislaus argues that "to reconsider the prior test claim only, without examining that which has amended the program since its original inception in 1984, overlooks 20 years of subsequent legislation and which has lead to the substantial filings which are before the Commission on State Mandates."[21] The Counties further contend that SB 1895 requires the Commission to reconsider the Commission's decision in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), adopted on May 25, 2000.

---

[21] Comments filed by County of Stanislaus on December 15, 2004.

Although the Counties' arguments to analyze Chapter 26.5 of the Government Code in its entirety up to the current date for purposes of reimbursement may have surface appeal, neither the law, nor the plain language of SB 1895 supports that position. For the reasons provided below, the Commission finds that SB 1895 gives the Commission the jurisdiction to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282). The Commission does not have the jurisdiction in this case to reconsider *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05), or the jurisdiction to address the statutory and regulatory amendments made to the program since 1985 that have been pled in *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49). The Commission further finds, based on the language of SB 1895, that the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004.

A. SB 1895 directs the Commission to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282)

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[22]

Since the Commission was created by the Legislature (Gov. Code, §§ 17500 et seq.), its powers are limited to those authorized by statute. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.

Thus, the Government Code gives the Commission jurisdiction only over those statutes and/or executive orders pled by the claimant in the test claim. The Commission does not have the authority to consider a claim for reimbursement on statutes or executive orders that have not been pled by the claimant.

In addition, if the Commission approves the test claim, the period of reimbursement is calculated based on the date the test claim is filed by the claimant. Government Code section 17557, subdivision (e), states "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Thus, if a test claim is filed on June 30, 2004, and is approved by the Commission, the reimbursement period would begin in fiscal year 2002-2003. Reimbursement is not based on the effective and operative date of the particular statute or executive order pled in the test claim, unless the effective and operative date falls after the period of reimbursement.

---

[22] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

Furthermore, Government Code section 17559 grants the Commission the authority to reconsider prior final decisions only within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on SB 1895. Absent SB 1895, the Commission would have no jurisdiction to reconsider any of its decisions relating to Chapter 26.5 of the Government Code since the two decisions on those statutes and regulations were adopted and issued well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by SB 1895, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[23] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of SB 1895.

Under the rules of statutory construction, when the statutory language is plain the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][24]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[25] To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[26]

SB 1895 states the following:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

---

[23] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[24] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

[25] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[26] *Estate of Griswald, supra*, 25 Cal.4th at page 911.

First, the Commission does not have the jurisdiction to "reconsider" the statutory and regulatory amendments enacted after 1985 to the Handicapped and Disabled program that were pled in *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49) since the Commission has not yet adopted a decision on that claim. Pursuant to Government Code section 17557, subdivision (e), *Handicapped and Disabled Students II* will have a reimbursement period beginning July 1, 2001, if the Commission finds that the statutory and regulatory amendments pled in the claim constitute a reimbursable state-mandated program.

Second, the Commission finds that the Commission does not have the jurisdiction to reconsider the Commission's decision in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). The express language enacted by the Legislature in SB 1895 refers to one decision with the use of the singular word "decision." According to the analysis on the bill prepared by the Senate Rules Committee dated August 25, 2004, SB 1895 "[d]irects the Commission on State Mandates (CSM), on or before December 31, 2005, to reconsider its decision relating to administrative and travel costs for AB 3632 (Brown), Chapter 1747, Statutes of 1984 and its parameters and guidelines for calculating state reimbursement costs." The legislative history cites only to the author and one of the statutes pled in the original *Handicapped and Disabled Students* (CSM 4282) test claim. Although, as argued by the Counties, the statutes pled in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) are included in Chapter 26.5 of the Government Code, there is no indication in the plain language of SB 1895 or in the Senate Rules Committee analysis that the Legislature intended to give the Commission jurisdiction to reconsider *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). The SEDs test claim was filed on a 1996 statute (Assem. Bill 2726), introduced by another author who is not identified in SB 1895 or in the legislative history.[27]

Therefore, the Commission finds that the Commission has jurisdiction to reconsider only the original Commission decision, *Handicapped and Disabled Students* (CSM 4282).

Finally, SB 1895 directs the Commission to reconsider its decision relating to "*included services* and administrative and travel costs" associated with services provided pursuant to Chapter 26.5 of the Government Code. The phrase "included services" is broad and does not limit the scope of this reconsideration to any particular service required by the statutes or regulations pled in *Handicapped and Disabled Students*. Therefore, the Commission finds that SB 1895 requires the Commission to reconsider the entire test claim in *Handicapped and Disabled Students*.

B. The period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004

SB 1895, enacted as a 2004 statute, directs the Commission to reconsider its 1990 Statement of Decision on the *Handicapped and Disabled Students* program. The parameters and guidelines for this program were originally adopted in 1991, with a reimbursement period beginning July 1, 1986. Over the last 14 years, reimbursement

[27] Statutes 1996, chapter 654 was introduced by Assembly Member Woods.

claims have been filed with the State Controller's Office for payment on this program, payments have been made by the state, and audits have occurred.

SB 1895, however, does not specify the period of reimbursement for the Commission's decision on reconsideration.[28] The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of July 1, 1986 (i.e., to reimbursement claims that have already been filed and have been audited and/or paid), or to prospective claims filed in the current and future budget years. If the Commission's decision on reconsideration is applied retroactively, the decision may impose new liability on the state that did not otherwise exist or change the legal consequences of these past events.

For the reasons below, the Commission finds the Legislature intended that the Commission's decision on reconsideration apply prospectively, to current and future budget years only.

The California Supreme Court has recently upheld its conclusion that there is a strong presumption against retroactive legislation. Statutes generally operate prospectively only. A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[29] The court explained its conclusion as follows:

> "Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly ... For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]
>
> This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance, a policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and

---

[28] In this respect, SB 1895 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, directs the Commission to reconsider Board of Control test claims relating to regional housing. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004."

[29] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

> inflexible import of the terms, and the manifest intention of the legislature." [Citation omitted.] "*A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.*" [Citation omitted.] (Emphasis added.)[30]

There is nothing in the plain language of SB 1895 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. Section 10 of SB 1895 states that the act was necessary to implement the Budget Act of 2004 and, thus, supports the conclusion that the statute was intended to apply prospectively to the current and future budget years. Similarly, the legislative history contained in the analysis of the Senate Rules Committee supports the conclusion that the statute applies to current and future budget years only. Page seven of the analysis states that "[t]his bill proposes to provide clarification and accountability *regarding the funds provided in the 2004-05 Budget Act* for mental health services for individuals with special needs." (Emphasis added.)

Moreover, had the Legislature intended to apply the Commission's decision on reconsideration retroactively, it would have included retroactive language in the bill similar to the language in other statutes relating to this program. For example, Statutes 2002, chapter 1167, addressed the funding and reimbursement for the Handicapped and Disabled program. The effective and operative date of the statute was September 30, 2002. However, the plain language in section 38 of the bill contains retroactive language that the terms of the statute applied to reimbursement claims for services delivered beginning in fiscal year 2001-2002. Section 41 of the bill also states that county reimbursement claims already submitted to the Controller for reimbursement for mental health treatment services in fiscal years up to and including fiscal year 2000-2001 were not subject to a dispute by the Controller's Office regarding the percentage of reimbursement claimed by the county.

Based on the case law cited above and the plain language of SB 1895, the Commission finds that the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004. Thus, to the extent there are new activities included in the program that are now reimbursable, reimbursement would begin July 1, 2004.

II. Does the test claim legislation constitute a state-mandated new program or higher level of service?

At the hearing, the Department of Finance argued that the state has chosen to make mental health services related to IEPs the responsibility of the counties and that current federal law allows the state to choose the agency or agencies responsible for service. Thus, the Department of Finance contends that the activities performed by counties under the Handicapped and Disabled Students program are federally mandated and not mandated by the state within the meaning of article XIII B, section 6 of the California Constitution. The Commission disagrees with the Department of Finance.

---

[30] *Ibid.*

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. State of California*, issued an unpublished decision in the present case upholding the Commission's decision that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution.[31] Once a court has ruled on a question of law in its review of an agency's action, the agency cannot act inconsistently with the court's order. Instead, absent "unusual circumstances," or an intervening change in the law, the decision of the reviewing court establishes the law of the case and binds the agency and the parties to the action in all further proceedings addressing the particular claim.[32]

Although there have been subsequent amendments to the original test claim legislation that have provided more specificity in the activities performed by counties and that have modified financial responsibilities for the Handicapped and Disabled program, these amendments do not create an "unusual circumstance" or constitute an "intervening change in the law" that would support a finding on reconsideration that the test claim should be denied.[33]

Although the Commission finds that the activities identified in the original Statement of Decision and the financial responsibilities for the program should be further clarified on reconsideration, the decision in *County of Santa Clara* that the test claim legislation is a reimbursable state-mandated program, is binding on the Commission and the parties for purposes of this reconsideration.

Moreover, other case law interpreting article XIII B, section 6, which is described below, further supports the conclusion that the test claim legislation mandates a new program or higher level of service on counties.

---

[31] *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993. The court stated the following:

> The intent of section 6 was to preclude the state from shifting to local government the financial responsibility for providing services in light of the restrictions imposed by Proposition 13 on the taxing and spending powers of local government. (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836.) Here it is undisputed that the provision of psychotherapy and other mental health services to special education students resulted in a higher level of service within County's Short-Doyle program.

[32] *George Arakelian Farms, Inc. v. Agricultural Labor Relations Board* (1989) 49 Cal.3d 1279, 1291.

[33] The amendments addressing financial responsibilities for this program are included in this analysis. The amendments enacted after 1985 that modify the activities performed by counties, however, are addressed in the *Handicapped and Disabled Students II* test claim filed by the Counties of Los Angeles and Stanislaus (02-TC-40 and 02-TC-49).

A. Case law supports the conclusion that the test claim legislation mandates a new program or higher level of service

The test claim legislation implements federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.

In 1988, the California Supreme Court held that education of handicapped children is "clearly" a governmental function providing a service to the public.[34] Thus, the test claim legislation qualifies as a program that is subject to article XIII B, section 6 of the California Constitution.

In 1992, the Third District Court of Appeal, in *Hayes v. Commission on State Mandates*, determined that the federal law at issue in the present case imposes a federal mandate on the states.[35] The *Hayes* case involved test claim legislation requiring school districts to provide special education services to disabled pupils. The school districts in the *Hayes* case alleged that the activities mandated by the state that exceeded federal law were reimbursable under article XIII B, section 6 of the California Constitution.

The court in *Hayes* determined that the state's "alternatives [with respect to federal law] were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event."[36] The court concluded that the state had no "true choice" but to participate in the federal program and, thus, there was a federal mandate on the state.[37]

Although the court concluded that the federal law was a mandate on the states, the court remanded the case to the Commission for further findings to determine if the state's response to the federal mandate constituted a state-mandated new program or higher level of service on the school districts.[38] The court held as follows:

> In our view the determination whether certain costs were imposed upon the local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.[39]

---

[34] *Lucia Mar Unified School District, supra*, 44 Cal.3d at page 835.

[35] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1592.

[36] *Hayes, supra*, 11 Cal.App.4th at page 1591.

[37] *Ibid.*

[38] *Ibid.*

[39] *Id.* at pages 1593-1594.

The court described its conclusion as follows:

> The Education of the Handicapped Act [renamed IDEA] is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in the state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. §§ 1412, 1413.) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.[40]

The federal law relevant to this case is summarized on pages 1582-1594 of the *Hayes* decision, and its requirements that existed at the time the test claim legislation was enacted are described below.

1. Pursuant to the court's ruling in *Hayes*, federal special education law imposes a federal mandate on the state

Before the mid-1970s, a series of landmark court cases established the right to an equal educational opportunity for children with disabilities. The federal courts determined that children with disabilities were entitled to a free public program of education and training appropriate to the child's capacity and that the children and their parents were entitled to a due process hearing when dissatisfied with placement decisions.[41]

In 1973, Congress responded with the Rehabilitation Act of 1973, section 504. Section 504 of the Rehabilitation Act of 1973 imposes an obligation on local school districts to accommodate the needs of children with disabilities. Section 504 provides that "[n]o otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." (29 U.S.C. 794.) "Since federal assistance to education is pervasive, ... section 504 was applicable to virtually all public educational programs in this and other states."[42] Section 504 gives school districts "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped

---

[40] *Id.* at page 1594.

[41] *Id.* at pages 1582-1584.

[42] *Id.* at page 1584.

child, constitutes discrimination against that child and a failure to provide an appropriate, free public education for the handicapped child."[43]

In 1974, Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of children with disabilities. Thus, in 1975, Congress enacted the Education for All Handicapped Children Act. In 1990, the Education for All Handicapped Act was renamed the Individuals with Disabilities Education Act (IDEA).[44]

Since 1975, the IDEA has guaranteed to disabled children the right to receive a free appropriate public education that emphasizes special education and related services designed to meet the child's individual needs. The IDEA further guarantees that the rights of disabled children and their parents are protected.[45] States are eligible for "substantial federal financial assistance" under the IDEA when the state agrees to adhere to the substantive and procedural terms of the act and submits a plan specifying how it will comply with federal requirements.[46] At the time the test claim legislation was enacted, the requirements of the IDEA applied to each state and each political subdivision of the state "involved in the education of handicapped children."[47]

Special education is defined under the IDEA as "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.[48] To be eligible for services under the IDEA, a child must be between the ages of three and twenty-one and have a qualifying disability.[49] If it is suspected that a pupil has a qualifying disability, the Individual Education Program, or IEP, process begins. The IEP is a written statement for a handicapped child that is developed and implemented in accordance with federal IEP regulations.[50] Pursuant to federal regulations on the IEP process, the child must be evaluated in all areas of suspected handicaps by a multidisciplinary team. Parents also have the right to obtain an independent assessment of the child by a qualified professional. Local educational

---

[43] *Id.* at pages 1584-1585.

[44] Public Law 101-476 (Oct. 30, 1990), 104 Stat.1143.

[45] 20 United States Code section 1400(c).

[46] *Hayes, supra,* 11 Cal.App.4th at page 1588; 20 United States Code sections 1411, 1412.

[47] Title 34 Code of Federal Regulations, sections 300.2 and 300.11. These regulations defined "public agency" to mean "all political subdivisions of the State *that are involved in the education of handicapped children.*"

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

[49] Title 20 United States Code section 1412.

[50] Title 20 United States Code section 1401; Title 34 Code of Federal Regulations section 300.340 et seq.

agencies are required to consider the independent assessment as part of their educational planning for the child.[51]

If it is determined that the child is handicapped within the meaning of IDEA, an IEP meeting must take place. Participants at the IEP meeting include a representative of the local educational agency, the child's teacher, one or both of the parents, the child if appropriate, other individuals at the discretion of the parent or agency, and evaluation personnel for children evaluated for the first time.[52] The local educational agency must take steps to insure that one or both of the parents are present at each meeting or are afforded the opportunity to participate, including giving the parents adequate and timely notice of the meeting, scheduling the meeting at a mutually convenient time, using other methods to insure parent participation if neither parent can attend, and taking whatever steps are necessary to insure that the parent understands the proceedings.[53] The IEP document must include the following information:

- a statement of the child's present levels of educational performance;
- a statement of annual goals, including short term instructional objectives;
- a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- the projected dates for initiation of services and the anticipated duration of the services; and
- appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.[54]

Each public agency must provide special education and related services to a handicapped child in accordance with the IEP.[55] In addition, each public agency must have an IEP in effect at the beginning of each school year for every handicapped child who is receiving special education from that agency. The IEP must be in effect before special education and related services are provided, and special education and related services set out in a child's IEP must be provided as soon as possible after the IEP is finalized.[56] Each public agency shall initiate and conduct IEP meetings to periodically review each child's IEP

---

[51] Former Title 34 Code of Federal Regulations section 300.503. The requirement is now at Title 34 Code of Federal Regulation section 300.502.

[52] Title 34 Code of Federal Regulations section 300.344.

[53] Title 34 Code of Federal Regulations section 300.345.

[54] Former Title 34 Code of Federal Regulations section 300.346. The IEP requirements are now found in Title 34 Code of Federal Regulations section 300.347.

[55] Former Title 34 Code of Federal Regulations section 300.349. The requirement is now found in Title 34 Code of Federal Regulations section 300.343.

[56] Title 34 Code of Federal Regulations section 300.342.

and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.[57]

A child that is assessed during the IEP process as "seriously emotionally disturbed" has a qualifying disability under the IDEA.[58] "Seriously emotionally disturbed" children are children who have an inability to learn which cannot be explained by intellectual, sensory, or health factors; who are unable to build or maintain satisfactory interpersonal relationships with peers and teachers; who exhibit inappropriate types of behavior or feelings under normal circumstances; who have a general pervasive mood of unhappiness or depression; and/or who have a tendency to develop physical symptoms or fears associated with personal or school problems. One or more of these characteristics must be exhibited over a long period of time and to a marked degree, and must adversely affect educational performance in order for a child to be classified as "seriously emotionally disturbed." Schizophrenic children are included in the "seriously emotionally disturbed" category. Children who are socially maladjusted are not included unless they are otherwise determined to be emotionally disturbed.[59]

Related services designed to assist the handicapped child to benefit from special education are defined to include "transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children."[60] Federal regulations define "psychological services" to include the following:

- administering psychological and educational tests, and other assessment procedures;
- interpreting assessment results;
- obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

---

[57] Title 34 Code of Federal Regulations section 300.343.

[58] Former Title 20 United States Code section 1401(a)(1). The phrase "serious emotionally disturbed" has been changed to "serious emotional disturbance." (See, 20 U.S.C. § 1401(3)(A)(i).)

[59] Former Title 34 Code of Federal Regulations section 300.5, subdivision (b)(8). "Serious emotional disturbance" is now defined in Title 34 Code of Federal Regulations section 300.7(c)(3).

[60] Title 20 United States Code section 1401; former Title 34 Code of Federal Regulations section 300.13 (the definition of "related services" can now be found in 34 C.F.R. § 300.24.)

- consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
- planning and managing a program of psychological services, including psychological counseling for children and parents.[61]

The comments to section 300.13 of the federal regulations further state that "[t]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services . . . if they are required to assist a handicapped child to benefit from special education."

Furthermore, if placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents or child.[62]

The IDEA also requires states and local educational agencies to establish and maintain due process procedures to assure that handicapped children and their parents are guaranteed procedural safeguards. The procedures must include an opportunity for the parents to examine all relevant records and to obtain an independent educational evaluation; procedures to protect the rights of children who do not have parents or guardians to assert their rights, including procedures for appointment of a surrogate for the parents; prior written notice to the parents whenever the educational agency proposes to initiate, change, or refuse to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child; procedures designed to assure that the required notice fully informs the parents in the parents' native language of all the procedures available; and an opportunity to present complaints. There must also be impartial due process hearing procedures that include the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; the right to present evidence; the right to confront, cross-examine, and compel the attendance of witnesses; the right to a written or electronic verbatim record of the hearing; the right to written findings of fact and decisions; the right to appeal the determination of the due process hearing officer; and the right to bring a civil action in court. The court in its discretion may award attorney's fees and costs in certain circumstances.[63]

Finally, the state is ultimately responsible for insuring the requirements of the IDEA. For example, the state educational agency is responsible for assuring that all education and related services required for a handicapped child will be under the general supervision of persons responsible for educational programs for handicapped children in the state educational agency and shall meet the education standards of the state educational

---

[61] *Ibid.*

[62] Title 20 United States Code section 1412; Title 34 Code of Federal Regulations section 300.302.

[63] Title 20 United States Code 1415.

agency.[64] The state educational agency is responsible for insuring that each public agency develops and implements an IEP for each handicapped child.[65] Furthermore, the state educational agency must provide services directly if no other agency provides them.[66] The comments to section 300.600 of the federal regulations describe the purpose of making the states ultimately responsible for providing special education and related services:

> The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children with each State. With respect to State educational agency responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:
>
> This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency . . . .
>
> Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Sen. Rep. 94-168, p. 24 (1975)).

There have been several amendments to the IDEA since the test claim legislation was originally enacted in 1984. Congress' 1997 amendment to the IDEA is relevant for purposes of this action. In 1997, Congress amended the IDEA to "strengthen the requirements on ensuring provisions of services by non-educational agencies ..." (Sen. Rep. 105-17, dated May 9, 1997.) The amendment clarified that the state or local educational agency responsible for developing a child's IEP could look to non-educational agencies to pay for or provide those services the educational agencies are otherwise responsible for. The amendment further clarified that if a non-educational agency failed to provide or pay for the special education and related services, the state or local educational agency responsible for developing the IEP remain ultimately responsible for ensuring that children receive all the services described in their IEPs in a

---

[64] Former Title 20 United States Code section 1412(6). The requirement is now in Title 20 United States Code section 1412(a)(11).

[65] Title 34 Code of Federal Regulations section 300.341.

[66] Former Title 34 Code of Federal Regulation section 300.600. The requirement is now in Title 34 Code of Federal Regulations section 300.142.

timely fashion and the state or local educational agency shall provide or pay for the services.[67] Federal law does not require states to use non-educational agencies to pay for or provide services. A states' decision regarding how to implement of the IDEA is still within the discretion of the state.

2. The state "freely chose" to mandate a new program or higher level of service on counties to implement the federal law

The court in *Hayes* held that if the state freely chose to impose the costs upon the local agency as a means of implementing a federally mandated program, regardless of whether the costs were imposed on the state by the federal government, then the costs are the result of a reimbursable state mandate pursuant to article XIII B, section 6.[68]

As more fully described below, the Commission finds that the state, with the enactment of the test claim legislation, freely chose to mandate a new program or higher level of service on counties.

The federal IDEA includes certain substantive and procedural requirements that must be included in the state's plan for implementation. But, as outlined above, federal law leaves the primary responsibility for implementation to the state.

Before the enactment of the test claim legislation, the state enacted comprehensive legislation (Ed. Code, §§ 56000 et seq.) to comply with federal law that required local educational agencies to provide special education services, including mental health and residential care services, to special education students.[69] Education Code section 56000 required that students receive public education and related services through the Master Plan for Special Education. Under the master plan, special education local plan areas (SELPAs), which consist of school districts and county offices of education, were responsible for developing and implementing a plan consistent with federal law to provide an appropriate education for individuals with special needs.[70] Each district, SELPA, or county office of education was required to establish IEP teams to develop, review, and revise education programs for each student with special needs.[71] The IEP team may determine that mental health or residential treatment services were required to support the student's special education needs.[72] The following mental health services were identified in statute: counseling and guidance; psychological services, other than assessment and development of the IEP; parent counseling and training; health and

---

[67] Title 20 United States Code sections 1412 (a)(12)(A), (B), and (C), and 1401 (8); Title 34 Code of Federal Regulations section 300.142. (See also, Letters from the Department of Education dated July 28, 1998 and August 2, 2004, to all SELPAs, COEs, and LEAs on the requirements of 34 C.F.R. 300.142; and *Tri-County Special Education Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 578.)

[68] *Hayes, supra*, 11 Cal.App.4th at pages 1593-1594.

[69] Statutes 1980, chapter 1218.

[70] Education Code sections 56140 and 56200.

[71] Education Code sections 56340 and 56341.

[72] Education Code sections 56363 and 56365.

nursing services; and social worker services.[73] In such cases, the school districts and county offices of education were solely responsible for providing special education services, including mental health and residential care services, for special education students under the state's statutory scheme.[74] The state Superintendent of Public Instruction was, and still is, responsible for supervising education and related services for handicapped children pursuant to the IDEA.[75]

In 1984 and 1985, the Legislature enacted the test claim legislation, which added Chapter 26.5 to the Government Code to shift the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments. Generally, the test claim legislation requires counties to:

- renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement;
- perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team;
- participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary;
- act as the lead case manager, as specified in statute and regulations, if the IEP calls for residential placement of a seriously emotionally disturbed pupil;
- issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils;
- provide psychotherapy or other mental health services, as defined in regulations, when required by the IEP; and
- participate in due process hearings relating to issues involving mental health assessments or services.

The purpose of the test claim legislation was recently described in the report prepared by Stanford Law School as follows:

> With the passage of AB 3632, California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs to acquire qualified staff to handle

---

[73] Education Code section 56363.

[74] Education Code section 56363; see also, Report by the Office of the Auditor General, dated April 1987, entitled "A Review of the Costs of Providing Noneducational Services to Special Education Students." The report states that in fiscal year 1985-86, the year immediately before the effective date of the test claim legislation, local education agencies provided psychotherapy and other mental health services to 941 students and residential services to 225 students.

[75] Education Code section 56135 and Government Code section 7570.

> the needs of these students, the state sought to have CMH [county mental health] agencies – who were already in the business of providing mental health services to emotionally disturbed youth and adults – assume the responsibility for providing needed mental health services to children who qualified for special education. Moreover, it was believed at the time that such mental health services would be most cost-efficiently provided by CMH agencies.[76]

Federal law does not require the state to impose any requirements relating to special education and related services on counties. At the time the test claim legislation was enacted, the requirements under federal law were imposed only on states and local educational agencies.[77] Today, federal law authorizes, but does not require, states to shift some of the special education requirements to non-educational agencies, such as county mental health departments.[78] But, if a county does not provide the service, federal law requires the state educational agency to be ultimately responsible for providing the services directly.[79] Thus, the decision to shift the mental health services for special education pupils from schools to counties was a policy decision of the state.

Moreover, the mental health services required by the test claim legislation for special education pupils were new to counties. At the time the test claim legislation was enacted, the counties had the existing responsibility under the Short-Doyle Act to provide mental health services to eligible children and adults. (Welf. & Inst. Code, §§ 5600 et seq.) But as outlined in a 1997 report prepared by the Department of Mental Health and the Department of Education, the requirements of the test claim legislation are different than the requirements under the Short-Doyle program. For example, mental health services under the Short-Doyle program for children are provided until the age of 18, are provided year round, and the clients must pay the costs of the services based on the ability to pay. Under the special education requirements, mental health services may be provided until the pupil is 22 years of age, are generally provided during the school year, and must be provided at no cost to the parent. Furthermore, the definition of "serious emotional disturbance" as a disability requiring special education and related services focuses on the pupil's functioning in school, a standard that is different than the standard provided under the Short-Doyle program.[80] Thus, with the enactment of the test claim legislation,

---

[76] "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 12.

[77] Title 34 Code of Federal Regulations section 300.2.

[78] Title 20 United States Code section 1412(a)(12).

[79] Title 20 United States Code sections 1412(a)(12)(A), (B), and (C), and 1401(8); Title 34 Code of Federal Regulations section 300.142.

[80] "Mental Health Services for Special Education Pupils, A Report to the State Department of Mental Health and the California Department of Education," dated March 1997. The construction of statutes by the officials charged with its administration is entitled to great weight. (*Whitcomb, supra,* 24 Cal.2d at pp. 756-757.)

counties are now required to perform mental health activities under two separate and distinct provisions of law: the Government Code (the test claim legislation) and the Welfare and Institutions Code.

Since article XIII B, section 6 "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of restrictions on the taxing and spending power of the local entities,"[81] the Commission finds that the shift of mental health services for special education pupils to counties constitutes a new program or higher level of service.

Accordingly, the Commission finds that the Commission's conclusion adopted in the 1990 Statement of Decision, that the test claim legislation mandates a new program or higher level of service, was correctly decided. The new activities mandated by the state are described below.

B. Activities expressly required by the test claim legislation that constitute a state-mandated new program or higher level of service on counties

The findings and conclusion in the Commission's 1990 Statement of Decision generally identify the following state-mandated activities: assessment, participation on the expanded IEP team, case management services for seriously emotionally disturbed pupils, and providing psychotherapy and other mental health services required by the pupil's IEP. The 1990 Statement of Decision states:

> The Commission concludes that, to the extent that the provisions of Government Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs," such legislation and regulations impose a new program or higher level of service upon a county.
>
> Moreover, the Commission concludes that any related participation on the expanded IEP team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Government Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county. ...
>
> The Commission concludes that the provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Government Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. In addition, such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP. ...

---

[81] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 876.

As described below, the Commission finds that the 1990 Statement of Decision does not fully identify all of the activities mandated by the test claim legislation.

1. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal Code Regs., tit. 2, §§ 60030, 60100)[82]

Government Code section 7571 requires the Secretary of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572. To implement this requirement, section 60030 of the joint regulations adopted by the Department of Mental Health and the Department of Education (Cal. Code Regs., tit. 2, §§ 60000 et seq.) require the local mental health director to appoint a liaison person for the local mental health program to ensure that an interagency agreement is developed before July 1, 1986, with the county superintendent of schools.[83] The requirement to develop the initial interagency agreement before July 1, 1986 is not reimbursable because the original reimbursement period for this claim began on or after July 1, 1986, and the reimbursement period for purposes of this reconsideration is July 1, 2004.

But the regulations require that the interagency agreement be renewed every three years, and revised if necessary. The interagency agreement "shall include, but not be limited to, a delineation of the process and procedure for" the following:

- Interagency referrals of pupils, which minimize time line delays. This may include written parental consent on the receiving agency's forms.
- Timely exchange of pupil information in accordance with applicable procedures ensuring confidentiality.

---

[82] The regulations pled in the original test claim were enacted by the Departments of Mental Health and Education as emergency regulations (Cal. Code Regs., tit. 2, §§ 60000 through 60610, filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)). These regulations were repealed and were superceded by new regulations, effective July 1, 1998. The 1998 regulations are the subject of *Handicapped and Disabled Students II* (02-TC-40, 02-TC-49). Most of the activities required by the original regulations remain the law. However, as indicated in this decision, several activities have been deleted in the 1998 regulations. Since the reimbursement period of this reconsideration begins July 1, 2004, those activities deleted by the 1998 regulations no longer constitute a state-mandated new program or higher level of service for purposes of the original test claim. The analysis of activities that have been modified by the 1998 regulations is provided in the staff analysis for *Handicapped and Disabled Students II* (02-TC-40, 02-TC-49).

[83] The local mental health program is the county community mental health program established in accordance with the Short-Doyle Act (Welf. & Inst. Code, §§ 5600 et seq.) or the county welfare agency when designated pursuant to Government Code section 7572.5. (Cal. Code of Regs., tit. 2, § 60020, subd. (d)).

- Participation of mental health professionals, including those contracted to provide services, at IEP team meetings pursuant to Government Code sections 7572 and 7576.
- Developing or amending the mental health related service goals and objectives, and the frequency and duration of such services indicated on the pupil's IEP.
- Transportation of individuals with exceptional needs to and from the mental health service site when such service is not provided at the school.
- Provision by the school of an assigned, appropriate space for delivery of mental health services or a combination of education and mental health services to be provided at the school.
- Continuation of mental health services during periods of school vacation when required by the IEP.
- Identification of existing public and state-certified nonpublic educational programs, treatment modalities, and location of appropriate residential placements which may be used for placement by the expanded IEP program team.
- Out-of-home placement of seriously emotionally disturbed pupils in accordance with the educational and treatment goals on the IEP.[84]

In addition, section 60100, subdivision (a), of the regulations requires the local mental health program and the special education local plan area liaison person to define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

Accordingly, the Commission finds that Government Code section 7571, and sections 60030 and 60100 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Renew the interagency agreement every three years, and revise if necessary.
- Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

2. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)

Government Code section 7572, subdivision (a), provides that "a child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the area of, ... psychotherapy, and other mental health assessments." Government Code section 7572, subdivision (c), states that psychotherapy and other mental health assessments shall be conducted by qualified mental health

[84] California Code of Regulations, title 2, section 60030, subdivision (b).

professionals as specified in regulations developed by the Department of Mental Health and the Department of Education.

Section 60040 of the regulations governs the referral to and the initial assessment by the county. Section 60040, subdivision (a), states that a local education agency may refer a pupil suspected of needing mental health services to the county mental health program when a review of the assessment data documents that the behavioral characteristics of the pupil adversely affect the pupil's educational performance. The pupil's educational performance is measured by standardized achievement tests, teacher observations, work samples, and grade reports reflecting classroom functioning, or other measures determined to be appropriate by the IEP team; the behavioral characteristics of the pupil cannot be defined solely as a behavior disorder or a temporary adjustment problem, or cannot be resolved with short-term counseling; the age of onset was from 30 months to 21 years and has been observed for at least six months; the behavioral characteristics of the pupil are present in several settings, including the school, the community, and the home; and the adverse behavioral characteristics of the pupil are severe, as indicated by their rate of occurrence and intensity.

Section 60040, subdivision (c), states that when a local education agency refers a pupil to the county, the local education agency shall obtain written parental consent to forward educational information to the county and to allow the county mental health professional to observe the pupil during school. The educational information includes a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, and a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.

Section 60040, subdivision (d), states that "[t]he local mental health program shall be responsible for reviewing the educational information [identified in the paragraph above], observing *if necessary*, the pupil in the school environment, and determining if mental health assessments are needed." (Emphasis added.) Subdivision (d)(1) provides that *"[i]f mental health assessments are deemed necessary by a mental health professional*, a mental health assessment plan shall be developed and the parent's written consent obtained ..." (Emphasis added.) This regulation includes language that implies that the observation of the pupil and the preparation of the mental health assessment plan are activities within the discretion of the county. The Commission finds, however, that these activities are mandated by the state when necessary to provide the pupil with a free and appropriate education under federal law. Under the rules of statutory construction, section 60040, subdivision (d), must be interpreted in the context of the entire statutory scheme so that the statutory scheme may be harmonized and have effect.[85] In addition, it is presumed that the administrative agency, like the Departments of Mental Health and Education, did not adopt a regulation that alters the terms of a legislative enactment.[86]

---

[85] *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

[86] *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

Federal law, through the IDEA, requires the state to *identify*, locate, and evaluate *all* children with disabilities, including children attending private schools, who are in need of special education and related services.[87] The state is also required by federal law to conduct a full and individual initial evaluation to determine whether a child is a child with a qualifying disability and the educational needs of the child.[88] Government Code section 7572, subdivision (a), is consistent with federal law and requires that a child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service. In cases where the pupil is suspected of needing mental health services, the state has delegated to the counties the activity of determining the need for service. Accordingly, the Commission finds that the following activities, identified in section 60040, subdivision (d) and (d)(1), are new activities mandated by the state:

- Review the following educational information of a pupil referred to the county by a local education agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
- If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
- If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.

The county is then required by section 60040, subdivision (d)(2), to complete the assessment within the time required by Education Code section 56344 (except as expressly provided, the IEP shall be developed within a total time not to exceed 50 days from the date of receipt of the parent's written consent for assessment.) If a mental health assessment cannot be completed within the time limits, the county mental health program shall notify the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.

Section 60040, subdivision (e), requires the county to provide to the IEP team a written assessment report in accordance with Education Code section 56327. Education Code section 56327 requires that the report include the following information:

- Whether the pupil may need special education and related services.
- The basis for making the determination.
- The relevant behavior noted during the observation of the pupil in the appropriate setting.

---

[87] 20 United States Code section 1412, subdivision (a)(3).

[88] 20 United States Code section 1414, subdivision (a).

- The relationship of that behavior to the pupil's academic and social functioning.
- The educationally relevant health and development, and medical findings, if any.
- For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.
- A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
- The need for specialized services, materials, equipment for pupils with low incidence disabilities.

After the assessment by the county is completed, Government Code section 7572, subdivision (d)(1), requires that the recommendation of the person who conducted the assessment be reviewed and discussed with the parent and the appropriate members of the IEP team before the IEP team meeting. When the proposed recommendation has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person from the county who conducted the assessment to attend the IEP team meeting. Government Code section 7572, subdivision (d)(1), states that "the person who conducted the assessment shall attend the individualized education program team meeting if requested."

Government Code section 7572, subdivision (e), requires the local education agency to invite the county to meet with the IEP team to determine the need for the related service and to participate in developing the IEP. The Commission finds, however, that the county's attendance at the IEP meeting at the request of the local education agency is not mandated by the state for the following reasons. Government Code section 7572, subdivision (e), states that *if* the county representative cannot meet with the IEP team, then the representative is required to provide the local education agency written information concerning the need for the service. The Commission finds that the assessment report required by section 60040, subdivision (e), of the regulations satisfies the written information requirement of Government Code section 7572, subdivision (e), and that Government Code section 7572, subdivision (e), does not impose any further requirement on the county to prepare additional written reports. The conclusion that the county is not required by the state to attend the IEP team meeting at the request of the local education agency is further supported by the sentence added to subdivision (e) by Statutes 1985, chapter 1274. That sentence provides the following: "If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code.[89] There is no requirement in the law that the qualified substitute has to be a county representative.

---

[89] Education Code section 56341, subdivision (e), stated the following when the test claim legislation was enacted (as amended by Stats. 1982, ch. 1201): "If a team is developing, reviewing, or revising the individualized education program of an individual

In addition, Government Code section 7572, subdivision (e), imposes a requirement on the county to provide a copy of the written information to the parent or any adult for whom no guardian or conservator has been appointed.

Finally, Government Code section 7572, subdivision (d)(2), provides that if a parent obtains an independent assessment regarding psychotherapy or other mental health services, and the independent assessment is submitted to the IEP team, the county is required to review the independent assessment. The county's recommendation shall be reviewed and discussed with the parent and with the IEP team before the meeting of the IEP team. The county shall attend the IEP team meeting if requested.

Accordingly, the Commission finds that Government Code section 7572 and section 60040 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Review the following educational information of a pupil referred to the county by a local education agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
- If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
- If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
- Assess the pupil within the time required by Education Code section 56344.[90]

---

with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement."

[90] The existing parameters and guidelines allow reimbursement for mental health assessments and include within that activity the interview with the child and the family, and collateral interviews, as necessary. These activities are not expressly required by the test claim legislation. However, when reconsidering the parameters and guidelines for this program, the Commission has the jurisdiction to consider "a description of the most reasonable methods of complying with the mandate." (Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(1)(A)(4).)

- If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
- Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.
- Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
- In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
- Review independent assessments of a pupil obtained by the parent.
- Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
- In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

3. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subds. (a) and (b); Cal. Code Regs., tit. 2, § 60100)

Government Code section 7572.5, subdivision (a), and section 60100, subdivision (b), of the regulations provide that when an assessment determines that a child is seriously emotionally disturbed as defined in section 300.5 of the Code of Federal Regulations, and any member of the IEP team recommends residential placement based on relevant assessment information, the IEP team shall be expanded to include a representative of the county. Government Code section 7572.5, subdivision (b), requires the expanded IEP team to review the assessment and determine whether (1) the child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care; (2) residential care is necessary for the child to benefit from educational services; and (3) residential services are available, which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation. Section 60100, subdivision (d), similarly states that the expanded IEP team shall consider all possible alternatives to out-of-home placement.

Section 60100, subdivision (c), states that if the county determines that additional mental health assessments are needed, the county is required to assess or re-assess the pupil in accordance with section 60040.

Section 60100, subdivision (e), states that when residential placement is the final decision of the expanded IEP team, the team shall develop a written statement documenting the pupil's educational and mental health treatment needs that support the recommendation for the placement.

Section 60100, subdivision (f), requires the expanded IEP team to identify one or more appropriate, least restrictive and least costly residential placement alternatives, as specified in the regulation.

Finally, section 60100, subdivision (g), requires the county representative on the expanded IEP team to notify the Local Mental Health Director or designee of the team's decision within one working day of the IEP team meeting. However, effective July 1, 1998, section 60100 of the regulations was amended and this activity is no longer required. Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of notifying the local mental health director of the decision is not a state-mandated new program or higher level of service.

Accordingly, the Commission finds that Government Code section 7572.5, subdivisions (a) and (b), and section 60100 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
- Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.

4. Act as the lead case manager, as specified in statute and regulations, if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, §§ 7572.5, subd. (c)(1), 7579; Cal. Code Regs., tit. 2, § 60110)

Government Code section 7572.5, subdivision (c)(1), provides that if the review of the expanded IEP team calls for residential placement of the seriously emotionally disturbed pupil, the county shall act as the lead case manager. That statute further states that "the mental health department shall retain financial responsibility for provision of case management services."

Section 60110, subdivision (a), requires the Local Mental Health Director or the designee to designate a lead case manager to finalize the pupil placement plan with the approval of the parent and the IEP team within 15 days from the decision to place the pupil in a residential facility. Subdivision (c) defines case management duties to include the following activities:

- Convening parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.

- Verifying with the educational administrator or designee the approval of the local governing board of the district, special education service region, or county office pursuant to Education Code section 56342.[91]
- Completing the local mental health program payment authorization in order to initiate out of home care payments.
- Coordinating the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
- Coordinating the completion of the residential placement as soon as possible.
- Developing the plan for and assisting the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
- Facilitating the enrollment of the pupil in the residential facility.
- Conducting quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
- Notifying the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
- Coordinating the six-month expanded IEP team meeting with the local education agency administrator or designee.

As of July 1, 1998, however, the activity of verifying with the educational administrator or designee the approval of the local governing board pursuant to Education Code section 56342 is no longer required by section 60100 of the regulations. In addition, the activity of coordinating the six-month expanded IEP team meeting with the local education agency administrator or designee was repealed as of July 1, 1998. Since the

---

[91] Education Code section 56342 states in relevant part the following:

> Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing board of the district and special education local plan area for review and recommendation regarding the cost of placement.
>
> The local governing board shall complete its review and make its recommendations, if any, at the next regular meeting of the board. A parent or representative shall have the right to appear before the board and submit written and oral evidence regarding the need for nonpublic school placement for his or her child. Any recommendations of the board shall be considered at an individualized education program team meeting, to be held within five days of the board's review.

reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that these two activities are not a state-mandated new program or higher level of service.

Moreover, on April 30, 1986, the Department of Mental Health issued DMH Letter No. 86-12 to all local mental health directors, program chiefs, and administrators, and to county administrative officers regarding the implementation of the test claim legislation. (p. 1513.) On page 1521 of the record, the Department lists the case management duties for seriously emotionally disturbed pupils placed in a residential facility and includes "coordinating the pupil's transportation needs" as a case management duty of the county. This letter issued by the Department of Mental Health was not identified or pled as an executive order in the original test claim, and the activity of "coordinating the pupil's transportation needs" is not expressly required by the test claim statutes or regulations. Moreover, section 60110 was amended on July 1, 1998, to include as a case management activity "coordinating the transportation of the pupil to the facility if needed." Section 60110, as amended on July 1, 1998, is the subject of a pending test claim, *Handicapped and Disabled II* (02-TC-40 and 02-TC-49). Therefore, the Commission finds that "coordinating the pupil's transportation needs" is not mandated by the test claim legislation before the Commission in this reconsideration.

Finally, Government Code section 7579, subdivision (a), requires courts, regional centers for the developmentally disabled, or other non-educational public agencies that engage in referring children to, or placing children in, residential facilities, to notify the administrator of the special education local plan area (SELPA) in which the residential facility is located before the pupil is placed in an out-of-home residential facility. The intent of the legislation, as stated in subdivision (c), is to "encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies." Government Code section 7579, subdivision (a), however, does not apply to county mental health departments. The duty imposed by section 7579 to notify the SELPA before the pupil is placed in a residential facility is a duty imposed on a placing agency, like a court or a regional center for the developmentally disabled. This test claim was filed on behalf of county mental health departments.[92] Thus, the Commission finds that Government Code section 7579 does not impose a state-mandated new program or higher level of service on county mental health departments.

Accordingly, the Commission finds that Government Code sections 7572.5, subdivision (c)(1), and section 60110 of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:

    1. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.

[92] Test claim (CSM 4282) filed by County of Santa Clara.

2. Complete the local mental health program payment authorization in order to initiate out of home care payments.
3. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
4. Coordinate the completion of the residential placement as soon as possible.
5. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
6. Facilitate the enrollment of the pupil in the residential facility.
7. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
8. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.

5. Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

Government Code section 7581 requires the county to be financially responsible for the residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility. Section 7581 states the following:

> The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent [if the parent places the child].

Consistent with Government Code section 7581, section 60200, subdivision (e), of the regulations requires the county welfare department to issue the payments to providers of out-of-home facilities in accordance with Welfare and Institutions Code section 18351, upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The authorization documents are required to include information sufficient to demonstrate that the child meets all eligibility criteria established in the regulations for this program. (Welf. & Inst. Code, § 18351.) The Department of Social Services is required to determine the rates to be paid to the residential providers in accordance with Welfare and Institutions Code section 18350. (Cal. Code Regs., tit. 2, § 60200, subd. (d).)

Thus, the test claim regulations require that payments to providers of 24-hour out-of-home care be made in accordance with Welfare and Institutions Code sections 18350 and

18351. Welfare and Institutions Code sections 18350 and following govern the payments to 24-hour out-of-home care providers for seriously emotionally disturbed pupils, and were added by the 1985 test claim statute. Welfare and Institutions Code sections 18350 and following were not pled in the original *Handicapped and Disabled Students* test claim. However, since Welfare and Institutions Code sections 18350 and 18351 were identified in the regulations that were pled in the test claim, and sections 18350 and 18351 define the scope of the activity and the costs at issue in this case, the Commission finds that the Commission may properly consider sections 18350 and 18351 on reconsideration of this claim.

Welfare and Institutions Code section 18351, subdivision (a), requires the county welfare department located in the same county as the county mental health agency designated to provide case management services to issue payments to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. Subdivision (a) further states that "[a]uthorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education."

Welfare and Institutions Code section 18350, subdivision (c), states that "[p]ayments shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers' actual allowable costs." At the time the test claim legislation was enacted, Welfare and Institutions Code section 11462, subdivision (b), defined "allowable costs" as follows:

> As used in this section, "allowable costs" means: (A) the reasonable cost of, and the cost of providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation; (B) reasonable cost of administration and operation necessary to provide the items described in paragraph (A); and (C) reasonable activities performed by social workers employed by group home providers which are not otherwise allowable as daily supervision or as the costs of administration.

Welfare and Institutions Code section 11462 was repealed and replaced in 1989, before the Commission adopted the 1990 Statement of Decision in this case.[93] A similar definition of allowable costs for care and supervision of the pupil in the residential facility remains the law, however, and can now be found in Welfare and Institutions Code section 11460, subdivision (b).[94] Since Government Code section 7581 requires counties to be responsible for the residential and *non-educational* costs of the pupil only, the

---

[93] Statutes 1989, chapter 1294.

[94] Welfare and Institutions Code section 11460 was added by Statutes 1989, chapter 1294.

Commission finds that the cost for school supplies are not required to be paid to residential care providers by the counties.

In addition, effective July 1, 1998, the regulations were amended to provide a definition of "care and supervision." The definition does not include issuing payments for the reasonable cost of administration and operation, and the reasonable activities performed by social workers employed by group home providers, which are not otherwise allowable as daily supervision or as the costs of administration.[95] Therefore, since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of issuing payments for the reasonable cost of administration and operation, and the reasonable activities performed by social workers employed by group home providers which are not otherwise allowable as daily supervision or as the costs of administration, do not constitute a state-mandated new program or higher level of service.

Thus, the Commission finds that the requirement to issue payments to providers of 24-hour out-of-home facilities for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation, constitutes a state-mandated new program or higher level of service.

Welfare and Institutions Code section 18351, subdivision (b), further requires the county welfare department to submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

Accordingly, the Commission finds that Government Code section 7581 and section 60200, subdivision (e), of the regulations constitute a state-mandated new program or higher level of service for the following activities:

- Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.
- Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

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

Government Code section 7576 requires the State Department of Mental Health, or any designated community mental health service (i.e., the county), to provide psychotherapy or other mental health services when required by a pupil' s IEP. Psychotherapy or other mental health services may be provided directly or by contracting with another public

[95] See California Code of Regulations, title 2, section 60025, subdivision (a), (eff. July 1, 1998).

agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

Section 60020, subdivision (a), defines "psychotherapy and other mental health services" as "those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code [Department of Mental Health regulations], and provided by a local mental health program directly or by contract." Section 542 of the Department of Mental Health regulations governs the definition of "day services": services that are designed to provide alternatives to 24-hour care and supplement other modes of treatment and residential services. Day services include day care intensive services, day care habilitative services, vocational services and socialization services. These services are defined in section 542 of the regulations as follows:

- Day care intensive services are "services designed and staffed to provide a multidisciplinary treatment program of less than 24 hours per day as an alternative to hospitalization for patients who need active psychiatric treatment for acute mental, emotional, or behavioral disorders and who are expected, after receiving these services, to be referred to a lower level of treatment, or maintain the ability to live independently or in a supervised residential facility."
- Day care habilitative services are "services designed and staffed to provide counseling and rehabilitation to maintain or restore personal independence at the best possible functional level for the patient with chronic psychiatric impairments who may live independently, semi-independently, or in a supervised residential facility which does not provide this service."[96]
- Vocational services are "services designed to encourage and facilitate individual motivation and focus upon realistic and obtainable vocational goals. To the extent possible, the intent is to maximize individual client involvement in skill seeking and skill enhancement, with the ultimate goal of meaningful productive work."

---

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

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

- Socialization services are "services designed to provide life-enrichment and social skill development for individuals who would otherwise remain withdrawn and isolated. Activities should be gauged for multiple age groups, be culturally relevant, and focus upon normalization."

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

- Collateral services, which are "sessions with significant persons in the life of the patient, necessary to serve the mental health needs of the patient."
- Assessment, which is defined as "services designed to provide formal documented evaluation or analysis of the cause or nature of the patient's mental, emotional, or behavioral disorder. Assessment services are limited to an intake examination, mental health evaluation, physical examination, and laboratory testing necessary for the evaluation and treatment of the patient's mental health needs."
- Individual therapy, which is defined as "services designed to provide a goal directed therapeutic intervention with the patient which focuses on the mental health needs of the patient."
- Group therapy, which are "services designed to provide a goal directed, face-to-face therapeutic intervention with the patient and one or more other patients who are treated at the same time, and which focuses on the mental health needs of the patient."
- Medication, which is defined to include "the prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process. This service shall include the evaluation of side effects and results of medication."
- Crisis intervention, which means "immediate therapeutic response which must include a face-to-face contact with a patient exhibiting acute psychiatric symptoms to alleviate problems which, if untreated, present an imminent threat to the patient or others."

The County of Los Angeles, in comments to the draft staff analysis, argues that all of the activities listed above should be identified as reimbursable state-mandated activities. However, as of July 1, 1998, the activities of providing vocational services, socialization services, and crisis intervention to pupils are no longer required by section 60020 of the regulations. The final statement of reasons for the 1998 adoption of section 60020 of the regulations by the Departments of Mental Health and Education provides the following reason for the deletion of these activities:

> The provision of vocational services is assigned to the State Department of Rehabilitation by Government Code section 7577.
>
> Crisis service provision is delegated to be "from other public programs or private providers, as appropriate" by these proposed regulations in

> Section 60040(e) because crisis services are a medical as opposed to educational service. They are, therefore, excluded under both the Tatro and Clovis decisions. These precedents apply because "medical" specialists must deliver the services. A mental health crisis team involves specialized professionals. Because of the cost of these professional services, providing these services would be a financial burden that neither the schools nor the local mental health services are intended to address in this program.
>
> The hospital costs of crisis service provision are explicitly excluded from this program in the Clovis decision for the same reasons.
>
> Additionally, the IEP process is one that responds slowly due to the problems inherent in convening the team. It is, therefore, a poor avenue for the provision of crisis services. While the need for crisis services can be a predictable requirement over time, the particular medical requirements of the service are better delivered through the usual local mechanisms established specifically for this purpose.[97]

Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activities of providing vocational services, socialization services, and crisis intervention to pupils do not constitute a state-mandated new program or higher level of service.

In addition, the County of Los Angeles specifically requests reimbursement for "medication monitoring." The phrase "medication monitoring" was not included in the original test claim legislation. "Medication monitoring" was added to the regulations for this program in 1998 (Cal. Code Regs. tit. 2, § 60020.) "Medication monitoring" is part of the new, and current, definition of "mental health services" that was adopted by the Departments of Mental Health and Education in 1998. The current definition of "mental health services" and "medication monitoring" is the subject of the pending test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and will not be specifically analyzed here. But, as of 1998, "dispensing of medications necessary to maintain individual psychiatric stability during the treatment process" was deleted from the definition of "mental health services." Since the reimbursement period for this reconsideration begins July 1, 2004, the Commission finds that the activity of "dispensing of medications necessary to maintain individual psychiatric stability during the treatment process" does not constitute a state-mandated new program or higher level of service.

Finally, section 60200, subdivisions (a) and (b), of the regulations clarifies that counties are financially responsible for providing the mental health services identified in the IEP of a seriously emotionally disturbed pupil placed in an out-of-home residential facility located within the State of California. Mental health services provided to a seriously emotionally disturbed pupil shall be provided either directly or by contract.

---

[97] Final Statement of Reasons, pages 55-56.

Accordingly, the Commission finds that Government Code section 7576, and sections 60020 and 60200 of the regulations constitute a state-mandated new program or higher level of service for the following activity:

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

7. Participate in due process hearings relating to issues involving mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550)

Government Code section 7586, subdivision (a), addresses the due process procedures when disputes regarding special education and related services arise. That section requires all state departments and their designated local agencies to be governed by the procedural safeguards required by federal law. The designated local agency is the county mental health program established in accordance with the Short-Doyle Act.[98]

Government Code section 7586, subdivision (a), states the following:

> All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.[99]

The due process hearing procedures identified in Education Code section 56501 allow the parent and the public education agency to initiate the due process hearing procedures when there is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child; there is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child; or when the parent refuses to consent to an assessment of the child. The due

---

[98] Government Code section 7571; California Code of Regulations, title 2, section 60020, subdivision (d).

[99] Section 60550 of the regulations contains similar language and provides that "[d]ue process hearing procedures apply to the resolution of disagreements between parents and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil."

process hearing rights include the right to a mediation conference pursuant to Education Code section 56500.3 at any point during the hearing process; the right to examine pupil records; and the right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Education Code section 56505.

Education Code section 56505, subdivision (e), further affords the parties the right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities; the right to present evidence, written arguments, and oral arguments; the right to confront, cross-examine, and compel the attendance of witnesses; the right to written findings of fact and decision; the right to be informed by the other parties to the hearing of the issues in dispute; and the right to receive a copy of all documents and a list of witnesses from the opposing party.

The Commission finds that the county's participation in the due process hearings relating to issues involving mental health assessments or services constitutes a state-mandated new program or higher level of service. Although federal law mandates the due process hearing procedures (20 U.S.C. § 1415), it is state law, rather than federal law, that requires counties to participate in due process hearings involving mental health assessment or service issues.

This finding is consistent with the Supreme Court's decision in the recent case of *San Diego Unified School District v. Commission on State Mandates*.[100] In the *San Diego Unified School District* case, the Supreme Court held that all due process hearing costs with respect to a mandatory expulsion of a student (those designed to satisfy the minimum requirements of federal due process, and those due process requirements enacted by the state that may have exceeded federal law) were reimbursable pursuant to article XIII B, section 6 since it was state law that required school districts to incur the hearing costs.[101]

Accordingly, the Commission finds that Government Code section 7586 and section 60550 of the regulations constitute a state-mandated new program or higher level of service for the following activity:

- Participation in due process hearings relating to issues involving mental health assessments or services.

III. Does the test claim legislation impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

In order for the activities listed above to impose a reimbursable, state-mandated program under article XIII B, section 6 of the California Constitution, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant

---

[100] *San Diego Unified School District, supra*, 33 Cal.4th 859.

[101] *Id.* at pages 881-882.

to Government Code section 17514.[102] Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency or school district is required to incur as a result of a statute that mandates a new program or higher level of service.

Government Code section 17556 states that the Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
>
> (f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for

[102] See also, *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835

that portion of the statute relating directly to the enforcement of the crime or infraction.

Except for Government Code section 17556, subdivision (e), the Commission finds that the exceptions listed in section 17556 are not relevant to this claim, and do not apply here. Since the Legislature has appropriated funds for this program in the 2004 Budget Bill, however, Government Code section 17556, subdivision (e), is relevant and is analyzed below.

A. Government Code section 17556, subdivision (e), does not apply to deny this claim

Government Code section 17556, subdivision (e), states the Commission shall not find costs mandated by the state if the Commission finds that:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, *or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate*. (Emphasis added.)

The Budget Acts of 2003 and 2004 contain appropriations " considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." The Budget Act of 2003 appropriated $69 million from the federal special education fund to counties to be used exclusively to support mental health services identified in a pupil's IEP and provided during the 2003-04 fiscal year by county mental health agencies pursuant to the test claim legislation. (Stats. 2003, ch. 157, item 6110-161-0890, provision 17.) The bill further states in relevant part that the funding shall be considered offsetting revenue pursuant to Government Code section 17556, subdivision (e):

> This funding shall be considered offsetting revenues within the meaning of subdivision (e) of section 17556 of the Government Code for any reimbursable mandated cost claim for provision of these mental health services provided in 2003-04.

The Budget Act of 2004 similarly appropriated $69 million to counties from the federal special education fund to be used exclusively to support mental health services provided during the 2004-05 fiscal year pursuant to the test claim legislation. (Stats. 2004, ch. 208, item 6110-161-0890, provision 10.) The appropriation was made as follows:

> Pursuant to legislation enacted in the 2003-04 Regular Session, of the funds appropriated in Schedule (4) of this item, $69,000,000 shall be used exclusively to support mental health services provided during the 2004-05 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code and that are included within an individualized education program pursuant to the Federal Individuals with Disabilities Education Act (IDEA).

The Budget Act of 2004 does not expressly identify the $69 million as "offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." But

the statute does contain language that the appropriation was made "Pursuant to legislation enacted in the 2003-04 Regular Session." As indicated above, it is the 2003-04 Budget Bill that contains the language regarding the Legislature's intent that the $69 million is considered offsetting revenue within the meaning of Government Code section 17556, subdivision (e).

In order for Government Code section 17556, subdivision (e), to apply to deny this claim for fiscal year 2004-05, the plain language of the statute requires that two elements be satisfied. First, the statute must include additional revenue that was specifically intended to fund the costs of the state mandate. Second, the appropriation must be in an amount sufficient to fund the cost of the state mandate.

The Commission finds that the Legislature intended to fund the costs of this state-mandated program for fiscal year 2004-05 based on the language used by the Legislature that the funds "shall be considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." Under the rules of statutory construction, it is presumed that the Legislature is aware of existing laws and that it enacts new laws in light of the existing law.[103] In this case, the Legislature specifically referred to Government Code section 17556, subdivision (e), when appropriating the $69 million. Thus, it must be presumed that the Legislature was aware of the plain language of Government Code section 17556, subdivision (e), and that its application results in a denial of a test claim.

But, based on public records, the second element under Government Code section 17556, subdivision (e), requiring that the appropriation must be *in an amount sufficient* to fund the cost of the state mandate, has not been satisfied. According to the State Controller's Deficiency Report issued on May 2, 2005, the amounts appropriated for this program in fiscal years 2003-04 and 2004-05 are not sufficient to pay the claims received by the State Controller's Office. Unpaid claims for fiscal year 2003-04 total $66,915,606. The unpaid claims for fiscal year 2004-05 total $68,958,263.[104]

---

[103] *Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 624.

[104] The State Controller's Deficiency Report is prepared pursuant to Government Code section 17567. Government Code section 17567 requires that in the event the amount appropriated for reimbursement of a state-mandated program is not sufficient to pay all of the claims approved by the Controller, the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time of proration. The Controller shall then issue a report of the action to the Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature that considers appropriations. The Deficiency Report is, thus, an official record of a state agency and is properly subject to judicial notice by the court. (*Munoz v. State* (1995) 33 Cal.App.4th 1767, 1773, fn. 2; *Chas L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 85-87.)

The Deficiency Report lists the total unpaid claims for this program as follows:

1999 and prior Local Government Claims Bills	$ 8,646
2001-02	124,940,258

This finding is further supported by the 2004 report published by Stanford Law School, which indicates that "$69 million represented only approximately half of the total funding necessary to maintain AB 3632 services."[105]

Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny this claim for fiscal year 2004-05. Eligible claimants are, however, required to identify the funds received from the $69 million appropriation as an offset to be deducted from the costs claimed.[106]

Based on the program costs identified by the State Controller's Office, the Commission further finds that counties do incur increased costs mandated by the state pursuant to Government Code section 17514 for this program. However, as more fully discussed below, the state has established cost-sharing mechanisms for some of the mandated activities that affect the total costs incurred by a county.

B. Increased costs mandated by the state for providing psychotherapy or other mental health treatment services, and for the residential and non-educational costs of a pupil placed in an out-of-home residential facility

In the Commission's 1990 Statement of Decision, the Commission concluded that the costs incurred for providing psychotherapy or other mental health treatment services were subject to the Short-Doyle Act. Under the Short-Doyle Act, the state paid 90 percent of the total costs of mental health treatment services and the counties paid the remaining 10 percent. Thus, the Commission concluded that counties incurred increased costs mandated by the state in an amount that equaled 10 percent of the total psychotherapy or other mental health treatment costs. The Commission further concluded that conducting assessments, participation on an expanded IEP team, and case management services for seriously emotionally disturbed pupils placed in residential facilities were not subject to the Short-Doyle Act and, thus, were 100 percent reimbursable. The Statement of Decision contains no findings regarding the activity of issuing and paying providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils.

Since the Statement of Decision was issued, the law with respect to the funding of psychotherapy or other mental health treatment services has changed. In addition, the Commission finds that the original Statement of Decision does not reflect the cost sharing ratio established by the Legislature in Welfare and Institutions Code section 18355 with respect to the residential care of seriously emotionally disturbed pupils. These issues are addressed below.

2002-03	124,871,698
2003-04	66,915,606
2004-05	68,958,263

[105] "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

[106] Government Code section 17514; California Code of Regulations, title 2, section 1183.1.

1. The costs for providing psychotherapy or other mental health treatment services

The test claim legislation (Stats. 1985, ch. 1274) amended Welfare and Institutions Code section 5651 to require that the annual Short-Doyle plan for each county include a description of the services required by Government Code sections 7571 and 7576 (psychotherapy or other mental health treatment services), including the cost of the services. Section 60200 of the regulations required the county to be financially responsible for the provision of mental health treatment services and that reimbursement to the provider of the services shall be based on a negotiated net amount or rate approved by the Director of Mental Health as provided in Welfare and Institutions Code section 5705.2, or the provider's reasonable actual cost. Welfare and Institutions Code section 5705.2 imposed a cost-sharing ratio for mental health treatment services between the state and the counties, with the state paying 90 percent and the counties paying 10 percent of the total costs.

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

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

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

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

section 6, article XIII B of the California Constitution. (Emphasis in original.)

There have been "intervening changes in the law" with respect to the costs for psychotherapy or other mental health treatment services, however. Thus, the decision in the *County of Santa Clara* case with respect to the inclusion of mental health treatment services for special education pupils in the Short-Doyle plan no longer applies and is not binding on the Commission for purposes of this reconsideration.[107]

In 1991, the Legislature enacted realignment legislation that repealed the Short-Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89, §§ 63 and 173.) The realignment legislation became effective on June 30, 1991. The parties have disputed whether the Bronzan-McCorquodale Act keeps the cost-sharing ratio, with the state paying 90 percent and the counties paying 10 percent, for the cost of psychotherapy or other mental health treatment services for special education pupils.

The Commission finds, however, that the dispute does not need to be resolved for purposes of this reconsideration. Section 38 of Statutes 2002, chapter 1167 (Assem. Bill 2781) prohibits the funding provisions of the Bronzan-McCorquodale Act from affecting the responsibility of the state to fund psychotherapy and other mental health treatment services for handicapped and disabled pupils and requires the state to provide reimbursement to counties for those services for all allowable costs incurred. Section 38 also states the following:

> *For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter*, counties are *not* required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund [i.e. realignment funds]. (Emphasis added.)

In addition, SB 1895 (Stats. 2004, ch. 493, § 6) provides that realignment funds used by counties for this program "are eligible for reimbursement from the state *for all allowable costs* to fund assessments, psychotherapy, and other mental health services . . . ," and that the finding by the Legislature is "declaratory of existing law." (Emphasis added.)

Therefore, beginning July 1, 2001, the 90 percent-10 percent cost-sharing ratio for the costs incurred for psychotherapy and other mental health treatment services no longer applies. Since the period of reimbursement for purposes of this reconsideration begins July 1, 2004, and section 38 of Statutes 2002,chapter 1167 is still in effect, all of the county costs for psychotherapy or other mental health treatment services are reimbursable, less any applicable offsets that are identified below.

2. The residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility

Government Code section 7581 requires the county to be financially responsible for the residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility. As described above, the residential and non-

[107] *George Arakelian Farms, Inc., supra,* 49 Cal.3d 1279, 1291.

educational costs include the costs for food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

Welfare and Institutions Code section 18355 describes a cost-sharing formula for the payment of these costs. That section states in relevant part the following:

> Notwithstanding any other provision of law, 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24-hour out-of-home care payment and local administrative costs. Reimbursement for 24-hour out-of-home payment costs shall be from that appropriation, *subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200*, and available funds... (Emphasis added.)

Since 1991, Welfare and Institutions Code section 15200, subdivision (c)(1), has provided that for counties that meet the performance standards or outcome measures in Welfare and Institutions Code section 11215, the state shall appropriate 40 percent of the sum necessary for the adequate care of each child. Thus, for those counties meeting the performance measures, their increased cost mandated by the state would equal 60 percent of the total cost of care for each special education child placed in an out-of-home residential facility, less any applicable offset.

When a county does not meet the performance standards or outcome measures in Welfare and Institutions Code section 11215, state funding for the program decreases and the counties are liable for the decreased cost.[108] The Commission finds that a county's cost incurred for the decrease in the state's share of the costs as a result of the county's failure to meet the performance standards, are not costs mandated by the state and are not reimbursable. Counties are mandated by the state to meet the performance standards for residential facilities.[109]

Therefore, the Commission finds that counties incur increased costs mandated by the state in an amount that equals 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

C. Identification of offsets

Reimbursement under article XIII B, section 6 and Government Code section 17514 is required only for the increased costs mandated by the state. As determined by the California Supreme Court, the intent behind section 6 was to prevent the state from

---

[108] Welfare and Institutions Code sections 15200, subdivision (c)(2), and 11215, subdivision (b)(5).

[109] *Ibid.*

forcing new programs on local governments that require an increased expenditure by local government of their limited tax revenues.[110]

The 1990 Statement of Decision does not identify any offsetting revenues. The parameters and guidelines for this program lists the following reimbursements that must be deducted from the costs claimed:

- Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and
- Any other reimbursements for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

The Commission agrees with the identification of any direct payments or categorical funds appropriated by the Legislature specifically for this program as an offset to be deducted from the costs claimed. In the past, categorical funding has been provided by the state for this program in the amount of $12.3 million.[111] The categorical funding was eliminated, however, in the Budget Acts of 2002 through 2004.

If, however, funds are appropriated in the Budget Act for this program, such as the $69 million appropriation in the 2004-05 Budget Act, such funds are required to be identified as an offset.

The Commission disagrees with the language in the existing parameters and guidelines that excludes private insurance payments as offsetting revenue. Federal law authorizes public agencies to access private insurance proceeds for services provided under the IDEA if the parent consents.[112] Thus, to the extent counties obtain private insurance proceeds with the consent of a parent for purposes of this program, such proceeds must be identified as an offset and deducted from the costs claimed. This finding is consistent with the California Supreme Court's decision in *County of Fresno v. State of California.* In the *County of Fresno* case, the court clarified that article XIII B, section 6 requires reimbursement by the state only for those expenses that are recoverable from tax revenues. Reimbursable costs under article XIII B, section 6, do not include reimbursement received from other non-tax sources.[113]

The Commission further disagrees with the language in the existing parameters and guidelines that excludes Medi-Cal payments as offsetting revenue. Federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.[114] Federal law limits this authority as follows:

---

[110] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of San Diego, supra*, 15 Cal.4th at page 81.

[111] Budget Acts of 1994-2001, Item 4440-131-0001.

[112] 34 Code of Federal Regulations section 300.142, subdivision (f).

[113] *County of Fresno, supra,* 53 Cal.3d at page 487.

[114] 34 Code of Federal Regulations section 300.142, subdivision (e).

(2) With regard to services required to provide FAPE [free appropriate public education] to an eligible child under this part, the public agency-

(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent would be required to pay;

(iii) May not use a child's benefits under a public insurance program if that use would

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discrimination of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.[115]

According to the 2004 report published by Stanford Law School, 51.8 percent of the students receiving services under the test claim legislation are Medi-Cal eligible.[116] Thus, the Commission finds to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal government for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed.

In addition, Government Code section 7576.5 describes offsetting revenue to counties transferred from local educational agencies for this program as follows:

> If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce

---

[115] 34 Code of Federal Regulations section 300.142, subdivision (e)(2)

[116] "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

> the local costs of providing these services. These funds shall be used exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

Government Code section 7576.5 was added by the Legislature in 2003 (Stats. 2003, ch. 227) and became operative and effective on August 11, 2003. Thus, the Commission finds money received by counties pursuant to Government Code section 7576.5 shall be identified as an offset and deducted from the costs claimed.

Finally, the existing parameters and guidelines do not require eligible claimants to offset any Short-Doyle funding, and specifically excludes such funding as an offset. As indicated above, the Short-Doyle Act was repealed and replaced with the realignment legislation of the Bronzan-McCorquodale Act. Based on the plain language of SB 1895 (Stats. 2004, ch. 493, § 6), realignment funds used by a county for this mandated program are not required to be deducted from the costs claimed. Section 6 of SB 1895 adds, as part of the Bronzan-McCorquodale Act, section 5701.6 to the Welfare and Institutions Code. Section 5701.6 states in relevant part the following:

> Counties may utilize money received from the Local Revenue Fund [realignment] ...to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. *If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs* to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations [IDEA] and required by Chapter 26.5 ... of the Government Code. (Emphasis added.)

Thus, the Commission finds that realignment funds used by a county for this mandated program are not required to be identified as an offset and deducted from the costs claimed.

Accordingly, the Commission finds that the following revenue and/or proceeds must be identified as offsets and be deducted from the costs claimed:

- Funds received by a county pursuant to Government Code section 7576.5.
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes funds received by a county pursuant to the $69 million appropriation to counties for purposes of this mandated program in the Budget Act of 2004 ((Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
- Private insurance proceeds obtained with the consent of a parent for purposes of this program.

- Medi-Cal proceeds obtained from the state or federal government that pay a portion of the county services provided to a pupil under this mandated program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source.[117]

CONCLUSION

The Commission concludes that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the *increased costs* in performing the following activities:

1. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
   - Renew the interagency agreement every three years, and revise if necessary.
   - Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
2. Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team (Gov. Code, § 7572, Cal. Code Regs., tit. 2, § 60040)
   - Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
   - If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
   - If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
   - Assess the pupil within the time required by Education Code section 56344.
   - If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
   - Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report

[117] *County of Fresno, supra,* 53 Cal.3d at page 487; California Code of Regulations, title 2, section 1183.1, subdivision (a)(8).

shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.

- Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
- In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
- Review independent assessments of a pupil obtained by the parent.
- Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
- In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

3. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary (Gov. Code, § 7572.5, subds. (a) and (b); Cal. Code Regs., tit. 2, § 60100)

   - Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
   - Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.

4. Act as the lead case manager if the IEP calls for residential placement of a seriously emotionally disturbed pupil (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, § 60110)

   - Designate a lead case manager when the expanded IEP team recommends out-of-home residential placement for a seriously emotionally disturbed pupil. The lead case manager shall perform the following activities:

     1. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
     2. Complete the local mental health program payment authorization in order to initiate out of home care payments.

3. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
4. Coordinate the completion of the residential placement as soon as possible.
5. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
6. Facilitate the enrollment of the pupil in the residential facility.
7. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
8. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.

5. Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

   - Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.
   - Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

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

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

7. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550)

The Commission further concludes that the following revenue and/or proceeds must be identified as offsets and be deducted from the costs claimed:

- Funds received by a county pursuant to Government Code section 7576.5
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes funds received by a county pursuant to the $69 million appropriation to counties for purposes of this mandated program in the Budget Act of 2004 ((Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
- Private insurance proceeds obtained with the consent of a parent for purposes of this program.
- Medi-Cal proceeds obtained from the state or federal government that pay a portion of the county services provided to a pupil under this mandated program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source

The period of reimbursement for this decision begins July 1, 2004.

Finally, any statutes and/or regulations that were pled in *Handicapped and Disabled Students* (CSM 4282) that are not identified above do not constitute a reimbursable state-mandated program.

Tab 4

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Government Code Sections 7570, 7571, 7572, 7572.5, 7572.55, 7573, 7576, 7579, 7582, 7584, 7585, 7586, 7586.6, 7586.7, 7587, 7588;

Statutes 1984, Chapter 1747; Statutes 1985, Chapter 107; Statutes 1985, Chapter 759; Statutes 1985, Chapter 1274; Statutes 1986, Chapter 1133; Statutes 1992, Chapter 759; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654; Statutes 1998, Chapter 691; Statutes 2001, Chapter 745; Statutes 2002, Chapter 585; and Statutes 2002, Chapter 1167; and

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

Filed on June 27, 2003 by the County of Stanislaus, Claimant; and

Filed on June 30, 2003, by the County of Los Angeles, Claimant.

Case No.: 02-TC-40/02-TC-49

Handicapped & Disabled Students II

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

(*Adopted on May 26, 2005*)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Government Code Sections 7570, 7571, 7572, 7572.5, 7572.55, 7573, 7576, 7579, 7582, 7584, 7585, 7586, 7586.6, 7586.7, 7587, 7588;

Statutes 1984, Chapter 1747; Statutes 1985, Chapter 107; Statutes 1985, Chapter 759; Statutes 1985, Chapter 1274; Statutes 1986, Chapter 1133; Statutes 1992, Chapter 759; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654; Statutes 1998, Chapter 691; Statutes 2001, Chapter 745; Statutes 2002, Chapter 585; and Statutes 2002, Chapter 1167; and

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

Filed on June 27, 2003 by the County of Stanislaus, Claimant; and

Filed on June 30, 2003, by the County of Los Angeles, Claimant.

Case No.: 02-TC-40/02-TC-49

Handicapped & Disabled Students II

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

(Adopted on May 26, 2005)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2005. Leonard Kaye and Paul McIver appeared on behalf of the County of Los Angeles. Pam Stone represented and appeared on behalf of the County of Stanislaus. Linda Downs appeared on behalf of the County of Stanislaus. Nicholas Schweizer and Jody McCoy appeared on behalf of the Department of Finance

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

The Commission adopted the staff analysis at the hearing by a vote of 4-0.

BACKGROUND

This test claim addresses amendments to the Handicapped and Disabled Students program (also known as, Assembly Bill 3632) administered by county mental health

departments. The Handicapped and Disabled Students program was initially enacted in 1984, as the state's response to federal legislation that guaranteed disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education (Individuals with Disabilities Education Act, or IDEA). Before 1984, the state adopted a comprehensive statutory scheme in the Education Code to govern the special education and related services provided to disabled children.[1] Among the related services, called "designated instruction and services" in California, the following mental health services are identified: counseling and guidance, psychological services other than the assessment and development of the IEP, parent counseling and training, health and nursing services, and social worker services.[2] The state and the local educational agencies (school districts and county offices of education) provided all related services, including mental health services, to children with disabilities.

In 1984 and 1985, the Legislature enacted Assembly Bill 3632 (Stats. 1984, ch. 1747, and Stats. 1985, ch. 1274), to shift the responsibility and funding for providing mental health services for students with disabilities from local educational agencies to county mental health departments. AB 3632 added Chapter 26.5 to the Government Code (§§ 7570 et seq.), and the Departments of Mental Health and Education adopted emergency regulations (Cal. Code Regs., tit. 2, §§ 60000-60610) to require county mental health departments to:

- Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement.
- Perform an initial assessment of a pupil referred by the local educational agency, and discuss assessment results with the parents and IEP team.
- Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
- Act as the lead case manager, as specified in statute and regulations, if the IEP calls for residential placement of a seriously emotionally disturbed pupil.
- Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils.
- Provide psychotherapy or other mental health services, as defined in regulations, when required by the IEP.
- Participate in due process hearings relating to issues involving mental health assessments or services.

---

[1] Education Code section 56000 et seq. (Stats. 1980, ch. 797.)

[2] Education Code section 56363.

Past and Pending Commission Decisions on the Handicapped and Disabled Students Program

On April 26, 1990, the Commission adopted a statement of decision in *Handicapped and Disabled Students* (CSM 4282). The test claim was filed by the County of Santa Clara on Statutes 1984, chapter 1747; Statutes 1985, chapter 1274; and on California Code of Regulations, title 2, sections 60000 through 60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)). The Commission determined that the activities of providing mental health assessments, psychotherapy and other mental health treatment services, as well as assuming expanded IEP responsibilities, were reimbursable as a state-mandated program under article XIII B, section 6 of the California Constitution beginning July 1, 1986. Activities related to assessments and IEP responsibilities were found to be 100 per cent (100%) reimbursable. Psychotherapy and other mental health treatment services were found to be ten per cent (10%) reimbursable due to the cost sharing methodology in existence under the Short-Doyle Act for local mental health services. On January 11, 1993, the Sixth District Court of Appeal, in an unpublished decision, sustained the Commission's decision in CSM 4282.[3]

In May 2000, the Commission approved a second test claim relating to this program, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (CSM 97-TC-05). The test claim on *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) was filed on Government Code section 7576, as amended by Statutes 1996, chapter 654, the corresponding regulations (Cal. Code Regs, tit. 2, §§ 60100 and 60200), and on a Department of Mental Health Information Notice Number 86-29. The test claim in *Seriously Emotionally Disturbed Pupils* addressed only the counties' responsibilities for out-of-state residential placements for seriously emotionally disturbed pupils, and has a reimbursement period beginning January 1, 1997.

In addition, there are two other matters currently pending with the Commission relating to the test claim statutes and regulations. In 2001, the Counties of Los Angeles and Stanislaus filed requests to amend the parameters and guidelines on the original test claim decision, *Handicapped and Disabled Students* (CSM 4282). The counties request that the parameters and guidelines be amended to delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services; to add an activity to provide reimbursement for room and board for in-state placement of pupils in residential facilities; and to amend the language regarding the reimbursement of indirect costs. The request to amend the parameters and guidelines was scheduled on the Commission's March 2002 hearing calendar. But at the request of the counties, the item was taken off calendar, and is still pending. If the Commission approves the counties'

[3] *County of Santa Clara v. Commission on State Mandates* (Jan. 11, 1993, H009520) [nonpub. Opn.]).

request to amend the parameters and guidelines, the reimbursement period for the new amended portions of the parameters and guidelines would begin on July 1, 2000.[4]

The second matter currently pending with the Commission is the reconsideration of the *Handicapped and Disabled Students* test claim (04-RL-4282-10) that was directed by Statutes 2004, chapter 493 (Sen. Bill No. 1895).

This test claim, *Handicapped and Disabled Students II*, presents the following issues:

- Does the Commission have the jurisdiction to rehear in this test claim the statutes and regulations previously determined by the Commission to constitute a reimbursable state-mandated program in *Handicapped and Disabled Students* (CSM 4282) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05)?
- Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and regulations impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and regulations impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Claimants' Position

The claimants contend that the test claim statutes and regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The County of Los Angeles, according to its test claim, is seeking reimbursement for the following activities:

- Mental health assessments and related treatment services, including psychotherapy, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management.
- Placement in a residential facility outside the child's home, including the provision of food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation.
- Due process hearings, notifications, resolution requirements.
- Preparation of interagency agreements.

The County of Stanislaus is seeking reimbursement for the activities required by statutory and regulatory amendments to the original program. The County of Stanislaus takes no position on the issue of providing residential services to the child.

---

[4] California Code of Regulations, title 2, section 1183.2.

The Counties of Los Angeles and Stanislaus filed comments on the draft staff analysis, which are addressed in the analysis of this claim.

Position of the Department of Finance

The Department of Finance filed comments on the test claims describing the Department's position on funding and the requested costs for residential treatment. With respect to funding, the Department contends the following:

- For claims for mental health treatment services provided before fiscal year 2000-01, eligible claimants are entitled to reimbursement for ten percent (10%) of their costs only. The Department argues that Bronzan-McCorquodale Act of 1991 was intended to replace the Short-Doyle Act, and provides ninety percent (90%) of the funding to counties for mental health treatment services for special education pupils.
- Eligible claimants are entitled to 100 per cent (100%) reimbursement for mental health treatment services beginning July 1, 2001. The Department states that section 38 of Statutes 2002, chapter 1167, increased the percentage of state reimbursement for treatment costs from ten percent (10%) to 100% for services delivered in fiscal year 2001-02 and subsequent years.

The Department of Finance states the following with respect to residential treatment costs:

> ....The [Department of Social Services (DSS)] sets reasonable board and care rates for in-state placement facilities based on specified criteria. To allow community mental health services to pay an unspecified and unregulated "patch" above and beyond the reasonable rate established by the DSS, could be extremely expensive and [would] provide no additional mental health services to the disabled child. The State would no longer be able to determine fair and reasonable placement costs. It is clear that Section 62000 [of the DSS regulations] intended that community mental health services defer to DSS when it came to board and care rate setting for in-state facilities. The state mandate process should not be used to undermine in-state rate setting for board and care in group homes.[5]

The Department of Finance filed comments on the draft staff analysis arguing that the Handicapped and Disabled Students program is federally mandated under the current federal law and that some of the activities recommended for approval do not increase the level of service required of counties and, thus, should be denied.

Position of the Department of Mental Health

The Department of Mental Health filed comments on the draft staff analysis that state in relevant part the following:

> After full review, [Department of Mental Health] wishes to state that it concurs with the comments made by the Department of Finance, but that [Department of Mental Health] has no objections, suggested

[5] Department of Finance comments filed October 7, 2003.

modifications, or other comments regarding the submission to the Claimants.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[6] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[7] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[8] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[9] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[10]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[11] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[12] A "higher level of service" occurs

---

[6] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[7] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[8] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[9] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[10] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

when the new "requirements were intended to provide an enhanced service to the public."[13]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[14] -

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[15] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[16]

Issue 1: **Does the Commission have jurisdiction to rehear in this test claim the statutes and regulations previously determined by the Commission to constitute a reimbursable state-mandated program in *Handicapped and Disabled Students* (CSM 4282) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05)?**

The claimants have included the following statutes and regulations in this test claim:

- Government Code sections 7570 et seq., as added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter, 107.
- Government Code section 7576, as amended by Statutes 1996, chapter 654.
- Sections 60000 through 60610 of the joint regulations adopted by the Departments of Mental Health and Education to implement the program. The claimants do not, however, identify the version of the regulations for which they are claiming reimbursement.

As indicated in the Background, the statutes and some of the regulations identified in the paragraph above were included in two prior test claims that the Commission approved as reimbursable state-mandated programs. In 1990, the Commission adopted a statement of decision in *Handicapped and Disabled Students* (CSM 4282) approving Government Code sections 7570 et seq., as added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter, 107, and sections 60000 through 60610 of the emergency regulations (filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86,

---

[13] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[14] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

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

[16] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

No. 28)) as a reimbursable state-mandated program. The Legislature has directed the Commission to reconsider this decision.[17]

In 2000, the Commission adopted a statement of decision in *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) approving Government Code section 7576, as amended by Statutes 1996, chapter 654, and the corresponding regulations (Cal. Code Regs, tit. 2, §§ 60100 and 60200) as a reimbursable state-mandated program for the counties' responsibilities for out-of-state residential placements for seriously emotionally disturbed pupils.

It is a well-settled principle of law that an administrative agency, like the Commission, does not have jurisdiction to retry a question that has become final. If a prior final decision is retried by the agency, without the statutory authority to retry or reconsider the case, that decision is void.[18]

In the present case, the Commission does not have the statutory authority to rehear in this test claim the statutes and regulations previously determined by the Commission to constitute a reimbursable state-mandated program in *Handicapped and Disabled Students* (CSM 4282) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

At the time these test claims were filed, Government Code section 17521 defined a "test claim" as the first claim, including claims joined or consolidated with the first claim, filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. The Commission's regulations allowed the filing of more than one test claim on the same statute or executive order only when (1) the subsequent test claim is filed within sixty (60) days from the date the first test claim was filed; and (2) when each test claim is filed by a different type of claimant or the issues presented in each claim require separate representation. (Cal. Code Regs., tit. 2, §§ 1183, subd. (i).) This test claim was filed more than sixty days from the date that *Handicapped and Disabled Students* (CSM 4282) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) were filed. In addition, all three test claims were filed by the same type of claimant; counties. There is no evidence in the record to suggest that the same statutes already determined by the Commission to constitute a reimbursable state-mandated program in the prior test claims require separate representation here.

---

[17] See reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10).

[18] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made is conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.

Finally, Government Code section 17559 grants the Commission the authority to reconsider prior final decisions only within 30 days after the Statement of Decision is issued. Since the two prior decisions in *Handicapped and Disabled Students* (CSM 4282) and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) were adopted and issued well over 30 days ago, the Commission does not have the jurisdiction in this test claim to reconsider the same statutes and regulations pled and determined in prior test claims.

As recognized by the California Supreme Court, the purpose behind the statutory scheme and procedures established by the Legislature in Government Code section 17500 et seq. was to "avoid[] multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."[19]

Therefore, the Commission does not have the jurisdiction in this test claim over the following statutes and regulations:

- The Government Code sections in Chapter 26.5 considered in *Handicapped and Disabled Students* (CSM 4282) that were added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter, 107, and that have not been amended by the remaining test claim legislation. These statutes are Government Code sections 7571, 7572.5, 7573, 7586, 7586.7, and 7588.
- Government Code section 7576, as amended by Statutes 1996, chapter 654, as it relates to out-of-state placement of seriously emotionally disturbed pupils.
- California Code of Regulations, title 2, sections 60000 through 60610 (filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)). These regulations were repealed and were superceded by new regulations, effective July 1, 1998.[20]
- California Code of Regulations, title 2, sections 60100 and 60200 (filed as emergency regulations on July 1, 1998 (Register 98, No. 26) and refiled as final regulations on August 9, 1999 (Register 99, No. 33)) as they relate to the out-of-state placement of seriously emotionally disturbed pupils.

Issue 2: Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?

The activities performed by counties under the Handicapped and Disabled Students program are mandated by the state and not by federal law

[19] *Kinlaw, supra*, 54 Cal.3d at page 333.

[20] See History of the regulations (Cal. Code Regs., tit. 2, §§ 60000 et seq.), notes 8 and 9.

The test claim statutes and regulations implement the federal special education law (IDEA) that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.

The Department of Finance argues that the activities performed by counties under the Handicapped and Disabled Students program are federally mandated and, thus, reimbursement is not required under article XIII B, section 6 of the California Constitution. The Commission disagrees.

In 1992, the Third District Court of Appeal, in *Hayes v. Commission on State Mandates*, determined that the federal law at issue in the present case, IDEA, imposes a federal mandate on the states.[21] The *Hayes* case involved test claim legislation requiring school districts to provide special education services to disabled pupils. The school districts in the *Hayes* case alleged that the activities mandated by the state that exceeded federal law were reimbursable under article XIII B, section 6 of the California Constitution.

The court in *Hayes* determined that the state's "alternatives [with respect to federal law] were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event."[22] The court concluded that the state had no "true choice" but to participate in the federal program and, thus, there was a federal mandate on the state.[23]

Although the court concluded that the federal law was a mandate on the states, the court remanded the case to the Commission for further findings to determine if the state's response to the federal mandate constituted a state-mandated new program or higher level of service on the school districts.[24] The court held that if the state "freely chose" to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate. The court's holding is as follows:

> In our view the determination whether certain costs were imposed upon the local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. *If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.*[25] (Emphasis added.)

---

[21] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1592.

[22] *Hayes, supra*, 11 Cal.App.4th at page 1591.

[23] *Ibid.*

[24] *Ibid.*

[25] *Id.* at page 1593-1594.

Here, pursuant to the court's holding in *Hayes*, the state "freely chose" to impose the costs upon the counties as a means of implementing the federal IDEA program.

Federal law does not require the state to impose any requirements relating to special education and related services on counties. At the time the test claim legislation was enacted, the requirements under federal law were imposed only on states and local educational agencies.[26] In 1997, Congress amended the IDEA to "strengthen the requirements on ensuring provisions of services by non-educational agencies ..." (Sen. Rep. 105-17, dated May 9, 1997.) The amendment clarified that the state or local educational agency responsible for developing a child's IEP could look to non-educational agencies to pay for or provide those services the educational agencies are otherwise responsible for. The amendment further clarified that if a non-educational agency failed to provide or pay for the special education and related services, the state or local educational agency responsible for developing the IEP remain ultimately responsible for ensuring that children receive all the services described in their IEPs in a timely fashion and the state or local educational agency shall provide or pay for the services.[27] Federal law, however, does not require states to use non-educational agencies to pay for or provide services. A state's decision regarding how to implement the IDEA is still within the discretion, or the "free choice," of the state. The Department of Finance agrees with this interpretation of federal law. The Department states the following:

> While subparagraph (A) of paragraph (11) of subdivision (a) of Sec. 612 states that the state educational agency is responsible for ensuring for the provision of IDEA services, subparagraph (B) states that "[s]ubparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State." This makes clear that Federal IDEA anticipates that agencies other than educational agencies *may be* responsible for providing services and absorbing costs related to the federal legislation. Indeed, subparagraph (A) of paragraph (12) lays out specific guidelines for the assigning of responsibility for services among various agencies.
>
> DOF contends that the fact that *the state has chosen through AB 3632* and related legislation to make mental health services related to individual education plans (IEPs) the responsibility of mental health agencies does not, in and of itself, trigger mandate reimbursement through Article XIII B, section 6 as the responsibilities in question are federally mandated and

---

[26] Title 34 Code of Federal Regulations section 300.2.

[27] Title 20 United States Code sections 1412 (a)(12)(A), (B), and (C), and 1401 (8); Title 34 Code of Federal Regulations section 300.142. (See also, Letters from the Department of Education dated July 28, 1998 and August 2, 2004, to all SELPAs, COEs, and LEAs on the requirements of 34 C.F.R. 300.142; and *Tri-County Special Education Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 578, where the court stated that "it is clear the Legislature could reassign administration of IDEA programs to a different entity if it chose to do so.".)

federal law allows the state to choose the agency or agencies responsible for service. (Emphasis added.)[28]

Accordingly, the activities performed by counties under the Handicapped and Disabled Students program are mandated by the state and not by federal law. Thus, the actual increased costs incurred as a result of the activities in the program that constitute a mandated new program or higher level of service are reimbursable within the meaning of article XIII B, section 6.

Several test claim statutes and regulations do not mandate counties to perform an activity and, thus, are not subject to article XIII B, section 6

In order for a statute or an executive order to be subject to article XIII B, section 6 of the California Constitution, the statutory language must mandate or require local governmental agencies to perform an activity or task. [29]

Here, there are several statutes included in the test claim that are helpful in understanding the Handicapped and Disabled Students program. But they do not require counties to perform an activity or task. These statutes are Government Code sections 7570, 7584, and 7587.[30]

In addition, non-substantive changes and amendments that do not affect counties were made to Government Code sections 7572, 7582, and 7585 by the test claim statutes. These amendments do not impose any state-mandated activities on counties.[31, 32]

---

[28] Department of Finance comments on the draft staff analysis.

[29] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra,* 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284; *Department of Finance, supra,* 30 Cal.4th at page 736; Gov. Code, § 17514.

[30] Government Code section 7570 provides that ensuring a free and appropriate public education for children with disabilities under federal law and the Education Code is the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. Government Code section 7584 defines "disabled youth," "child," and "pupil." Government Code section 7587 requires the Departments of Education and Mental Health to adopt regulations to implement the program.

[31] Government Code section 7572, as originally added in 1984 and amended in 1985, addresses the assessment of a student, including psychological and other mental health assessments performed by counties. The 1992 amendments to Government Code section 7572 substituted the word "disability" for "handicap," and made other clarifying, non-substantive amendments. Government Code section 7582 states that assessments and therapy treatment services provided under the program are exempt from financial eligibility standards and family repayment requirements. The 1992 amendment to section 7582 substituted "disabled child or youth" for "handicapped child." Government Code section 7585 addresses the notification of an agency's failure to provide a required service and reports to the Legislature. The 2001 amendments to section 7585 corrected the spelling of "administrative" and deleted the requirement for the Superintendent of

Furthermore, the Commission finds that Government Code section 7579, as amended by the test claim legislation, does not impose any state-mandated duties on county mental health departments. As originally enacted, Government Code section 7579 required courts, regional centers for the developmentally disabled, or other non-educational public agencies that engage in referring children to, or placing children in, residential facilities, to notify the administrator of the special education local plan area (SELPA) in which the residential facility is located before the pupil is placed in an out-of-home residential facility. The intent of the legislation, as stated in subdivision (c), was to "encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies."

The 2002 test claim statute (Stats. 2002, ch. 585) amended Government Code section 7579 by adding subdivision (d), to require public agencies other than educational agencies that place a child in a residential facility located out of state, without the involvement of a local educational agency, to assume responsibility for educational and non-educational costs of the child. Government Code section 7579, subdivision (d), states the following:

> Any public agency other than an educational agency that places a disabled child or child suspected of being disabled in a facility out of state without the involvement of the school district, SELPA, or COE [county office of education] in which the parent or guardian resides, shall assume financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility.

Government Code section 7579, subdivision (d), however, does not apply to county mental health departments. The duty imposed by section 7579 to pay the educational and non-educational costs of a child placed in an out-of-state residential facility is a duty imposed on a placing agency, like a court or a regional center for the developmentally

---

Public Instruction and the Secretary of Health and Welfare to submit yearly reports to the Legislature on the failure of an agency to provide a required service.

[32] The County of Los Angeles, in comments to the draft staff analysis for this test claim, addresses a finding made on the reconsideration of the original *Handicapped and Disabled Students* claim (04-RL-4282-10), relating to Government Code section 7572 and the counties' attendance at IEP meetings following a mental health assessment of a pupil. The County's comments are not relevant to this test claim, however. The language in Government Code section 7572 relating to the county's attendance at an IEP meeting following an assessment was added by the Legislature in 1985. As indicated in the analysis, the Commission does not have jurisdiction in this test claim to address the statutes or activities originally added by the Legislature in 1984 and 1985. The Commission does have jurisdiction in this test claim over Government Code section 7572, as amended by Statutes 1992, chapter 759. But the 1992 amendments to section 7572 were non-substantive and do not impose any additional state-mandated activities on counties.

disabled, that fails to seek the involvement of the local educational agency. This consolidated test claim has been filed on behalf of county mental health departments.[33]

This conclusion is further supported by section 60510 of the regulations. Section 60510 of the regulations was adopted in 1998 (filed as an emergency regulation on July 1, 1998 (Register 98, No. 26) and refiled as a final regulation on August 9, 1999 (Register 99, No. 33)) to implement Government Code section 7579. The regulation requires "the court, regional center for the developmentally disabled, or public agency other than an educational agency" to notify the SELPA director before placing a child in a facility and requires the agency to provide specified information to the SELPA. Section 60510 is placed in article 7 of the regulations dealing with the exchange of information between "Education and Social Services." Article 7 is separate and apart from, and located after, the regulations addressing mental health related services. Accordingly, the Commission finds that Government Code section 7579, and section 60510 of the regulations, do not impose any state-mandated duties on county mental health departments.

Finally, the County of Stanislaus requests reimbursement for section 60400 of the regulations (filed as an emergency regulation on July 1, 1998 (Register 98, No. 26) and refiled as a final regulation on August 9, 1999 (Register 99, No. 33)). Section 60400, on its face, does not mandate any activities on counties. Rather, section 60400 of the regulations addresses the requirement imposed on the Department of Health Services to provide the services of a home health aide when the local educational agency considers a less restrictive placement from home to school for a pupil. The statutory authority and reference for this regulation is Government Code section 7575, which requires the Department of Health Services, "*or any designated local agency administering the California Children's Services*," to be responsible for occupational therapy, physical therapy, and the services of a home health aide, as required by the IEP. The claimants, however, did not plead Government Code section 7575 in their test claims. In addition, there is no evidence in the record that local agencies administering the California Children's Services program have incurred increased costs mandated by the state. Accordingly, the Commission finds that section 60400 of the regulations does not impose any state-mandated activities on county mental health departments.

Accordingly, Government Code sections 7570, 7572, 7579, 7582, 7584, 7585, and 7587, as amended by the test claim legislation, and sections 60400 and 60510 of the regulations do not impose state-mandated duties on counties and, thus, are not subject to article XIII B, section 6 of the California Constitution.

---

[33] The declarations submitted by the claimants here are from the county mental health departments. (See declaration of Paul McIver, District Chief, Department of Mental Health, County of Los Angeles; and declaration of Dan Souza, Mental Health Director for the County of Stanislaus.)

The remaining test claim statutes and regulations constitute a "program" within the meaning of article XIII B, section 6

The remaining test claim statutes and regulations consist of the following:

- Government Code sections 7572.55 (as added in 1994), and 7576 and 7586.6 (as amended in 1996); and
- With the exception of sections 60400 and 60510 of the regulations, the joint regulations adopted by the Departments of Mental Health and Education (Cal. Code Regs, tit. 2, §§ 60000 et seq.), which took effect as emergency regulations on July 1, 1998 (Register 98, No. 26) and became final on August 9, 1999 (Register 99, No. 33).

In order for the test claim statutes and regulations to be subject to article XIII B, section 6 of the California Constitution, the statutes and regulations must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles* v. *State of California*[34], defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[35]

The test claim statutes and regulations involve the special education and related services provided to pupils. In 1988, the California Supreme Court held that education of handicapped children is "clearly" a governmental function providing a service to the public.[36] Thus, the remaining test claim statutes and regulations qualify as a program that is subject to article XIII B, section 6 of the California Constitution.

Issue 3: Do the remaining test claim statutes and regulations impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

This test claim addresses the statutory and regulatory changes made to the existing Handicapped and Disabled Students program. The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. "Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."[37] A statute or executive order imposes a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately

---

[34] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[35] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at 537.

[36] *Lucia Mar Unified School District, supra,* 44 Cal.3d at page 835.

[37] *County of Los Angeles, supra,* 43 Cal.3d at page 56; *San Diego Unified School District, supra,* 33 Cal.4th at page 874.

before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.[38]

As indicated above, the original statutes in Chapter 26.5 of the Government Code were added by the Legislature in 1984 and 1985. In addition, pursuant to the requirements of Government Code section 7587, the Departments of Mental Health and Education adopted the first set of emergency regulations for the program in 1986. Although the history of the regulations states that the first set of emergency regulations were repealed on June 30, 1997, by operation of Government Code section 7587, and that a new set of regulations were not operative until one year later (July 1, 1998), the Commission finds, as described below, that the initial set of emergency regulations remained operative after the June 30, 1997 deadline, until the new set of regulations became operative in 1998. Thus, for purposes of analyzing whether the remaining test claim legislation constitutes a new program or higher level of service, the initial emergency regulations, and the 1984 and 1985 statutes in Chapter 26.5 of the Government Code, constitute the existing law in effect immediately before the enactment of the test claim legislation.

Government Code section 7587 required the Departments of Mental Health and Education to adopt emergency regulations by January 1, 1986, to implement the Handicapped and Disabled Students program. The statute, as amended in 1996 (Stats. 1996, ch. 654), further states that the emergency regulations "shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997." Section 7587 states, in relevant part, the following:

> ...For the purposes of the Administrative Procedure Act, *the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare*. These regulations shall not be subject to the review and approval of the Office of Administrative Law and *shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997*, and the final regulations shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments. (Emphasis added.)

The final regulations were not adopted by the June 30, 1997 deadline. Nevertheless, the courts have interpreted the time limits contained in statutes similar to Government Code section 7587 as directory and not mandatory. When a deadline in a statute is deemed directory, then the action required by the statute remains valid.[39] The California Supreme Court describes the general rule of interpretation as follows:

> Time limits are usually deemed to be directory unless the Legislature clearly expresses a contrary intent. [Citation omitted.] "In ascertaining

---

[38] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[39] *California Correctional Peace Officers Association v. State Personnel Board* (1995) 10 Cal.4th 1133, 1145.

> probable intent, California courts have expressed a variety of tests. In some cases focus has been directed at the likely consequences of holding a particular time limitation mandatory, in an attempt to ascertain whether those consequences would defeat or promote the purpose of the enactment. . . .Other cases have suggested that a time limitation is deemed merely directory 'unless a consequence or penalty is provided for failure to do the act within the time commanded. [Citation omitted.] As *Morris v. County of Marin* [citation omitted] held, the consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as "mandatory."[40]

As determined by the California Supreme Court, time limits are usually deemed directory unless a contrary intent is expressly provided by the Legislature or there is a penalty for not complying with the deadline. In the present case, the plain language of Government Code section 7587 does *not* indicate that the Legislature intended the June 30, 1997 deadline to be mandatory, thus making the regulations invalid on that date. If that was the case, the state would be acting contrary to federal law by not having procedures in place for one year regarding the assessment, special education, and related services of a child suspected of needing mental health services necessary to preserve the child's right under federal law to receive a free and appropriate public education.[41] Instead, the plain language of the statute expresses the legislative intent that the regulations are "deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare." This language supports the conclusion that the Legislature intended the original regulations to remain valid until new regulations were adopted.

This conclusion is further supported by the actions of the affected parties after the June 30, 1997 deadline. In 1998, individual plaintiffs filed a lawsuit seeking a writ of mandate directing the Departments of Mental Health and Education to adopt final regulations in accordance with Government Code section 7587.[42] As indicated in the petition for writ of mandate, the plaintiffs asserted that the original emergency regulations were enforced and applied after the June 30, 1997 deadline, that the Office of

---

[40] *Ibid.*

[41] The requirements of the federal special education law (the Individuals with Disabilities Education Act (IDEA)) have been determined to constitute a federal mandate on the states. (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1592.) Under federal law, states are required to provide specially designed instruction, at no cost to the parent, to meet the unique needs of a disabled pupil, including classroom instruction and related services, according to the pupil's IEP. (U.S.C., tit. 20 §§ 1400 et seq.; 34 C.F.R. § 300.343.) Related services include psychological services. (34 C.F.R. § 300.24.) Pursuant to federal regulations on the IEP process, the pupil must be evaluated in all areas of suspected disabilities by a multidisciplinary team. (34 C.F.R. § 300.502.)

[42] *McLeish and Ryan v. State Department of Education, et al.*, Sacramento Superior Court, Case No. 96CS01380.

Administrative Law did not provide notice of repeal of the regulations, and that the original emergency regulations were never deleted from the California Code of Regulations.[43] Ultimately, the parties stipulated to a judgment and writ that subsequent emergency regulations would be filed on or before July 1, 1998, to supercede the original emergency regulations, and that on or before September 24, 1999, the final regulations would be in full force and effect.[44] Thus, the parties affected by the original emergency regulations continued to act as if the regulations were still in effect.

Therefore, the Commission finds that the initial set of emergency regulations remained operative after the June 30, 1997 deadline, until the new set of regulations became operative in 1998. Thus, for purposes of analyzing whether the remaining test claim legislation constitutes a new program or higher level of service, there is no time gap between the original emergency regulations and the subsequent regulations adopted in July 1998. The initial emergency regulations, and the 1984 and 1985 statutes in Chapter 26.5 of the Government Code, constitute the valid, existing law in effect immediately before the enactment of the test claim legislation.

Accordingly, the issue before the Commission is whether the remaining test claim legislation [Gov. Code, § 7572.55, as added in 1994, and §§ 7576 and 7586.6, as amended in 1996, and the joint regulations adopted by the Departments of Mental Health and Education (Cal. Code Regs, tit. 2, §§ 60000 et seq.), which took effect as emergency regulations on July 1, 1998 (Register 98, No. 26) and became final on August 9, 1999 (Register 99, No. 33)] imposes a new program or higher level of service when compared to the legal requirements in effect immediately before the enactment of the test claim legislation, by increasing the actual level of governmental service provided in the existing program.

A. Interagency Agreements (Gov. Code, § 7586.6; Cal. Code Regs., tit. 2, § 60030)

Government Code section 7586.6

Government Code section 7586.6 was added by the test claim legislation in 1996 to address, in part, the interagency agreements between counties and local educational agencies. Government Code section 7586.6, subdivision (b), states the following:

> It is the intent of the Legislature that the designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time. It is the intent of the Legislature that the state and local interagency agreements be updated at least every three years or earlier as necessary.

The plain language of Government Code section 7586.6, subdivision (b), states the "legislative intent" that the local interagency agreements be updated at least every three years or earlier as necessary.

---

[43] See Petition for Writ of Mandamus, paragraphs 42 and 43, *McLeish, supra.*

[44] See Writ of Mandamus, *McLeish, supra.*

The Commission finds that Government Code section 7586.6 does not impose a new program or higher level of service. Even if legislative intent were determined to constitute a mandated activity, updating or renewing the interagency agreements every three years is not new and the level of service required of counties is not increased. Under prior law, former section 60030, subdivision (a)(2), of the regulations adopted by the Departments of Mental Health and Education required the local mental health director[45] and the county superintendent of schools to renew, and revise if necessary, the interagency agreements every three years or at any time the parties determine a revision is necessary.

Accordingly, the Commission finds that Government Code section 7586.6 does not impose a new program or higher level of service.

California Code of Regulations, title 2, section 60030

Section 60030 of the joint regulations governs the interagency agreements between counties and local educational agencies. Under prior law, the original emergency regulations required the development of an interagency agreement that included "a delineation of the process and procedure" for the following nine (9) items:

- Interagency referrals of pupils, which minimize time line delays. This may include written parental consent on the receiving agency's forms.
- Timely exchange of pupil information in accordance with applicable procedures ensuring confidentiality.
- Participation of mental health professionals, including those contracted to provide services, at IEP team meetings pursuant to Government Code sections 7572 and 7576.
- Developing or amending the mental health related service goals and objectives, and the frequency and duration of such services indicated on the pupil's IEP.
- Transportation of individuals with exceptional needs to and from the mental health service site when such service is not provided at the school.
- Provision by the school of an assigned, appropriate space for delivery of mental health services or a combination of education and mental health services to be provided at the school.
- Continuation of mental health services during periods of school vacation when required by the IEP.
- Identification of existing public and state-certified nonpublic educational programs, treatment modalities, and location of appropriate residential placements, which may be used for placement by the expanded IEP program team.

[45] Local mental health director is defined as "the officer appointed by the governing body of a county to manage a community mental health service." (Cal. Code Regs., tit. 2, § 60020, subd. (e).)

- Out-of-home placement of seriously emotionally disturbed pupils in accordance with the educational and treatment goals on the IEP.[46]

In addition, former section 60100, subdivision (a), of the regulations required the local mental health program and the SELPA liaison to define the process and procedures for coordinating services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils. These requirements remain the law.

Section 60030 of the regulations, as replaced by the test claim legislation in 1998, now requires that the interagency agreement include a "delineation of the procedures" for seventeen (17) items. In this regard, section 60030, subdivision (c), requires that the following additional eight (8) procedures be identified in the interagency agreement:

- Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
- A host county[47] to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
- Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
- At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)

---

[46] Former California Code of Regulations, title 2, section 60030, subdivision (b).

[47] A "host county" is defined to mean the county where the pupil with a disability is living when the pupil is not living in the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (d).) The "county of origin" is defined as the county in which the parent of the pupil with disability resides. If the pupil is a ward or dependent of the court, an adoptee receiving adoption assistance, or a conservatee, the county of origin is the county where this status currently exists. (Cal. Code Regs., tit. 2, § 60020, subd. (b).)

- The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

According to the final statement of reasons prepared by the Departments of Education and Mental Health for the regulations, the section on interagency agreements was "expanded because experience in the field has shown that many local interagency agreements are not effective." The final statement of reasons further states that the regulation "requires stronger interagency agreements in order to improve local agencies' ability to adhere to the timelines required by law."[48]

Since the interagency agreement must now contain additional information, the Commission finds that section 60030 of the regulations imposes a new program or higher level of service for the one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures:

- Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
- A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
- Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
- At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)

[48] Final Statement of Reasons, pages 10-11.

- The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)[49]

B. Referral and Mental Health Assessment of a Pupil (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045)

Government Code section 7576, as amended by the 1996 test claim statute (Stats. 1996, ch. 654), and sections 60040 and 60045 of the regulations govern the referral of a pupil suspected of needing mental health services to the county for an assessment. Under prior law, Government Code section 7572 and former section 60040 of the regulations required counties to perform the following referral and assessment activities:

- Review the following educational information of a pupil referred to the county by a local education agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil.
- If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
- If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment.
- Assess the pupil within the time required by Education Code section 56344.

---

[49] The Counties of Los Angeles and Stanislaus, in comments to the draft staff analysis, argue that revising the interagency agreement in accordance with section 60030 of the regulations is not a one-time activity. The County of Los Angeles argues "the negotiation, development, and periodic revision and review of Interagency Agreements require a variety of time consuming activities over an extended period of time." The County of Stanislaus contends that the interagency agreement is a living, breathing document. However, as indicated in the analysis, periodic renewal and revision of the agreements, which are ongoing activities, are not new. Counties were required to perform these activities every three years under the prior regulations. (Former Cal. Code Regs., tit. 2, § 60030.) Reimbursement for the ongoing activities of renewing the interagency agreements every three years and revising if necessary are addressed in the reconsideration of the original *Handicapped and Disabled Students* program (04-RL-4282-10).

- If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.
- Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities.
- Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
- In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent.
- Review independent assessments of a pupil obtained by the parent.
- Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
- In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

These activities are still required by law. However, the test claim legislation requires counties to perform additional activities. For example, Government Code section 7576, subdivision (b)(1), mandates a new program or higher level of service by requiring the county and the local educational agency to "work collaboratively to ensure that assessments performed *prior to referral* are as useful as possible to the community mental health service [i.e., the county] in determining the need for mental health services and the level of services needed." (Emphasis added.)

In addition, Government Code section 7576, subdivision (g), and section 60040, subdivision (g), mandate a new program or higher level of service by requiring a county that receives a referral for a pupil with a different county of origin, to forward the referral within one working day to the county of origin. The county of origin shall then have the programmatic and fiscal responsibility for providing or arranging for the provision of necessary services for the pupil.

Furthermore, section 60045 of the regulations addresses the assessment of a pupil and imposes new, required activities on counties. Under prior law, counties were required to determine if a mental health assessment of a pupil is necessary. (Former Cal. Code Regs., tit. 2, § 60040, subd. (d).) Section 60045 retains that requirement, and also

requires that if the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and local educational agency of the county determination within one working day. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(1).)

Section 60045, subdivision (a)(2), now requires that if the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral.

Section 60045, subdivision (b), provides that "if a mental health assessment is determined to be necessary," the community mental health service shall notify the local educational agency, develop a mental health assessment plan, and provide the plan and a consent form to the parent." Under prior law, counties were required to develop a mental health assessment plan and provide a consent form for the assessment to the parent. (Former Cal. Code Regs., tit. 2, § 60040, subd. (d).) However, the activities to notify the local educational agency when an assessment is determined necessary, and to provide the assessment plan to the parent are new activities.

Although section 60045, subdivisions (a) and (b), includes language that implies that the activities are within the discretion of the county (e.g., the activity is required "if no mental health assessment is determined necessary"), the Commission finds that these activities are mandated by the state when necessary to provide the pupil with a free and appropriate education under federal law. Under the rules of statutory construction, section 60045, subdivisions (a) and (b), must be interpreted in the context of the entire statutory scheme so that the statutory scheme may be harmonized and have effect.[50] In addition, it is presumed that the administrative agency, like the Departments of Mental Health and Education, did not adopt a regulation that alters the terms of a legislative enactment.[51] Federal law, through the IDEA, requires the state to *identify*, locate, and evaluate *all* children with disabilities, including children attending private schools, who are in need of special education and related services.[52] The state is also required by federal law to conduct a full and individual initial evaluation to determine whether a child has a qualifying disability, and the educational needs of the child.[53] In addition, Government Code section 7572, subdivision (a), requires that a child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service. In cases where the pupil is suspected of needing mental health services, the state has delegated to the counties the activity of assessing the need for service. Accordingly, the Commission finds that the section 60045, subdivisions (a) and (b), mandate the following new activities that constitute a new program or higher level of service:

---

[50] *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

[51] *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

[52] 20 United States Code section 1412, subdivision (a)(3).

[53] 20 United States Code section 1414, subdivision (a).

- If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and local educational agency of the county determination within one working day.
- If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral.
- Notify the local educational agency when an assessment is determined necessary.
- Provide the assessment plan to the parent.

Furthermore, section 60045, subdivision (c), requires counties to perform a new activity to "report back to the referring [local educational agency] or IEP team within 30 days from the date of the receipt of the referral . . . if no parental consent for a mental health assessment has been obtained." The Commission finds this activity constitutes a new program or higher level of service.

The Commission further finds that section 60045, subdivision (d), mandates a new program or higher level of service on counties by requiring counties to notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. This activity was not required under prior law.

The Commission also finds that section 60045, subdivision (f)(1), mandates a new program or higher level of service on counties by requiring counties to provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. As enacted before the test claim legislation, Government Code section 7572, subdivision (d)(1), requires that the parent be notified in writing of this parental right. But Government Code section 7572, subdivision (d)(1), does not specify the agency that is required to provide the written notice. Thus, section 60045, subdivision (f)(1), delegates the responsibility to the county.

Finally, section 60045, subdivision (h), mandates a new program or higher level of service by requiring the county of origin to prepare statutorily required IEP reassessments. Pursuant to federal law, yearly reassessments are required to determine the needs of the pupil.[54]

C. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

The Departments of Education and Mental Health adopted a new regulation in section 60055 to address the interim placement of a pupil receiving mental health services pursuant to an existing IEP following the pupil's transfer to a new school district. Section 60055 states the following:

> (a) Whenever a pupil who has been receiving mental health services, pursuant to an IEP, transfers into a school district from a school district in another county, the responsible LEA [local educational

[54] 34 Code of Federal Regulations, section 300.343.

agency] administrator or IEP team shall refer the pupil to the local community mental health service [county] to determine appropriate mental health services.

(b) The local mental health director or designee shall ensure that the pupil is provided interim mental health services, as specified in the existing IEP, pursuant to Section 56325 of the Education Code, for a period not to exceed thirty (30) days, unless the parent agrees otherwise.

(c) An IEP team, which shall include an authorized representative of the responsible community mental health service, shall be convened by the LEA to review the interim services and make a determination of services within thirty (30) days of the pupil's transfer.

According to the final statement of reasons, section 60055 "conforms with and implements Education Code section 56325 which ensures that special education pupils continue to receive services after they transfer into a new school district or SELPA. This section is intended to address implementation problems in these situations reported by the field in which eligible pupils were denied services due to an inter-county transfer."[55]

The Commission finds that section 60055 mandates a new program or higher level of service on counties, following a pupil's transfer to a new school district, by requiring them to perform the following activities:

- Provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.
- Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

D. Participate as a Member of the IEP Team When Residential Placement of a Pupil is Recommended (Gov. Code, § 7572.55; Cal. Code Regs., tit. 2, § 60100)

Under existing law, when a child is assessed as seriously emotionally disturbed and any member of the IEP team recommends residential placement, the IEP team shall be expanded to include a representative of the county. The expanded IEP team is required to review the assessment and determine whether: (1) the child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care; (2) residential care is necessary for the child to benefit from educational services; and (3) residential services are available, which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation. The expanded IEP team is also required to consider all possible alternatives to out-of-home placement. (Gov. Code, § 7572.5, former Cal. Code Regs, tit. 2, § 60100.) Finally, the expanded IEP team is required to document the

[55] Final Statement of Reasons, page 20.

pupil's educational and mental health treatment needs that support the recommendation for the placement. (Former Cal. Code Regs, tit. 2, § 60100, subd. (e).)

These activities remain the law and counties are currently eligible for reimbursement for their participation on the expanded IEP team.[56] However, the test claim legislation amended the law with respect to the activities performed by the expanded IEP team.

In 1994, the Legislature added section 7572.55 to the Government Code (Stats. 1994, ch. 1128). Government Code section 7572.55, subdivision (c), requires the expanded IEP team, when a recommendation is made that a child be placed in an *out-of-state* residential facility, to develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school.

In addition, section 60100 of the regulations, as adopted in 1998, requires the expanded IEP team to perform the following activities:

- The expanded IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
- The expanded IEP team shall ensure that placement is in accordance with admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)

The Department of Finance contends that these activities performed by the expanded IEP team do not constitute a new program or higher level of service. The Department states the following:

> It is our interpretation that there is no meaningful difference between the requirements under the prior regulations and the new regulations with respect to identifying, analyzing, and documenting all alternatives to residential placement. The existing activities of considering "all possible alternatives to out-of-home placement" and documenting "the pupil's educational and mental health treatment needs that support the recommendation for the placement" would already include the development of a plan for using less restrictive and in-state alternatives and documentation of the reasons why these alternatives were rejected. It is not clear that the new requirements cited above impose a new or higher level of service.[57]

---

[56] For this reason, the Commission agrees with a comments filed by the Counties of Los Angeles and Stanislaus on the draft staff analysis that the county's participation on the expanded IEP team occurs when there is a recommendation for out-of-home placement, regardless of whether the recommendation is for a facility in the state or a facility out of the state. This test claim, however, addresses only the new activities required by the Government Code sections and regulations for which the Commission has jurisdiction (i.e., Gov. Code, § 7572.55, as added by Stats. 1994, ch. 1128, and the 1998 regulations.)

[57] Department of Finance comments to the draft staff analysis.

The Commission disagrees. First, the activity required by Government Code section 7572.55, subdivision (c), to develop a plan for using less restrictive alternatives and in-state alternatives when a recommendation is made that a child be placed in an out-of-state facility, is a new requirement. Government Code section 7572.55 was *added* by the test claim legislation. Under prior law, the expanded IEP team was only required to "consider" all possible alternatives to residential placement. The express language of prior law did not require the expanded IEP team to develop a plan for using less restrictive alternatives specifically for out-of-state placements. Thus, the Commission finds that Government Code 7572.55, subdivision (c), imposes a new program or higher level of service with regard to the counties' participation on the expanded IEP team.

The Commission further finds that the two activities mandated by section 60100 are new activities, not required under prior law. Section 60100, subdivision (c), requires the expanded IEP team to document the alternatives to residential placement that were considered and the reasons why they were rejected. Under prior law, the expanded IEP team was required to "consider" all possible alternatives to residential placement. Prior law also required the expanded IEP team to document the pupil's educational and mental health treatment needs that support the final recommendation for the placement. But prior law did not require the expanded IEP team to document the alternatives to residential placement that were considered by the team and the reasons why the alternatives were rejected. Thus, the Commission finds that section 60100, subdivision (c), imposes a new program or higher level of service.

Moreover, the Commission finds that the activity required by section 60100, subdivision (j), imposes a new program or higher level of service by requiring, for the first time, that the expanded IEP team ensure that placement is in accordance with admission criteria of the facility.

Finally, when the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in residential care, counties are now required to ensure that: (1) the mental health services are specified in the IEP in accordance with federal law; and (2) the mental health services are provided by qualified mental health professionals.[58] (Cal. Code Regs., tit. 2, § 60100, subd. (i).) Counties were not required to perform these activities under prior law. Therefore, the Commission finds that the activities required by section 60100, subdivision (i), constitute a new program or higher level of service.

E. Case Management Duties for Pupils Placed in Residential Care (Cal. Code Regs., tit. 2, §§ 60100, 60110)

Under existing law, Government Code section 7572.5, subdivision (c)(1), requires the county to act as the lead case manager if the review of the expanded IEP team calls for residential placement of the seriously emotionally disturbed pupil. The statute further

---

[58] Section 60020 defines "qualified mental health professional" to include the following licensed practitioners of the healing arts: a psychiatrist; psychologist; clinical social worker; marriage, family and child counselor; registered nurse, mental health rehabilitation specialist, and others who have been waivered under Welfare and Institutions Code section 5751.2.

requires that "the mental health department shall retain financial responsibility for provision of case management services." Former section 60110, subdivision (a), required the following case management duties:

- Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
- Complete the local mental health program payment authorization in order to initiate out of home care payments.
- Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
- Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.
- Facilitate the enrollment of the pupil in the residential facility.
- Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP.
- Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP.
- Coordinate the six-month expanded IEP team meeting with the local education agency administrator or designee.

Sections 60100 and 60110 of the regulations, as adopted in 1998, require county case managers to perform the following new activities not required under prior law:

- Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)[59]
- When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with

[59] Although the regulation requires the county case manager to plan for the educational needs of a pupil placed in a residential facility, the local educational agency is ultimately responsible for "providing or arranging for the special education and non-mental health related services needed by the pupil. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(2); Final Statement of Reasons, p. 24.)

admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)[60]

- Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).) Under prior law, the expanded IEP team identified the placement. (Former Cal. Code Regs., tit. 2, § 60100, subd. (f).)
- Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
- Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
- Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)[61]

The Commission finds that the new activities bulleted above constitute a new program or higher level of service.

In addition, the language for some of the case management activities required under existing law was amended by section 60110 of the test claim legislation. Thus, the issue is whether the amended language mandates an increase in the level of service provided by the county case manager.

For example, existing law required counties to "conven[e] parents and representatives of public and private agencies in accordance with subsection (f) of Section 60100 in order to identify the appropriate residential placement." (Former Cal. Code Regs., tit. 2, § 60110,

---

[60] A "community treatment facility" is defined in section 60025 of the regulations to mean "any residential facility that provides mental health treatment services to children in a group setting which has the capacity to provide secure confinement. The facility's program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code."

[61] Welfare and Institutions Code section 4094.5, subdivision (e)(1), states in relevant part that "[t]he child shall, prior to admission, have been determined to be in need of the level of care provided by a community treatment facility, by a county interagency placement committee ..."

subd. (c)(1).) Section 60110, subdivision (c)(1), as replaced by the test claim legislation, amended the regulation, in relevant part, by requiring the county case manager to include "educational staff" in the meeting. The Commission finds that the requirement to include "educational staff" in the meeting does not increase the level of service required by county case managers. The old regulation required county case managers to convene the meeting with "representatives of public agencies." For purposes of this program, "representatives of public agencies" includes educational staff.[62] Thus, section 60110, subdivision (c)(1), does not impose a new program or higher level of service.

Furthermore, former section 60110, subdivision (c)(8), required case managers to conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services as required by the IEP. That requirement remains the law. However, section 60110, subdivision (c)(8), as replaced by the test claim legislation, requires the case manager to also evaluate "the continuing stay criteria" of a pupil placed in a community treatment facility on a quarterly basis:

> In addition, for children placed in a community treatment facility, an evaluation shall be made within every 90 days of the residential placement of the pupil to determine if the pupil meets the continuing stay criteria as defined in Welfare and Institutions Code section 4094 and implementing mental health regulations.

Pursuant to Department of Mental Health regulations, the continuing stay criteria require the case manager and the community treatment facility psychiatrist to evaluate and document the continued placement of the pupil in the community treatment facility.[63]

---

[62] See section 60000 of the regulations, which provides that "this chapter applies to the State Departments of Mental Health, Social Services, and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas."

[63] California Code of Regulations, title 9, section 1924, defines the "continuing stay criteria" for this program as follows:

> (b) Individuals who are special education pupils identified in paragraph (4) of subdivision (c) of Section 56026 of the Education Code and who are placed in a CTF [community treatment facility] prior to age eighteen (18) pursuant to Chapter 26.5 of the Government Code may continue to receive services through age 21 provided the following conditions are met:
>
> (1) They continue to satisfy the requirements of subsection (a) [documentation by the CTF psychiatrist and the case manager supporting the continued placement of the pupil in the community treatment facility];
>
> (2) They have not graduated from high school;
>
> (3) They sign a consent for treatment and a release of information for CTF staff to communicate with education and county mental health

The Commission finds that the evaluation every 90 days of the continuing stay criteria of a pupil placed in a community treatment facility, as required by section 60110, subdivision (c)(8), constitutes a new program or higher level of service.

Finally, under prior law, the expanded IEP team was required to review the case progress, the continuing need for out-of-home placement, the extent of compliance with the IEP, and progress toward alleviating the need for out-of-home care "at least every six months." (Gov. Code, § 7572.5, subd. (c)(2).) In addition, former section 60110, subdivision (c)(10), required case managers to "coordinate the six-month expanded IEP team meeting with the local educational agency administrator or designee."

Section 60110, subdivision (c)(10), as adopted by the test claim legislation in 1998, replaced the requirement imposed on the case manager to "coordinate" the expanded six-month IEP team meeting, with the requirement to "schedule and attend" the six-month expanded IEP team meeting. Section 60110, subdivision (c)(10), states the following:

> Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement.

The Commission finds that section 60110, subdivision (c)(10), increases the level of service required of counties. Under the prior requirement, case managers were required to coordinate the expanded IEP team meeting every six months. Case managers are now required to schedule the meeting. The activities of "coordinating" and "scheduling" are different. To "coordinate" means to "to place in the same order, class, or rank; to harmonize in a common effort; to work together harmoniously." To "schedule" means "to plan or appoint for a certain date or time." [64] In addition, although a representative from the county is a member of the IEP team, there was no requirement that the case manager, who may be a different person than the IEP team member, attend the IEP team meeting.[65] Therefore, the Commission finds that section 60110, subdivision (c)(10), of the regulations constitutes a new program or higher level of service for the activity of scheduling and attending the six-month expanded IEP team meetings.

> professionals after staff have informed them of their rights as an adult;
>
> (4) A CTF obtains an exception from the California Department of Social Services to allow for the continued treatment of the young adult in a CTF... .

[64] Webster's II New College Dictionary (1999) pages 248, 987.

[65] Existing law authorizes the county to delegate the case management responsibilities to the county welfare department. (Gov. Code, § 7572.5, subd. (c)(1).)

F. Authorize Payments to Out-Of-Home Residential Care Providers (Cal. Code Regs., tit. 2, § 60200, subd. (e))

Pursuant to existing law, counties are financially responsible for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed pupil placed in an out-of-home residential facility. The residential and non-educational costs include the costs for food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. (Gov. Code, § 7581, former Cal. Code Regs., tit. 2, § 60200, subd. (e), Welf. & Inst. Code, § 15200, subd. (c)(1).) The counties' financial responsibility for the residential and non-educational costs of pupils placed out of the home remain the law today.

In addition, former section 60200 of the regulations required the county welfare department to issue the payments to providers of out-of-home facilities in accordance with Welfare and Institutions Code section 18351, upon receipt of authorization documents from the State Department of Mental Health *or* a designated county mental health agency. The authorization documents are required to include information sufficient to demonstrate that the child meets all eligibility criteria established in the regulations for this program. (Welf. & Inst. Code, § 18351.)

The county welfare department is still required to issue payments to the residential facilities under section 60200, subdivision (e), of the regulations, as replaced in 1998. However, the regulation now requires the county community mental health service to authorize the payment to the residential facility before the county welfare agency can issue the payment. Subdivision (e) states, "[t]he community mental health service shall be responsible for authorizing payment to the facilities listed in Section 60025 based upon rates established by the Department of Social Services in accordance with Sections 18350 through 18356 of the Welfare and Institutions Code."

The Department of Finance contends that "[a]ccording to the Department of Social Services, there is no meaningful difference between the requirements under the prior regulations and the new regulations with respect to authorizing payments to the out-of-home residential facilities." The Department further states that "the child's mental health caseworker is already required to participate in the development of the IEP, and this IEP could constitute the authorizing paperwork that is presented to the county child welfare department to initiate payment for residential treatment." Thus, the Department argues that "[i]t is not clear that the new requirement . . . would impose a new or higher level of service."[66]

The Commission disagrees with the Department's interpretation of section 60200 of the regulations. The same rules of construction applicable to statutes govern the interpretation of administrative regulations. Thus, the Commission, like a court, should attempt to ascertain the intent of the regulating agency.[67]

---

[66] Department of Finance comments to the draft staff analysis.

[67] *Goleta Valley Community Hospital v. Department of Health Services* (1984) 149 Cal.App.3d 1124, 1129.

As indicated above, prior law specified that either the Department of Mental Health or a designated county mental health agency provided the authorization documents before payment to the residential facility could be issued. According to the final statement of reasons prepared by the Departments of Mental Health and Education for the 1998 regulations, section 60200, subdivision (e), now assigns the responsibility of authorizing payments to the residential facilities solely to the county community mental health service. The final statement of reasons also states that it is the responsibility of the county to determine that the residential placement meets all of the criteria established in Welfare and Institutions Code sections 18350 through 18356. The final statement of reasons for this regulation expressly provides the following:

> Subsection (e) assigns the responsibility for authorizing payment for board and care to the community mental health service. It is the responsibility of the community mental health service to determine that the residential placement meets all of the criteria established in Sections 18350 through 18356 of the Welfare and Institutions Code. These sections of code also refer to Section 11460 of the Welfare and Institutions Code which state that rates will be established by CDSS, and outline certain requirements in order for facilities to be eligible for payment."[68]

Thus, compliance with section 60200, subdivision (e), of the regulations requires the counties to determine that the residential placement meets all of the criteria established in the Welfare and Institutions Code before authorizing payment. The final statement of reasons suggests that the requirement to authorize payment to residential facilities may not be satisfied by simply providing the IEP to the county welfare department.

The Department of Social Services has not provided the Commission with any comments on this test claim. In addition, the argument asserted by the Department of Finance is not supported with documentary evidence or declarations signed under the penalty of perjury, as required by the Commission's regulations. (Cal. Code Regs., tit. 2, § 1183.02, subd. (c).)

Accordingly, the Commission finds that authorizing payments to the residential facilities in accordance with section 60200, subdivision (e), constitutes a new program or higher level of service.

G. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs, tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c))

Pursuant to existing law, counties are required to provide psychotherapy or other mental health treatment services to a pupil, either directly or by contract, when required by the pupil's IEP. (Gov. Code, § 7576; former Cal. Code Regs., tit. 2, § 60200, subd. (b).) Under the former regulations, "psychotherapy and other mental health services" were defined to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health regulations. (Former Cal. Code Regs., tit. 2, § 60020, subd. (a).)

---

[68] Final Statement of Reasons, page 26.

The regulations adopted by the Departments of Education and Mental Health in 1998 modified these activities. For example, section 60200, subdivision (c)(1), adds new requirements when a pupil receives mental health services in a host county. Under such circumstances, the county of origin (the county where the parent resides, the pupil receives adoption assistance, or where the pupil is a ward of the court, for example) is financially responsible for the mental health services, even though the services are provided in a host county. (Cal. Code Regs., tit. 2, § 60200, subd. (c).) Section 60200, subdivision (c)(1), states the following:

> The host county shall be responsible for making its provider network available and shall provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. Counties of origin shall negotiate with host counties to obtain access to limited resources, such as intensive day treatment and day rehabilitation.

Thus, the Commission finds that section 60200, subdivision (c)(1), of the regulations mandates a new program or higher level of service for the following new activities:

- The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals.
- The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation.

In addition, section 60020, subdivision (i), changed the definition of mental health services. As indicated above, the former regulations defined "psychotherapy and other mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health regulations. (Former Cal. Code Regs., tit. 2, § 60020, subd. (a).) Under the prior regulations, these services included the following: day care intensive services, day care habilitative (counseling and rehabilitative) services, vocational services, socialization services, collateral services, assessment, individual therapy, group therapy, medication (including the prescribing, administration, or dispensing of medications, and the evaluation of side effects and results of the medication), and crisis intervention.

Section 60020, subdivision (i), of the regulations, now defines "mental health services" as follows:

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

Section 60020 of the test claim regulations continues to include mental health assessments, collateral services, intensive day treatment, and day rehabilitation within the definition of "mental health services." These services are not new.[69]

However, the activities of crisis intervention, vocational services, and socialization services were deleted by the test claim regulations. The final statement of reasons, in responding to a comment that these activities remain in the definition of "mental health services," states the following:

> The provision of vocational services is assigned to the State Department of Rehabilitation by Government Code section 7577.
>
> Crisis service provision is delegated to be "from other public programs or private providers, as appropriate" by these proposed regulations in Section 60040(e) because crisis services are a medical as opposed to educational service. They are, therefore, excluded under both the Tatro and Clovis decisions. These precedents apply because "medical" specialists must deliver the services. A mental health crisis team involves specialized professionals. Because of the cost of these professional services, providing these services would be a financial burden that neither the schools nor the local mental health services are intended to address in this program.
>
> The hospital costs of crisis service provision are explicitly excluded from this program in the Clovis decision for the same reasons.
>
> Additionally, the IEP process is one that responds slowly due to the problems inherent in convening the team. It is, therefore, a poor avenue for the provision of crisis services. While the need for crisis services can be a predictable requirement over time, the particular medical requirements of the service are better delivered through the usual local mechanisms established specifically for this purpose.[70]

Thus, counties are not eligible for reimbursement for providing crisis intervention, vocational services, and socialization services since these activities were repealed as of July 1, 1998.

---

[69] The County of Los Angeles, in comments to the draft staff analysis, argues that all activities specified in section 60020, subdivision (i), should be reimbursable under this test claim. The County of Stanislaus filed similar comments. As indicated in the analysis, however, the activities of mental health assessments, collateral services, intensive day treatment, and case management, are not new activities. Counties were required to perform these activities under the prior regulations. (Former Cal. Code Regs., tit. 2, § 60020, subd. (a).) Reimbursement for the activities of mental health assessments, collateral services, intensive day treatment, and case management, are addressed in the reconsideration of the original *Handicapped and Disabled Students* program (04-RL-4282-10).

[70] Final Statement of Reasons, pages 55-56.

Nevertheless, section 60020 of the regulations increases the level of service of counties providing mental health services by including case management services and "psychotherapy" within the meaning of "mental health services." The regulation defines psychotherapy to include both individual and group therapy, based on the definition in Business and Professions Code section 2903. Business and Professions Code section 2903 states in relevant part the following:

> No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.
>
> The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.
>
> Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

The Commission finds that providing the services of case management and psychotherapy, as defined in Business and Professions Code section 2903, to a pupil when required by the pupil's IEP constitutes a new program or higher level of service.

Furthermore, under prior law, mental health services included prescribing, administering, and dispensing medications, and evaluating the side effects and results of the medication. Section 60020, subdivision (i), now includes "medication monitoring" within the provision of mental health services. "Medication monitoring" is defined in section 60020, subdivision (f), as follows:

> "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness.

The Department of Finance argues that "medication monitoring" does not increase the level of service provided by counties. The Department states the following:

> It is our interpretation that there is no meaningful difference between the medication requirements under the prior regulations and the new regulations of the test claim. The existing activities of "dispensing of medications, and the evaluation of side effects and results of medication" are in fact activities of medication monitoring and seem representative of all aspects of medication monitoring. To the extent that counties are already required to evaluate the "side effects and results of medication," it is not clear that the new requirement of "medication monitoring" imposes a new or higher level of service.[71]

The Commission disagrees with the Department's interpretation of section 60020, subdivisions (i) and (f), of the regulations, and finds that "medication monitoring" as defined in the regulation increases the level of service required of counties.

The same rules of construction applicable to statutes govern the interpretation of administrative regulations.[72] Under the rules of statutory construction, it is presumed that the Legislature or the administrative agency intends to change the meaning of a law or regulation when it materially alters the language used.[73] The courts will not infer that the intent was only to clarify the law when a statute or regulation is amended unless the nature of the amendment clearly demonstrates the case.[74]

In the present case, the test claim regulations, as replaced in 1998, materially altered the language regarding the provision of medication. The activity of "dispensing" medications was deleted from the definition of mental health services. In addition, the test claim regulations deleted the phrase "evaluating the side effects and results of the medication," and replaced the phrase with "monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness." The definitions of "evaluating" and "monitoring" are different. To "evaluate" means to "to examine carefully; appraise."[75] To "monitor" means to "to keep watch over; supervise."[76] The definition of "monitor" and the regulatory language to monitor the "psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness" indicate that the activity of "monitoring" is an ongoing activity necessary to ensure that the pupil receives a free and appropriate education under federal law. This interpretation is supported by the final statement of reasons for the adoption of the language in section 60020, subdivision (f), which state that the regulation was intended to make it

---

[71] Department of Finance comments to draft staff analysis.

[72] *Goleta Valley Community Hospital v. Department of Health Services* (1984) 149 Cal.App.3d 1124, 1129.

[73] *Garrett v. Young* (2003) 109 Cal.App.4th 1393, 1404-1405.

[74] *Medina v. Board of Retirement, Los Angeles County Employees Retirement Assn.* (2003) 112 Cal.App.4th 864, 869-870.

[75] Webster's II New College Dictionary (1999) page 388.

[76] *Id.* at page 708.

clear that "medication monitoring" is an educational service that is provided pursuant to an IEP, rather than a medical service that is not allowable under the program.[77]

Neither the Department of Mental Health nor the Department of Education, agencies that adopted the regulations, filed substantive comments on this test claim. Thus, there is no evidence in the record to contradict the finding, based on the rules of statutory construction, that "medication monitoring" increases the level of service on counties.

Therefore, the Commission finds that the activity of "medication monitoring," as defined in section 60020, subdivisions (f) and (i), constitutes a new program or higher level of service.

Finally, section 60050 was added by the test claim legislation to address the completion or termination of IEP health services. In relevant part, section 60050, subdivision (b), states the following:

> When completion or termination of IEP specified health services is mutually agreed upon by the parent and the community mental health service, or when the pupil is no longer participating in treatment, the community mental health service shall notify the parent and the LEA which shall schedule an IEP meeting to discuss and document this proposed change it if is acceptable to the IEP team.

The Commission finds that section 60050, subdivision (b), mandates a new program or higher level of service by requiring counties to notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of the service, or when the pupil is no longer participating in treatment.

H. Participation in Due Process Hearings (Cal. Code Regs., tit. 2, § 60550)

The County of Los Angeles argues that a county's participation in a due process hearing, which resolves disputes between a parent and a public agency regarding special education and related services, is reimbursable. The County further argues that reimbursement should cover the costs for "participation in mediation conferences, travel costs associated with dispute resolution, preparation of witnesses and documentary evidence, as well as participation in administrative hearings ..."[78] The Commission disagrees.

Under existing law, due process procedures are in place to resolve disputes between a parent and a public agency regarding the special education and related services, including mental health services provided to a pupil by a county under the Handicapped and Disabled Students program. Government Code section 7586, as originally enacted in 1984, requires all state departments and their designated local agencies, including counties, to be governed by the procedural due process protections required by federal law. Government Code section 7586, subdivision (a), states the following:

> All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of

---

[77] Final Statement of Reasons, page 7.

[78] County of Los Angeles' comments to the draft staff analysis.

> Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

Pursuant to the former regulations, counties were required to participate in the due process hearings relating to issues involving mental health assessments or services and were required to prepare documentation and provide testimony supporting the county's position. (Former Cal. Code Regs., tit. 2, § 60550.) Counties are currently eligible for reimbursement for their participation in the due process hearings.

The test claim legislation, section 60550 of the regulations, as enacted in 1998, does not increase the level of service provided by counties with respect to the due process hearings. Counties are still subject to the due process hearing procedures as they were under prior law, and are still required to prepare documentation and provide testimony to support its position. According to the final statement of reasons, the amendments in the regulation, with respect to the county, simply reflect the deletion of the Office of Administrative Hearings from the hearing process.

Therefore, the Commission finds that section 60550 does not mandate that counties perform new activities or increase their level of service. Therefore, section 60550 of the regulations does not impose a new program or higher level of service on counties.

I. Compliance Complaints (Cal. Code Regs., tit. 2, § 60560)

The County of Stanislaus requests reimbursement for defending against an allegation that the county has not complied with the regulations for this program, in accordance with section 60560 of the regulations. Section 60560 states that "[a]llegations of failure by an LEA, Community Mental Health Services or CCS to comply with these regulations, shall be resolved pursuant to [sections 4600 et seq. of the Department of Education regulations]."

The Commission finds that the compliance complaint procedure established by section 60560 does not constitute a new program or higher level of service. The compliance complaint procedures, as they relate to the counties' participation in the Handicapped and Disabled Students program, have been in the law since 1991. Section 4650 of the Department of Education regulations (the regulation cited as the authority for section 60560 of the joint regulations in this case) addresses compliance complaints and was adopted in 1991.[79] Section 4650, subdivision (a)(viii), states in relevant part the following:

> For complaints relating to special education the following shall also be conditions for direct state intervention:

[79] California Code of Regulations, title 5, section 4650.

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals ...

Therefore, the Commission finds that section 60560 does not constitute a new program or higher level of service.

J. Interagency Dispute Resolution (Cal. Code Regs., tit. 2, §§ 60600, 60610)

The County of Stanislaus requests reimbursement for the counties' participation in interagency dispute resolution procedures, in accordance with sections 60600 and 60610 of the regulations. These regulations implement Government Code section 7585, which was enacted in 1984. Government Code section 7585 provides that whenever any department or local agency designated by that department fails to provide a related service specified in a pupil's IEP, the parent, adult pupil, or any local educational agency shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare. The superintendent and the secretary, or their designees, shall meet to resolve the issue within 15 days. If the issue cannot be resolved, the matter is referred to the Office of Administrative Hearings, whose decision is binding on the parties. Under prior regulations (former section 60610), once the dispute resolution procedures have been completed, the agency determined responsible for the service shall pay for, or provide the service, and shall reimburse the other agency that provided the service, if applicable.

Sections 60600 and 60610, as adopted in 1998, do not change the prior dispute resolution procedures. The level of participation by the county under the interagency dispute resolution procedures remains the same.

Therefore, the Commission finds that sections 60600 and 60610 of the regulations do not mandate a new program or higher level of service on counties.

Issue 4: Do the test claim statutes and regulations impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

As indicated above, the Commission finds that the following activities mandate a new program or higher level of service on counties:

1. Interagency Agreements (Cal. Code Regs., tit. 2, § 60030)
    - The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures:
        - Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)

- A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
- Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
- At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
- The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

2. Referral and Mental Health Assessments (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045)

- Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
- A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
- If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)

- If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
- Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
- Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
- Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)
- The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

3. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)
   - Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.
   - Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.
4. Participate as a Member of the Expanded IEP Team When Residential Placement of a Pupil is Recommended (Gov. Code, § 7572.55; Cal Code Regs., tit. 2, § 60100)
   - When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. (Gov. Code, § 7572.55, subd. (c).)
   - The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)

- The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
- When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

5. Case Management Duties for Pupils Placed in Residential Care (Cal. Code Regs., tit. 2, §§ 60100, 60110)
   - Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
   - When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
   - Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)
   - Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
   - Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
   - Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

- Evaluate every 90 days the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
- Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

6. Authorize Payments to Out-Of-Home Residential Care Providers (Cal. Code Regs., tit. 2, § 60200, subd. (e))
   - Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356.
7. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c))
   - The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
   - The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
   - Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
   - Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
   - Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
   - Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

In order for the activities listed above to impose a reimbursable, state-mandated program under article XIII B, section 6 of the California Constitution, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514.[80] Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency or school district is required to incur as a result of a statute that mandates a new program or higher level of service.

Government Code section 17556 states that the Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
>
> (f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

---

[80] See also, *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Except for Government Code section 17556, subdivision (e), the Commission finds that the exceptions listed in section 17556 are not relevant to this claim, and do not apply here. Since the Legislature has appropriated funds for this program, however, Government Code section 17556, subdivision (e), is relevant and is analyzed below.

A. Government Code section 17556, subdivision (e), does not apply to deny this claim

Government Code section 17556, subdivision (e), states the Commission shall not find costs mandated by the state if the Commission finds that:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, *or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate*. (Emphasis added.)

Thus, in order for Government Code section 17556, subdivision (e), to apply to deny this claim, the plain language of the statute requires that two elements be satisfied. First, the statute must include additional revenue that was specifically intended to fund the costs of the state mandate. Second, the appropriation must be in an amount sufficient to fund the cost of the state mandate.

For the reasons provided below, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny this claim.

The reimbursement period of this test claim, if approved by the Commission, would begin July 1, 2001. The Budget Act of 2001 appropriated funds to counties specifically for this program in the amounts of $12,334,000 and $46,944,000.[81] The Budget Act of 2002 appropriated $1000 to counties.[82]

---

[81] Statutes 2001, chapter 106, items 4440-131-0001 and 4440-295-0001. Item 4440-295-0001, however, is an appropriation, pursuant to article XIII B, section 6, for the original program approved by the Commission in CSM 4282, *Handicapped and Disabled Students* (Stats. 1984, ch. 1747; Stats. 1985, ch. 1274; and on Cal. Code Regs., tit.2, §§ 60000 through 60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

[82] Statutes 2002, chapter 379, item 4440-295-0001. Item 4440-295-0001 is an appropriation, pursuant to article XIII B, section 6, for the original program added approved by the Commission in CSM 4282, *Handicapped and Disabled Students* (Stats. 1984, ch. 1747; Stats. 1985, ch. 1274; and on Cal. Code Regs., tit.2, §§ 60000 through 60610 (Emergency Regulations filed December 31, 1985, designated effective January 1,

The Commission finds that the amount appropriated in 2001 and 2002 are not sufficient to fund the cost of the state mandate and, thus, the second element under Government Code section 17556, subdivision (e), has not been satisfied. According to the State Controller's Deficiency Report issued on May 2, 2005, the unpaid claims for fiscal year 2001-02 total $124,940,258. The unpaid claims for fiscal year 2002-03 total $124,871,698.[83]

In addition, the Budget Acts of 2003 and 2004 contain appropriations "considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." However, for the reasons provided below, the Commission finds that Government Code section 17556, subdivision (e), has not been satisfied with these appropriations.

The Budget Act of 2003 appropriated $69 million to counties from the federal special education fund to be used exclusively to support mental health services identified in a pupil's IEP and provided during the 2003-04 fiscal year by county mental health agencies pursuant to the test claim legislation. (Stats. 2003, ch. 157, item 6110-161-0890, provision 17.) The bill further states in relevant part that the funding shall be considered offsetting revenue pursuant to Government Code section 17556, subdivision (e):

> This funding shall be considered offsetting revenues within the meaning of subdivision (e) of section 17556 of the Government Code for any reimbursable mandated cost claim for provision of these mental health services provided in 2003-04.

The Budget Act of 2004 similarly appropriated $69 million to counties from the federal special education fund to be used exclusively to support mental health services provided during the 2004-05 fiscal year pursuant to the test claim legislation. (Stats. 2004, ch. 208, item 6110-161-0890, provision 10.) The appropriation in 2004 was made as follows:

> Pursuant to legislation enacted in the 2003-04 Regular Session, of the funds appropriated in Schedule (4) of this item, $69,000,000 shall be used exclusively to support mental health services provided during the

---

1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

[83] The Deficiency Report is prepared pursuant to Government Code section 17567. Government Code section 17567 requires that in the event the amount appropriated for reimbursement of a state-mandated program is not sufficient to pay all of the claims approved by the Controller, the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time of proration. The Controller shall then issue a report of the action to the Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature that considers appropriations. The Deficiency Report is, thus, an official record of a state agency and is properly subject to judicial notice by the court. (*Munoz v. State* (1995) 33 Cal.App.4th 1767, 1773, fn. 2; *Chas L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 85-87.)

2004-05 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code and that are included within an individualized education program pursuant to the Federal Individuals with Disabilities Education Act (IDEA).

The Budget Act of 2004 does not expressly identify the $69 million as "offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." But the statute does contain language that the appropriation was made "[p]ursuant to legislation enacted in the 2003-04 Regular Session." As indicated above, it is the 2003-04 Budget Bill that contains the language regarding the Legislature's intent that the $69 million is considered offsetting revenue within the meaning of Government Code section 17556, subdivision (e).

The Commission finds that the Legislature intended to fund the costs of this state-mandated program for fiscal year 2004-05 based on the language used by the Legislature that the funds "shall be considered offsetting revenues within the meaning of Government Code section 17556, subdivision (e)." Under the rules of statutory construction, it is presumed that the Legislature is aware of existing laws and that it enacts new laws in light of the existing law.[84] In this case, the Legislature specifically referred to Government Code section 17556, subdivision (e), when appropriating the $69 million. Thus, it must be presumed that the Legislature was aware of the plain language of Government Code section 17556, subdivision (e), and that its application results in a denial of a test claim.

But, based on public records, the second element under Government Code section 17556, subdivision (e), requiring that the appropriation must be *in an amount sufficient* to fund the cost of the state mandate, has not been satisfied. According to the State Controller's Deficiency Report issued on May 2, 2005, the amounts appropriated for this program in fiscal years 2003-04 and 2004-05 are not sufficient to pay the claims approved by the State Controller's Office. Unpaid claims for fiscal year 2003-04 total $66,915,606. The unpaid claims for fiscal year 2004-05 total $68,958,263.[85]

---

[84] *Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 624.

[85] The State Controller's Deficiency Report lists the total unpaid claims for the following fiscal years as follows:

1999 and prior Local Government Claims Bills	$ 8,646
2001-02	124,940,258
2002-03	124,871,698
2003-04	66,915,606
2004-05	68,958,263

This finding is further supported by the 2004 report published by Stanford Law School, which states "$69 million represented only approximately half of the total funding necessary to maintain AB 3632 services."[86]

Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny this claim. Eligible claimants are, however, required to identify the funds received during fiscal years 2001-02 through 2004-05 as an offset to be deducted from the costs claimed.[87]

Based on the program costs identified by the State Controller's Office, the Commission further finds that counties do incur increased costs mandated by the state pursuant to Government Code section 17514 for this program. However, as more fully discussed below, the state has amended cost-sharing mechanisms for some of the mandated activities that affect the total costs incurred by a county.

B. Increased costs mandated by the state for providing psychotherapy and other mental health services.

In *Handicapped and Disabled Students* (CSM 4282), the Commission determined that the costs incurred for providing psychotherapy or other mental health treatment services were subject to the Short-Doyle Act. Under the Short-Doyle Act, the state paid 90 percent of the total costs of mental health treatment services and the counties paid the remaining 10 percent. Thus, the Commission concluded that counties incurred increased costs mandated by the state in an amount that equaled 10 percent of the total psychotherapy or other mental health treatment costs. In 1993, the Sixth District Court of Appeal agreed with the Commission's conclusion.[88]

In 1991, the Legislature enacted realignment legislation that repealed the Short-Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89, §§ 63 and 173.) The realignment legislation became effective on June 30, 1991. The parties have disputed whether the Bronzan-McCorquodale Act keeps the cost-sharing ratio, with the state paying 90 percent and the counties paying 10 percent, for the cost of psychotherapy or other mental health treatment services for special education pupils.

The Commission finds, however, that the Commission does not need to resolve that dispute for purposes of this test claim. Section 38 of Statutes 2002, chapter 1167 (Assem. Bill 2781) prohibits the funding provisions of the Bronzan-McCorquodale Act from affecting the responsibility of the state to fund psychotherapy and other mental health treatment services for handicapped and disabled pupils and requires the state to provide reimbursement to counties for those services for all allowable costs incurred. Section 38 also states the following:

---

[86] "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

[87] Government Code section 17514; California Code of Regulations, title 2, section 1183.1.

[88] *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993 (unpubl.)

> *For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter*, counties are *not* required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund [i.e. realignment funds]. (Emphasis added.)

In addition, Senate Bill 1895 (Stats. 2004, ch. 493, § 6) states that realignment funds used by counties for this program "are eligible for reimbursement from the state *for all allowable costs* to fund assessments, psychotherapy, and other mental health services . . . .," and that the finding by the Legislature is "declaratory of existing law." (Emphasis added.)

Therefore, beginning July 1, 2001, the 90 percent-10 percent cost-sharing ratio for the costs incurred for psychotherapy and other mental health treatment services no longer applies. Since the period of reimbursement for purposes of this reconsideration begins July 1, 2001, and section 38 of Statutes 2002, chapter 1167 is still in effect, all of the county costs for psychotherapy or other mental health treatment services are reimbursable, less any applicable offsets that are identified below.

C. Identification of offsets

Reimbursement under article XIII B, section 6 and Government Code section 17514 is required only for the increased costs mandated by the state. As determined by the California Supreme Court, the intent behind section 6 was to prevent the state from forcing new programs on local governments that require an increased expenditure by local government of their limited tax revenues.[89]

Government Code section 7576.5 states the following:

> If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

Government Code section 7576.5 was added by the Legislature in 2003 (Stats. 2003, ch. 227) and became operative and effective on August 11, 2003. Thus, the Commission finds money received by counties pursuant to Government Code section 7576.5 shall be identified as an offset and deducted from the costs claimed.

In addition, any direct payments or categorical funds appropriated by the Legislature to the counties specifically for this program shall be identified as an offset and deducted from the costs claimed. This includes the appropriations made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amount of $12,334,000

---

[89] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of San Diego, supra*, 15 Cal.4th at page 81.

and the $69 million appropriations in 2003 and 2004.[90] The appropriations made by the Legislature in 2001 and 2002, under Item 4440-295-0001 (appropriations of $46,944,000 and $1000, respectively), however, were expressly made pursuant to article XIII B, section 6 for purposes of reimbursing the original program approved by the Commission in CSM 4282, *Handicapped and Disabled Students*.[91] Since the Commission does not have jurisdiction in this test claim over the reimbursement of the statutes and regulations pled in the original test claim (CSM 4282), the Commission finds that the 2001 appropriation of $46,944,000 and the 2002 appropriation of $1000 are not required to be identified as an offset and deducted from the costs claimed here.

Furthermore, to the extent counties obtain private insurance proceeds with the consent of a parent for purposes of this program, such proceeds must be identified as an offset and deducted from the costs claimed. Federal law authorizes public agencies to access private insurance proceeds for services provided under the IDEA if the parent consents.[92] Thus, this finding is consistent with the California Supreme Court's decision in *County of Fresno v. State of California.* In the *County of Fresno* case, the court clarified that article XIII B, section 6 requires reimbursement by the state only for those expenses that are recoverable from tax revenues. Reimbursable costs under article XIII B, section 6, do not include reimbursement received from other non-tax sources.[93]

The Commission further finds that, to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal government for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed. Federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.[94] Federal law limits this authority as follows:

> (2) With regard to services required to provide FAPE [free appropriate public education] to an eligible child under this part, the public agency-
>
> (i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
>
> (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2)

---

[90] Statutes 2001, chapter 106, items 4440-131-0001; Statutes 2003, chapter 157, item 6110-161-0890, provision 17; Statutes 2004, chapter 208, item 6110-161-0890, provision 10.

[91] Statutes 2001, chapter 106, item 4440-295-0001; Statutes 2002, chapter 379, item 4440-295-0001.

[92] 34 Code of Federal Regulations section 300.142, subdivision (f).

[93] *County of Fresno, supra,* 53 Cal.3d at page 487.

[94] 34 Code of Federal Regulations section 300.142, subdivision (e).

of this section, may pay the cost that the parent would be required to pay;

(iii) May not use a child's benefits under a public insurance program if that use would

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discrimination of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.[95]

According to the 2004 report published by Stanford Law School, 51.8 percent of the students receiving services under the test claim legislation are Medi-Cal eligible.[96] Thus, the finds to the extent counties obtain proceeds under the Medi-Cal program from the state or federal government for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed.[97]

Finally, Senate Bill 1895 (Stats. 2004, ch. 493, § 6), states that realignment funds under the Bronzan-McCorquodale Act that are used by a county for the Handicapped and Disabled Students program are not required to be deducted from the costs claimed. Section 6 of Senate Bill 1895 adds, as part of the Bronzan-McCorquodale Act, section 5701.6 to the Welfare and Institutions Code, which states in relevant part the following:

---

[95] 34 Code of Federal Regulations section 300.142, subdivision (e)(2).

[96] "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

[97] In comments to the draft staff analysis, the County of Stanislaus states that counties share in the cost of Medi-Cal and, thus, the local Medi-Cal match should not be offset from the costs claimed under this program. The Commission agrees. Under the Medi-Cal program, "the state's share of costs of medical care and services, county administration, and fiscal intermediary services shall be determined pursuant to a plan approved by the Director of Finance and certified to by the director." (Welf. & Inst. Code, § 14158.5.) Thus, this analysis recommends that *to the extent* a county obtains proceeds under the Medi-Cal program from the state or federal government and that such proceeds pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program, such funds are required to be identified as an offset and deducted from the costs claimed.

> Counties may utilize money received from the Local Revenue Fund [realignment] ... to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. *If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs* to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations [IDEA] and required by Chapter 26.5 ... of the Government Code. (Emphasis added.)

Senate Bill 1895 was a budget trailer bill to the 2004 budget. However, for reasons provided below, the language in Welfare and Institutions Code section 5701.6, that realignment funds are not required to be identified as an offset and deducted from the costs claimed, is retroactive and applies to the reimbursement period for this test claim, beginning July 1, 2001.

Welfare and Institutions Code section 5701.6, subdivision (b), states that "[t]his section is declaratory of existing law." Although a legislative statement that an act is declaratory of existing law is not binding on the courts, the courts have interpreted such language as legislative intent that the amendment applies to all existing causes of action. The courts have given retroactive effect to such a statute when there is no constitutional objection to its retroactive application. In this regard, the California Supreme Court has stated the following:

> A subsequent expression of the Legislature as the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act. [Citation omitted.] Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a "clarification," the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. [Citation omitted.] Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question of the legislative body enacting the statute. [Citation omitted.] Thus, where a statute provides that it clarifies or declares existing law, "[i]t is obvious that such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of construction, we must give effect to this intention unless there is some constitutional objection thereto." [Citations omitted.][98]

Thus, the Commission finds that realignment funds used by a county for this mandated program are not required to be identified as an offset and deducted from the costs claimed.

Accordingly, the Commission finds that the following revenue and/or proceeds must be identified as offsets and be deducted from the costs claimed:

---

[98] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.

- Funds received by a county pursuant to Government Code section 7576.5.
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of $12,334,000 (Stats. 2001, ch. 106, item 4440-131-0001), and the $69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
- Private insurance proceeds obtained with the consent of a parent for purposes of this program.
- Medi-Cal proceeds obtained from the state or federal government that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source.[99]

CONCLUSION

The Commission concludes that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs in performing the following activities:

1. Interagency Agreements (Cal. Code Regs., tit. 2, § 60030)
    - The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures:
        - Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
        - A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
        - Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)

[99] *County of Fresno, supra,* 53 Cal.3d at page 487; California Code of Regulations, title 2, section 1183.1, subdivision (a)(8).

- At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
- The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

2. Referral and Mental Health Assessments (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045)

- Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
- A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
- If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
- If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
- Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)

- Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
- Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
- Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)
- The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

3. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)
   - Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.
   - Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.
4. Participate as a Member of the Expanded IEP Team When Residential Placement of a Pupil is Recommended (Gov. Code, § 7572.55; Cal Code Regs., tit. 2, § 60100)
   - When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. (Gov. Code, § 7572.55, subd. (c).)
   - The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
   - The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
   - When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

5. Case Management Duties for Pupils Placed in Residential Care (Cal. Code Regs., tit. 2, §§ 60100, 60110)

   - Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
   - When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
   - Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)
   - Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
   - Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
   - Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)
   - Evaluate every 90 days the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
   - Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

6. Authorize Payments to Out-Of-Home Residential Care Providers (Cal. Code Regs., tit. 2, § 60200, subd. (e))

   - Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356.

7. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c))

   - The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
   - The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
   - Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
   - Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
   - Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
   - Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

The Commission further concludes that the following revenue and/or proceeds must be identified as offsets and deducted from the costs claimed:

- Funds received by a county pursuant to Government Code section 7576.5.
- Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of $12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), and the $69 million appropriations in 2003 and

2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10).

- Private insurance proceeds obtained with the consent of a parent for purposes of this program.
- Medi-Cal proceeds obtained from the state or federal government that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
- Any other reimbursement received from the federal or state government, or other non-local source.

The reimbursement period for this test claim begins July 1, 2001.[100]

Finally, any statutes and or regulations that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

[100] Government Code section 17557, subdivision (e).

Tab 5

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Section 7576, as amended by Statutes of 1996, Chapter 654; California Code of Regulations, Title 2, Division 9, Chapter 1 , Sections 60000-60610; and California Department of Mental Health Information Notice Number 86-29 Filed on December 22, 1997 By the County of Los Angeles, Claimant.	No. 97-TC-05 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on May 25, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on May 26, 2000.

Paula Higashi, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Section 7576, as amended by Statutes of 1996, Chapter 654; California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610; and California Department of Mental Health Information Notice Number 86-29 Filed on December 22, 1997; By the County of Los Angeles, Claimant.	No. 97-TC-05 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on May 25, 2000)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on April 27, 2000 during a regularly scheduled hearing. Leonard Kaye, Paul McIver, Gurubanda Khalsa, and Robert Ulrich appeared for the County of Los Angeles and Daniel Stone appeared for the Department of Finance.

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

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

This test claim alleges reimbursable costs mandated by the state regarding the monitoring and paying for out-of-state residential placements for seriously emotionally disturbed (SED) pupils as detailed in Government Code section 7576, California Code of Regulations sections 60000-60610, and the California Department of Mental Health Information Notice Number 86-29.

Prior law provided that any community mental health agency shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation, when required in an individual's IEP. Specifically, Government Code section 7576 as amended by Statutes of 1985, Chapter 1247 provided:

"Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's [IEP]. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency. "

Regulations in effect immediately before the enactment of the test claim legislation prohibited county mental health agencies from providing psychotherapy and other mental health services in those cases where out-of-state residential placement was required. Section 60200 provided:

"(b) The local [county] mental health program shall be responsible for:

"(1) Provision of mental health services as recommended by a local mental health program representative and included in an [IEP]. Services shall be provided directly or by contract. . . . *The services must be provided within the State of California.* " (Emphasis added.)

In contrast, LEAs were required to provide mental health services for students placed outside of California under subdivision (c) of section 60200, which provided:

"(c) [LEAs] shall be responsible for:

"(3) Mental health services when an individual with exceptional needs is placed in a nonpublic school outside of the State of California." (Emphasis added.)

Thus, the law in effect immediately before the enactment of the test claim legislation did not require county mental health agencies to pay or monitor the mental health component of out-of-state residential placements for SED pupils.[1]

The Test Claim Legislation

The Legislature, in section 1 of Statutes of 1996, Chapter 654, expresses its intent that:

"The *fiscal and program* responsibilities of community mental health services shall be the same *regardless of the location of placement.* . . . [LEAs] and community mental health services *shall make out-of-state placements . . . only* if other options have been considered and are determined inappropriate. . . . "[2] (Emphasis added .)

Before the enactment of Chapter 654, counties were only required to provide mental health services to SED pupils placed in out-of-home (in-state) residential facilities. However, section 1 now requires counties to have fiscal and programmatic responsibility for SED pupils

---

[1] Title 2, California Code of Regulations, section 60200, subdivision (c)(3).

[2] Statutes of 1996, Chapter 654.

regardless of placement - i.e., regardless of whether SED pupils are placed out-of-home (in-state) or out-of-state.

Chapter 654 also added subdivision (g) to Government Code section 7576, which provides:

> "Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin which *shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. . . .* " (Emphasis added.)

California Code of Regulations, sections 60100 and 60200, amended in response to section 7576, further define counties' "fiscal and programmatic responsibilities" for SED pupils placed in out-of-state residential care. Specifically, section 60 100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil" reflects the Legislature's intent behind the test claim statute by 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. Section 60200 entitled "Financial Responsibilities" details county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

In particular, amended section 60200 removes the requirement that LEAs be responsible for the out-of-state residential placement of SED pupils. Subdivision (c) of section 60200 *now* provides that the county mental health agency of origin shall be "responsible for the provision of assessments and mental health services included in an IEP in accordance with [section 601001." Thus, as amended, section 60200 replaces the LEA with the *county of origin* as the entity responsible for paying the mental health component of *out-of-state* residential placement for SED pupils.

Therefore, the Commission found that under the test claim legislation and implementing regulations, county mental health agencies now have the fiscal and programmatic responsibility for the mental health component of a SED pupil's IEP whenever such pupils are referred to a community mental health agency by an IEP team.

Issue 1: Does the Test Claim Legislation Impose a New Program or Higher Level of Service Within an Existing Program Upon County Offices of Education Within the Meaning of Section 6, Article XIII B of the California Constitution by Requiring County Mental Health Agencies to Pay for Out-of-State Residential Placement for Seriously Emotionally Disturbed Pupils?

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must direct or obligate an activity or task upon local governmental entities; and (2) the required activity or task must be new, thus constituting a "new program, " or it must create an increased or "higher level of service" over the former required level of service. The court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local

agencies or school districts that do not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[3]

The test claim legislation involves the paying and monitoring of the mental health component of out-of-state residential placement for SED pupils. These placements are deemed necessary by an IEP team to ensure that the pupil receives a free appropriate public education. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements upon county mental health agencies that do not apply generally to all residents and entities of the state. Therefore, the Commission found that paying and monitoring of the mental health component of out-of-state residential placements for SED pupils constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[4]

Does A Shift of Costs and Activities Between Local Governmental Entities Create a New Program or Higher Level of Service?

The Commission found that immediately before the enactment of the test claim legislation, LEAs were responsible for paying and monitoring the mental health component of out-of-state residential placements for SED pupils. The test claim legislation shifted these responsibilities to county mental health agencies. The Government Code considers both LEAs and county mental health agencies local agencies for purposes of mandates law. Thus, the question arises whether a shift of program responsibilities from one local agency to another constitutes a state mandate. This question was recently addressed in *City of San Jose v. State of California?*

In *City of San Jose,* the issue was whether Government Code section 29550, which gave counties the discretion to charge cities and other local agencies for the costs of booking persons arrested by a city or other local agency into county jails, constituted a state mandate. The City of San Jose (City) contended that because the statute allowed counties to charge cities and other local agencies for booking fees, the statute imposed a new program under article XIII B, section 6. Thus, the City maintained that the *Lucia Mar*[7] decision governed the claim.

---

[3] *County of Los Angeles* v. *State of California (1987)* 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California (1987)* 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig (1988)* 44 Cal.3d 830, 835.

[4] *Long Beach Unified School Dist. v. State of California (1990)* 225 Cal.App.3d 155, 172.

[5] *City of San Jose, supra* (1996) 45 Cal.App.4th 1802.

[6] The Commission noted that the *Handicapped and Disabled Students* Test Claim, which also involved a shift of funding and activities from one local agency to another, was decided six years before the *City of San Jose* decision. Therefore, the analysis the Commission relied on in deciding the *Handicapped and Disabled Students* Test Claim is inapplicable to the present test claim.

[7] *Lucia Mar, supra* (1988) 44 Cal.3d 830, involved Education Code section 59300, enacted in 1981. That section required local school districts to contribute part of the cost of educating district students at state schools for the severely handicapped *while the state continued to administer the program.* Prior to 1979, the school districts had been required by statute to contribute to the education of students in their districts who attended state schools.

The *City of San Jose* court disagreed with the City's contention. The court held that the shift in funding was not from the state to the local agency, but from the county to the city and, thus, *Lucia Mar* was inapposite. The court stated:

> "The flaw in the City's reliance on Lucia Mar is that in our case the shift in funding is not from the state to the local entity but from the county to the city. *In Lucia Mar,* prior to the enactment of the statute in question, the *program was funded and operated entirely by the state. Here, however, at the time section 29550 was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county.* "[8] (Emphasis added.)

The *City of San Jose* court concluded that:

> *"Nothing in article XIII B prohibits the shifting of costs between local governmental entities.* "[9] (Emphasis added.)

The requirement to provide for and monitor the mental health component of a SED pupil in an out-of-state residential placement was not shifted to county mental health agencies by LEAs - LEAs have no such power. Rather, the shift in activities was performed by the state. *City of San Jose* applies if it can be shown that *LEAs* initiated the shift *of costs* to counties. However, this is not the case. Although a shift between local agencies occurred, the state required the shift. Moreover, the shift entailed both *costs and activities.*

As explained above, the legislation at issue in *City of San Jose* permitted counties to charge cities and other local agencies for the costs of booking persons arrested by a city or other local agency into county jails. The counties, in turn, enacted ordinances that required cities and other local agencies to pay booking fees. Under these facts, the county not the state, imposed costs upon cities and other local agencies. While the state enabled counties with the authority to charge booking fees to cities or other local agencies, the state did not require the imposition of such fees.

The same cannot be said for the test claim legislation. Before the enactment of the test claim legislation, LEAs were required to provide for the mental health component of a SED pupil in an out-of-state residential placement. Under the test claim legislation, the state shifted those responsibilities from LEAs to county mental health agencies. This scenario is different from

---

However, those statutes were repealed following the passage of Proposition 13 in 1978. In 1979, the state assumed full responsibility for funding the schools. At the time section 59300 was enacted in 1981, the state had full financial responsibility for operating state schools.

The California Supreme Court found that the primary financial and administrative responsibility for state handicapped schools rested with the state at the time the test claim statute was enacted. The court stated that "[t]he intent of [section 6] would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government. . . . " (Emphasis added.) Thus, the court found that, under the circumstances of the case, the transfer of financial responsibility from the state to local school districts imposed a new program under section 6.

[8] City of *San* Jose, *supra* (1996) 45 Cal.App.4th 1802, 1812.

[9] *Id.* at 1815.

the one in *City of San Jose,* in which the court recounted: "in our case the shift in *funding* is not from the State to the local entity but from county to city. "[10] (Emphasis added.)

Based on the foregoing, the Commission found that *City of San Jose* does not apply to the present test claim. The shift in responsibilities regarding the mental health component of SED pupils in out-of-state residential placements represents a shift performed by the state. In addition, there is a shift of *costs and activities.*

Issue 2: Does the Requirement That Counties Pay and Monitor the Mental Health Component of Out-of-State Residential Placements for SED Pupils Represent Costs Mandated by the State?

The Commission noted that the issue of whether federal special education law requires counties to pay and monitor the mental health component of out-of-state residential placements for SED pupils must be addressed to determine whether there are costs mandated by the state.

Overview of Federal Special Education Law - The Individuals with Disabilities Education Act (IDEA)

The Commission noted that the Education for All Handicapped Children Act (Act) of 1975 is the backbone of the federal statutory provisions governing special education. [11] The express purpose of the Act is to assist state and local educational efforts to assure equal protection of the law and that children with disabilities have available special education and related services designed to meet their unique needs.

The Act requires : "that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. "[12] The Act defines FAPE as "special education" and "related services" that: (1) are provided at public expense,* under public supervision and direction, and without charge; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary, or secondary school education in the state involved; and (4) are provided in conformity with the individualized education program (IEP) required under federal law.

The Commission further noted that every disabled child must have an IEP. The IEP is a written statement developed in a meeting between the school, the teacher, and the parents. It includes the child's current performance, the annual goals and short-term instructional objectives, specific educational services that must be provided, and the objective criteria and evaluation procedures to determine whether the objectives are being achieved. Special education services include both *special education,* defined as specially designed instruction to meet the unique needs of a child with disabilities, and *related services,* defined as such developmental, corrective, and other supportive services as may be require;! to assist a child

---

[10] City of *San Jose, supra* (1996) 45 Cal.App.4th 1802, 1812.

[11] In 1990, Congress changed the title of the Act to the "Individuals with Disabilities Education Act."

[12] *Ibid.*

with disabilities to benefit from special education. The federal definition of a "child with a disability" includes children with serious emotional disturbances.

Are Counties Responsible for Paying and Monitoring the Mental Health Component of Out-of-State Residential Placements for SED Pupils Under Federal Law?

As discussed in the previous section, federal law requires that every child receive a FAPE. The Commission found that SED pupils are no exception to this requirement. [13] The test claim legislation requires counties to be responsible for the mental health component of out-of-state residential placements for SED pupils. A SED pupil's IEP team, which includes a county mental health representative, directs such placements. [14] The purpose of a SED pupil's IEP is to ensure they receive a FAPE in the least restrictive environment. In those cases where out-of-state residential placements are required, it is because an IEP team has determined that no school site, school district, or out-of-home (in-state) residential placement is adequate to provide the necessary special education services to meet the federal FAPE requirement. [15]

The Commission found that when an IEP team recommends an out-of-state residential placement for a SED pupil, the requirement to provide such placement is a federal, not state requirement. Such placements are made to ensure pupils receive a FAPE, not in response to any state program. However, the fact that federal law requires the state to provide a FAPE to all disabled children begs the question: Does federal law require county mental health agencies to pay and monitor the mental health component of out-of-state residential placements for SED pupils?

The Commission found that federal law does not require counties to provide out-of-state placements. The Commission recognized that federal law defines "local educational agency" as:

> "A public board of education or other public authority legally constituted within a State for either *administrative control or direction of,* or *to perform a service function for*, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. . . . The term includes -

---

[13] The claimant agrees: "As previously noted, of the 1,000 pupils who receive residential care, only a few, about 100, are placed out-of-state. But the rights of the few are no less that the rights of the many. [SED] pupils placed in out-of-state residential program [sic] are also entitled to a [FAPE]." See claimant's Test Claim filing dated December 22, 1997 at page 3.

[14] Education Code section 56345 requires school districts or county offices of education to provide the services that are recommended in the student's IEP.

[15] The Commission noted that title 2, California Code of Regulations, section 60100 provides that when an IEP team member recommends residential placement, the IEP team is expanded to include a county mental health representative. Before determining that residential placement is required, the expanded IEP team must consider other, less restrictive alternatives - such as a full-time behavioral aide in the classroom and/or parent training. The IEP team must document the alternatives considered and why they were rejected. Section 60100 goes on to provide that: "Residential placements for a [SED pupil] may be made out of California only when no-instate facility can meet the pupil's needs. "

"(i) an educational service agency . . . ; and

"(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school. "[16]

The Commission found that, as the above definition demonstrates, federal law does not consider counties to be "local educational agencies. "[17] Counties are not legally constituted in the state for "'either *administrative control or direction of,* or *to perform a service function for,* public elementary or secondary schools. " Under the test claim legislation counties are only providing services *on an individual basis.*

Furthermore, the Commission found that counties are not recognized by the state as an administrative agency having control and direction of a public elementary or secondary school It is LEAs that continue to control a SED pupil's IEP. LEAs determine when a county mental health agency representative must join a pupil's IEP team. The county acts in a responsive manner to the determinations of the LEA, not in a proactive manner. Therefore, the Commission concluded that counties do not have administrative control and direction of public elementary or secondary schools, let alone SED pupils.

Moreover, the Commission recognized that federal law defines public agency to include:

" [State Educational Agencies-J, LEAs, [educational service agencies (ESA)] , public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and *any other political subdivisions of the State that are responsible for providing education to children with disabilities.* "[18] (Emphasis added.)

The Commission found that the federal definition of "public agency" does not include counties for purposes of this test claim. Since counties are not included in the federal definition of LEAs, the question remains whether counties are "responsible for providing education to children with disabilities. " To answer this question it is necessary to review the state's requirements under the test claim legislation. Here, under the test claim legislation, counties are not responsible for providing education to children with disabilities. Rather, the test claim legislation limits counties' responsibilities to paying for and monitoring the mental health component of out-of-state residential placements of SED pupils. Under the test claim legislation, LEAs continue to be responsible for the educational aspects of a SED pupil's IEP. This is evidenced by regulation section 60110, subdivision (b)(2), which provides that: "The LEA shall be responsible for providing or arranging for the special education and non-mental health related services needed by the pupil." Moreover, there is no reference to counties in federal special education law that would support a finding that counties, under the program outlined in the test claim legislation, are required to pay for and monitor out-of-state residential placements of SED pupils. Therefore, the Commission concluded that federal law does not

---

[16] Title 20, United States Code, section 1401, subdivision (15).

[17] The definition of "local educational agency" is identical in the federal regulations. See 34 Code of Federal Regulations, section 300.18.

[18] 34 Code of Federal Regulations, section 300.22.

require counties to pay for and monitor the mental health component of out-of-state residential placements for SED pupils.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation, regulations, and information notice impose new programs or higher levels of service within an existing program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- 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 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, sections 60000-60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

Tab 6

Adopted: October 26, 2006

CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (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)

Commencing with Fiscal Year 2006-2007

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs

claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable 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 Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure

section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)

1. Renew the interagency agreement every three years, and revise if necessary.
2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))

1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)

11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.

12. If necessary, interview the pupil and family, and conduct collateral interviews.

13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)

14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)

15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)

16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)
4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)
2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)

3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)
5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)
7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)
8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)
9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)
10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)
11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)
14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

---

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
6. Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.

7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the

contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

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

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

Cost Report Method

A. Cost Report Method

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUE AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.

---

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(F)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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

July 30, 2010

Ms. Jill Kanemasu
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

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

RE: **Adopted Amendments to Parameters and Guidelines,** 09-PGA-03
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)
State Controller's Office, Requestor

Dear Ms. Kanemasu:

On July 29, 2010, the Commission on State Mandates adopted the enclosed amendment to the parameters and guidelines for the above-entitled program.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

J:mandates/2009/09pga03/pgaadopttrans

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS AND GUIDELINES ON: Government Code Sections 7570-7588; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Sections 60000-60610 (Emergency Regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency Regulations effective July 1, 1998 [Register 98, No. 26], Final Regulations effective August 9, 1999 [Register 99, No. 33]); Filed on February 4, 2010; By State Controller's Office, Requestor.	No. 09-PGA-03 (04-RL-4282-10; 02-TC-40/ 02-TC-49; 97-TC-05) *Consolidated Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental health Services* ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.2 (Adopted on July 29, 2010)

AMENDMENT TO PARAMETERS AND GUIDELINES

On July 29, 2010, the Commission on State Mandates adopted the attached amendment to parameters and guidelines.

Paula Higashi

Paula Higashi, Executive Director

Dated: July 30, 2010

Tab 7

Amended: July 29, 2010
Adopted: October 26, 2006

AMENDMENT TO CONSOLIDATED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students 09-PGA-03 (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)

Commencing with Fiscal Year 2008-2009

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs

claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable 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 Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure

section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are eligible for reimbursement:

A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):

1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)

1. Renew the interagency agreement every three years, and revise if necessary.
2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.

C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))

1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)

11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.

12. If necessary, interview the pupil and family, and conduct collateral interviews.

13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)

14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)

15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)

16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)

18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)

20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)

21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.

2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)

1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)
4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)

1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)
2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs, tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)

3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)

4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit, 2, § 60110, subd, (b)(1).)

5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)

6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)

7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)

8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)

9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)

10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(7).)

11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)

12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)

13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)

14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)

15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)

G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.

2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.

3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)[1])

1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

[1] Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)

3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

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

5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

6. Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.

2. Preparation of witnesses and documentary evidence to be presented at hearings.

3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.

4. Attendance and participation in formal mediation conferences.

5. Attendance and participation in information resolution conferences.

6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.

7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the

contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

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

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

Cost Report Method

A. Cost Report Method

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING REVENUE AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.

---

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(G)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

Commission on State Mandates

Original List Date: 5/10/2010
Last Updated: 7/30/2010
List Print Date: 07/30/2010
Claim Number: 09-PGA-03
Issue: Handicapped and Disabled Student (04-RL-4282-10); Handicapped and Disabled Students II (02-TC-40/02-TC-49); and Seriously Emotionally Disturbed (SED) Pupils; Out-ofState Mental Health Services (97-TC-05)

Mailing Information: Notice of adopted Ps & Gs

Mailing List

Related Matter(s)

02-TC-40	Handicapped and Disabled Students II
02-TC-49	County Mental Health Services For Pupils With Disabilities
04-RL-4282-10	Handicapped and Disabled Students
97-TC-05	Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Zoey Todd Department of Mental Health (A-31) 1600 9th Street, Room 130 Sacramento, CA 95814	Tel: Fax:	(916) 651-1446 (916) 654-3198
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Michael Wilkening Department of Finance (A-15) 915 L Street, 9th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-6423
Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Tel: Fax:	(909) 386-8850 (909) 386-8830
Ms. Robin Ulesich-Roemmel Department of Mental Health (A-31) 1600 9th Street, Room 150 Sacramento, CA 95814	Tel: Fax:	(916) 651-0491 (916) 653-6486
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Fax:	(916) 939-7901 (916) 939-7801

Ms. Stacey R. Wofford Department of Mental Health (A-31) 1600 9th Street, Room 130 Sacramento, CA 95814	Tel: Fax:	(916) 651-0995 (916) 651-1496
Director California Department of Developmental Services P.O. Box 944202 Sacramento, CA 94244-2020	Tel: Fax:	(916)654-1690
Mr. Edward Jewik Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 974-8564 (213) 617-8106
Ms. Christine L. Cohen County of Ventura County Auditor's Office 800 S. Victoria Avenue Ventura, CA 93009-1540	Tel: Fax:	(805) 654-3151 (805) 654-5081
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913
Ms. Bonnie Burns Children & Family Services County of Fresno 2011 Fresno Street, Suite 301 Fresno, CA 93721	Tel: Fax:	(916) 000-0000 (916) 000-0000
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	**Claimant Representative** Tel: Fax:	 (916) 485-8102 (916) 485-0111
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Fax:	(916) 324-4728 (916) 319-0116
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	**Claimant Representative** Tel: Fax:	 (916) 471-5538 (916) 366-4838

Ms. Linda Downs Administrative Services Stanislaus County Behavioral Health & Recovery Services 800 Scenic Drive Modesto, CA 95350	Tel: Fax:	(209) 525-6225 (209) 525-6291
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Fax:	(916) 446-7517 (916) 446-2011
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: Fax:	(916) 368-9244 (916) 368-5723
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 974-9791 (213) 617-8106
County of Sacramento Mental Health Administration 7001-A East Parkway, Suite 400 Sacramento, CA 95823	Tel: Fax:	(916) 875-7070 (916) 875-6970
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328 (916) 323-9530
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584
Mr. Mark Refowitz County of Orange Health Care Agency Orange County Department of Mental Health 405 W. 5th St., Suite 721 Santa Ana, CA 92701	Tel: Fax:	(714) 834-6254 (714) 834-3660
Ms. Patricia Ryan California Mental Health Directors Association 2125 19 Street, 2nd Floor Sacramento, CA 95818-1602	Tel: Fax:	(916) 556-3477 (916) 446-4519
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	(951) 303-3034 (951) 303-6607
Ms. Diane Van Maren Senate Budget & Fiscal Review Committee (E-22) California State Senate State Capitol, Room 5066 Sacramento, CA 95814	Tel: Fax:	(916) 445-5202 (916) 323-8386

Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Ms. Sandra Shewry, Director Department of Health Services (A-22) 1501 Capital Avenue MS 0000 Sacramento, CA 95899-7413	Tel: Fax:	(916) 440-7400 (916) 440-7404
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 322-9891
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Fax:	(916) 443-9136 (916) 443-1766
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Mr. Dale Mangram Riverside County Auditor Controller's Office 4080 Lemon Street, 11th Floor Riverside, CA 92502	Tel: Fax:	(951) 955-3883 (951) 955-8133
Mr. Edward Jewik Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 974-8564 (213) 617-8106
Mr. Mark Hagiya Department of Health Services P.O. Box 997413, MS0010 Sacramento, CA 95899-7413	Tel: Fax:	(916) 440-7400 (916) 440-7408
Ms. Denise C. Hunt, R.N., M.F.T. County of Stanislaus Behavioral Health and Recovery Systems 800 Scenic Drive Modesto, CA 95350	Tel: Fax:	(209) 525-6205 (209) 525-6291
Mr. Mark Ginsberg Department of Social Services (A-24) Staff Attorney 744 P Street, MS 17-27 Sacramento, CA 95814	Tel: Fax:	(916) 657-2353 (916) 657-2281

Tab 8

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES AMENDMENT FOR:

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
Statutes 1994, Chapter 1128 (AB 1892)
Statutes 1996, Chapter 654 (AB 2726)
Statutes 2011, Chapter 43 (AB 114)

California Code of Regulations, Title 2, Sections 60000-60610 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])

Requestor: Department of Finance

Reimbursement Ends: Effective July 1, 2011.

Case Nos.: 11-PGA-06 (4282, 04-RL-4282-10, 02-TC-40/02-TC-49, 97-TC-05)

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

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

(*Adopted September 28, 2012*)

(*Served October 5, 2012*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines amendment on consent during a regularly scheduled hearing on September 28, 2012.

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

COMMISSION FINDINGS

Chronology

12/21/2011	Department of Finance filed a request to amend parameters and guidelines
01/18/2012	Commission staff issued a notice of complete filing and schedule for comments issued
06/14/2012	Draft staff analysis and proposed parameters and guidelines amendment issued
09/11/2012	Proposed statement of decision and parameters and guidelines amendment issued

I. Summary of the Mandate

The consolidated programs were enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. Under federal law, a state's educational agency is responsible for meeting the IDEA requirements. However, states have the option under federal law to assign responsibility for the provision of mental health or other related services to other local agencies.[1] Thus, the test claim statutes (codified in chapter 26.5 of the Government Code by AB 3632, beginning with section 7560) shifted to counties the responsibility and funding of the mental health services required by the IDEA and identified in a pupil's individualized education plan (IEP).

On October 26, 2006, the Commission consolidated the parameters and guidelines for the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* programs for claiming costs beginning in fiscal year 2006-2007. The consolidated parameters and guidelines were last amended in July 2010 to correct language in Section VI of the parameters and guidelines, dealing with the record retention requirements unique to the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.[2]

On December 21, 2011, the Department of Finance requested that these parameters and guidelines be amended to reflect AB 114, a budget trailer bill enacted on June 30, 2011, to end reimbursement for the consolidated program on June 30, 2011.[3]

AB 114 (Stats. 2011, ch. 43)

AB 114 eliminates the test claim statutory requirements for counties, shifts the responsibilities of providing mental health services required by a pupil's IEP to school districts, and continues the funding for educationally related mental health services to pupils.[4] AB 114 amended the test claim statutes as follows:

---

[1] 20 U.S.C. section 1412(a)(11) and (a)(12).

[2] Exhibit B.

[3] Exhibit A.

[4] The floor analysis on AB 114, prepared by the Assembly on June 28, 2011, states the following:

- Section 32 amended Government Code section 7572, by eliminating former subdivision (c), which stated the following: "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, pursuant to this chapter." Section 32 also amended former subdivision (e) by eliminating the requirement for the local education agency to invite the county mental health professional to meet with the IEP team whenever mental health services are considered for inclusion in the IEP team.
- Sections 33-38, 41, 42, 43, 48, 49, and 51 added a subdivision to Government Code sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7, and Welfare and Institutions Code sections 5701.3, 5701.6, and 18356.1 to state the following: "This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed."
- Section 40 amended Government Code section 7585, which addresses an agency's failure to provide services required under an IEP. The bill eliminated references to mental health services provided by counties under Government Code section 7576.
- Section 44 repealed Government Code section 7588, which provided that "This chapter shall become operative on July 1, 1986, except Section 7583, which shall become operative on January 1, 1985."
- Section 47 amended Welfare and Institutions Code section 5651 to eliminate former subdivision (a)(2), which provided that the annual county mental health services performance contract shall include assurances "that the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirements of that chapter."

Section 55 of the bill also directs the Departments of Education and Mental Health to modify or repeal the joint regulations adopted to implement the program that are no longer supported by statute.[5] These regulations are located in Title 2, sections 60000 et seq., and are considered the

---

Amend and repeals various sections of the Education, Government, and Welfare and Institutions code to repeal the state AB 3632 mandate program, which mandated counties to provide mental health services to students with disabilities. This mandate was suspended due to the veto of funding for the AB 3632 mandate in the 2010-2011 budget by Governor Schwarzenegger. As a result of this elimination, responsibility for educationally related mental health services, as required by federal law for student[s] with disabilities, is permanently shifted to schools. Pursuant to federal law, local educational agencies are required to update the Individualized Education Plan of each child that will experience a change in services as a result of this shift of responsibility.

[5] AB 114, section 55 states the following:

"meat" of the program. The regulations are included in the consolidated parameters and guidelines for reimbursement. Section 60000 introduces the regulatory requirements by stating the following:

> The provisions of this chapter shall implement Chapter 26.5, commencing with Section 7570, of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to pupils with disabilities. This chapter applies to the State Departments of Mental Health, Health Services, Social Services, and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas.

Following the enactment of AB 114, working group meetings and webinars with school districts were conducted by the Department of Education to help transition the provision of psychological and other mental health services to school districts. The webinar documents state that the Title 2 regulations related to the test claim statutes are no longer supported by statute and will need to be readopted, amended and adopted, or repealed.[6] As of this date, however, the regulations still exist in the California Code of Regulations.

II. Commission Findings

The request to amend the parameters and guidelines for this consolidated program raises a couple of legal issues. Although the enabling statutes for the program have been amended by the

---

(a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are not longer supported by statute due to the amendments in Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(b) The State Department of Education and the appropriate departments within the California Health and Human Services Agency shall review regulations to ensure the appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(c) The State Department of Education and the appropriate departments within the California Health and Human Services Agency may adopt regulations to implement Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Education and the appropriate departments within the California Health and Human Services Agency are hereby exempted, for this purpose, from the requirements of subdivision (b) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

[6] Exhibit D.

Legislature to become inoperative and, thus, no longer imposing a state-mandated program beginning July 1, 2011, the regulations that implement the program have not yet been amended or repealed and still exist in the California Code of Regulations. Thus, the issue is whether counties continue to be mandated by the state to comply with the regulations in Title 2, sections 60000 et seq. For the reasons below, the Commission finds that the activities required by sections 60000, et seq., and included in the consolidated parameters and guidelines, no longer impose a reimbursable state-mandated program pursuant to article XIII B, section 6.

Government Code sections 11340, et seq., governs the rulemaking process. Government Code section 11342.2 states that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Thus, state agencies do not have the discretion to promulgate a regulation that is inconsistent with the governing statute. Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and not effective.[7]

AB 114 repealed and made inoperative the statutes that originally shifted the provision of psychotherapy and other mental health treatment services for pupils based on their IEPs to counties. Although the regulations in Title 2, sections 60000, et seq., were valid when promulgated by the Departments of Education and Mental Health, the regulatory requirements imposed on counties now conflict with the enabling statutes. Therefore, the requirements imposed on counties are not in effect pursuant to Government Code section 11342.2, and the test claim regulations no longer constitute a state-mandated program on counties.

Furthermore, AB 114 was intended to implement changes made in the Budget Act for fiscal year 2011-2012 and its plain language makes inoperative the test claim statutes beginning July 1, 2011. Therefore, the Commission finds that the consolidated mandated program ends on June 30, 2011, and that counties are no longer eligible to claim reimbursement for these programs beginning July 1, 2011.

The proposed parameters and guidelines amendment adds language to the title, Section I Summary, and Section III Period of Reimbursement to clarify that effective July 1, 2011, the consolidated mandated program is no longer reimbursable.

III. Conclusion

The Commission hereby adopts this 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.

---

[7] *Ontario Community Foundation, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816-817; *Woods v. Superior Court* (1981) 28 Cal.3d 668, 678.

Tab 9

AGREEMENT TO PROVIDE MENTAL HEALTH SERVICES

This Agreement is executed this 1st day of July, 1998, by and between Mental Health Systems Inc. ("MHS"), a California non-profit corporation and Charter Provo Canyon School, LLC ("Provo Canyon") a Delaware for-profit limited liability company.

RECITALS

A. MHS is certified as a Short-Doyle/Medi-Cal Mental Health Rehabilitation Services Provider, which desires to contract with Provo Canyon to provide care to children and adolescents who have been authorized by certain County Mental Health Departments of California as listed on Exhibit C to receive mental health services;

B. Provo Canyon has been approved by the certain County Mental Health Departments for the State of California (as listed on Exhibit C) as a provider of services to children and adolescents residing in California and desires to contract with MHS for the purpose of obtaining certain funds distributed by California State Social Services and California County Mental Health Departments;

C. MHS seeks to contract with qualified professionals to assure that appropriate care is provided to those persons authorized to receive mental health services;

D. Provo Canyon has agreed to provide the services of qualified professionals to provide care to those persons authorized to receive mental health services.

IT IS THEREFORE AGREED by the parties as follows:

1. Definitions.

A. **Beneficiary** shall mean any person authorized by any of the certain County Mental Health Departments of California (as listed on Exhibit C which may be amended from time to time as appropriate and upon mutual agreement of the parties) to receive Mental Health Services and who has been properly placed at Provo Canyon for the provision of services pursuant to Chapter 26.5 of Division 7 of Title 1 of the Government Code.

B. **Mental Health Services** shall mean all inpatient mental health services.

C. **Covered Services** are those services covered by California State Social Service funding or by California County Mental Health Departments, as identified on Exhibit A.

D. **Professional** shall mean an employee, or independent contractor of Provo Canyon qualified to provide services as required pursuant to this Agreement.

2. Provision of Covered Services. Provo Canyon will employ Professionals who shall provide Covered Services to Beneficiaries in accordance to this Agreement. Provo Canyon shall insure that Covered Services are rendered in a manner which assures availability, adequacy, and continuity of care to Beneficiaries.

Provo Canyon shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable State and Federal requirements, and which are necessary fro the provision of the services hereunder.

All Covered Services rendered hereunder shall be provided by Provo Canyon under the general supervision of MHS. MHS shall have the right to monitor the kind, quality, appropriateness, timeliness and the amount of Covered Services to be provided, however all decisions pertaining to the Mental Health Services to be rendered to any Beneficiary shall be based on the individual Beneficiary's medical needs as initially determined by Provo Canyon. Provo Canyon shall remain solely responsible for the quality of all Mental Health Services and Covered Services provided.

3. Compliance with Laws.

A. Nondiscrimination. Provo Canyon shall not discriminate in providing any services based on the sex, race, national origin, religion, or disability of any Beneficiary.

B. Child Abuse Reporting and Related Personnel Requirements. Provo Canyon, and all persons employed by Provo Canyon, shall comply with all child abuse and neglect laws of the State of Utah and shall report all known or suspected instances of child abuse to an appropriate child protective agency, as mandated by the laws of Utah. Provo Canyon shall assure that any person who enters into employment as a care custodian of minor children, or who enters into employment as a health or other practitioner, prior to commencing employment, and as a prerequisite to that employment, shall sign a statement on a form provided by MHS in accordance with the above laws to the effect that such person has knowledge of, and will comply with, these laws. For the safety and welfare of minor children, Provo Canyon shall, to the maximum extent permitted by law, ascertain arrest and conviction records for all current and prospective employees and shall not employ or continue to employ any person convicted of any crime involving any harm to minor children. Provo Canyon shall not employ or continue to employ, or shall take other appropriate action to fully protect all persons receiving services under this Agreement concerning, any person whom Provo Canyon knows, or reasonably suspects, has committed any acts which are inimical to the health, morals, welfare, or safety of minor children, or which otherwise make it inappropriate for such person to be employed by Provo Canyon.

C. Fair Labor Standards. Provo Canyon shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend and hold harmless MHS, its officers, employees and agents, from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act, for services performed by Provo Canyon's employees for which MHS may be found jointly or solely liable.

D. Licensure. Provo Canyon certifies that it is licensed as a Residential Treatment Center and that each of its Professionals is licensed and/or certified in good standing to practice his or her profession in the State of Utah. Provo Canyon, its Professionals, officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of the services hereunder and required by the laws or regulations of the United States, Utah and all other applicable government jurisdictions or agencies. Provo Canyon agrees to immediately notify MHS in the event that Provo Canyon or any Professional has his/her license placed on probation, suspended, or terminated.

4. Insurance. Without limiting Provo Canyon's indemnification as provided herein, at all times during the course of this Agreement, Provo Canyon shall maintain professional liability insurance at least in the amount of [$2,000,000 per occurrence and $6,000,000 annual aggregate]. Provo Canyon shall also maintain customary and reasonable workers compensation insurance and general liability insurance. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of or from any services provided by Provo Canyon (including those services rendered by Provo Canyon Professionals or personnel who are acting under the direction or supervision of Provo Canyon) shall be payable by Provo Canyon, to the extent not covered by insurance proceeds. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of services provided by MHS shall be payable by MHS, to the extent not covered by insurance proceeds.

Provo Canyon shall provide evidence of such coverage prior to the effective date of this Agreement and thereafter as requested by MHS. Provo Canyon's insurance shall include MHS as an additional insured with respect to the operations which Provo Canyon performs under contract with MHS. It is agreed that any insurance maintained by MHS shall apply in excess of and not contribute with, insurance provided by this policy. Provo Canyon's insurance shall not be canceled, limited or non-renewed until after thirty (30) days written notice has been given to MHS at the address first noted in this Agreement.

In the event that any Professional or Provo Canyon is sued as a result of any services provided to a Beneficiary pursuant to this Agreement, Provo Canyon shall immediately notify MHS. Provo Canyon shall notify MHS, in writing, within sixteen (16) hours of becoming aware of any occurrence of a serious nature which may expose MHS to liability. Such occurrences shall include, but not be limited to deaths, accidents or injuries to any Beneficiary, or acts of negligence of Provo Canyon or one of its Professionals.

5. Prohibition on Billing Beneficiaries. MHS shall be the sole source of payment to Provo Canyon for those Covered Services rendered to the Beneficiaries for which MHS obtains funding from California State Social Services and/or California County Mental Health Departments. Provo Canyon agrees that in no event shall it seek payment from the Beneficiaries for any Covered Service except in those instances where there is a co-payment amount or for incremental costs, as outlined in the financial policies of Provo Canyon, including medical and ancillary expenses not covered under routine room and board. If Provo Canyon desires to seek such payment from the Beneficiaries for either a co-payment or for incremental costs, Provo Canyon shall seek such payment directly without any involvement from MHS. Provo Canyon agrees that it and not MHS will have full responsibility for Provo Canyon's collection of money for such co-payments or incremental costs.

6. Total Quality Management/Utilization Review. Provo Canyon agrees to cooperate fully with MHS in assuring total quality management and utilization review in accordance with MHS's policies. This includes, but is not limited to, permitting MHS to observe the operation of Provo Canyon and to review the records of individual Beneficiaries, in accordance with all applicable laws, to assure that the care which is provided is appropriate.

7. Release of Medical Information. MHS, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by MHS. Provo Canyon, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by Provo Canyon.

8. Indemnification. Except as provided herein, MHS agrees to indemnify and hold Provo Canyon, its officers, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which Provo Canyon may sustain, pay, suffer or incur by reason of any act, omission, or negligence of MHS in performing its obligations under this Agreement.

Except as provided herein, Provo Canyon agrees to indemnify and hold MHS, its officers, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which MHS may sustain, pay, suffer or incur by reason of any act, omission, or negligence of Provo Canyon in performing its obligations under this Agreement.

Immediately after either Party has notice of a claim or potential claim relating either directly or indirectly to any Beneficiary as defined by this Agreement, that party shall give notice to the other of any claim or other matter with respect to which indemnity may be sought pursuant to this provision, and of the commencement of any legal proceedings or action with respect to such claim, and shall permit the other party at its own expense to assume the handling and defense of any such claim, proceeding or action. Neither party shall pay or settle any claim or action subject to the indemnity hereunder without the prior written consent of the other party.

Failure to give such notice, or the payment or settlement without written consent, shall vitiate the indemnity provided herein.

9. Maintenance of Records. Provo Canyon agrees to maintain standard financial and medical records for Beneficiaries for at least a five-year period (or longer if required by law or by any funding source) and to comply with all applicable provisions of federal and state law concerning confidentiality of such records. In the event a Beneficiary chooses another mental health services provider, Provo Canyon shall forward such records to the new mental health services provider upon Provo Canyon's receipt of the Beneficiary's signed consent and authorization in a timely manner at no cost to the Beneficiary or MHS.

10. Access to Records. This Section is included herein because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement. If such Section 1861(v)(1)(I) should not be found applicable to this Agreement under the terms of such Section and the regulations promulgated thereunder, then this Section of the Agreement will be deemed not to be a part of this Agreement and will be null and void. Until the expiration of four years after the furnishing of services under this Agreement, Provo Canyon will make available to MHS, the California County Mental Health Departments listed on Exhibit C, U.S. Department of Health and Human Services, and the Comptroller General this Agreement and all related books, documents and records. Unless required by law, Provo Canyon shall not otherwise disclose the terms and conditions of this Agreement to any third parties, except to its attorneys or accountants who shall be similarly bound.

11. Audits. Provo Canyon will permit MHS and those California County Mental Health Departments listed on Exhibit C, upon written request and during reasonable business hours, to have access to its business, financial and client records related to services provided to Beneficiaries related to this Agreement for the purpose of auditing Provo Canyon's bills and for conducting quality and utilization review.

12. Required Notification. Provo Canyon shall notify MHS within five days of any of the following occurrences:

A. Provo Canyon or a Professional's license is suspended, revoked, voluntarily relinquished, or subject to terms of probation or other restrictions;

B. Provo Canyon or a Professional is suspended from participation in the Medicare or Medicaid programs;

C. Provo Canyon's insurance as set forth in Section 5 is terminated or the limits of coverage are decreased for any reason;

D. When a Professional who is a member of the medical staff has his/her privileges limited or terminated in any manner;

E. Provo Canyon or a Professional is named in a professional liability action or any other action involving a Beneficiary or related to the services provided by Provo Canyon or its Professionals to any Beneficiary.

13. Compliance with Medicare and Medicaid/No Referrals. The parties to this Agreement expressly acknowledge that it has been and continues to be their intent to comply fully with all federal, state, and local laws, rules and regulations. It is not a purpose, nor is it a requirement, of this Agreement or of any other agreement between the parties, to offer or receive any remuneration of any patient, payment of which may be made in whole or in part by Medicare or Medicaid. Neither party shall make or receive any payment that would be prohibited under state or federal law.

14. Compensation. MHS will pay Provo Canyon in accordance with the procedures and terms set forth in Exhibit B ("Fee Schedule and Compensation Procedure").

Provo Canyon shall only be entitled to compensation from MHS for those services for which MHS has received remuneration from the California State Social Services or from a California County Mental Health Department. Provo Canyon shall not be entitled to any compensation from MHS for any services for which MHS does not receive remuneration from the California State Social Services or California County Mental Health Department. By way of illustration and not limitation, MHS may not receive remuneration, and therefore Provo Canyon shall not be entitled to any compensation for the following:

A. services rendered prior to receipt of any required advance approval to provide services;

B. services which are not Covered Services as set forth on Exhibit A;

C. unnecessary services as determined by MHS in accordance with its utilization policies and procedures.

In consideration of the compensation which Provo Canyon receives under this Agreement, Provo Canyon agrees to cooperate with MHS and to amend this Agreement from time to time as MHS may reasonably request in order to comply with various contractual obligations which MHS may need to satisfy in order to receive California State Social Services or California County Mental Health Department funding.

15. Costs. All costs incurred in the provision of Provo Canyon's services, including but not limited to the Covered Services, shall be born by Provo Canyon and not by MHS. Any costs incurred by MHS for the purpose of providing Total Quality Management/Utilization Review as set forth in Section 6, hereto or conducting Audits as set forth in Section 11 hereto shall be born by MHS, provided however, that any additional costs incurred by MHS which result from any delay or complication for which Provo Canyon is responsible shall be born by Provo Canyon. Provo Canyon shall reimburse MHS for all such costs within thirty (30) days of receiving from MHS a written account of all such additional costs.

16. Patient Disputes. If there are any disputes between MHS and Provo Canyon for itself or its Professionals, the dispute must be discussed directly between Provo Canyon and MHS and at no point shall the Beneficiary become aware of or participate in these discussions.

17. Termination. The term of this Agreement is one (1) year and shall renew automatically unless terminated in accordance with the provisions of this Section.

A. Either party may terminate this Agreement without cause upon thirty days written notice. In the event that this Agreement is terminated, the parties will work together to bring forth the smooth transition of Beneficiaries' care which, by way of demonstration but not exclusion, may include providing interim services not to exceed sixty (60) days in accordance with all terms of this Agreement.

B. The Agreement shall be terminated automatically upon Provo Canyon having its license suspended or revoked or its ability to participate in the Medicare/Medicaid program suspended or terminated.

C. Either party may immediately terminate this Agreement with cause if the other party materially breaches this Agreement. Under such circumstances, the nonbreaching party may give notice of the breach and the Agreement shall terminate within fifteen (15) days unless the breach is corrected within such time.

18. Effect of Termination. Upon termination, the provisions of Section 4 ("Insurance"), Section 8 ("Indemnification"), Section 10 ("Access to Records"), Section 11 ("Audits"), Section 14 ("Compensation"), Section 15 ("Costs") and Section 16 ("Patient Disputes") shall remain in effect.

19. Non-Exclusivity. Nothing contained herein shall restrict the right of Provo Canyon or Professional to participate in providing services to other patients, regardless of the payor for such services.

20. Jeopardy. In the event the performance by either party hereto of any term, covenant, condition or provision of this Agreement should (i) jeopardize (A) the licensure of either party, any employee or any individual providing services hereunder or any provider owned and/or operated by either party or any corporate affiliate of such party (a "Covered Party"); (B) any Covered Party's participation in or reimbursement from Medicare, Medicaid or other reimbursement of payment programs; or (C) any Covered Party's full accreditation by JCAHO or any successor accrediting agency, or (ii) if the continuance of this Agreement should be in violation of any statute, ordinance, or otherwise deemed illegal or be deemed unethical by any recognized body, agency or association in the medical or behavioral health care fields (collectively, "Jeopardy Event"), then the parties shall use their best efforts to meet forthwith in an attempt to negotiate an amendment to this Agreement to remove or negate the effects of the Jeopardy Event. In the event the parties are unable to negotiate such an amendment within fifteen (15) days following written notice by either party of the Jeopardy Event, then either party may terminate this Agreement immediately upon written notice to the other party, notwithstanding any severability provisions hereto to the contrary.

21. Notices. All notices required under this Agreement shall be provided in writing as follows:

MHS:

Mental Health Systems, Inc.
9845 Erma Road, Suite 300
San Diego, CA 92131
Attn: Bill Eastwood

With a copy to:

Gray Cary Ware & Freidenrich
4365 Executive Drive, Suite 1600
San Diego, CA 92121-2189
Attention: T. Knox Bell, Esq.

Provo Canyon:

Charter Provo Canyon School, LLC
1350 East 750 North
Orem, UT 84097
Attn: Administration

With a copy to:

Charter Provo Canyon School, LLC
c/o Charter Behavioral Health Systems, LLC
1105 Sanctuary Parkway, Suite 400
Alpharetta, Georgia 30004
Attn: General Counsel

22. Independent Status. Provo Canyon is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services or Covered Services required of it by the terms of this Agreement. Provo Canyon is entirely responsible for compensating its Professionals and other staff, subcontractors and consultants employed by Provo Canyon. The parties are independent of each other and this Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between MHS and Provo Canyon or any of Provo Canyon's Professionals, other employees, agents, consultants or subcontractors. Provo Canyon assumes exclusively the responsibility for the acts of its Professionals, employees, agents, consultants and/or subcontractors as they relate to the services and Covered Services to be provided during the course and scope of their employment. Provo Canyon will remain an independent contractor responsible for all taxes and/or payments made by MHS. Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Provo Canyon and MHS with respect to Charter Provo Canyon School or any equity interest in Charter Provo Canyon School on the part of MHS.

23. Assignment. This Agreement shall not be subcontracted or assigned except to an affiliate or purchaser of Provo Canyon. If MHS wishes to assign this Agreement, it must notify Provo Canyon in writing and obtain its written consent.

24. Organization, Power and Authority. MHS hereby represents, warrants and covenants that it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

Provo Canyon hereby represents, warrants and covenants that it is a for-profit limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

25. Nonassumption of Liabilities. By entering into and performing this Agreement, neither party shall become liable for any of the existing or future obligations, liabilities or debts of the other party.

26. Rights Cumulative, No Waiver. No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of default thereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

27. Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect the Agreement.

[Remainder of Page intentionally left blank]

28. **Counterparts.** This Agreement may be executed in counterparts, each of which will be treated as an original, but all of which together will constitute one and the same instrument.

29. **Entire Agreement.** This Agreement contains the entire agreement of the parties and can only be modified by documents signed by both the parties.

Entered into this on the date first noted above.

"MHS"
Mental Health Services, Inc.:

Bill Eastwood

Title: Executive Director

"Provo Canyon"
Charter Provo Canyon School, LLC:

_____

Title: _____

28. Counterparts. This Agreement may be executed in counterparts, each of which will be treated as an original, but all of which together will constitute one and the same instrument.

29. Entire Agreement. This Agreement contains the entire agreement of the parties and can only be modified by documents signed by both the parties.

Entered into this on the date first noted above.

"MHS"	"Provo Canyon"
Mental Health Services, Inc.:	Charter Provo Canyon School, LLC:
_____	_____
Title: _____	Title: Executive Vice President

EXHIBIT A: COVERED SERVICES

Provo Canyon School will provide the following services and facilities: Room and board; first aid supplies and nursing services; laundry services; supervised use of recreational equipment and facilities; supervised work projects; and, all routine therapeutic and behavioral modification services and testing.

Tab 10

AGREEMENT TO PROVIDE MENTAL HEALTH SERVICES

This agreement is executed this 5th day of December, 2006, by and between MHS, Inc. ("MHS"), a California non-profit corporation and UHS of Provo Canyon, Inc. ("Provo Canyon") a Delaware for-profit limited liability company.

RECITALS

A. MHS is certified as a Short-Doyle/Medi-Cal Mental Health Rehabilitation Services Provider, which desires to contract with Provo Canyon to provide care to children and adolescents who have been authorized by certain County Mental Health Departments of California as listed on Exhibit C to receive mental health services;

B. Provo Canyon has been approved by the certain County Mental Health Departments for the State of California (as listed on Exhibit C) as a provider of services to children and adolescents residing in California and desires to contract with MHS for the purpose of obtaining certain funds distributed by California State Social Services and California County Mental Health Departments;

C. MHS seeks to contract with qualified professionals to assure that appropriate care is provided to those persons authorized to receive mental health services;

D. Provo Canyon has agreed to provide the services of qualified professionals to provide care to those persons authorized to receive mental health services.

IT IS THEREFORE AGREED by the parties as follows:

1. Definitions.

A. **Beneficiary** shall mean any person authorized by any of the certain County Mental Health Departments of California (as listed on Exhibit C which may be amended from time to time as appropriate and upon mutual agreement of the parties) to receive Mental Health Services and who has been properly placed at Provo Canyon for the provision of services pursuant to Chapter 26.5 of Division 7 of title 1 of the Government Code.

B. **Mental Health Services** shall mean all inpatient mental health services.

C. **Covered Services** are those services covered by California State Social Service funding or by California County Mental Health Departments, as identified on Exhibit A.

D. **Professional** shall mean an employee, or independent contractor of Provo Canyon qualified to provide services as required pursuant to this Agreement.

2. **Provision of Covered Services.**

Provo Canyon will employ Professionals who shall provide Covered Services to Beneficiaries in accordance to this Agreement. Provo Canyon shall insure that Covered Services are rendered in a manner which assures availability, adequacy, and continuity if care to Beneficiaries.

Provo Canyon shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable State and Federal requirements, and which are necessary for the provision of the services hereunder.

All Covered Services rendered hereunder shall be provided by Provo Canyon under the general supervision of MHS. MHS shall have the right to monitor the kind, quality, appropriateness, timeliness and the amount of Covered Services to be provided, however all decisions pertaining to the Mental Health Services to be rendered to any Beneficiary shall be based on the individual Beneficiary's medical needs as initially determined by Provo Canyon. Provo Canyon shall remain solely responsible for the quality of all Mental Health Services and Covered Services provided.

3. **Compliance with Laws**.

A. **Nondiscrimination.** Provo Canyon shall not discriminate in providing any services based on sex, race, national origin, religion, or disability of any Beneficiary.

B. **Child Abuse Reporting and Related Personnel Requirements.** Provo Canyon, and all persons employed by Provo Canyon, shall comply with all child abuse and neglect laws of the State of Utah and shall report all known or suspected instances of child abuse to an appropriate child protective agency, as mandated by the laws of Utah. Provo Canyon shall assure that any person who enters into the employment as a care custodian of minor children, or who enters into employment as a health practitioner, prior to commencing employment, and as a prerequisite to that employment, shall sign a statement on a form provided by MHS in accordance with the above laws to the effect that such person has knowledge of, and will comply with, these laws. For the safety and welfare of minor children, Provo Canyon shall, to the maximum extent permitted by law, ascertain arrest and conviction records for all current and prospective employees and shall not employ or continue to employ any person convicted of any crime involving any harm to minor children. Provo Canyon shall not employ or continue to employ, or shall take other appropriate action to fully protect all persons receiving services under this Agreement concerning, any person whom Provo Canyon knows, or reasonably suspects, has committed any acts which are inimical to the health, morals, welfare, or safety of minor children, or which otherwise make it inappropriate for such person to be employed by Provo Canyon.

C. **Fair Labor Standards.** Provo Canyon shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend and hold harmless MHS, its officers, employees and agents, from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney" fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act, for services performed by Provo Canyon's employees for which MHS may be found jointly or solely liable.

D. **Licensure.** Provo Canyon certifies that it is licensed as a Residential Treatment Center and that each of its Professionals is licensed and/or certified in good standing to practice his or her profession in the State of Utah. Provo Canyon, its Professionals, officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of the services hereunder and required by the laws or regulations of the United States, Utah and all other applicable government jurisdictions or agencies. Provo Canyon agrees to immediately notify MHS in the event that Provo Canyon or any Professional has his/her license placed on probation, suspended, or terminated.

4. **Insurance.**

Without limiting Provo Canyon's indemnification as provided herein, at all times during the course of this Agreement, Provo Canyon shall maintain professional liability insurance at least in the amount of $2,000,000 per occurrence and $6,000,000 annual aggregate. Provo Canyon shall also maintain customary and reasonable workers compensation insurance and general liability insurance. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses and settlements arising out of or from any services provided by Provo Canyon (including those services rendered by Provo Canyon Professionals or personnel who are acting under the direction or supervision of Provo Canyon) shall be payable by Provo Canyon, to the extent not covered by insurance proceeds. The costs for said policies, deductible amounts, uncovered liabilities, defense costs, loss adjustment expenses, and settlements arising out of services provided by MHS shall be payable by MHS, to the extent not covered by insurance proceeds.

Provo Canyon shall provide evidence of such coverage prior to the effective date of this Agreement and thereafter as requested by MHS. Provo Canyon's insurance shall include MHS as an additional insured with respect to the operations which Provo Canyon performs under contract with MHS. It is agreed that any insurance maintained by MHS shall apply in excess of and not contribute with, insurance provided by this policy. Provo Canyon's insurance shall not be canceled, limited or non-renewed until thirty (30) days written notice has been given to MHS at the address first noted in this Agreement.

In the event that any Professional or Provo Canyon is sued as a result of any services provided to a Beneficiary pursuant to this Agreement, Provo Canyon shall immediately notify MHS. Provo Canyon shall notify MHS, in writing, within sixteen

(16) hours of becoming aware of any occurrence of a serious nature which may expose MHS to liability. Such occurrences shall include, but not be limited to deaths, accidents or injuries to any Beneficiary, or acts of negligence of Provo Canyon or one of its Professionals.

5. **Prohibition on Billing Beneficiaries.**

MHS shall be the sole source of payment to Provo Canyon for those Covered Services rendered to the Beneficiaries for which MHS obtains funding from California State Social Services and/or California County Mental Health Departments. Provo Canyon agrees that in no event shall it seek payment from the Beneficiaries for any Covered Service except in those instances where there is a co-payment amount or for incremental costs, as outlined in the financial policies of Provo Canyon, including medical and ancillary expenses not covered under routine room and board. If Provo Canyon desires to seek such payment from the Beneficiaries for either a co-payment or for incremental costs, Provo Canyon shall seek such payment directly without any involvement from MHS. Provo Canyon agrees that it and not MHS will have full responsibility for Provo Canyon's collection of money for such co-payments or incremental costs.

6. **Total Quality Management/Utilization Review.**

Provo Canyon agrees to cooperate fully with MHS in assuring total quality management and utilization review in accordance with MHS's policies. This includes, but is not limited to, permitting MHS to observe the operation of Provo Canyon and to review the records of individual Beneficiaries, in accordance with all applicable laws, to assure that the care which is provided is appropriate.

7. **Release of Medical Information.**

MHS, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by MHS. Provo Canyon, as applicable and appropriate, shall obtain from Beneficiaries appropriate authorization for release of medical information by Provo Canyon.

8. **Indemnification.**

Except as provided herein, MHS agrees to indemnify and hold Provo Canyon, its offices, directors, employees, agents, successors and assigns harmless from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorney's fees and reasonable costs of investigation, which Provo Canyon may sustain, pay, suffer or incur by reason of any act, omission, or negligence of MHS in performing its obligations under this Agreement.

Immediately after either Party has notice of a claim or potential claim relating either directly or indirectly to any Beneficiary as defined by this Agreement, that party

shall give notice to the other of any claim or other matter with respect to which indemnity may be sought pursuant to this provision, and of the commencement of any legal proceedings or action with respect to such claim, and shall permit the other party at its own expense to assume the handling and defense of any such claim, proceeding or action. Neither party shall pay or settle any claim or action subject to the indemnity hereunder without the prior written consent of the other party. Failure to give such notice, or the payment or settlement without written consent, shall vitiate the indemnity provided herein.

9. Maintenance of Records.

Provo Canyon agrees to maintain standard financial and medical records for Beneficiaries for at least a five-year period (or longer if required by law or by any funding source) and to comply with all applicable provisions of federal and state law concerning confidentiality of such records. In the event a Beneficiary chooses another mental health services provider, Provo Canyon shall forward such records to the new mental health services provider upon Provo Canyon's receipt of the Beneficiary's signed consent and authorization in a timely manner at no cost to the Beneficiary or MHS.

10. Access to Records.

This Section is included herein because of the possible application of Section 1861(v) (1) (1) of the Social Security Act to this Agreement. If such Section and the regulations promulgated thereunder, then this Section of the Agreement will be deemed not to be a part of this Agreement and will be null and void. Until the expiration of four years after the furnishing of services under this Agreement, Provo Canyon will make available to MHS, the California County Mental Health Departments listed on Exhibit C, U.S. Department of Health and Human Services, and the Controller General this Agreement and all related books, documents, and records. Unless required by law, Provo Canyon shall not otherwise disclose the terms and conditions of this Agreement to any third parties, except to its attorneys or accountants who shall be similarly bound.

11. Audits.

Provo Canyon will permit MHS and those California County Mental Health Departments listed on Exhibit C, upon written request and during reasonable business hours, to have access to its business, financial and client records related to services provided to Beneficiaries related to this Agreement for the purpose of auditing Provo Canyon's bills and for conducting quality and utilization review.

12. Required Notification.

Provo Canyon shall notify MHS within five days of any of the following occurrences:

A. Provo Canyon or a Professional's license is suspended, revoked, voluntarily relinquished, or subject to terms of or other restrictions;

B. Provo Canyon or a Professional is suspended from participation in the Medicare or Medicaid programs;

C. Provo Canyon's insurance as set forth in Section 5 is terminated or the limits of coverage are decreased for any reason;

D. When a Professional who is a member of the medical staff has his/her privileges limited or terminated in any manner;

E. Provo Canyon or a Professional is named in a professional liability action or any other action involving a Beneficiary or related to the services provided by Provo Canyon or its Professionals to any Beneficiary.

13. **Compliance with Medicare and Medicaid/No Referrals.**

The parties to this Agreement expressly acknowledge that it has been and continues to be their intent to comply fully with all federal, state, and local laws, rules and regulations. It is not a purpose, nor is it a requirement, of this Agreement or of any other agreement between the parties, to offer or receive any remuneration of any patient, payment of which may be made in whole or in part by Medicare or Medicaid. Neither party shall make or receive any payment that would be prohibited under state or federal law.

14. **Compensation.**

MHS will pay Provo Canyon in accordance with the procedures and terms set forth in Exhibit B ("Fee Schedule and Compensation Procedure").

Provo Canyon shall only be entitled to compensation from MHS for those services for which MHS has received remuneration from the California State and Social Services or from a California County Mental Health Department. Provo Canyon shall not be entitled to any compensation from MHS for any services for which MHS does not receive remuneration from the California State Social Services or California County Mental Health Department. By the way of illustration and not limitation, MHS may not receive remuneration, and therefore Provo Canyon shall not be entitled to any compensation for the following:

A. Services rendered prior to receipt of any required advance approval to provide services;

B. Services which are not Covered Services as set forth on Exhibit A;

C. Unnecessary services as determined by MHS in accordance with its utilization policies and procedures.

In consideration of the compensation which Provo Canyon receives under this Agreement, Provo Canyon agrees to cooperate with MHS and to amend this Agreement from time to time as MHS may reasonably request in order to comply with various contractual obligations which MHS may need to satisfy in order to receive California State Social Services or California County Mental Health Department funding.

15. **Costs.**

All costs incurred in the provision of Provo Canyon's services, including but not limited to the Covered Services, shall be born by Provo Canyon and not MHS. Any costs incurred by MHS for the purpose of providing Total Quality Management/Utilization Review as set forth in Section 6, hereto or conducting Audits as set forth in Section 11 hereto shall be born by MHS, provided however, that any additional costs incurred by MHS which result from any delay or complication for which Provo Canyon is responsible shall be born by Provo Canyon. Provo Canyon shall reimburse MHS for all such costs within thirty (30) days of receiving from MHS a written account of all such additional costs.

16. **Patient Disputes.**

If there are any disputes between MHS and Provo Canyon for itself or its Professionals, the dispute must be discussed directly between Provo Canyon and MHS and at no point shall the Beneficiary become aware of or participate in these discussions.

17. **Termination.**

The term of this Agreement is one (1) year and shall renew automatically unless terminated in accordance with the provisions of this Section.

A. Either party may terminate this Agreement without cause upon thirty days written notice. In the event that this Agreement is terminated, the parties will work together to bring forth the smooth transition of Beneficiaries' care which, by way of demonstration but not exclusion, may include providing interim services not to exceed sixty (60) days in accordance with all terms of this Agreement.

B. The Agreement shall be terminated automatically upon Provo Canyon having its license suspended or revoked or its ability to participate in the Medicare/Medicaid program, suspended or terminated.

C. Either party may immediately terminate this Agreement with cause if the other party materially breaches this Agreement. Under such circumstances, the non-breaching party may give notice of the breach and the Agreement shall terminate within fifteen (15) days unless the breach is corrected within such time.

18. **Effect of Termination.**

Upon termination, the provisions of Section 4 ("Insurance"), Section 8 ("Indemnification"), Section 10 ("Access to Records"), Section 11 ("Audits"), Section 14 ("Compensation"), Section 15 ("Costs") and Section 16 ("Patient Dispute") shall remain in effect.

19. **Non-Exclusivity.**

Nothing contained herein shall restrict the right of Provo Canyon or Professional to participate in providing services to other patients, regardless of the payor for such services.

20. **Jeopardy.**

In the event the performance by either party hereto of any term, covenant, condition or provision of this Agreement should (I) jeopardize (A) the licensure of either party, any employee or any individual providing services hereunder or any provider owned and/or operated by either party or any corporate affiliate of such party (a "Covered Party"); (B) any Covered Party' participation in or reimbursement from Medicare, Medicaid or other reimbursement of payment programs; or (c) any Covered Party's full accreditation by JCAHO or any successor accrediting agency, or (ii) if the continuance of this Agreement should be in violation of any statute, ordinance, or otherwise deemed illegal or be deemed unethical by any recognized body, agency, or association in the medical or behavioral health care fields (collectively, "Jeopardy Event"), then the parties shall use their best efforts to meet forthwith in an attempt to negotiate an amendment to this Agreement to remove or negate the effects of the Jeopardy Event. In the event the parties are unable to negotiate such an amendment within fifteen (15) days following written notice by either party of the Jeopardy Event, then either party may terminate this Agreement immediately upon written notice to the other party, notwithstanding any severability provisions hereto to the contrary.

21. **Notices.**

All notices required under this Agreement shall be provided in writing as follows:

MHS:

Mental Health Systems, Inc.
9465 Farnham Street
San Diego, CA 92123
Attn: Kimberly Bond

With a copy to:

DLA Piper
4365 Executive Drive, Suite 1600
San Diego, CA92121-2189
Attention: T. Knox Bell, Esp.

Provo Canyon:

UHS of Provo Canyon, Inc.
1350 East 750 North
Orem, UT 84097
Attn: Administration

22. **Independent Status**.

Provo Canyon is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services or Covered Services required of it by the terms of this Agreement. Provo Canyon is entirely responsible for compensating its Professional and other staff, subcontractors and consultants employed by Provo Canyon. The parties are independent of each other and this Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between MHS and Provo Canyon or any of Provo Canyon's Professionals, other employees, agents, consultants or subcontractors. Provo Canyon assumes exclusively the responsibility for the acts of its Professional, employees, agents, consultants and/or subcontractors as they relate to the services and Covered Services to be provided during the course and scope of their employment. Provo Canyon will remain an independent contractor responsible for all taxes and/or payments made by MHS. Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Provo Canyon and MHS with respect to UHS of Provo Canyon, Inc. or any equity interest in UIIS of Provo Canyon, Inc. on the part of MHS.

23. **Assignment.**

This Agreement shall not be subcontracted or assigned except to an affiliate or purchaser of Provo Canyon. If MHS wishes to assign this Agreement, it must notify Provo Canyon in writing and obtain its written consent.

24. **Organization, Power and Authority**.

MHS hereby represents, warrants and covenants that it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite corporate power and authority to execute and

deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms.

Provo Canyon hereby represents, warrants and covenants that it is a for-profit limited liability company duly organized, validly existing and I good standing under the laws of the State of Delaware, is qualified or otherwise has met all lawful requirements to transact business in the State of Utah, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and this Agreement is valid, binding and enforceable in accordance with its terms

25. **Non-assumption of Liabilities.**

By entering into and performing this Agreement, neither party shall become liable for any of the existing or future obligations, liabilities or debts of the other party.

26. **Rights Cumulative, No Waiver.**

No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of default thereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed by as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

27. **Captions and Headings.**

The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect the Agreement.

28. **Counterparts.**

This Agreement may be executed in counterparts, each of which will be treated as an original, but all of which together will constitute one and the same instrument.

29. **Entire Agreement.**

This Agreement contains the entire agreement of the parties and can only be modified by documents signed by both the parties.

Entered into this on the date first noted above.

"MHS"
Mental Health Systems, Inc.

_____

Title: _____

"Provo Canyon"
UHS of Provo Canyon, Inc.

_____

Title: _____

EXHIBIT A: COVERED SERVICES

Provo Canyon will provide the following services and facilities: Room and board; first aid supplies and nursing services' laundry services; supervised use of recreational equipment and facilities; supervised work projects; and, all routine therapeutic and behavioral modification services and testing.

Tab 11

Francine Giani
Executive Director
Department of Commerce

Jon M. Huntsman, Jr.
Governor
State of Utah

Kathy Berg
Director
Division of Corporations
& Commercial Code

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF CORPORATIONS & COMMERCIAL CODE
CERTIFICATE OF REGISTRATION

C T CORPORATION SYSTEM
PROVO CANYON SCHOOL, INC.
136 EAST SOUTH TEMPLE, SUITE 2100
SALT LAKE CITY UT 84111

Access Code
Code: 4511097

State of Utah
Department of Commerce
Division of Corporations & Commercial Code

CERTIFICATE OF REGISTRATION

Corporation - Domestic - Non-Profit

This certifies that **PROVO CANYON SCHOOL, INC.** has been filed and approved on **January 06, 2009** and has been issued the registration number **7231976-0140** in the office of the Division and hereby issues this Certification thereof.

Kathy Berg

KATHY BERG
Division Director

*The Access Code is used for Online Applications used by this Division only.

RECEIVED
JAN 06 2009
Utah Div. Of Corp. & Comm. Code

EXPEDITE

State of Utah
Department of Commerce
Division of Corporations and Commercial Code
I hereby certified that the foregoing has been filed and approved on this 6th day of Jan. 2009 in this office of this Division and hereby issued This Certificate thereof.
Examiner ORP Date 1/7/09
Kelly Berg
Division Director

ARTICLES OF INCORPORATION

OF

PROVO CANYON SCHOOL, INC.

A Nonprofit Corporation

01-06-09P01:49 RCVD

We, the undersigned natural persons all being of the age of eighteen years or more, acting as incorporators under the Utah Revised Nonprofit Corporation Act (the "Act"), adopt the following Articles of Incorporation for such Corporation:

ARTICLE I

Name: The name of the corporation is PROVO CANYON SCHOOL, INC.

ARTICLE II

Duration: The period of duration of this corporation is perpetual.

ARTICLE III

Purposes: The specific purposes for which the corporation has been formed are to engage in any lawful act for which a nonprofit corporation may be organized under the Act.

ARTICLE IV

Members: The corporation shall have a single voting member.

ARTICLE V

Incorporator: The name and address of the incorporator is:

NAME	ADDRESS
Matthew D. Klein	367 South Gulph Road King Of Prussia, PA 19406-0958

Date: 01/06/2009
Receipt Number: 2715124
Amount Paid: $1,167.00

723976

ARTICLE VI

Registered Office and Agent: The address of the corporation's initial registered office shall be 136 East South Temple, suite 2100, Salt Lake City, Utah 84111. Such office may be changed at any time by the Board of Trustees without amendment of these Articles of Incorporation. The corporation's initial registered agent at such address shall be CT Corporation System.

I hereby acknowledge and accept appointment as corporate registered agent:

VickiAnn Owens
Special Assistant Secretary

ARTICLE VII

Distributions: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof.

ARTICLE VII

Distribution on Dissolution: Upon the dissolution of the Corporation, the Board of Directors shall make provision for the payment, satisfaction, and discharge of all of the liabilities and obligations of the Corporation, and shall return, transfer, or convey any assets held by the Corporation upon a condition requiring return, transfer, or conveyance by reason of the dissolution. Thereafter, the Board of Directors shall transfer or convey the remaining assets of the Corporation to such organizations or domestic or foreign corporations, as shall be determined pursuant to a plan of distribution adopted by the Corporation in accordance with the Act.

IN WITNESS WHEREOF, Matthew D. Klein has executed these Articles of Incorporation in duplicate this 6th day of January, 2009. He is the incorporator herein; has read the above and foregoing Articles of Incorporation; know the contents thereof and that the same is true to the best of his knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters he believes to be true.

Matthew D. Klein, Incorporator

ASSIGNMENT AND CONSENT TO USE OF NAME

UHS of Provo Canyon, Inc. a Utah corporation, filed a DBA application for the name "Provo Canyon School" shown as entity number 6364497-0151, registered October 20, 2006. UHS of Provo Canyon, Inc. hereby assigns and consents to the use of the name "Provo Canyon School, Inc." in forming a new Utah nonprofit corporation, and authorizes Matthew D. Klein as incorporator to utilize the name for the new corporation.

UHS of Provo Canyon, Inc.

By: _____
Alan B. Miller, President

Tab 12

2 CA ADC § 60100

Term

2 CCR s 60100

Cal. Admin. Code tit. 2, s 60100

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 9. JOINT REGULATIONS FOR PUPILS WITH DISABILITIES
CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO PUPILS WITH DISABILITIES
ARTICLE 3. RESIDENTIAL PLACEMENT
This database is current through 03/16/07, Register 2007, No. 11

s 60100. LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil.

(a) This article shall apply only to a pupil with a disability who is seriously emotionally disturbed pursuant to paragraph (i) of Section 3030 of Title 5 of the California Code of Regulations.

(b) When an IEP team member recommends a residential placement for a pupil who meets the educational eligibility criteria specified in paragraph (4) of subsection (c) of Section 300.7 of Title 34 of the Code of Federal Regulations, the IEP shall proceed in the following manner:

(1) An expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service.

(2) If any authorized representative is not present, the IEP team meeting shall be adjourned and be reconvened within fifteen (15) calendar days as an expanded IEP team with an authorized representative from the community mental health service participating as a member of the IEP team pursuant to Section 7572.5 of the Government Code.

(3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

(c) Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall consider less restrictive alternatives, such as providing a behavioral specialist and full-time behavioral aide in the classroom, home and other community environments, and/or parent training in the home and community environments. The IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. Such alternatives may include any combination of cooperatively developed educational and mental health services.

(d) When the expanded IEP team recommends a residential placement, it shall document the pupil's

educational and mental health treatment needs that support the recommendation for residential placement. This documentation shall identify the special education and related mental health services to be provided by a residential facility listed in Section 60025 that cannot be provided in a less restrictive environment pursuant to Title 20, United States Code Section 1412(a)(5).

(e) The community mental health service case manager, in consultation with the IEP team's administrative designee, shall identify a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.

(f) The residential placement shall be in a facility listed in Section 60025 that is located within, or in the county adjacent to, the county of residence of the parents of the pupil with a disability, pursuant to paragraph (3) of subsection (a) of Section 300.552 of Title 34 of the Code of Federal Regulations. When no nearby placement alternative which is able to implement the IEP can be identified, this determination shall be documented, and the community mental health service case manager shall seek an appropriate placement which is as close to the parents' home as possible.

(g) Rates for care and supervision shall be established for a facility listed in Section 60025 in accordance with Section 18350 of the Welfare and Institutions Code.

(h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.

(i) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in residential care, the community mental health service shall ensure that:

(1) The mental health services are specified in the IEP in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi).

(2) Mental health services are provided by qualified mental health professionals.

(j) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a facility listed in Section 60025, the expanded IEP team shall ensure that placement is in accordance with admission criteria of the facility.

Note: Authority cited: Section 7587, Government Code. Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code. Reference: Sections 7576(a) and 7579, Government Code; Sections 11460(c)(2)-(c)(3), 18350 and 18356, Welfare and Institutions Code; Sections 1412 and 1414, Title 20, United States Code; and Sections 300.7 and 300.552, Title 34, Code of Federal Regulations.

HISTORY

1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440-131-001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).

3. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

4. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, s4.) (Register 98, No. 26).

5. New article 3 (sections 60100-60110) and section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.

6. Editorial correction restoring prior Histories 1-2, adding new Histories 3-4, and renumbering and amending existing History 1 to new History 5 (Register 98, No. 44).

7. New article 3 (sections 60100-60110) and section refiled 10-26-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.

8. New article 3 (sections 60100-60110) and section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2-25-99 order, including amendment of section heading, amendment of subsections (b)-(b)(2), (d) and (i)(1) and amendment of Note, transmitted to OAL 6-25-99 and filed 8-9-99 (Register 99, No. 33).

2 CCR s 60100, 2 **◆CA ADC s 60100◆**
1CAC

2 **◆CA ADC s 60100◆**

END OF DOCUMENT

Term

Doc 1 of 4

Cite List Docs In Sequence Table of Contents

Tab 13

aid, aid for the entire month shall be paid.

11457. (a) Money from noncustodial parents for child or spousal support with respect to whom an assignment under Section 11477 has been made shall be paid directly to the local child support agency and shall not be paid directly to the family. Absent parent support payments, when collected by or paid through any public officer or agency, shall be transmitted to the county department providing aid under this chapter until a procedure is established under subdivision (b).

(b) The Department of Child Support Services, by regulation, shall work in conjunction with the California State Association of Counties, the County Welfare Director's Association, the Child Support Director's Association, and other pertinent stakeholders to establish procedures not in conflict with federal law, for the collection and distribution of noncustodial parent support payments.

(c) If an amount collected as child or spousal support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under subdivision (a) of Section 11477 for the current months and all past months.

11458. The county may cancel, suspend or revoke aid under this chapter for cause. Upon instructions from the department, the county shall cancel, suspend or revoke aid under this chapter.

Upon request of the department, an immediate report of every suspension of aid shall be made to the department stating the reason for the suspension and showing the action of the county in approving the suspension.

11460. (a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments or Indian tribes that have entered into an agreement pursuant to Section 10553.1.

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish the maximum level of state participation in out-of-state foster care group home

program rates effective January 1, 1992.

(1) The department shall develop regulations that establish the method for determining the level of state participation for each out-of-state group home program. The department shall consider all of the following methods:

(A) A standardized system based on the level of care and services per child per month as detailed in Section 11462.

(B) A system which considers the actual allowable and reasonable costs of care and supervision incurred by the program.

(C) A system which considers the rate established by the host state.

(D) Any other appropriate methods as determined by the department.

(2) State reimbursement for the AFDC-FC group home rate to be paid to an out-of-state program on or after January 1, 1992, shall only be paid to programs which have done both of the following:

(A) Submitted a rate application to the department and received a determination of the level of state participation.

(i) The level of state participation shall not exceed the current fiscal year's standard rate for rate classification level 14.

(ii) The level of state participation shall not exceed the rate determined by the ratesetting authority of the state in which the facility is located.

(iii) The level of state participation shall not decrease for any child placed prior to January 1, 1992, who continues to be placed in the same out-of-state group home program.

(B) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department.

(3) State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis.

(d) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

(e) Nothing shall preclude a county from using a portion of its county funds to increase rates paid to family homes and foster family agencies within that county, and to make payments for specialized care increments, clothing allowances, or infant supplements to homes within that county, solely at that county's expense.

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative extended family member as described in Section 362.7, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0-4	$ 294
5-8	319
9-11	340
12-14	378

Tab 14

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

In the Matter of: STUDENT, Petitioner, vs. YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT and SAN BERNARDINO COUNTY DEPARTMENT OF BEHAVIORAL HEALTH, Respondents.	OAH NO. N2005070683

DECISION

This matter came on regularly for hearing, before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at Yucaipa, California on September 2 and 6, 2005.

Student (student) was represented by advocate Jillian Bonnington.

Ms. Gail Lindberg, program manager for the East Valley Special Education Local Plan Area, represented the Yucaipa-Calimesa Joint Unified School District (district).

Scott M. Runyan, Esq. represented the San Bernardino County Department of Behavioral Health (DBH).

Oral and documentary evidence was received, the record was left open, and the matter was continued for good cause to allow the parties to submit written closing arguments/briefs. The parties' written arguments/briefs were received, read, and considered, and the matter was deemed submitted on September 27, 2005.

During the continuance period, from the date the parties rested their cases, September 7, 2005 until the matter was deemed submitted on September 27, 2005, petitioner filed the

following motions: a motion for reconsideration of the denial of petitioner's motion for a "stay put" order; and a motion for sanctions against the district. Those motions and the briefs filed by respondents in opposition were read and considered. The rulings on the motions follow:

1. Petitioner's motion for reconsideration of her "stay put" request is denied. Petitioner's original motion for a "stay put" order was heard, and denied, by ALJ William O. Hoover on July 29, 2005. Petitioner then filed a motion for reconsideration of ALJ Hoover's order. That motion for reconsideration was heard on the record, and denied, by ALJ Hewitt on the first day of the hearing, September 2, 2005. Petitioner's current motion for reconsideration of ALJ Hoover's and ALJ Hewitt's rulings was filed on September 14, 2005. This, petitioner's third attempt to obtain a "stay put" order, also fails. The basis for denial of petitioner's current motion for reconsideration will become evident from the facts, conclusions, and order resulting from the instant due process hearing.

2. Petitioner's motion for sanctions against the district is also denied based on petitioner's failure to present competent evidence that district representatives engaged in any bad faith actions during the instant litigation.

PROPOSED ISSUES

1. Was petitioner provided with a Free and Appropriate Public Education (FAPE) from June 6, 2005 through the present?

2. Did respondents properly implement and fund student's Individualized Education Plan (IEP) as described in the June 6, 2005 and June 27, 2005 IEP documents?

3. Did respondents offer services and instruction designed to meet student's unique needs?

4. Is the district obligated to fund student's current placement if DBH is statutorily prohibited from funding the placement?

INTRODUCTION

The reason the previous section is titled "proposed issues" is because all of the issues delineated by petitioner really hinge on one, key issue. All parties agree on the relevant underlying facts. The key issue is whether, given the facts of the instant case, respondents are statutorily prohibited from funding student's current placement. If so, then respondents have not "denied" student a FAPE because, they have no discretion to "deny" funding the placement. If, however, respondents are not statutorily prohibited from funding petitioner's current placement then DBH is ready and willing to fund petitioner's placement, retroactive to June 6, 2005.

ISSUE

1. Are respondents statutorily prohibited from funding student's current placement?

FACTUAL FINDINGS

1. Student, whose date of birth is May 4, 1989, is a 16-year-old female.

2. Student attended school in the district during the 2002-2003 and 2003-2004 school years. During these periods student was not identified as a special education student.

3. Student's parents are currently separated and student's mother has sole legal and physical custody of student.

4. In 2004, student's mother relocated student to Arizona. Student's parents remained in California. On December 19, 2004, student's mother placed student at Youth Care, Inc. (Youth Care) due to student's emotional instability. Youth Care is a Delaware corporation located in, and doing business in, Draper, Utah. Youth Care is a group home/residential care facility that provides in-house care for mentally disturbed youths.

5. Student's mother contacted the district to inquire about special education services that may be available to student since student's parents live within district boundaries. On February 17, 2005, the district sent its school psychologist to Utah to conduct a psycho educational assessment of student. Upon completion of the assessment the district concluded that student was eligible for special education under the category of emotional disturbance (ED), but did not qualify as a student with a specific learning disability (SLD).

6. On March 18, 2005 an Individualized Education Program (IEP) team was convened to discuss student's needs. As a result of the meeting, the district offered to place student at the district's Yucaipa High School in a Special Class for ED students. Student's mother disagreed with the placement and requested an AB2726 residential placement[1]. The district informed mother that DBH needed to conduct an assessment before an AB2726 placement could be offered. Student's mother signed an authorization form allowing release of information to DBH and the district referred the matter to DBH.

7. DBH conducted an assessment of student, as requested.

8. On June 6, 2005, the IEP team again met to discuss student's situation. The IEP team agreed that "residential care under AB2726 is appropriate at this time." (Petitioner's Exhibit 2.) Student's mother was adamant in her assertion that student's current placement at Youth Care is an appropriate placement for student. DBH was receptive to mother's request; however, DBH needed proof that Youth Care is a nonprofit entity. This request was based on

[1] This refers to a mental health services placement.

DBH's belief, as will be discussed in the Legal Conclusions section of this decision, that DBH was statutorily prohibited from funding placements in out-of-state "for profit" entities. As stated in student's June 6, 2005 IEP, "[DBH] has made [student] eligible for AB2726 as of this date 6/6/05. Once Youth Care provides information to DBH regarding funding for placement and their non-profit status, DBH will make it effective today." (Petitioner's Exhibit 2.) The IEP also states: "The District offer of FAPE for educational placement for the 30 days interim until the next IEP meeting is the NPS placement." (Petitioner's Exhibit 2.) Due to the uncertainty of Youth Care's profit/non-profit status, other placement options were discussed at the IEP meeting. The following alternative placements were suggested: Provo Canyon, a Utah placement; Cinnamon Hills, a Utah placement; and an in-state, California placement. Student's mother refused to consider any of the suggestions. Instead, student's mother insisted that student remain in her current placement at Youth Care.

9. On June 27, 2005, a "follow-up" IEP team meeting was held. Again, Youth Care's profit/non-profit status was discussed. In fact, Youth Care's profit/non-profit status was the key discussion. All parties agreed that Youth Care was an appropriate placement for student unless its profit/non-profit status precluded funding. Consequently, DBH again requested documentation of Youth Care's profit/non-profit status.

10. Ultimately, it was established that Youth Care is a "for-profit" entity that provides direct services to student. Youth Care has a business relationship with Aspen Solutions, Inc. (Aspen Solutions), a non-profit, California corporation. Youth Care and Aspen Solutions are associated through a "Management Agreement," dated January 1, 2003. That agreement reflects that Aspen Solutions "is engaged in the business of providing certain management and administrative services to providers of health care services." (Petitioner's Exhibit 3.). Youth Care is such a "provider of health care services" and Aspen Solutions has contracted with Youth Care to: provide administrative coordination and support to Youth Care; establish bookkeeping and accounting systems for Youth Care, including preparation, distribution and recordation of all bills and statements for services rendered by Youth Care; and prepare cost reports. Aspen Solutions is responsible for recruiting, hiring, and compensating its employees, employees who are responsible for performing Aspen Solutions' previously listed responsibilities. Aspen Solutions has no role in hiring Youth Care employees and Youth Care, not Aspen Solutions, is responsible for the "supervision of all Youth [Care] staff with regards to therapeutic activities..." (Petitioner's Exhibit 3). Aspen Solutions plays no part in the daily activities at Youth Care. Aspen Education Group Vice President Ruth Moore's testimony established that: "the finance department of Youth Care sets rates for services. The management fee charged by Aspen Solutions is a percentage for each facility. The amounts collected can vary although the percentage is standardized across the facilities." Aspen Solutions plays no role in Youth Care's rate setting and does not mandate that services billed through Aspen Solutions be provided by Youth Care on a non-profit basis.

11. By letter, dated July 7, 2005, DBH notified mother that DBH can not fund student's placement at Youth Care because Youth Care is a "for-profit" entity and DBH is prohibited by California Code of Regulations, title 2 (Regulations), section 60100, subdivision

(h) and California Welfare and Institutions Code (Code) section 11460, subdivision (c), subsections (2) and (3), from funding a "for-profit" placement.

12. Other county agencies in California have made AB2726 placements at Youth Care. In fact, there are several agencies that currently have such placements at Youth Care. There was no evidence that Youth Care's "profit/non-profit" status was ever considered by the California county agencies that currently fund AB2726 placements at Youth Care. In the present instance, when DBH originally requested information concerning Youth Care's profit/non-profit status, it received documents concerning Aspen Solutions. Those documents reveal that Aspen Solutions is a non-profit corporation.

LEGAL CONCLUSIONS

1. California Government Code sections 7570 through 7588 shifts responsibility for certain services from local education agencies to other state agencies, such as DBH in the present instance, to provide services, such as occupational therapy, physical therapy, nursing services, mental health services, and residential placements. In pertinent part, Regulations section 60100 provides:

> (h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education. (Emphasis added.)

Code section 11460, subdivision (c), subsection (3), provides:

> State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be made to a group home organized and operated on a nonprofit basis. (Emphasis added.)

As set forth in Findings 4 and 10, Youth Care is an out-of-state group home/residential care facility that operates on a profit basis. It is not operated on a nonprofit basis. Accordingly, DBH and district are prohibited from funding student's Youth Care placement. Code section 11460(c)(3) states that reimbursements for placements "shall only be made to a group home organized and operated on a nonprofit basis." The statute uses the mandatory term "shall;" consequently, there is an absolute prohibition against funding Youth Care, a group home organized and operated on a profit basis.

2. Petitioner asserts that based on the business relationship between Youth Care and Aspen Solutions, Youth Care falls within Aspen Solutions' non-profit status; thereby avoiding the Code's funding prohibition. Petitioner highlights the fact that similar placements at Youth Care have been, and currently are, funded by other California county agencies; therefore, such placements must be permissible. Petitioner's assertion lacks merit. As set forth in Finding 5, while it is true that other California county agencies have placed individuals at Youth Care, it seems that the placements were made without a full understanding of Youth Care's status and its true relationship with Aspen Solutions. DBH discovered, as set forth in Finding 10, that Aspen Solutions and Youth Care are distinct legal entities; Aspen Solutions merely acts as Youth Care's bookkeeper. Code section 11460(c)(3) states in pertinent part that agencies, such as DBH and the district, may only make payments to "a group home organized and operated on a nonprofit basis." Youth Care is the group home/residential facility, not Aspen Solutions. Youth care is the entity providing services to student, not Aspen Solutions. Youth Care's profit/nonprofit status is what is important, not Aspen Solutions'. Youth Care is "for profit" and cannot magically become "nonprofit" by virtue of its management agreement with Aspen Solutions. Consequently, the determinations that DBH and district are absolutely prohibited from funding student's current placement, and that petitioner's "stay put" requests were properly denied are, and were, appropriate.

3. As indicated by Finding 4, mother unilaterally elected to place student in the current Youth Care placement. Mother and her advocate knew, as early as June 6, 2005, that DBH was concerned about Youth Care's profit/nonprofit status and its effect on respondents' abilities to fund the placement (Finding 8). Nonetheless, mother elected to continue with the placement. By doing so, she assumed the risk that she would not be reimbursed for costs of the placement. Additionally, because DBH and district are statutorily prohibited from funding the Youth Care placement, they are equally prohibited from making any retroactive reimbursements to mother for the placement.

4. Under both state law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400; Educ. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet state educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9).) In the present instance, DBH and the district have worked in good faith to develop an appropriate program for student. DBH is ready and willing to fund an appropriate placement. In fact, DBH is ready and willing, but unable, to fund student's current placement at Youth Care. Consequently, respondents have not denied student a FAPE because there is no current IEP in effect with which to conform, and respondents are diligently pursuing other reasonable alternatives to student's Youth Care Placement. Student's mother is encouraged to work with respondents to find an appropriate placement by considering other, viable alternatives.

5. Petitioner asserts that if DBH fails to fund student's current placement, then the district should fund the placement under the "single line of authority" doctrine. It is unnecessary to discuss the "single line" doctrine because, district, like DBH falls within the

purview of Regulations section 60100 and Code section 11460. Accordingly, both DBH and district are statutorily barred from funding student's placement at any out-of-state "for-profit" residential facility.

6. California Education Code section 56507, subdivision (d) requires that the extent to which each party prevailed on each issue heard and decided must be indicated in the hearing decision. In the present case, respondents prevailed on the controlling issue and all sub-issues.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Student's petition is denied.

2. The parties shall continue to engage in the IEP process and diligently pursue placement alternatives to Youth Care.

Dated: November 2, 2005

ROY W. HEWITT
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

Note: Pursuant to California Education Code section 56505, subdivision (k), the parties have a right to appeal this Decision to a court of competent jurisdiction within 90 days of receipt of this Decision.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

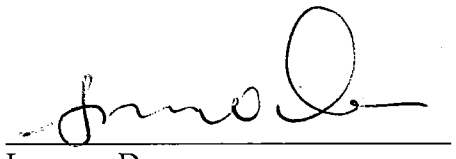
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 5, 2016, I served the:

SCO Comments on the Incorrect Reduction Claim
Incorrect Reduction Claim
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 December 5, 2016 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: 11/2/16

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@sdcounty.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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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
achinncrs@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

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
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

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

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@sdcounty.ca.gov

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.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

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

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

January 20, 2017

Ms. Lisa Macchione
County of San Diego
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

Ms. Jill Kanemasu
Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
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

Dear Ms. Macchione and Ms. Kanemasu:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision by **February 10, 2017**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 24, 2017**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about March 10, 2017. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

ITEM __

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

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

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

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the Office of the State Controller's (Controller's) reduction of vendor costs totaling $1,387,095 (the treatment and board and care costs in Finding 2) claimed for fiscal years 2006-2007 through 2008-2009 by the County of San Diego (claimant) for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.[2] The Controller reduced vendor costs claimed for board and care and

[1] Note that this caption differs from the Test Claim and Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the statutes and executive orders and the specific sections approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

[2] Though the consolidated *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)* Parameters and Guidelines apply to the

treatment services for out-of-state residential placement of SED pupils in facilities organized and operated for-profit. The Parameters and Guidelines and the test claim statutes and regulations only allow vendor payments for the board and care and treatment services for SED pupils placed in out-of-state facilities organized and operated on a *nonprofit* basis.

At the October 28, 2016 Commission meeting, the Commission found that the Revised Final Audit Report, issued December 18, 2012, superseded the previous Final Audit Report for the purpose of the statute of limitations, and therefore this IRC was timely filed.

As explained herein, staff recommends that the Commission on State Mandates (Commission) deny this IRC.

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

On May 25, 2000, the Commission approved the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*, 97-TC-05 Test Claim, as a reimbursable state-mandated program.[3] The test claim statutes and implementing regulations were part of the state's response to the federal Individuals with Disabilities Education Act (IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.[4] As originally enacted, the statutes shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP), but the implementing regulations required that all services provided by the counties be provided *within* the State of California.[5] In 1996, the Legislature amended Government Code section 7576 to provide that the fiscal and program responsibilities of counties for SED pupils shall be the same regardless of the location of placement, and that the counties shall have fiscal and programmatic responsibility for providing or arranging the provision of necessary services for SED pupils placed in out-of-state residential facilities.[6] The test claim statutes and regulations address the counties' responsibilities for out-of-state placement of seriously emotionally disturbed pupils.

---

fiscal years at issue, this IRC solely involves the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.

[3] Exhibit B, Controller's Comments on the IRC, page 139 (Statement of Decision on 97-TC-05).

[4] Former Government Code sections 7570, et seq., as enacted and amended by Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274; California Code of Regulations, title 2, sections 60000-60610 (emergency regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28).

[5] Former California Code of Regulations, title 2, section 60200.

[6] Statutes 1996, chapter 654.

The Parameters and Guidelines for the *SED* program were adopted on October 26, 2000,[7] and corrected on July 21, 2006,[8] with a period of reimbursement beginning January 1, 1997. The Parameters and Guidelines, as originally adopted, authorize reimbursement for the following costs:

> 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, [sections] 60100 and 60110.[9]

The correction adopted on July 21, 2006, added the following sentence: "Included in this activity is the cost for out-of-state residential board and care of SED pupils." The correction was necessary to clarify the Commission's finding that the term "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements" includes reimbursement for "residential costs" of out-of-state placements.[10] Thus, the Parameters and Guidelines for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*, 97-TC-05, authorize reimbursement for payments to out-of-state service vendors providing board and care and treatment services for SED pupils "*as specified* in Government Code section 7576 and Title 2, California Code Regulations, [sections] 60100 and 60110."

Former section 60100(h) required that "[o]ut-of-state placements shall only be made in residential programs that meet the requirements of Welfare and Institutions Code sections 11460(c)(2) through (c)(3)." Welfare and Institutions Code section 11460, as amended by Statutes of 1995, chapter 724, governed the foster care program from 1996 to 2010. During those years, Welfare and Institutions Code section 11460(c)(3) provided that "State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home *organized and operated on a nonprofit basis*." (Emphasis added.) Thus, the nonprofit rule applicable to out-of-state foster care group homes was made expressly applicable to out-of-state residential placements of SED pupils.

On October 26, 2006, the Commission consolidated the Parameters and Guidelines for *Handicapped and Disabled Students (04-RL-4282-10)*; and *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)*, for costs incurred commencing with the 2006-2007 fiscal year.[11] The reimbursable activities in the consolidated Parameters and Guidelines require counties to determine that the residential placement of SED pupils meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing

---

[7] Exhibit A, IRC, page 31.

[8] Exhibit A, IRC, page 31.

[9] Exhibit X, Parameters and Guidelines, adopted October 26, 2000.

[10] Exhibit X, Corrected Parameters and Guidelines, dated July 21, 2006.

[11] Exhibit A, IRC, pages 30-43 (consolidated Parameters and Guidelines, adopted October 26, 2006).

payment. Former Welfare and Institutions Code section 18350(c) required that "[p]ayments for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467, inclusive."[12] And, as discussed above, section 11460(c) requires that out-of-state facilities where SED pupils are placed, shall be organized and operated on a nonprofit basis. Thus, reimbursement for the cost of board, care, and treatment services in out-of-state residential facilities remained the same when the program was consolidated with the *Handicapped and Disabled Students* program and during all audit years in question.[13]

The consolidated Parameters and Guidelines also contain instructions for claiming costs. With respect to claims for contract services, claimants are required to provide the name of the contractor who performed the services and show the dates and times when services were performed. The costs claimed must also be supported with contemporaneous source documents. Supporting documents shall be retained "during the period subject to audit."[14]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs *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), by transferring responsibility for SED pupils to school districts, effective July 1, 2011.[15] Thus on September 28, 2012, the Commission adopted an amendment to the consolidated Parameters and Guidelines ending reimbursement for these programs effective July 1, 2011.

Procedural History

On April 9, 2008, the claimant filed its fiscal year 2006-2007 annual reimbursement claim.[16] On February 10, 2009, the claimant filed its fiscal year 2007-2008 annual reimbursement claim.[17] On February 8, 2010, the claimant filed its fiscal year 2008-2009 annual reimbursement claim.[18] The Controller asserts that it initiated the audit of the fiscal years 2006-2007 through 2008-2009 reimbursement claims on April 14, 2010.[19] On March 7, 2012, the Controller issued the Final

[12] Exhibit X, Welfare and Institutions Code section 18350, as amended by Statutes 1990, chapter 46, section 12, effective April 10, 1990.

[13] Exhibit A, IRC, pages 30-43 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[14] Exhibit A, IRC, pages 42 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[15] Exhibit X, Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by the Governor, June 30, 2011.

[16] Exhibit A, IRC, page 123.

[17] Exhibit A, IRC, page 133.

[18] Exhibit A, IRC, page 145.

[19] Exhibit B, Controller's Comments on the IRC, page 6.

Audit Report.[20] On December 18, 2012, the Controller issued the Revised Final Audit Report, relating to Finding 4 only.[21] On December 10, 2015, the claimant filed this IRC.[22] On December 18, 2015, Commission staff notified the claimant that the IRC filing was deemed untimely filed.[23] On December 28, 2015, claimant filed the Appeal, *Appeal of Executive Director Decision,* 15-AEDD-01.[24] On March 25, 2016 and September 23, 2016, the Commission heard the claimant's Appeal, but took no action.[25] On October 28, 2016, the Commission granted the claimant's Appeal.[26] On December 5, 2016, the Controller filed comments on the IRC.[27] The claimant did not file rebuttal comments.

On January 20, 2017, Commission staff issued the Draft Proposed Decision.[28]

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[29] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

[20] Exhibit A, IRC, page 76.

[21] Exhibit A, IRC, page 76.

[22] Exhibit A, IRC, page 1.

[23] Exhibit X, *Appeal of Executive Director Decision,* 15-AEDD-01, page 1.

[24] Exhibit X, *Appeal of Executive Director Decision,* 15-AEDD-01, page 14.

[25] 15-AEDD-01 was also set for hearing on May 26, 2016 but was continued, and again on July 22, 2016 but was postponed.

[26] Exhibit X, October 28, 2016 Commission hearing minutes and transcript excerpt, page 7.

[27] Exhibit B, Controller's Comments on the IRC.

[28] Exhibit C, Draft Proposed Decision, issued January 20, 2017.

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

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[30]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[31]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant. [32] In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[33]

Claims

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

Issue	Description	Staff Recommendation
Timeliness of the audit for fiscal years 2006-2007 through 2008-2009.	Government Code section 17558.5 required the Controller to initiate an audit no later than three years after the claim is filed or last amended, or if no payment is made, within 3 years of the date of payment. In either case, the audit must completed within 2 years after initiation.	*The audit was timely initiated and concluded –* The audit was initiated on April 14, 2010, less than three years after payment for the 2006-2007 reimbursement claim and within three years from the date the reimbursement claims for fiscal years 2007-2008 and 2008-2009 were filed, and therefore was timely initiated. The Final Audit Report providing the claimant with

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

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

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

[33] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

		the claim component adjusted, the amount adjusted, and the reason for the adjustment, was dated March 7, 2012, less than two years after the initiation of the claim on April 14, 2010, and thus was timely completed.
Timeliness of the IRC.	The claimant filed this IRC more than three years after the completion of the Final Audit Report, but less than three years after the completion of the Revised Final Audit Report which "superseded" the former report. The claimant must file an IRC within three years of "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." Former Cal. Code Regs., title 2, § 1185(b) (effective from May 8, 2007, to June 30, 2014).	*The Commission has determined that this IRC was timely filed based on the date of the Revised Final Audit Report which "superseded" the Final Audit Report.*[34]
Reduction of costs claimed for vendor payments for board, care, and treatment services for SED pupils placed in an out-of-state facility that is organized and operated for-profit.	The Controller found that a total of $1,387,095 claimed for board and care and treatment costs for all fiscal years audited was not allowable because, based on the documentation provided by the claimant in this case; the vendor costs claimed were for Charter Provo Canyon, Utah, an out-of-state *for-profit* residential facility and, thus, the costs were beyond the scope of the mandate.	*Correct as a matter of law* – During all of the fiscal years at issue in these claims, the Parameters and Guidelines and state law required that residential and treatment costs for SED pupils placed in out-of-state residential facilities be provided by nonprofit facilities and thus, costs claimed for vendor services provided by an out-of-state service vendor that is organized and operated on a for-profit basis is beyond the scope of the mandate and not reimbursable as a matter of law.

[34] Exhibit X, October 28, 2016 Commission hearing minutes and transcript excerpt, page 7.

Staff Analysis

A. The IRC was Timely Filed.

On March 7, 2012, the Controller issued the Final Audit Report with the reductions at issue in this IRC.[35] On December 18, 2012, the Controller issued the Revised Final Audit Report which "supersedes" the Final Audit Report because the Controller "recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement." The revision had no fiscal effect on allowable total program costs, or on the adjustments in Finding 2.[36] The claimant filed this IRC on December 10, 2015, challenging the Controller's reductions in Finding 2 for out-of-state, for-profit, vendor costs for room and board and treatment incurred for SED pupils for fiscal years 2006-2007, 2007-2008, and 2008-2009.

Based on the facts in this case, the Commission has found that the claimant's IRC was timely filed because the Revised Final Audit Report issued December 18, 2012 stated that it "supersedes" the Final Audit Report issued March 7, 2012.[37] The dictionary definition of supersede is: 1. to replace: supplant; 2. to cause to be set aside or replaced by another.[38] Since the December 18, 2012 Revised Final Audit Report superseded the earlier Final Audit Report, it constitutes the last essential element of the audit for purposes of the period of limitation, which put the claimant on notice of the right to file an IRC with the Commission within three years. Thus, based on the date of the Revised Final Audit Report, the claimant had until December 18, 2015 to file the IRC.

The IRC was filed on December 10, 2015 and thus was timely filed.

B. The Controller Timely Initiated and Completed the Audit Pursuant to Government Code Section 17558.5.

The claimant filed the 2006-2007 reimbursement claim on April 9, 2008,[39] the 2007-2008 reimbursement claim on February 10, 2009,[40] and the 2008-2009 reimbursement claim on February 8, 2010.[41] The State paid $4,106,959 for fiscal year 2006-2007 from the fiscal year 2009-2010 budget.[42] The Controller initiated the audit on April 14, 2010, at which time the claims for fiscal years 2007-2008 and 2008-2009 had not been paid and within one year of the payment on the 2006-2007 claim in fiscal year 2009-2010.[43] The Controller issued the Final

[35] Exhibit B, Controller's Comments on the IRC, page 6.

[36] Exhibit A, IRC, page 76.

[37] Exhibit X, October 28, 2016 Commission hearing minutes and transcript excerpt, page 7.

[38] Webster's II New College Dictionary (1995) page 1107.

[39] Exhibit A, IRC, page 123.

[40] Exhibit A, IRC, page 133.

[41] Exhibit A, IRC, page 145.

[42] Exhibit A, IRC, page 84 (footnote 3 in audit report).

[43] Exhibit B, Controller's Comments on the IRC, page 6.

Audit Report with the reductions at issue in this IRC, on March 7, 2012.[44] The Revised Final Audit report was issued on December 18, 2012.[45]

When the reimbursement claims at issue in this IRC were submitted, Government Code section 17558.5 required the Controller to initiate an audit no later than three years after the claim is filed or last amended. However, if no funds are appropriated or no payment is made to the claimant for the program for the fiscal year at issue, the time for the Controller to initiate the audit is tolled to three years after the date of the initial payment of the claim.

Staff recommends that the Commission find that the Controller timely initiated the audit for all three fiscal years. The fiscal year 2006-2007 reimbursement claim was filed on April 9, 2008, but the claim was not paid until fiscal year 2009-2010. Thus the time for the Controller to initiate the claim was tolled, and the audit initiation date of April 14, 2010 was within three years of the date of payment on the claim. As to the other two fiscal years, the audit was initiated within three years of the date the claims were submitted.

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."[46]

Therefore, a timely audit must be completed by April 12, 2012. The Revised Final Audit Report which did not change Finding 2 from the March 7, 2012 Final Audit Report, notified the claimant of the adjustments, the amounts adjusted, and the reason for the adjustment.

Based on the foregoing, staff recommends that the Commission find that the audit was timely completed pursuant to Government Code section 17558.5(a).

C. The Controller's Reduction of Costs Claimed for Vendor Services Provided by Out-Of-State Residential Treatment and Board and Care Programs That Are Organized and Operated on a For-Profit Basis Is Correct as a Matter of Law.

In Finding 2, costs related to ineligible vendor payment for out-of-state residential placement of SED pupils in programs that are "owned and operated *for-profit*" were reduced. The claimant contends that state law conflicted with federal law during this time period and that federal law did not limit the placement of SED pupils to nonprofit facilities. Absent a decision from the courts on this issue, however, the Commission is required by law to presume that the state statutes and regulations adopted in accordance with the Administrative Procedures Act, are valid. The claimant further argues that decisions issued by the OAH and the U.S. Supreme Court support the position that reimbursement is required if a SED pupil is placed in a for-profit facility that complies with federal IDEA law. However, the claimant has provided no documentation or evidence that the costs claimed in the reimbursement claims at issue in this IRC were incurred as

[44] Exhibit A, IRC, page 76.

[45] Exhibit A, IRC, page 76.

[46] Government Code section 17558.5(c).

a result of a court order finding that no other alternative placement was identified for a SED pupil during the audit years in question, and unlike the court's equitable powers under IDEA, the reimbursement requirements of article XIII B, section 6, of the California Constitution must be strictly construed and not applied as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[47] Thus, those decisions do not support the claimant's right to reimbursement.

Staff recommends the Commission find that the Controller's reduction of costs claimed for vendor services provided by out-of-state residential programs that are organized and operated on a for-profit basis is correct as a matter of law. The Parameters and Guidelines authorize reimbursement for the payments made by counties to out-of-state care providers of a SED pupil for residential and treatment costs based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356.[48] Counties are further required to determine that the residential placement "meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment."[49]

During the reimbursement period, Welfare and Institutions Code section 18350(c) required that the payment "for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467" of the Welfare and Institutions Code. Welfare and Institutions Code section 11460 governed the foster care program and subdivision (c)(3) provided that "State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home *organized and operated on a nonprofit basis*." (Emphasis added.) Thus, the nonprofit rule applicable to out-of-state foster care group homes was made expressly applicable to out-of-state residential placements of SED pupils. Consistent with these statutes, section 60100(h) of the regulations for this program states that out-of-state residential programs shall meet the requirements in Welfare and Institutions Code section 11640(c)(2) through (3) and, thus, be organized and operated on a nonprofit basis. Thus, the Parameters and Guidelines require that the out-of-state residential facility be operated on a nonprofit basis.

The claimant makes no argument disputing the Controller's findings that Charter Provo Canyon School is a for-profit facility that provided the treatment and board and care services for its SED pupils. Claimant contends, however, that reimbursement is required because it contracted with Mental Health Systems, Inc., a nonprofit corporation, in accordance with the Parameters and Guidelines, and provides a copy of a letter from the IRS verifying that Mental Health Systems, Inc., is a nonprofit entity.[50] During the course of the audit, the claimant provided a copy of the contracts between Mental Health Systems, Inc., and Charter Provo Canyon School, LLC (later

---

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

[48] Exhibit A, IRC, page 37 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[49] Exhibit A, IRC, page 37 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[50] Exhibit A, IRC, page 24.

identified as UHS of Provo Canyon) "for the provision of services pursuant to Chapter 26.5 of Division 7 of Title 1 of the Government Code" (the chapter Government Code that includes the test claim statute). The agreement demonstrates that Charter Provo Canyon School provided the services for the claimant, and confirms that Charter Provo Canyon School, LLC is a for-profit limited liability company.

Accordingly, the evidence in the record supports the Controller's finding that the services were provided by for-profit entities and are outside the scope of the mandate.

Conclusion

Staff finds that the Controller's reductions are correct as a matter of law.

Staff Recommendation

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: 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 re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26]; final regulations effective August 9, 1999 [Register 99, No. 33])[51] Fiscal Years 2006-2007, 2007-2008, and 2008-2009 County of San Diego, Claimant	Case No.: 15-9705-I-06 *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)* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted March 24, 2017*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on March 24, 2017. [Witness list will be included in the adopted Decision.]

[51] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the statutes and executive orders and the specific sections approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

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

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

Member	**Vote**
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC challenges the Office of the State Controller's (Controller's) findings and reductions of vendor costs, for the treatment and board and care costs in Finding 2 claimed for fiscal years 2006-2007 through 2008-2009 by the County of San Diego (claimant), for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*[52] program.

At the October, 28, 2016 Commission meeting, the Commission found that the Revised Final Audit Report, issued December 18, 2012, superseded the Final Audit Report for the purpose of the statute of limitations for filing the IRC and therefore the claim was timely filed.

The Commission now finds that, because the audit reductions were completed on March 7, 2012, within two years from the date the reimbursement claims were filed or paid, the audit was timely as required by section 17558.5 of the Commission's regulations.

The Commission further finds that the Controller's reduction of costs claimed for vendor services provided by out-of-state residential programs that are organized and operated on a for-profit basis is correct as a matter of law. During the entire reimbursement period for this program, state law and the Parameters and Guidelines required that out-of-state residential programs that provide board and care and treatment services to SED pupils shall be organized and operated on a nonprofit basis. The Parameters and Guidelines also require the claimant to provide supporting documentation for the costs claimed. In this case, the Controller concluded, based on a service agreement provided by the claimant, that the vendor payments made by the

[52] Though the consolidated *Handicapped and Disabled Students; Handicapped and Disabled Students II;* and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* parameters and guidelines apply to the fiscal years at issue, this IRC solely involves the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.

claimant to Mental Health Systems, Inc., a California nonprofit corporation, are not reimbursable because Mental Health Systems, Inc., contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide the board and care and treatment services for SED pupils. Since the facility providing the treatment and board and care is a for-profit facility, the Controller correctly found that the costs were not eligible for reimbursement under the Parameters and Guidelines and state law.

The decisions issued by the Office of Administrative Hearings (OAH) and the United States Supreme Court that claimant relies upon to argue for subvention are not applicable in this case because those cases do not address the subvention requirement of Article XIII B section 6 of the California Constitution. Moreover, the claimant has provided no documentation or evidence that the costs claimed in the subject reimbursement claims were incurred as a result of a court order finding that no other alternative placement was identified for a SED pupil during the audit years in question. Further, unlike the court's equitable powers under the federal Individuals with Disabilities Education Act (IDEA), the reimbursement requirements of article XIII B, section 6, of the California Constitution must be strictly construed and not applied as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[53]

Therefore, the Commission denies this IRC.

I. Chronology

04/09/2008	Claimant filed its fiscal year 2006-2007 annual reimbursement claim.[54]
02/10/2009	Claimant filed its fiscal year 2007-2008 annual reimbursement claim.[55]
02/08/2010	Claimant filed its fiscal year 2008-2009 annual reimbursement claim.[56]
04/14/2010	Date that Controller asserts that it initiated the audit of the fiscal years 2006-2007 through 2008-2009 reimbursement claims.[57]
03/07/2012	Controller issued the Final Audit Report.[58]
12/18/2012	Controller issued the Revised Final Audit Report, which "superseded" the Final Audit Report.[59]

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

[54] Exhibit A, IRC, page 123. In its audit report, the Controller noted the County received payment for their 2006-2007 claim from the 2009-10 budget (see also, Exhibit A, page 84).

[55] Exhibit A, IRC, page 133.

[56] Exhibit A, IRC, page 145.

[57] Exhibit B, Controller's Comments on the IRC, page 6.

[58] Exhibit A, IRC, page 8.

[59] Exhibit A, IRC, pages 8 and 76

12/10/2015 Claimant filed this IRC.[60]

12/18/2015 Commission issued a notice that the IRC was deemed untimely filed.

12/28/2015 Claimant filed the *Appeal of Executive Director Decision*, 15-AEDD-01.

03/25/2016 Commission heard 15-AEDD-01, but took no action.

09/23/2016 Commission heard 15-AEDD-01, but took no action.[61]

10/28/2016 Commission heard 15-AEDD-01, and granted claimant's Appeal, finding that the IRC was timely filed.[62]

12/05/2016 Controller filed comments on the IRC.[63]

01/20/2017 Commission staff issued the Draft Proposed Decision.[64]

II. Background

A. Out-of-State Residential Treatment for Seriously Emotionally Disturbed (SED) Pupils

This IRC addresses reimbursement claims for costs incurred by the County of San Diego for vendor services provided to SED pupils in out-of-state residential facilities from fiscal years 2006-2007, 2007-2008, and 2008-2009. During the audit period, the consolidated Parameters and Guidelines for *Handicapped and Disabled Students* (04-RL-4282-10); *Handicapped and Disabled Students II* (02-TC-40/02-TC-49); and *Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services (97-TC-05)* governed the program.[65] The history of this program with respect to out-of-state residential treatment for SED pupils is described below.

Government Code sections (Gov. Code, §§ 7570, et seq.) and implementing regulations (Cal. Code Regs., tit. 2, §§ 60000, et seq.) were part of the state's response to the federal Individuals with Disabilities Education Act (IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.[66] As originally enacted, Government Code sections 7570, et seq. shifted to counties the

[60] Exhibit A, IRC, page 1.

[61] 15-AEDD-01 was also set for hearing on May 26, 2016 but was continued, and again on July 22, 2016 but was postponed.

[62] Exhibit X, October 28, 2016 Commission meeting minutes and transcript excerpt, page 7.

[63] Exhibit B, Controller's Comments on the IRC, page 1.

[64] Exhibit C, Draft Proposed Decision, issued January 20, 2017.

[65] Exhibit A, IRC, page 30 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[66] Former Government Code sections 7570, et seq., as enacted and amended by Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274; California Code of Regulations, title 2, sections 60000-60610 (emergency regulations filed December 31, 1985, designated effective

responsibility and funding of mental health services required by a pupil's individualized education plan (IEP), but the implementing regulations required that all services provided by the counties be provided *within* the State of California.[67] In 1996, the Legislature amended Government Code section 7576 to provide that the fiscal and program responsibilities of counties for SED pupils shall be the same regardless of the location of placement, and that the counties shall have fiscal and programmatic responsibility for providing or arranging the provision of necessary services for SED pupils placed in out-of-state residential facilities.[68]

On May 25, 2000, the Commission approved the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*, 97-TC-05 Test Claim, in which the claimant pled the 1996 amendment to Government Code section 7576 and the regulations that implemented the amendment, as a reimbursable state-mandated program (hereafter referred to as "SED").[69] In the Test Claim Statement of Decision the Commission found that:

> Before the enactment of Chapter 654, counties were only required to provide mental health services to SED pupils placed in out-of-home (in-state) residential facilities. However, section 1 now requires counties to have fiscal and programmatic responsibility for SED pupils regardless of placement – i.e., regardless of whether SED pupils are placed out-of-home (in-state) or out-of-state.
>
> Chapter 654 also added subdivision (g) to Government Code section 7576, which provides:
>
> > "Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. . . ." (Emphasis added.)
>
> California Code of Regulations, sections 60100 and 60200, amended in response to section 7576, further define counties' "fiscal and programmatic responsibilities" for SED pupils placed in out-of-state residential care. Specifically, section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil" reflects the Legislature's intent behind the Test Claim statute by 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

---

January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28).

[67] Former California Code of Regulations, title 2, section 60200.

[68] Statutes 1996, chapter 654.

[69] Exhibit B, Controller's Comments on the IRC, pages 22-30.

needs. Section 60200 entitled "Financial Responsibilities" details county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

In particular, amended section 60200 removes the requirement that LEAs be responsible for the out-of-state residential placement of SED pupils. Subdivision (c) of section 60200 now provides that the county mental health agency of origin shall be "responsible for the provision of assessments and mental health services included in an IEP in accordance with [section 60100]." Thus, as amended, section 60200 replaces the LEA with the county of origin as the entity responsible for paying the mental health component of out-of-state residential placement for SED pupils.[70]

As relevant here, the Commission concluded that the following new costs were mandated by the state:

- Payment of out-of-state residential placements for SED pupils. (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60100, 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, sections 60000-60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)[71]

Parameters and Guidelines for the *SED* program were adopted on October 26, 2000,[72] and corrected on July 21, 2006,[73] with a period of reimbursement beginning January 1, 1997. The Parameters and Guidelines, as originally adopted, authorize reimbursement for the following costs:

> 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, [sections] 60100 and 60110.[74]

The correction adopted on July 21, 2006 added the following sentence: "Included in this activity is the cost for out-of-state residential board and care of SED pupils." The correction was necessary to clarify the Commission's finding when it adopted the Parameters and Guidelines,

---

[70] Exhibit B, Controller's Comments on the IRC, pages 141-142 (Statement of Decision, *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*, 97-TC-05).

[71] Exhibit B, Controller's Comments on the IRC, page 148.

[72] Exhibit X, Parameters and Guidelines, adopted October 26, 2000.

[73] Exhibit X, Corrected Parameters and Guidelines, dated July 21, 2006.

[74] Exhibit X, Parameters and Guidelines, adopted October 26, 2000.

that the term "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements" includes reimbursement for "residential costs" of out-of-state placements.[75]

Thus, the Parameters and Guidelines authorize reimbursement for payments to out-of-state service vendors providing board and care and treatment services for SED pupils "*as specified* in Government Code section 7576 and Title 2, California Code Regulations, [sections] 60100 and 60110." Former section 60100(h) required that "[o]ut-of-state placements shall only be made in residential programs that meet the requirements of Welfare and Institutions Code sections 11460(c)(2) through (c)(3)." Welfare and Institutions Code section 11460, as amended by Statutes of 1995, chapter 724, governed the foster care program from 1996 to 2010. During those years, Welfare and Institutions Code section 11460(c)(3) provided that "State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home *organized and operated on a nonprofit basis*." (Emphasis added.) Thus, the nonprofit rule applicable to out-of-state foster care group homes was made expressly applicable to out-of-state residential placements of SED pupils.

On October 26, 2006, the Commission consolidated the Parameters and Guidelines for *Handicapped and Disabled Students (04-RL-4282-10); Handicapped and Disabled Students II (02-TC-40/02-TC-49); and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)* for costs incurred commencing with the 2006-2007 fiscal year.[76] The reimbursable activities in the consolidated Parameters and Guidelines require counties to determine that the residential placement of SED pupils meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment as follows:

> G. Authorize payments to in-state or out-of-state residential care providers/ Issue payments to providers of in-state or out-of-state residential care for the residential and noneducational costs of seriously emotionally disturbed pupils (Gov. Code,§ 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))
>
> 1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. *This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment*.[77]

At that time Welfare and Institutions Code section 18350(c) required that "[p]ayments for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467,

---

[75] Exhibit X, Corrected Parameters and Guidelines, dated July 21, 2006.

[76] Exhibit A, IRC, page 30 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[77] Exhibit A, IRC, page 37 (emphasis added) (consolidated Parameters and Guidelines, adopted October 26, 2006).

inclusive."[78] And, as discussed above, section 11460(c) requires that out-of-state facilities where SED pupils are placed, shall be organized and operated on a nonprofit basis. Thus, under the Parameters and Guidelines, reimbursement for the cost of out-of-state residential placement of seriously emotionally disturbed pupils is contingent upon the placement being at a nonprofit facility.

Section V. of the consolidated Parameters and Guidelines instructs claimants to claim for contract services as follows:

> Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.[79]

Section IV. of the Parameters and Guidelines then requires that the costs claimed be supported with contemporaneous source documents. Pursuant to Section VI., the supporting documents shall be retained "during the period subject to audit."[80]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *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)*, by transferring responsibility for SED pupils to school districts, effective July 1, 2011.[81] Thus on September 28, 2012, the Commission adopted an amendment to the Parameters and Guidelines ending reimbursement for these programs effective July 1, 2011.

B. The Audit Findings of the Controller

The claimant submitted reimbursement claims totaling $14,484,766 for fiscal years 2006-2007 through 2008-2009. The Controller audited the claims and reduced them by $2,832,875 for various reasons. The claimant only disputes the reduction in Finding 2 for $1,387,095 relating to ineligible vendor payments for board and care and treatment services for out-of-state residential

---

[78] Exhibit X, Welfare and Institutions Code section 18350, as amended by Statutes 1990, chapter 46, section 12, effective April 10, 1990.

[79] Exhibit A, IRC, pages 39-40 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[80] Exhibit A, IRC, page 42 (consolidated Parameters and Guidelines, adopted October 26, 2006).

[81] Exhibit X, Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by the Governor, June 30, 2011.

placement of SED pupils in facilities that are "owned and operated *for-profit*."[82] The Controller concluded that the vendor payments made by the claimant to Mental Health Systems, Inc., a California nonprofit corporation, are not allowable because Mental Health Systems, Inc., contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide the out-of-state residential placement services. Since the facility providing the treatment and board and care is a for-profit facility, the Controller found that the costs are not eligible for reimbursement under the Parameters and Guidelines.[83]

III. Positions of the Parties

A. County of San Diego

The claimant contends that it timely filed its IRC on December 10, 2015, based on the Revised Final Audit Report dated December 18, 2012, which "superseded" the Final Audit Report dated March 7, 2012.

The claimant further contends that the Controller's reductions for vendor payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for-profit are incorrect and should be reinstated. For all fiscal years at issue, the claimant asserts that the requirements in the Parameters and Guidelines, based on California Code of Regulations, title 2, section 60100(h) and Welfare and Institutions Code section 11460(c)(3), are in conflict with the 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)).[84] In support of this position, the claimant argues the following:

- California law prohibiting placement in for-profit facilities is inconsistent with federal law, which no longer has such limitation, and with IDEA's requirement that children with disabilities be placed in the most appropriate educational environment out-of-state and not be constrained by nonprofit status.[85]
- Counties will be subject to increased litigation without the same ability as parents to place seriously emotionally disturbed students in appropriate for-profit out-of-state facilities because the U.S. Supreme Court and the Office of Administrative Hearings (OAH) have found that parents were entitled to reimbursement for placing students in appropriate for-profit out-of-state facilities when the IEP prepared by the school district was found to be inadequate and the placement was otherwise proper under IDEA.[86]

[82] Exhibit A, IRC, page 9.

[83] Exhibit A, IRC, page 94; Exhibit B, Controller's Comments on the IRC, pages 192-202 and 206-216 (see also the contract between Mental Health Systems, Inc., and Charter Provo Canyon School, LLC (later identified as UHS of Provo Canyon, Inc.)).

[84] Exhibit A, IRC, page 9.

[85] Exhibit A, IRC, pages 12-13.

[86] Exhibit A, IRC, pages 14-16.

- The County contracted with a nonprofit entity, Mental Health Services, Inc., to provide the out-of-state residential services subject to the disputed disallowances.[87]
- State and Federal law do not contain requirements regarding the tax identification status of mental health treatment service providers and the county has complied with the legal requirements regarding treatment services, so there is no basis to disallow treatment costs.[88] California Code of Regulations, title 2, section 60020(i) and (j) describes the type of mental health services to be provided to SED pupils, as well as who shall provide these services to special education students, with no mention of the tax identification status of the services provider.[89]

B. State Controller's Office

It is the Controller's position that the audit adjustments are correct and that this IRC should be denied. The Controller asserts that the unallowable costs resulting from the out-of-state residential placement of SED pupils in for-profit facilities are correct because the Parameters and Guidelines only allow vendor payments for SED pupils placed in a group home organized and operated on a nonprofit basis.[90] The Controller states that the unallowable treatment and board-and-care vendor payments claimed result from the claimant's placement of SED pupils in a prohibited for-profit out-of-state residential facility.[91]

The Controller does not dispute the assertion that California law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils. The Controller also does not dispute that local educational agencies, unlike counties, are not restricted under the Education Code from contracting with for-profit schools for educational services. However the Controller maintains that under the mandated program, costs incurred at out-of-state for-profit residential programs are not reimbursable.[92]

The Controller also distinguishes the OAH case cited by the claimant, in which the administrative law judge found that not placing the student in an appropriate facility denied the student a free and appropriate public education under federal regulations, which the Controller argues has no bearing or precedent here because the decision does not address the issue of state mandated reimbursement for residential placements made outside of the regulations.[93] The Controller also cites an OAH case where the administrative law judge found, consistent with the Parameters and Guidelines, that the county Department of Health could *not* place a student in an out-of-state residential facility that is organized and operated for profit because the county is

[87] Exhibit A, IRC, pages 16-17.

[88] Exhibit A, IRC, pages 17-18.

[89] Exhibit A, IRC, page 17.

[90] Exhibit B, Controller's Comments on the IRC, page 11.

[91] Exhibit B, Controller's Comments on the IRC, page 11.

[92] Exhibit B, Controller's Comments on the IRC, page 14.

[93] Exhibit B, Controller's Comments on the IRC, page 14.

statutorily prohibited from funding a residential placement in a for-profit facility. There, the administrative law judge also determined that the business relationship between the nonprofit entity, Aspen Solutions, and a for-profit residential facility, Youth Care, did not grant the latter nonprofit status.[94]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[95] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[96]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[97] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency.

---

[94] Exhibit B, Controller's Comments on the IRC, page 14 (citing OAH case Nos. N 2007090403 (Exhibit B of the IRC, pages 112-121) and 2005070683 (Tab 14 of the Controller's Comments on the IRC, pages 231-237)).

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

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

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

> [Citation.]'"…"In general…the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…" [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[98]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant. [99] In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[100]

A. The IRC was Timely Filed.

On March 7, 2012, the Controller issued the Final Audit Report.[101] On December 18, 2012, the Controller issued the Revised Final Audit Report which "supersedes" the Final Audit Report because the Controller "recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement." The revision had no fiscal effect on allowable total program costs, or on the adjustments in Finding 2, which are the subject of this IRC.[102] The claimant filed this IRC on December 10, 2015, challenging the Controller's reductions in Finding 2 for out-of-state, for-profit, vendor costs for room and board and treatment incurred for SED pupils for fiscal years 2006-2007, 2007-2008, and 2008-2009.

Based on the facts in this case, the Commission has found that the claimant's IRC was timely filed because the Revised Final Audit Report issued December 18, 2012 stated that it "supersedes" the Final Audit Report issued March 7, 2012.[103]

A reimbursement claim for actual costs filed by a local agency is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5. Government Code section 17558.5(c) requires the Controller to notify 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

---

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

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

[100] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[101] Exhibit B, Controller's Comments on the IRC, page 6.

[102] Exhibit A, IRC, page 76.

[103] Exhibit X, October 28, 2016 Commission hearing minutes and transcript excerpt, page 7.

adjustment."[104] Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

In 2012, when the Final Audit Report and the Revised Final Audit Report were issued, section 1185.1(c) of the Commission's regulations, required IRCs to be filed "no later than three (3) 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."[105] Unlike current regulations, section 1185.1(c), as it existed in 2012, did not expressly state that the time for filing an IRC begins to accrue when the claimant *first* receives a notice of adjustment.[106]

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.[107] Generally, "a plaintiff must file suit within a designated period after the cause of action accrues."[108] The cause of action accrues "when [it] is complete with all of its elements."[109] The courts have held that a cause of action accrues and is complete "upon the occurrence of the last element essential to the cause of action."[110]

In this case, the period of limitation for filing an IRC accrued and attached to the Revised Final Audit Report issued December 18, 2012, since the Controller stated that the Revised Final Audit Report "supersedes" the March 7, 2012 Final Audit Report. The dictionary definition of

---

[104] Government Code section 17558.5(c).

[105] California Code of Regulations, title 2, section 1185.1(c) (Register 2010, No. 44).

[106] California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 48), which now states the following:

> All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant ***first*** receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met. (Emphasis added.)

[107] *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc., v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

[108] *Ibid.*

[109] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[110] *Seelenfreund v. Terminix of Northern California, Inc.,* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

supersede is: 1. to replace: supplant; 2. to cause to be set aside or replaced by another.[111] Since the December 18, 2012 Revised Final Audit Report superseded the Final Audit Report, it constitutes the last essential element of the audit for purposes of the period of limitation, which put the claimant on notice of the right to file an IRC with the Commission within three years. Thus, based on the date of the Revised Final Audit Report, the claimant had until December 18, 2015 to file the IRC.

The IRC was filed on December 10, 2015 and thus was timely filed.

B. The Controller Timely Initiated and Completed the Audit Pursuant to Government Code Section 17558.5.

The claimant filed the 2006-2007 reimbursement claim on April 9, 2008,[112] the 2007-2008 reimbursement claim on February 10, 2009,[113] and the 2008-2009 reimbursement claim on February 8, 2010.[114] The State paid $4,106,959 for fiscal year 2006-2007 from the fiscal year 2009-2010 budget.[115] The Controller asserts that it initiated the audit on April 14, 2010 and this is not disputed. At the time the audit was initiated, the claims for fiscal years 2007-2008 and 2008-2009 had not been paid and it was within one year of the payment on the 2006-2007 claim in fiscal year 2009-2010.[116] The Controller issued the Final Audit Report on March 7, 2012, less than two years after the date the audit was initiated.[117] The Revised Final Audit Report, which did not change the finding in dispute in this IRC, was issued on December 18, 2012.[118]

1. The audit was timely initiated pursuant to Government Code section 17558.5.

When the reimbursement claims at issue in this IRC were submitted, Government Code section 17558.5 required the Controller to initiate an audit no later than three years after the claim is filed or last amended. However, if no funds are appropriated or no payment is made to the claimant for the program for the fiscal year at issue, the time for the Controller to initiate the audit is tolled to three years after the date of the initial payment of the claim. The statute reads as follows:

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. *However, if no funds are appropriated or no*

[111] Webster's II New College Dictionary (1995) page 1107.

[112] Exhibit A, IRC, page 123.

[113] Exhibit A, IRC, page 133.

[114] Exhibit A, IRC, page 145.

[115] Exhibit A, IRC, page 84 (footnote 3 in audit report).

[116] Exhibit B, Controller's Comments on the IRC, page 6.

[117] Exhibit A, IRC, page 76.

[118] Exhibit A, IRC, page 76.

payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.[119]

The Commission finds that the Controller timely initiated the audit for all three fiscal years. The fiscal year 2006-2007 reimbursement claim was filed on April 9, 2008, but the claim was not paid until fiscal year 2009-2010. Thus the time for the Controller to initiate the claim was tolled, and the audit initiation date of April 14, 2010 was within three years of the date of payment on the claim. As to the other two fiscal years, the audit was initiated within three years of the date the claims were submitted.

Therefore, the time to initiate an audit in this case was timely pursuant to Government Code section 17558.5(a).

2. The audit was timely completed pursuant to Government Code section 17558.5.

Government Code section 17558.5 requires that an audit be completed no later than two years after the date that the audit was commenced.[120] Here, the Controller's audit was commenced on April 14, 2010. Therefore, a timely audit must be completed by April 12, 2012. The Controller issued the Final Audit Report on March 7, 2012, notifying the claimant of the reduction in Finding 2, before the completion deadline of April 12, 2012. The Controller also issued the Revised Final Audit Report on December 18, 2012, after the completion deadline. For the reasons below, the Commission finds that the Controller timely completed the audit with respect to Finding 2, the only finding in dispute, based on the March 7, 2012 Final Audit Report.

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."[121]

As explained by the Controller and the claimant, the December 18, 2012 Revised Audit Report recalculated offsetting revenues from the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year 2008-2009 (in Finding 4) and had no fiscal effect on allowable total program costs for that fiscal year.[122] No other revisions to the Controller's findings were made, and the reduction in Finding 2 remained the same. The Revised Final Audit

---

[119] Statutes 2005, chapter 890, effective January 1, 2005, emphasis added.

[120] Statutes 2004, chapter 890, effective January 1, 2005.

[121] Government Code section 17558.5(c).

[122] Exhibit A, IRC, page 82 (Revised Final Audit Report); Exhibit X, *Appeal of Executive Director Decision*, 15-AEDD-01, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1); see also, page 3, where appellant states that "[t]he Revised Final Audit Report contained contains [sic] recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009."

Report which did not change Finding 2 from the March 7, 2012 Final Audit Report, notified the claimant of the adjustments, the amounts adjusted, and the reason for the adjustment as follows:

> The county overstated residential placement costs by $1,653,904 for the audit period.
>
> The county claimed board-and-care costs and mental health treatment "patch" costs for residential placements in out-of-state facilities that are operated on a for-profit basis. Only placements in facilities that are operated on a not-for-profit basis are eligible for reimbursement.
>
> …
>
> We adjusted costs claimed for residential placement in out-of-state facilities that are owned and operated on a for-profit basis…[123]

Based on the foregoing, the Commission finds that the audit was timely completed pursuant to Government Code section 17558.5(a).

C. The Controller's Reduction of Costs Claimed for Vendor Services Provided by Out-Of-State Residential Treatment and Board and Care Programs That Are Organized and Operated on a For-Profit Basis Is Correct as a Matter of Law.

1. During all of the fiscal years at issue in these claims, the Parameters and Guidelines and state law required that SED pupils placed in out-of-state residential facilities be placed in nonprofit facilities and thus, costs claimed for vendor services provided by out-of-state service programs that are organized and operated on a for-profit basis are beyond the scope of the mandate.

As described below, the Commission finds that the Controller's reduction for vendor service costs claimed for treatment and board and care of SED pupils placed in facilities that are organized and operated for-profit is correct as a matter of law.

Reimbursement claims filed with the Controller are required by law to be filed in accordance with the parameters and guidelines adopted by the Commission.[124] Parameters and guidelines provide instructions for eligible claimants to prepare reimbursement claims for direct and indirect costs of a state-mandated program.[125] Parameters and guidelines are regulatory in nature and "APA valid, and absent a court ruling setting them aside, are binding on the parties."[126]

---

[123] Exhibit A, IRC, page 87.

[124] Government Code sections 17561(d)(1); 17564(b); and 17571; *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 801, where the court ruled that parameters and guidelines adopted by the Commission are regulatory in nature and are "APA valid"; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201, where the court found that the Commission's quasi-judicial decisions are final and binding, just as judicial decisions.

[125] Government Code section 17557; California Code of Regulations, title 2, section 1183.7(e).

[126] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 801; *California School*

As indicated above, the consolidated Parameters and Guidelines authorize reimbursement for the payments made by counties to out-of-state care providers of a SED pupil for residential and treatment costs based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. Counties are further required to determine that the residential placement "meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment."

As described in the Background, Welfare and Institutions Code section 18350(c) required that the payment "for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467" of the Welfare and Institutions Code. Welfare and Institutions Code section 11460 governed the foster care program and subdivision (c)(3) provided that "State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home *organized and operated on a nonprofit basis*." (Emphasis added.) Thus, the nonprofit rule applicable to out-of-state foster care group homes was made expressly applicable to out-of-state residential placements of SED pupils. Consistent with these statutes, section 60100(h) of the regulations for this program states that out-of-state residential programs shall meet the requirements in Welfare and Institutions Code section 11640(c)(2) through (3) and, thus, be organized and operated on a nonprofit basis.

The claimant argues, however, that there is no requirement in state or federal law regarding the tax identification status of mental health treatment service providers and that the California Code of Regulations, at section 60020(i) and (j), describe the type of mental health services to be provided in the *SED* program, as well as who shall provide it, with no requirement regarding the providers' tax identification status.[127] However, section 60020 of the regulations defines "psychotherapy and other mental health services" for SED pupils and is part of the same article containing the provisions in section 60100, which further specifies the requirements for out-of-state residential programs. The definition of "psychotherapy and other mental health services" in section 60020 does not change the requirement that an out-of-state residential facility providing treatment services and board and care for SED pupils is required to be organized and operated on a nonprofit basis under this program.

This is further evidenced by the regulatory history of section 60100. During the regulatory process for the adoption of California Code of Regulation section 60100, comments were filed by interested persons with concerns that referencing Welfare and Institutions Code section 11460 in section 60100 of the regulations to provide that "[o]ut-of-state placements shall only be made in residential programs that meet the requirements of Welfare and Institutions Code sections 11460(c)(2) through (c)(3)" was not clear since state reimbursement for special education residential placements is not an AFDC-Foster Care program. The Departments of Education and Mental Health responded as follows:

> Board and care rates for children placed pursuant to Chapter 26.5 of the Government Code are linked in statute to the statutes governing foster care board and care rates. The foster care program and the special education pupils program

Boards Association v. State of California (2009) 171 Cal.App.4th 1183, 1201.

[127] Exhibit A, IRC, page 17-18.

> are quite different in several respects. This creates some difficulties which must be corrected through statutory changes, and cannot be corrected through regulations. Rates are currently set for foster care payments to out-of-state facilities through the process described in WIC Sections 11460(c)(2) through (c)(3). The rates cannot exceed the current level 14 rate *and the program must be non-profit*, and because of the requirements contained in Section WIC 18350, placements for special education pupils must also meet these requirements. The Departments believe these requirements are clearly stated by reference to statute, but we will handbook WIC Sections 11460(c)(2) through (c)(3) for clarity.[128]

In addition, the departments specifically addressed the issue of "out-of-state group homes which are organized as for profit entities, but have beds which are leased by a non-profit shell corporation."[129] The departments stated that the issue may need further legal review of documentation of group homes that claim to be nonprofit, but nevertheless "[t]he statute in WIC section 11460 states that state reimbursement shall only be paid to a group home organized and operated on a non-profit basis."[130]

Subsequent to the adoption of the Test Claim Decision and Parameters and Guidelines for this program, legislation was introduced to address the issue of payment for placement of SED pupils in out-of-state for profit facilities in light of the fact that the federal government eliminated the requirement that a facility be operated as nonprofit in order to receive federal funding. However, as described below, the legislation was not enacted and the law applicable to these claims remained unchanged during the reimbursement period of the program.

In the 2007-2008 legislative session, Senator Wiggins introduced SB 292, which would have authorized payments to out-of-state, for-profit residential facilities that meet applicable licensing requirements in the state in which they operate, for placement of SED pupils placed pursuant to an IEP. The committee analysis for the bill explained that since 1985, California law has tied the requirement for placement of a SED pupil placed out-of-home pursuant to an IEP, to state foster care licensing and rate provisions. However, the analysis notes that the funds for placement of SED pupils are not AFDC-FC funds. California first defined the private group homes that could receive AFDC-FC funding as nonprofits to parallel the federal funding requirement. Because of the connection between foster care and SED placement requirements, this prohibition applies to placements of SED pupils as well. The committee analysis further recognized that the federal

---

[128] Exhibit X, Final Statement of Reasons for Joint Regulations for Pupils with Disabilities, page 127 (emphasis added).

[129] Exhibit X, Final Statement of Reasons for Joint Regulations for Pupils with Disabilities, page 128.

[130] Exhibit X, Final Statement of Reasons for Joint Regulations for Pupils with Disabilities, page 128.

government eliminated the requirement that a facility be operated as a nonprofit in order to receive federal funding in 1996.[131] However, the bill did not pass the assembly.[132]

In 2008, AB 1805, a budget trailer bill, containing identical language to SB 292 was vetoed by the governor.[133] In his veto message he wrote, "I cannot sign [AB 1805] in its current form because it will allow the open-ended reimbursement of claims, including claims submitted and denied prior to 2006-07. Given our state's ongoing fiscal challenges, I cannot support any bill that exposes the state General Fund to such a liability."[134]

Subsequently, during the 2009-2010 legislative session, Assembly Member Beall introduced AB 421, which authorized payment for 24-hour care of SED pupils placed in out-of-state, for-profit residential facilities. The bill analysis for AB 421 cites the Controller's disallowance of $1.8 million in mandate claims from San Diego County based on the claims for payments for out-of-state, for-profit residential placement of SED pupils. The analysis states that the purpose of the proposed legislation was to incorporate the allowance made in federal law for reimbursement of costs of placement in for-profit group homes for SED pupils.[135] Under federal law, for-profit companies were originally excluded from receiving federal funds for placement of foster care children because Congress feared repetition of nursing home scandals in the 1970s, when public funding of these homes triggered growth of a badly monitored industry.[136] The bill analysis suggests that the reasoning for the current policy in California, limiting payments to nonprofit group homes, ensures that the goal of serving children's interests is not mixed with the goal of private profit. For these reasons, California has continually rejected allowing placements in for-profit group home facilities for both foster care and SED pupils.[137] The authors and supporters of the legislation contended that out-of-state, for-profit facilities are sometimes the only available placement to meet the needs of the child, as required by federal law.[138] The author notes the discrepancy between California law and federal law, which allows federal

---

[131] Exhibit X, Assembly Committee on Human Services, analysis of SB 292 (2007-2008 Reg. Sess.), June 17, 2009, page 2.

[132] Exhibit X, Complete Bill History, SB 292 (2007-2008 Reg. Sess.).

[133] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010 Reg. Sess.), May 20, 2009, page 3.

[134] Exhibit X, Governor's Veto Message, AB 1885 (2007-2008), September 30, 2008.

[135] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010), May 20, 2009, page 2.

[136] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010), May 20, 2009, page 1.

[137] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010), May 20, 2009, page 2.

[138] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010), May 20, 2009, page 2.

funding of for-profit group home placements.[139] However, the bill did not pass the Assembly and therefore did not move forward.[140]

Thus, during the entire reimbursement period for this program, reimbursement was authorized only for out-of-state residential facilities organized and operated on a nonprofit basis. Although the claimant contends that state law conflicted with federal law during this time period, there is no law or evidence in the record that the nonprofit requirement for out-of-state residential programs conflicts with federal law or results in a failure for a pupil to receive a free and appropriate education. Absent a decision from the courts on this issue, the Commission is required by law to presume that the statutes and regulations for this program, which were adopted in accordance with the Administrative Procedures Act, are valid.[141]

Accordingly, pursuant to the law and the Parameters and Guidelines, reimbursement is required only if the out-of-state service vendor operates on a nonprofit basis. As indicated above, the Parameters and Guidelines are binding.[142] Therefore, costs claimed for out-of-state service vendors that are organized and operated on a for-profit basis are beyond the scope of the mandate.

2. The claimant's reference to decisions issued by the Supreme Court and administrative bodies allowing placement in for-profit residential programs is misplaced.

The claimant argues that:

> 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.
>
> …
>
> 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

[139] Exhibit X, Assembly Committee on Appropriations, analysis of AB 421 (2009-2010), May 20, 2009.

[140] Exhibit X, Complete Bill History, AB 421 (2009-2010).

[141] California Constitution, article III, section 3.5; *Robin J. v. Superior Court* (2004) 124 Cal.App.4th 414, 425.

[142] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 801; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

so that students would be placed appropriately and counties would not be subject to needless litigation as evidenced in the Riverside case above.[143]

The Riverside OAH decision relied upon by claimants, involved a SED pupil who was deaf, had impaired vision, and an orthopedic condition, was assessed as having borderline cognitive ability, and had a long history of social and behavioral difficulties. His only mode of communication was American Sign Language. The parties agreed that the National Deaf Academy would provide the student with a free and appropriate public education, as required by federal law. The facility accepted students with borderline cognitive abilities and nearly all service providers are fluent in American Sign Language. However, the school district and county mental health department took the position that they could not place the student at the National Deaf Academy because it is operated by a for-profit entity. OAH found that the state was not prohibited from placing the student at this out-of-state for-profit facility because the facility was the only one identified as an appropriate placement.[144] Upon appeal, the District Court affirmed the OAH order directing the school district and the county mental health department to provide the student with compensatory education consisting of immediate placement at the National Deaf Academy and through the 2008-2009 school year.[145]

The claimant also relies on the U.S. Supreme Court decision in *Florence County School District Four v. Carter*,[146] for the proposition that local government will be subject to increased litigation with the Controller's interpretation. In the *Florence* case, the court held that parents can be reimbursed under IDEA when they unilaterally withdraw their child from an inappropriate placement in a public school and place their child in a private school, even if the placement in the private school does not meet all state standards or is not state approved. Although the court found that parents are entitled to reimbursement under such circumstances only if a federal court concludes both that the public placement violated IDEA and the private school placement was proper under IDEA, the court's decision in such cases is *equitable*. "IDEA's grant of equitable authority empowers a court 'to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act.'"[147] Unlike the court's equitable powers under IDEA, the reimbursement requirements of article XIII B, section 6, of the

[143] Exhibit A, IRC, pages 14-15.

[144] Exhibit A, IRC, pages 112-121 (*Student v. Riverside Unified School District and Riverside County Department of Mental Health*, OAH Case No. 2007090403, dated January 15, 2008).

[145] Exhibit X, *Riverside County Department of Mental Health v. Sullivan* (E.D.Cal. 2009) EDCV 08-0503-SGL.

[146] *Florence County School District v. Carter* (1993) 510 U.S. 7.

[147] *Florence County School District v. Carter* (1993) 510 U.S. 7, 12 (citing its prior decision in *School Comm. of Burlington v. Department of Ed. of Mass*. (1985) 471 U.S. 359, 369).

California Constitution must be strictly construed and not applied as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[148]

In this case, the claimant has provided no documentation or evidence that the costs claimed were incurred as a result of a court order finding that no other alternative placement was identified for a SED pupil during the audit years in question. Thus, the Commission does not need to reach the issue of whether reimbursement under article XIII B, section 6 of the California Constitution would be required in such cases. Therefore, these decisions do not support the claimant's right to reimbursement.

Accordingly, the Commission finds that the Controller's reduction of costs for vendor service payments for treatment and board and care for SED pupils placed in out-of-state residential programs organized and operated for-profit, is consistent with the Commission's Parameters and Guidelines and is correct as a matter of law.

3. The documentation in the record supports the Controller's findings that services were provided by for-profit residential programs.

The claimant makes no argument disputing the Controller's findings that Charter Provo Canyon School is a for-profit facility that provided the treatment and board and care services for its SED pupils. Claimant contends, however, that reimbursement is required because it contracted with Mental Health Systems, Inc., a nonprofit corporation, in accordance with the Parameters and Guidelines, and provides a copy of a letter from the IRS verifying that Mental Health Systems, Inc., is a nonprofit entity.[149] Claimant further argues that

> 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.[150]

In this case, the Controller concluded that the vendor payments made by the claimant to Mental Health Systems, Inc., a California nonprofit corporation are not reimbursable because Mental Health Systems, Inc., contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide the board and care and treatment services for SED pupils. Since the facility providing the treatment and board and care is a for-profit facility, the Controller found that the costs were not eligible for reimbursement under the Parameters and Guidelines.[151] As indicated above, reimbursement is required only if the out-of-state service vendor that provides board and care and treatment services to SED pupils is organized and operated on a nonprofit basis. Costs claimed for out-of-state service vendors that are organized and operated

---

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

[149] Exhibit A, IRC, page 24.

[150] Exhibit A, IRC, pages 16-17.

[151] Exhibit A, IRC, page 94.

on a for-profit basis are beyond the scope of the mandate and are not eligible for reimbursement as a matter of law.

During the course of the audit, claimant provided a copy of the contracts between Mental Health Systems, Inc., and Charter Provo Canyon School, LLC (later identified as UHS of Provo Canyon) "for the provision of services pursuant to Chapter 26.5 of Division 7 of Title 1 of the Government Code" (the chapter Government Code that includes the test claim statute). The agreement demonstrates that Charter Provo Canyon School provided the services for the claimant, and confirms that Charter Provo Canyon School, LLC is a for-profit limited liability company. The contract title itself expresses that it is an "Agreement to Provide Mental Health Services" and the recitals state "Provo Canyon has agreed to provide the services of qualified professionals to provide care to those persons authorized to receive mental health services."[152] In addition, the reimbursement claims filed for 2006-2007 and 2007-2008 identify the vendor as "Mental Health Systems-Provo Canyon" and for 2008-2009 as "MHS-Provo Canyon."[153]

Accordingly, the evidence in the record supports the Controller's finding that the services were provided by for-profit entities and are outside the scope of the mandate.

V. Conclusion

Based on the foregoing, the Commission finds that the Controller's reductions are correct as a matter of law and denies this IRC.

[152] Exhibit B, Controller's Comments on the IRC, pages 192-204 and 206-216.

[153] Exhibit A, IRC, pages 127, 138, and 150.

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 January 20, 2017, I served the:

> **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
> *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 January 20, 2017 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/18/17

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@sdcounty.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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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
achinncrs@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

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
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

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

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@sdcounty.ca.gov

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.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

Exhibit D

RECEIVED
February 01, 2017
Commission on
State Mandates

BETTY T. YEE
California State Controller

January 31, 2017

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

Re: **Draft Proposed Decision**
Incorrect Reduction Claim
Handicapped and Disabled Students; Handicapped and Disabled Students II; and Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services,
15-9705-I-06
Government Code Sections 7571, 7572, 7572.5, 7572.55, 7576, 7581, and 7586 as added by Statutes 1984, Chapter 1747; and as amended by Statutes 1985, Chapter 1274; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200, and 60550
Fiscal Years 2006-07, 2007-08, and 2008-09
San Diego County, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) has reviewed the Commission on State Mandates' (Commission) draft proposed decision dated January 20, 2017, for the above incorrect reduction claim filed by San Diego County. We support the Commission's conclusion and recommendation.

The Commission supported the SCO adjustments totaling $1,387,095 for reductions related to the out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The program's parameters and guidelines and the underlying state regulation do not support mandate reimbursement for residential placements in for-profit facilities.

P.O. Box 942850, Sacramento, CA 94250 ♦ (916) 445-2636
3301 C Street, Suite 700, Sacramento, CA 95816 ♦ (916) 324-8907
901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 ♦ (323) 981-6802

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/lr

17759

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

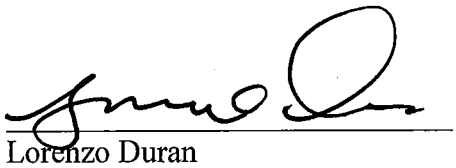
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 1, 2017, I served the:

> **State Controller's Office 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 February 1, 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: 1/18/17

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@sdcounty.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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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
achinncrs@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

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
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

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

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@sdcounty.ca.gov

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.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

Exhibit E

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

LISA M. MACCHIONE
SENIOR DEPUTY
Direct Dial: (619) 531-6296
E-Mail: 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 rational 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[1] 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. [2] 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

---

[1] 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."

[2] Draft Proposed Decision, page 26.

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.[3] 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. [4] 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. [5] The draft proposed decision provides that "it constituted the last element of the audit…" [6] 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

[3] Attachment A, Entrance Conference Agenda, March 29, 2010.
[4] Exhibit A, IRC, page 76.
[5] Exhibit A, IRC, page 76.
[6] 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

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
- Chris Ryan (916) 327-0696 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

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	Fiscal Year 2006-07	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
Total	$ 16,484,972	$ 18,181,239	$ 18,368,066	$ 53,034,277
Less: Late Penalty	(10,000)	-	-	(10,000)
Less: Other Reimbursments	(9,887,542)	(11,589,942)	(17,062,025)	(38,539,509)
Total Claimed	$ 6,587,430	$ 6,591,297	$ 1,306,041	$ 14,484,768
Less: Payments for claims	-	-	-	-
Less: DMH Categorical Funding	(4,058,334)	-	-	(4,058,334)
Total Unreimbursed Claim	$ 2,529,096	$ 6,591,297	$ 1,306,041	$ 10,426,434

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).

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

_____
_____
_____
_____
_____
_____
_____
_____

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

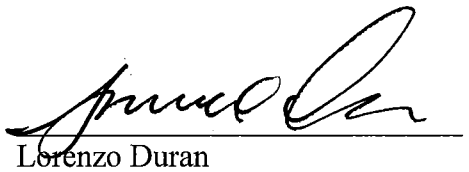
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

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@sdcounty.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
achinncrs@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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
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

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

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

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@sdcounty.ca.gov

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.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

ORIGINAL

RECEIVED

APR 18 2016

COMMISSION ON STATE MANDATES

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, March 25, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

Will the parties for Items 2, 3, 4, 5, 6, 7, and 8 please rise?

(Parties/witnesses stood to be sworn or affirmed.)

MS. HALSEY: Do you solemnly swear or affirm that the testimony which you are about to give is true and correct, based on your personal knowledge, information, or belief?

(A chorus of affirmative responses was heard.)

MS. HALSEY: Thank you.

Chief Legal Counsel will present Item 2, the Appeal of Executive Director Decision, for the dismissal of an incorrect reduction claim filed by the County of San Diego because it was not filed within the period of limitation.

MS. SHELTON: Good morning.

The Commission's regulations require that an incorrect reduction claim shall be filed no later than three years following the Controller's written notice of adjustment, reducing the claim for reimbursement. If the filing is not timely, the regulations provide that the filing be deemed incomplete and authorizes the Executive Director to return the filing for lack of jurisdiction.

In this case, the County of San Diego appeals the decision of the Executive Director to deem an incorrect reduction claim that was filed more than three years after the Controller's first final audit report as untimely and incomplete.

The County asserts that the three-year period of limitations should instead be measured from the Controller's second revised audit report and not from the first final audit report. The second revised audited report updated reimbursement percentages for offsetting revenues and had no fiscal effect on total allowable costs or on the reduction challenged by the County.

Staff recommends that the Commission adopt the proposed decision to uphold the Executive Director's decision to return the filing as incomplete.

Will the parties and witnesses please state your names for the record?

MS. MACCHIONE: I'm Lisa Macchione for the County of San Diego.

MR. SAND: And I'm Kyle Sand, Senior Deputy County Counsel from the County of San Diego.

MR. SPANO: I'm Jim Spano, Audit Bureau Chief of State Controller's Office, Division of Audits.

CHAIR ORTEGA: Okay, thank you.

Mr. Sand and Ms. Macchione?

MR. SAND: Well, first of all, I thank you for hearing us out today. This is our -- both of our first time here at the Commission, so this is a very interesting experience so far.

CHAIR ORTEGA: Welcome.

MR. SAND: Well, we'll keep our comments brief.

We've briefed the matter fully in our appeal; and the Commission staff has written a draft opinion.

Ultimately, our argument is quite simple: Is this report I have in my hand, the revised audit report, dated December 12th of 2012, the final determination of the matter? We argue that it is, based on the wording of the report, based on the language contained in the letter, that it is superseding the March report. And, you know, the plain meaning of the word *"supersede"* is to repeal and replace; that the March had, you know, essentially no effect.

So in calendaring the time in which to file our incorrect reduction claim in this matter, we reasonably relied on this report, that it was the final determination in the matter.

If you can see, it's a bound report. The cover letter says that it is superseding -- every page on it states that this is revised findings, revised Schedule 1.

Now, it's true that, as the Commission has

argued, the fiscal change did not occur between the March report, which we argue has been repealed by this report, and by the language that was used by the State Controller's Office.

(Mr. Chivaro entered the meeting room.)

MR. SAND: However, you know, as the -- words have meaning; and for the State Controller to say that this report supersedes the prior report, in our opinion, that means that this is their final determination on the matter. And, you know, this is the, I think, fourth matter in the past five or six years before this Commission regarding statute of limitations. And we believe, and we argue, and we ask the Commission to consider the policy of favoring disposition of matters on the merits rather than kicking out legitimate matters before this Commission based on procedural grounds.

This is consistent with recent decisions in San Mateo.

And with that -- unless, Ms. Macchione, if you have anything further to add --

MS. MACCHIONE: No, none.

MR. SAND: -- we'll entertain comments from staff and Commission Member questions.

CHAIR ORTEGA: Thank you.

Mr. Spano, do you have anything?

MR. SPANO: I'm here just addressing the factual question relating to the audit report.

CHAIR ORTEGA: Okay, are there any questions? Do you folks want to hear from Camille again?

Yes, Ms. Olsen?

MEMBER OLSEN: So I'm concerned about this in relation to our Item 10 that was on consent, in which it appears that we did want to clarify language related to this. So that does suggest that this is a gray area prior to our adoption of Item 10 and going forward to clarify the language.

So I'm kind of sympathetic here.

MS. SHELTON: Let me try to address that.

It is true that we've been -- as we've been doing more and more incorrect reduction claims, we've been noticing that the Controller's Office has issued many documents after the final audit report. We've had revised final audit reports. We've had computer-generated sheets that also discuss either the amount of the reduction, and sometimes it will state a reason and sometimes it does not. We've had letters. We've had situations with the final audit report that have said, "Well, we invite you to continue to participate in an informal discussion for a 60-day time period." And that has only been in a few final audit

reports. So it hasn't been clear.

And the Commission's regulations are written the way they are, that list many different types of written documents that the Controller has issued in the past, because we don't know what's going to happen on a case-by-case basis.

As we've talked about before, you know, the Controller's doesn't have regulations. So I don't know from case-to-case what is the final document.

Under the statutes, though, the final document for an incorrect reduction claim -- or for an audit that would trigger the time to accrue the filing for an incorrect reduction claim is any written document that identifies the reduction and the reason for the reduction.

And under the statutes, in this case, the first final audit report was issued or dated March 7th, 2012.

Under the statutes, the County could have filed an incorrect reduction claim the very next day. And the Commission's regulations provide for an additional three-year period of time.

So it wouldn't -- and the purpose of a statute of limitation is to promote finality in pleadings and in filings, so that claims don't become stale.

We can't keep moving the clock every time the

Controller issues something, when their very first report that identifies the reduction and the reason for the reduction is enough under the statutes to file an incorrect reduction claim.

So the whole purpose of Item 10 is to clarify that it is your first document, your first written notice that satisfies the requirements of Government Code section 17558.5. That triggers the accrual period. And that hasn't -- there is one decision we have identified in this proposed decision that was incorrect; and I agree, that is incorrect, where the Commission did accept a filing after the three-year period based on a later issued remittance advice. That's not a correct legal decision.

It is the first -- what is correct and what the Commission has been finding consistently is the first report that comes out, written notice to the claimant, that identifies the reduction and the reason for the reduction. And that's what starts the clock.

MEMBER OLSEN: And the March 7th report did say it was the final report, is that correct, so that should have triggered in the thinking of the County that -- of the claimant that our three-year time starts now; is that it?

MS. SHELTON: That is correct. But you can

verify with Mr. Spano.

MR. SPANO: That is correct.

MEMBER OLSEN: Okay.

CHAIR ORTEGA: Mr. Alex?

MEMBER ALEX: Would it be the same result if the later-in-time report had changed the reduction amount?

MS. SHELTON: No. We've said that in the analysis as well.

If it takes a new reduction, you know, it arguably has a completely different reasoning for a reduction, I think that would trigger a new statute of limitations.

This report changed just offsetting revenues, a finding that was never challenged by the County; and it didn't change the overall amount of reduction, and didn't change the Finding 2, I believe, that was being challenged in that filing. So there was no change with respect to the issue being challenged.

CHAIR ORTEGA: Ms. Ramirez?

MEMBER RAMIREZ: I have a question.

Could you review the precedential value of, should we accept the appeal?

MS. SHELTON: Under the law, the Commission's decisions are not precedential. And there is case law

from the California Supreme Court that does state that a quasi judicial agency is authorized to change their legal opinions through adjudicative matters as long as it's based on law, and it's correct as a matter of law. And that's what we're doing here. They're certainly going back in history. You're going to go back and find some decisions that, when you review them again, arguably may not be correct as a matter of law.

If they have not been challenged in court, they're still final decisions for that particular matter. But our decisions are not precedential.

MEMBER RAMIREZ: Thank you.

CHAIR ORTEGA: Okay, any other comments or questions from the Commission?

(No response)

CHAIR ORTEGA: Seeing none, Mr. Sand, did you have any…?

MR. SAND: Well, I would note that, clearly, there's a -- the people that are coming before the Commission are, you know, sophisticated in the sense that they're members of local government. The State is a professional entity -- counties, school districts, cities as well.

Now, clearly, there is an issue with the regulation. Clearly, there is an issue -- something's

going on here that we would have so many issues before this Commission, over the past few years, about whether a claim was timely.

Now, there's an easy solution to this, going forward. Even if you were to rule against us -- which I don't think you should today -- is that the regulation needs to be clarified. You know, a lot of -- you know, staff -- both local government and state staff are in a disagreement over what the regulation says.

There have been -- this is now the fourth time that somebody's come before this Commission, arguing whether or not the statute of limitation is completed prior to filing.

In two of those times previously, you've ruled in favor of local government. In the *Gallivan* case, which had a lengthy discussion of the statute of limitations, I believe -- and correct me if I'm wrong, Ms. Shelton -- but 13 or 14 years had passed before they had notice; and they kept arguing a later and later date.

Now, the County didn't do that. You had a final audit report in March of 2012. Six months later, the State Controller's Office -- and here's another solution, is don't use language like this if you're the State Controller's Office. Don't say that it supersedes. Don't infer that the March had no effect.

You know, I could go out and buy Christmas presents for my kids tomorrow; but I don't have to because it's not due. And we relied on this date. We relied on the language that the State Controller used in its cover letter. We relied on the face page of this report, which was bound and sent to us, in calendaring the date.

This was not the County shirking from its duties or missing a calendar date. It was reliance on what is said in the regulation, that we have three years from the date of the final audit report; the date of this report, which is December 2012; the language in the cover letter, saying that the March report has been superseded, and that this is the final audit report; the numerous references, stating that all the findings are revised.

Now, it's true that the amount didn't change; but if we were to look at the San Mateo case, which was decided within the past six months, this is fairly consistent with what happened in that case.

The reports, the letters that the State Controller issued indicated that the first -- the first report that went out was not the final one. And the only difference here is, you know, a couple months later, they said disregard March, and so that's what we relied on.

CHAIR ORTEGA: Okay, thank you.

Ms. Olsen?

MEMBER OLSEN: I'm actually swayed by the County's argument here. I really think that in a situation like this where, you know, it was nine months later that this second final audit report came out -- it's not like it was three years, minus four days later date, and the County then said, "Oh, the clock starts over. We can wait another three years." It's well within a reasonable time for them to have thought, "You know, this extended our period of time to put in our claim."

I don't quite understand why they waited until the very end to do it, but that's not really the germane point here. The point is that they're pleading something before the Commission; and there is a lot of blame to go around here, in the sense of clarity. And I think the Commission has a responsibility, in that sense, to find in favor of those who are bringing a case in front of the Commission.

So I'll support the County's point of view on this one.

CHAIR ORTEGA: Ms. Ramirez?

MEMBER RAMIREZ: Generally, I like to -- not just generally -- I always like to give a lot of deference to staff's really great work on this. But

saying that this doesn't have precedential value in the few occasions that we can have a little flexibility, I would support you, Ms. Olsen.

MS. SHELTON: Let me just clarify, too, this is a jurisdictional matter. So if we don't have jurisdiction, then any rulings on the substance of the incorrect reduction claim would be void.

So in order to go the direction that you're going, you're going to have to find, as a matter of law, that the final report that satisfied Government Code section 17558.5(c) was the revised final audit report, and not the first final audit report.

MEMBER RAMIREZ: And the consequences would be?

MS. SHELTON: It's, to me, a little bit more gray -- a lot more gray. I mean, it could set it up, you know, for litigation. It is a jurisdictional issue, so it has to be "yes" or "no."

MEMBER ALEX: So that actually is where my question goes to. It's staff's finding, as a matter of law, that the first report has to be the final report.

Can you say a little bit more about why?

MS. SHELTON: I agree. This part is confusing because, as I've indicated before, the Controller's office tends to issue different types of documents. And different -- each case has been factually different.

So when you're just -- forget the Commission's regulations for a minute and just look at the Government Code. And the Government Code allows an incorrect reduction claim to be filed as soon as the Controller issues some written notice that identifies a reduction and the reasons for the reduction.

Now, I did want to get back to -- I was recently looking at the Generally Accepted Government Accounting Principles, and one of those principles says that if you come across new information that may change your findings on an audit, then you should go back in an audit and issue a revised audit report. The problem is, I mean, that applies generally to every government audit.

These Government Code statutes, though, do have deadlines in them. You know, there's a deadline to complete the audit, and there's a deadline to file an incorrect reduction claim. So even -- you know, in this particular case, we've seen -- well, in this case, they did issue a revised audit report with respect to one finding that was never challenged, and then it also didn't change the bottom-line reduction.

So if it had changed the finding that was being challenged, most certainly, then that would trigger -- start the clock over again.

MEMBER ALEX: But let me explore that just a bit, because if the final -- the first report, the first final report had been filed, the County could still have filed the next day under the statute. But then a few months later, if the Controller had changed something to the bottom line, you're saying that would have triggered a new statute?

MS. SHELTON: Well, if they had filed one, they could amend their IRC to include the subsequent audit report. I mean, that's how we've done things in the past.

So it still preserves your -- it's just like filing a complaint, you're preserving your pleading. Even under the law for civil litigation, you can file a complaint even if you don't have all the information. And that's the purpose of discovery rules.

So, you know, you're protecting your pleading by filing it as soon as you have a final audit report that's issued that identifies the reasons and the reduction.

Again, factually different -- I just want to make it clear where we've gone before. Factually different if the Controller, in their letter, invites additional comment for 60 days, or some other days, like I guess the *San Mateo* case -- I don't remember them by

claimants -- but invites additional discussion or something, then it's not final if you're inviting additional discussion. But when you say this is the final audit report, it's final.

MEMBER ALEX: So what do you think about the issue of it being described as superseded? Because that -- you know, look, it does strike me, as a lawyer, looking at that, that that's a new final report.

MS. SHELTON: Right. I think it's definitely a reasonable argument. I'm not suggesting that it's not a reasonable argument. We just looked at it factually, and what happened factually. And nothing happened to the finding at all. It's the same finding. The same amount reduced, same reason for reduction.

MEMBER ALEX: You're looking at me.

Go ahead, Sarah.

MEMBER OLSEN: You know, I still think that Mr. Sand's argument is pretty compelling, in that they got a new report nine months later and it said it superseded. And in the absence of any clarification from anybody that that didn't apply, "supersedes" seems pretty clear to me from looking at it from their perspective. And so far, I haven't heard anything that would change my opinion there.

MS. SHELTON: It might be a good question for

Mr. Spano; but I believe all of their revised audit reports say they're superseding. So that we've had this before, it's just never been highlighted by a party in argument.

All of their revised reports say that they're superseding; is that correct?

MR. SPANO: I believe that's correct.

MEMBER OLSEN: So, Mr. Spano, can I ask a question about that?

So in your reports, do you say the specific -- just, for instance, I'm just going to make a "for instance." The 12/12 report would say, "With respect to the 3/7 report, these particular findings are superseded," or does it say, "The report is superseded"?

MR. SPANO: What we basically say is that the revised final report supersedes our previous report, so we do a generic statement. And the reason we do that, is that it becomes too confusing if we want to issue a revision to only Finding Number 4. So what we do, we make the revision in totality right now to clarify. Because the only thing -- like I said, the only thing that was actually changed, was just that Finding 4. But the net impact was zero because of offsetting revenues.

MS. HALSEY: I just wanted to say, the trigger for an incorrect reduction claim and what you're taking

jurisdiction over, is a reduction; and what triggers that, is a notice of that reduction, and the reason for the reduction is the reduction itself that is what the cause of action is.

MEMBER ALEX: But counsel did say that if the reasoning changed, even without a change to the reduction, that would still trigger a new --

MS. SHELTON: If it's a completely different reason. I mean, you'd have to look at the case factually. But I was going to tag back onto Ms. Olsen's question. And in this particular audit report, it does say that it does supersede the prior audit report. But it also, when you read it, explains exactly what they did: That it only changed Finding Number 4 with respect to updated the offsetting revenues.

Right?

MR. SPANO: That's correct. There was four findings right now. And we clarified in the report that the only finding that actually changed was 4 because of subsequent information provided to us by the Department of Health. It didn't have an impact on the finding; but for transparency purposes, we reissued a report to show the amounts. But there was sufficient offsetting revenues to not have an impact on the total report itself, or the total of Finding 4. So Finding 4 did not

change in dollars at all.

MS. SHELTON: And Finding 2 did not change in dollars; is that correct?

MR. SPANO: Actually, Finding 4 changed the offsetting revenues, but the -- yes, Finding 2 did not change at all. There was no impact on Finding 2. The only thing that changed was Finding 4.

MEMBER ALEX: So I have to say that it's sufficiently confusing that you found it appropriate to update the regulation, which I think is absolutely appropriate. I think we're all kind of struggling with this. And what I would say, in my observation, is while the claimant had the right to file the day after the first final report, I'm not sure that created an obligation to do so when there was this superseding report. So I think -- I'm trying to think this through, because clearly what you're saying is right, it's jurisdictional, so there has to be a legal basis for the Commission to have jurisdiction.

But I think a report that is issued by the Controller, that says "superseding report," even if it doesn't specifically change the outcome of the reduction, I think it's a pretty reasonable thing to assume that that is a new final report. That's my initial thought here.

MEMBER OLSEN: That's where I am.

CHAIR ORTEGA: Do you have any --

MS. HALSEY: Well, we would probably also want to look at that regulation proposal that we have, because that would be inconsistent with your interpretation, because it would no longer be the first notice of a reduction. I guess it would be any notice of a reduction.

MEMBER ALEX: But you can -- I mean, you've made a determination; and we put it on consent, and we've consented to it, so that's now, going forward, how we approach this, and I'm okay with that. We're giving notice to the world that that's the way we're proceeding. But we had to clarify that to make sure everybody's aware of it. And I think we're just looking at this particular case. And I fully understand -- I do wonder why they waited until the very end, but that's, again, not relevant here.

I understand why you would think that you have three years; and I think it's -- at least my current thought is that that's a reasonable thing to have decided.

CHAIR ORTEGA: I think one other thing that would be helpful for the Controller's office to think about, I know a lot of the IRCs we're looking at are from

past years, and different practices may have occurred. But the fact-specific nature of all of the cases that have come before us, and having to weigh when letters are received or what kind of document was received, that it might be helpful going forward if there was a standard communication plan, so that claimants and the Commission staff could start to see this kind of report is the final report. Additional back-and-forth is communicated in a specific way. If all of the IRCs going forward were treated the same way, I think it would make it a lot clearer for the Commission in future issues.

There are always going to be disputes about whether the reductions are accurate or not. But trying to kind of figure out what the communication has been and when different triggers are pulled, I think is getting complicated. So, something to think about going forward.

Okay, is there any additional public comment on this item?

(No response)

CHAIR ORTEGA: All right, we've heard everything here.

Is there a motion?

MEMBER RAMIREZ: Well, I supported Ms. Olsen.

So do you want to make a motion?

MEMBER OLSEN: I'll move -- I mean, I'm going

to vote against it.

CHAIR ORTEGA: Yes, I understand.

MEMBER OLSEN: But I'll move it -- move the staff recommendation in order to put this forward.

MEMBER RAMIREZ: You're moving to vote against the staff recommendation?

MEMBER OLSEN: Yes.

MEMBER RAMIREZ: That is, to grant the appeal? Or do you want to amend the staff recommendation?

CHAIR ORTEGA: Let's clarify. Well, I think you're welcome to make the motion that you want to make

MEMBER RAMIREZ: Grant the appeal?

MS. SHELTON: Can I just -- you can make whatever motion and vote today. If you choose to vote against the staff recommendation, I need to take it back and rewrite it.

MEMBER OLSEN: Oh, it needs to be taken back, anyway; right?

MS. HALSEY: No, It's an appeal, so you just vote against staff recommendation and we take jurisdiction and we go write an analysis for the IRC, yes. That's it.

CHAIR ORTEGA: Well, let's take a moment.

Procedurally, Camille, what is your advice to grant the appeal? I mean, that's the issue before us.

MS. SHELTON: Yes, if you vote against the decision, we would take it back and deal -- reverse the findings on what you have here, and then add the findings for the substantive challenge on the IRC.

MEMBER OLSEN: Is the appropriate motion to --

MS. SHELTON: The appropriate motion would be --

MEMBER OLSEN: -- to vote against?

I mean, if we --

MS. SHELTON: It's to grant the appeal.

MEMBER OLSEN: To the grant the appeal?

MS. SHELTON: To grant the appeal, and find that the Executive Director did not correctly return the filing and that there is jurisdiction, has been met.

MEMBER OLSEN: That's the motion I'm making.

MS. HALSEY: Based on the revised one.

MS. SHELTON: Based on the superseding revised final audit report.

MEMBER OLSEN: Right.

MEMBER RAMIREZ: Got it.

CHAIR ORTEGA: So we have a motion and a second by Ms. Ramirez.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?
MEMBER CHIVARO: No.
MS. HALSEY: Ms. Olsen?
MEMBER OLSEN: Aye.
MS. HALSEY: Ms. Ortega?
CHAIR ORTEGA: No.
MS. HALSEY: Ms. Ramirez?
MEMBER RAMIREZ: Aye.
MS. HALSEY: Mr. Saylor?
(No response)
CHAIR ORTEGA: You didn't call Mr. Chiang.
MS. HALSEY: Oh, Mr. Chiang, sorry.
MEMBER CHIANG: No.
MS. HALSEY: No? So two "noes" then.
CHAIR ORTEGA: So the motion fails; right?
MEMBER RAMIREZ: We tied up.
MS. HALSEY: Oh, we have a tie.
MS. SHELTON: Okay, with a tie vote, under the Commission's regulations, there is no action taken on this item. The Commission's regulations require that you can make another motion, if you would like, or set it for another hearing.
MEMBER CHIANG: Can we take it under submission and let Don review the record and cast a vote?
MS. HALSEY: At the next hearing, let him vote.

MS. SHELTON: Yes, you absolutely can do that, sure.

CHAIR ORTEGA: All right, let's do that.

MEMBER OLSEN: So it will come back to us at the next hearing?

MS. SHELTON: When you have seven members.

MEMBER OLSEN: Yes.

CHAIR ORTEGA: Okay, do we need to vote on that, or can we do that as a --

MS. SHELTON: Or you can just continue it.

CHAIR ORTEGA: So we will continue that item until we have the necessary members.

MEMBER RAMIREZ: This is a first.

CHAIR ORTEGA: Thank you.

Okay, thank you, Mr. Sand, Ms. Macchione.

CHAIR ORTEGA: Item 3.

MS. HALSEY: Chief Legal Counsel Camille Shelton will present Item 3, the new test-claim decision on *Immunization Records: Hepatitis B*.

MS. SHELTON: Item 3. This is the second hearing on the Department of Finance's request for the Commission to adopt a new test-claim decision to supersede the original decision for this program, based on a 2010 statute that modifies the State's liability by providing that the full immunization against hepatitis B

ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, October 28, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

CHAIR ORTEGA: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

MS. HALSEY: Thank you.

MS. YAGHOBYAN: Thank you.

MS. HALSEY: Going back to Item 2, Chief Legal Counsel Camille Shelton will present Item 2, the appeal of the Executive Director decision filed by the County of San Diego for the dismissal of its incorrect reduction claim because it was not filed within the period of limitation.

Appellant's representative notified Commission staff that he will not be appearing at this hearing, and will stand on the written and oral submissions in the record.

MS. SHELTON: Good morning. This item was heard by the Commission at the last three prior hearings but has not received a sufficient number of votes to take action.

No changes have been made to the proposed decision. Staff recommends that the Commission adopt the proposed decision to uphold the Executive Director's decision.

Will the parties and witnesses please state your name for the record?

MR. SPANO: Jim Spano, State Controller's Office,

Division of Audits.

CHAIR ORTEGA: Okay, any --

VICE CHAIR HARIRI: I have a couple of questions.

CHAIR ORTEGA: Sure.

VICE CHAIR HARIRI: Can the findings be segregated and separated into separate claims?

MR. SPANO: Say it again?

VICE CHAIR HARIRI: The findings. The revised report speaks of findings, Finding 1, 2, 3, and 4. Can these findings be segregated and treated as separate claims? Or were they also excluded from the revised report? Although the revised report addressed Finding 4, not the finding that the County had an issue with. Did the revised report include all claims?

MR. SPANO: Yes. Both -- the original and a revised report base included all fiscal years being audited right now. So it's not that -- we didn't exclude any of the findings. All we did was updated one of the findings to incorporate on the EPSDT settlement that was made late by the Department of Mental Health. But because of the offsetting revenues exceeded costs claimed right now, it didn't have any impact on the dollar. So we revised the report to incorporate the settlement information, but it didn't have any dollar impact at all on the findings. But the revised report incorporated all findings.

VICE CHAIR HARIRI: The reason I ask this question is because there was a discussion whether the term "supersedes" means what it means; or based on an argument by our counsel, is that the revised report only addressed Finding 4, and made no fiscal changes, while the County has an issue with Finding 2.

So if the revised report included the entire claim, and it, verbatim, states "it supersedes all previous reports," how can one not consider that the clock begins to tick at that point, when the revised report was issued? "Supersedes" means supersedes. And it included the entire claim, even though there were various elements that were discussed at one time or another. But it doesn't really lessen or reduce the fact that the revised report included the entire claim. That's how we saw it.

And I really struggled with this issue, even at the office. We met with our chief deputy counsel and two deputy treasurers. We try to be fair in our vote.

CHAIR ORTEGA: Camille, do you want to say anything additional about your conclusion about "supersedes" versus…

MS. SHELTON: We also had a lot of discussion in our office about the facts of this particular case. And when -- we obviously saw the word "supersedes," and obviously that is a reasonable interpretation of what's

going on.

The other side of it, though, which I think is also a reasonable interpretation -- and it makes for an issue to be pretty gray -- is that when you looked at what happened, all they did was update the offsetting savings, and made no change -- no language change, even, with respect to the other findings. They're exactly the same as they were.

And so when you look at the law of statute of limitations, it's really all about notice to the claimant about when they have enough information to believe that they have been wronged and can file an incorrect reduction claim.

And we took the position that you definitely were on notice when that first audit report came out. And the challenge that you're making to the finding never changed. And so that was the basis of our recommendation.

CHAIR ORTEGA: Okay. Anyone else have any comments or any further discussion?

MEMBER OLSEN: Well, I'll make a motion; but I'm obviously not sure quite how to frame this motion, so --

CHAIR ORTEGA: Well, perhaps the chief counsel can give you some advice on that.

MEMBER OLSEN: I would like to move rejection of the

director's decision -- the Executive Director's decision.

MS. SHELTON: So you'd be granting the appeal?

MEMBER OLSEN: There you go.

I want to move to grant the appeal.

MS. SHELTON: On the basis of?

MEMBER OLSEN: On the basis of, language matters.

MS. SHELTON: That the second audit report supersedes the first audit report?

MEMBER OLSEN: That's right.

CHAIR ORTEGA: Okay.

VICE CHAIR HARIRI: I second that.

CHAIR ORTEGA: That's the motion on the table; and seconded by Mr. Hariri.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: No.

MS. HALSEY: Mr. Hariri?

VICE CHAIR HARIRI: Yes. Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: No.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR ORTEGA: Okay, the motion passes.

MS. HALSEY: Yes.

CHAIR ORTEGA: So we will revisit this at a future meeting; right?

MS. SHELTON: It just goes back in the queue. We'll address the jurisdictional issue with the merits in a proposed decision.

CHAIR ORTEGA: Okay.

MR. SPANO: And for the record right now, we have since -- to eliminate any confusion, we have updated our reports right now, and no longer use the word "supersede" right now to provide -- and basically, we clarify that the original report is the one that is consistent with statute. It's based on the statute of limitations. It's used for statute of limitation.

MEMBER RAMIREZ: May I ask, you're not going to use "supersede" anymore? Is there another word?

MR. SPANO: Yes, it revises or updates.

MEMBER RAMIREZ: Okay, thanks.

MS. HALSEY: And does it just revise or update a particular finding or the whole document?

MR. SPANO: It actually goes in the transmittal

letter itself.

MS. SHELTON: I can't comment on that until we receive an IRC.

MR. SPANO: Okay, thank you.

CHAIR ORTEGA: Yes, Ms. Olsen?

MEMBER OLSEN: But we've also updated our regulations; correct?

MS. HALSEY: Yes. The first notice.

MS. SHELTON: Yes. The regulations do clarify whatever form your notice takes, whatever it is, whether it's a letter or an audit report or whatever, it's the first notice received by the claimant of a reduction.

CHAIR ORTEGA: Yes, so all of this will have better --

MEMBER OLSEN: No ongoing?

CHAIR ORTEGA: Yes, we have better results going forward.

So that takes us to Item 6.

MS. HALSEY: Item 6, which is reserved for County applications for a finding of significant financial distress, or SB 1033 applications.

No SB 1033 applications have been filed.

Item 7 was on consent.

And Item 8 will be presented by Program Analyst Kerry Ortman, and is the end-of-session legislative

Adopted: October 26, 2000
F:/mandates/1997/97tc05/pg102600
Document Date: October 12, 2000

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.)

Received
November 9, 2011
Commission on
State Mandates

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, sub divisions 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

Received
November 9, 2011
Commission on
State Mandates

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.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Section 7576, as amended by Statutes of 1996, Chapter 654; California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610; and California Department of Mental Health Information Notice Number 86-29 Filed on December 22, 1997 By the County of Los Angeles, Claimant.	No. 97-TC-05 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12 *(Adopted on October 26, 2000; Corrected on July 21, 2006)*

CORRECTED PARAMETERS AND GUIDELINES

On October 26, 2000, the Commission adopted the staff analysis and proposed parameters and guidelines for this program. Page 5 of the analysis adopted by the Commission states the following:

> Residential Costs
>
> It is the County of Santa Clara's position that the proposed Parameters and Guidelines do not provide reimbursement for "residential costs" of out-of-state placements. Staff disagrees. ***The Commission, in its Statement of Decision for this mandate, found that payment of out-of state residential placements for SED pupils is reimbursable.*** The Commission's regulations require Parameters and Guidelines to describe specific costs that are reimbursable, including one-time and on-going costs, and the most reasonable methods of complying with the mandate.[1] It is staff's position that ***the cost of out-of-state residential placement of SED pupils would reasonably include the board and care of that pupil while they are out-of-state, and therefore, staff finds that residential costs are covered under payment of out-of-state residential placement for SED pupils.*** Staff does not propose any changes to Claimant's Revised Proposed Parameters and Guidelines, since Section IV., entitled "Reimbursable Activities, B. Continuing Costs, 1. Mental Health Service Vendor Reimbursements," already provides for reimbursement to 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 the California Code Regulations, Title 2, subsections 60100 and 60110." It is staff's position that ***under Section IV., the***

[1] Title 2, California Code of Regulations, section 1183.1 (a) (4).

term "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements" includes reimbursement for "residential costs" of out-of-state placements. (Emphasis added.)

In order for the parameters and guidelines to conform to the findings of the Commission, this correction is being issued. The following underlined language is added to Section IV (B), Reimbursable Activities:

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. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

Dated:_____ _____

Paula Higashi, Executive Director

Corrected July 21, 2006
Adopted: October 26, 2000
j:/mandates/1997/97tc05/psgs/correctedpsgs0706

Corrected
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:

B. 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.

C. 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. Included in this activity is the cost for out-of-state residential board and care of SED pupils.

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, sub divisions 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.

West's Ann.Cal.Welf. & Inst.Code § 18350

West's Annotated California **Codes**Currentness
Welfare and **InstitutionsCode** (Refs & Annos)
Division 9. Public Social Services (Refs & Annos)
Part 6. Miscellaneous Provisions (Refs & Annos)
Chapter 6. Seriously Emotionally Disturbed Children: 24-HOUR Out-of-home Care (Refs & Annos)

§18350. Payments for twenty-four-hour out-of-home care; limitations

(a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under **Section** 7572.5 of the Government **Code**. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act. [FN1]

(c) Payments for care and supervision shall be based on rates established in accordance with **Sections** 11460 to 11467, inclusive.

(d) Payments for 24-hour out-of-home care under this **section** shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

CREDIT(S)

(Added by Stats.1985, c. 1274, **§** 15, eff. Sept. 30, 1985. Amended by Stats.1989, c. 1294, **§** 22; Stats.1990, c. 46 (S.B.1176), **§** 12, eff. April 10, 1990.)

[FN1]Health and Safety **Code§** 1500 et seq.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Severability provisions of Stats.1989, c. 1294, see Historical and Statutory Notes under **Welfare** and **InstitutionsCode§** 5407.

Former **§18350**, added by Stats.1965, c. 1784, **§** 5, amended by Stats.1965, c. 2052, p. 4791, **§** 3, derived from former **§** 2380, added by Stats.1961, c. 1447, p. 3294, **§** 1, related to the purpose of the chapter on community services for older persons and was repealed by Stats.1973, c. 1080, **§** 3. See **Welfare** and **InstitutionsCode§** 9000 et seq.

CROSS REFERENCES

Computation and payment of aid grants, administration, see **Welfare** and **InstitutionsCode§** 11460.
Review of determination of eligibility for payment, see **Welfare** and Institution **Code§** 18354.

CODE OF REGULATIONS REFERENCES

Pupils with disabilities,
Financial responsibilities, mental health services, see 2 Cal. **Code** of Regs. **§** 60200.
LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil, see 2 Cal. **Code** of Regs. **§** 60100.

LIBRARY REFERENCES

2001 Main Volume

Infants 226.
Social Security and Public Welfare 194.30.
Westlaw Topic Nos. 211, 356A.
C.J.S. Adoption of Persons §§ 10 to 12.
C.J.S. Infants §§ 57, 70 to 82, 84.
C.J.S. Social Security and Public Welfare§ 124.

RESEARCH REFERENCES

Treatises and Practice Aids

10 Witkin Cal. Summ. 9th Parent and Child § 14, (S 14) Mentally Disturbed Children.

Current through Ch. 5*o*f 2006 Reg.Sess. urgency legislation

End of Document

Assembly Bill No. 114

CHAPTER 43

An act to amend Sections 1240, 1622, 2558.46, 8201, 8208, 8263.2, 8263.4, 8447, 8499, 42127, 42238.146, 44955.5, 56325, and 69432.7 of, to amend and renumber Section 60422.3 of, to amend and repeal Sections 56139 and 56331 of, to amend, repeal, and add Sections 8203.5, 41202, and 76300 of, to add Sections 41202.5, 41210, 41211, 42251, and 46201.3 to, and to repeal and add Section 42606 of, the Education Code, to amend Section 7911.1 of the Family Code, to amend Sections 7572, 7582, 7585, 12440.1, and 17581.5 of, to amend and repeal Sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7 of, and to repeal Section 7588 of, the Government Code, and to amend Sections 5651 and 11323.2 of, to amend and repeal Sections 5701.3 and 5701.6 of, to add and repeal Section 18356.1 of, and to repeal Chapter 6 (commencing with Section 18350) of Part 6 of Division 9 of, the Welfare and Institutions Code, relating to education finance, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 30, 2011. Filed with Secretary of State June 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 114, Committee on Budget. Education finance.

(1) Existing law requires a county superintendent of schools to certify in writing whether or not the county office of education is able to meet its financial obligations for the current and 2 subsequent fiscal years. Existing law requires a county superintendent of schools to approve, conditionally approve, or disapprove the adopted budget for the school districts under his or her jurisdiction and to determine whether the adopted budget is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

This bill would require the budgets of a county office of education and a school district for the 2011–12 fiscal year to project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year, and would delete the certification requirement regarding the 2 fiscal years subsequent to the 2011–12 fiscal year. The bill would prohibit the Superintendent of Public Instruction from requiring a county office of education to do otherwise.

(2) Existing law requires a revenue limit to be calculated for each county superintendent of schools, adjusted for various factors, and reduced, as specified. Existing law reduces the revenue limit for each county superintendent of schools for the 2011–12 fiscal year by a deficit factor of 19.892%.

This bill instead would set the deficit factor for each county superintendent of schools for the 2011–12 fiscal year at 20.041%.

(3) The Child Care and Development Services Act, administered by the State Department of Education, provides that children who are 10 years of age or younger, children with exceptional needs, children 12 years of age or younger who are recipients of child protective services or at risk of abuse, neglect, or exploitation, children 12 years of age or younger who are provided services during nontraditional hours, children 12 years of age or younger who are homeless, and children who are 11 and 12 years of age, as funding permits, as specified, are eligible, with certain requirements, for child care and development services.

This bill would instead provide that children from infancy to 13 years of age and their parents are eligible, with certain requirements, for child care and development services.

(4) Existing law requires that a child who is 11 or 12 years of age and who is otherwise eligible for subsidized child care and development services, except for his or her age, be given first priority for enrollment, and in cases of programs operating at full capacity, first priority on the waiting list for a before or after school program, as specified. Existing law also requires contractors to provide each family of an otherwise eligible 11 or 12 year old child with information about the availability of before and after school programs located in the family's community.

This bill would instead provide that the preferred placement for children who are 11 or 12 years of age and who are otherwise eligible for subsidized child care and development services is in a before or after school program. The bill would specify criteria for the provision of subsidized child care services for children who are 11 and 12 years of age.

(5) Existing law, effective July 1, 2011, requires the State Department of Education to reduce the maximum reimbursable amounts of the contracts for the Preschool Education Program, the General Child Care Program, the Migrant Day Care Program, the Alternative Payment Program, the CalWORKs Stage 3 Program, and the Allowance for Handicapped Program by 15%, as specified.

This bill would instead provide that the reduction in the maximum reimbursable amounts of the contracts for the programs listed above would be 11% or whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act.

(6) Existing law requires that the cost of state-funded child care services be governed by regional market rates, and establishes a family fee schedule reflecting specified income eligibility limits. Existing law revises the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years to reflect an increase of 10% to existing fees, and requires the State Department of Education to submit an adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.

This bill would delete the provision requiring the fee schedule to reflect a 10% increase in family fees.

(7) Under existing law (Proposition 98), the California Constitution requires the state to comply with a minimum funding obligation each fiscal year with respect to the support of school districts and community college districts. Existing statutory law specifies that state funding for the Child Care and Development Services Act is included within the calculation of state apportionments that apply toward this constitutional funding obligation.

This bill would, commencing July 1, 2011, specify that funds appropriated for the Child Care and Development Services Act do not apply toward the constitutional minimum funding obligation for school districts and community college districts, with the exception of state funding for the part-day California state preschool programs and the After School Education and Safety Program.

The bill would make related changes in the calculation of the minimum funding obligation required by Proposition 98.

(8) Existing law prescribes the percentage of General Fund revenues appropriated for school districts and community college districts for purposes of the provisions of the California Constitution requiring minimum funding for the public schools.

This bill would state that specified sales and use tax revenues transferred pursuant to certain provisions of the Revenue and Taxation Code are not General Fund revenues for these purposes. The bill would provide that its provisions would be operative for the 2011–12 fiscal year and subsequent years only if one or more ballot measures approved before November 17, 2012, authorize those revenues to be so treated, and provide funding for school districts and community college districts in an amount equal to that which would have been provided if the tax revenues were General Fund revenues.

The bill would require, if the aforementioned provisions of law are rendered inoperative because the ballot measure or measures are not approved, that by December 17, 2012, the Director of Finance, in consultation with the Superintendent of Public Instruction, determine the amount by which the minimum amount of moneys required to be applied by the state for the support of school districts and community college districts was reduced pursuant to the operation of the aforementioned provisions of law for the 2011–12 fiscal year. Following the determination of this amount, the bill would appropriate an amount equal to 17.8% of that amount from the General Fund to the Superintendent for each of the 2012–13 to 2016–17, inclusive, fiscal years in accordance with a specified priority order, and would appropriate 2.2% of that amount from the General Fund to the Chancellor of the California Community Colleges for each of the 2012–13 to 2016–17, inclusive, fiscal years, in accordance with a specified priority order.

(9) Existing law requires the county superintendent of schools to determine a revenue limit for each school district in the county, and requires the amount of the revenue limit to be adjusted for various factors. Existing

law reduces the revenue limit for each school district for the 2011–12 fiscal year by a deficit factor of 19.608%.

This bill instead would set the deficit factor for each school district for the 2011–12 fiscal year at 19.754%.

(10) Under existing law, county offices of education receive certain property tax revenues. Existing law requires a revenue limit to be calculated for each county superintendent of schools, and requires the amount of the revenue limit to be adjusted for various factors, including the amount of property tax revenues a county office of education receives.

This bill would require the Superintendent of Public Instruction for the 2011–12 fiscal year to determine the amount of excess property taxes available to county offices of education, and would require the auditor-controller of each county to distribute those amounts to the Supplemental Revenue Augmentation Fund within the county exclusively to reimburse the state for the costs of providing trial court services and costs until those moneys are exhausted. By imposing additional duties on local agency officials, this bill would impose a state-mandated local program.

(11) Existing law requires the Superintendent of Public Instruction to allocate, for the 2010–11 and 2011–12 fiscal years, a supplemental categorical block grant to a charter school that begins operation in the 2008–09, 2009–10, 2010–11, or 2011–12 fiscal year. Existing law requires that this supplemental categorical block grant equal $127 per unit of charter school average daily attendance as determined at the 2010–11 2nd principal apportionment for schools commencing operations in the 2008–09, 2009–10, or 2010–11 fiscal year and at the 2011–12 2nd principal apportionment for schools commencing operations in the 2011–12 fiscal year. Existing law prohibits a locally funded charter school that converted from a preexisting school between the 2008–09 and 2011–12 fiscal years, inclusive, from receiving these funds.

This bill instead would provide that, to the extent funds are provided, for the 2010–11 to the 2014–15 fiscal years, inclusive, a supplemental categorical block grant would be allocated to charter schools commencing operations during or after the 2008–09 fiscal year. The bill would provide that a locally or direct funded charter school, not just a locally funded charter school, that converted from a preexisting school between the 2008–09 and 2014–15 fiscal years, inclusive, would be prohibited from receiving these funds.

The bill would provide that for, the 2010–11 to the 2014–15 fiscal years, inclusive, the supplemental categorical block grant received by eligible charter schools would equal $127 per unit of charter school average daily attendance for charter schools commencing operations during or after the 2008–09 fiscal year, as specified.

(12) Existing law authorizes the governing board of a school district to terminate the services of any certificated employees of the district during the time period between 5 days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies if the governing board of a school district determines that its total revenue limit per unit of

average daily attendance for the fiscal year of that Budget Act has not increased by at least 2% and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district.

This bill would make this provision inoperative from July 1, 2011, to July 1, 2012, inclusive.

(13) Existing law sets forth the minimum number of instructional days and minutes school districts, county offices of education, and charter schools are required to offer.

This bill, for the 2011–12 school year, would reduce the minimum number of required instructional days and minutes by up to 7 days, and would reduce the revenue limit for each school district, county office of education, and charter school, as specified. The bill would require implementation of this reduction by a school district, county office of education, and charter school that is subject to collective bargaining to be achieved through the bargaining process, provided that the agreement has been completed and reductions implemented no later than June 30, 2012. These provisions would be operative only for the 2011–12 school year and only if the Director of Finance determines that the state revenue forecast does not meet a specified amount.

(14) Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act (IDEA), in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, and with special education and related services as reflected in an individualized education program (IEP). Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and to be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as required pursuant to the federal IDEA.

Existing law authorizes referral, through a prescribed process, of a pupil who is suspected of needing mental health services to a community mental health service. Existing law requires the State Department of Mental Health or a designated community mental health service to be responsible for the provision of mental health services, as defined, if required in a pupil's IEP.

This bill would make these provisions concerning referral for mental health services inoperative as of July 1, 2011, would repeal them as of January 1, 2012, and would make other related conforming changes.

(15) Existing law, for the 2008–09 to the 2014–15 fiscal years, inclusive, provides that the governing board of a school district is not required to provide pupils with instructional materials by a specified period of time following adoption of those materials by the State Board of Education.

This bill would make a technical, nonsubstantive change in this provision by changing its section number.

(16) Existing law, the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program (Cal Grant Program), establishes the Cal Grant A and B Entitlement Awards, the California Community College Transfer Entitlement Awards, the Competitive Cal Grant A and B Awards, the Cal Grant C Awards, and the Cal Grant T Awards under the administration of the Student Aid Commission, and establishes eligibility requirements for awards under these programs for participating students attending qualifying institutions.

Existing law imposes requirements on qualifying institutions, requiring the commission to certify by October 1 of each year the institution's latest 3-year cohort default rate as most recently reported by the United States Department of Education. Existing law provides that an otherwise qualifying institution that did not meet a specified 3-year cohort default rate would be ineligible for new Cal Grant awards at the institution. Under the Cal Grant Program, for the 2012–13 academic year and every academic year thereafter, an otherwise qualifying institution with a 3-year cohort default rate that is equal to or greater than 30% is ineligible for initial or renewal Cal Grant awards at the institution, except as specified.

This bill instead would specify that an otherwise qualifying institution with a 3-year cohort default rate that is equal to or greater than 30% is ineligible for initial and renewal Cal Grant awards at the institution, except as specified.

(17) Existing law establishes the California State University under the administration of the Trustees of the California State University. Existing law authorizes the trustees to draw from funds appropriated to the university, for use as a revolving fund, amounts necessary to make payments of obligations of the university directly to vendors. Existing law requires the trustees to contract with one or more public accounting firms to conduct systemwide and individual campus annual financial statement and compliance audits. Existing law further requires that at least 10 individual campus audits be conducted annually on a rotating basis, and that each campus be audited at least once every 2 years.

This bill would require the annual audits to be conducted in accordance with generally accepted accounting principles. The bill would delete the requirements that at least 10 individual campus audits be conducted annually on a rotating basis, and that each campus be audited at least once every 2 years. The bill would require that the statements of net assets, revenues, expenses, changes in net assets, and cashflows be included as an addendum to the annual systemwide audit.

(18) Existing law requires the governing board of each community college district to charge each student a fee, and sets that fee at $36 per unit per semester.

This bill would raise the fee to $46 per unit per semester if the Director of Finance determines that the state revenue forecast does not meet a specified amount.

(19) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law provides that no local agency or school district is required to implement or give effect to any statute or executive order, or portion thereof, that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. Existing law provides that only certain specified mandates are subject to that provision.

This bill would specify that 2 additional mandates relating to community college districts are included among those that are subject to the provision.

(20) The Administrative Procedure Act, among other things, sets forth procedures for the development, adoption, and promulgation of regulations by administrative agencies charged with the implementation of statutes.

This bill would authorize the State Department of Social Services and the State Department of Education, notwithstanding the procedures required by the Administrative Procedure Act, to implement the provisions of the bill that relate to the Child Care and Development Services Act through all-county letters, management bulletins, or other similar instructions.

(21) This bill would provide that the implementation of the provisions of the bill related to the provision of child care services would not be subject to the appeal and resolution procedures for agencies that contract with the State Department of Education for these purposes.

(22) This bill would express the intent of the Legislature that specified funding in the Budget Act of 2011 related to educationally related mental health services would be exclusively available only for the 2011–12 and 2012–13 fiscal years.

(23) This bill would express the intent of the Legislature that the State Department of Education and appropriate departments within the California Health and Human Services Agency modify or repeal regulations pertaining to the elimination of statutes pursuant to this bill related to mental health services provided by county mental health agencies. The bill would require the State Department of Education and appropriate departments within the California Health and Human Services Agency to review regulations to ensure appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act and of certain statutes enacted pursuant to this bill. The bill would authorize the State Department of Education and appropriate departments within the California Health and Human Services Agency to utilize the statutory process for adopting emergency regulations in implementing certain statutes enacted pursuant to this bill.

(24) This bill would make conforming changes, correct some cross-references, and make other technical, nonsubstantive changes.

(25) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(26) Existing law requires the State Department of Education to award grants to school districts, county superintendents of schools, or entities approved by the department for nonrecurring expenses incurred in initiating or expanding a school breakfast program or a summer food service program.

This bill would make an appropriation of $1,000 for purposes of these grants.

(27) The funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(28) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she annually may present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) For fiscal years 2004–05 to 2006–07, inclusive, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API), as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools and his or her determinations for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. As a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized

template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

(B) Commencing with the 2007–08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007–08 and was operating in fiscal year 2006–07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

(C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B), using available test scores and weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.

(D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude schools operated by county offices of education pursuant to Section 56140, as determined by the department.

(E) In addition to the requirements above, the county superintendent, or his or her designee, annually shall verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive

instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(F) (i) Commencing with the 2010–11 fiscal year and every third year thereafter, the Superintendent shall identify a list of schools ranked in deciles 1 to 3, inclusive, of the API for which the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county that describes the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the base API as defined in clause (ii).

(ii) For the 2010–11 fiscal year, the list of schools ranked in deciles 1 to 3, inclusive, of the base API shall be updated using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the 2009 base API and thereafter shall be updated every third year using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the base API of the year preceding the third year consistent with clause (i).

(iii) As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

(G) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(H) On a quarterly basis, the county superintendent, or his or her designee, shall report the results of the visits and reviews conducted that quarter to the governing board of the school district at a regularly scheduled meeting held in accordance with public notification requirements. The results of the visits and reviews shall include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. If the county superintendent, or his

or her designee, conducts no visits or reviews in a quarter, the quarterly report shall report that fact.

(I) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance, and the sufficiency of instructional materials, as defined by Section 60119.

(J) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(v) The extent to which pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(K) The county superintendent may make the status determinations described in subparagraph (J) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and the availability of qualified reviewers.

(L) If the county superintendent determines that the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72, or is not in good repair, as specified in subdivision (d) of Section 17002 and required by Sections 17014, 17032.5, 17070.75, and 17089, the county superintendent, among other things, may do any of the following:

(i) Return to the school to verify repairs.

(ii) Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the visit of the county superintendent or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on his or her Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually, on or before August 15, present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of a school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of an applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) (A) Commencing with the 2005–06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), and not currently under review pursuant to a state or federal intervention program, the county superintendent specifically shall review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent elects to conduct written surveys of teachers, the county

superintendent shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), or, if applicable, provide a copy of the report to the school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the department purchases textbooks or instructional materials for the school district, the department shall issue a public statement at the first regularly scheduled meeting of the state board occurring immediately after the department receives the request of the county superintendent and that meets the applicable public notice requirements, indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary for the purchase of the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to a county office of education that, based upon current projections, will not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to a county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to a county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify a certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(i) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each county office of education budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(ii) For the 2011–12 fiscal year, the county superintendent shall not be required to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(iii) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the Superintendent, as a condition on approval of a county office of education

budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the state board pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent to an interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of a certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of an educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of an educational program has been reported.

SEC. 2. Section 1622 of the Education Code is amended to read:

1622. (a) On or before July 1 of each fiscal year, the county board of education shall adopt an annual budget for the budget year and shall file that budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. The budget, and supporting data, shall be maintained and made available for public review. The budget shall indicate the date, time, and location at which the county board of education held the public hearing required under Section 1620.

(b) The Superintendent of Public Instruction shall examine the budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the county office of education to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the county office of education to satisfy its multiyear financial commitments. In addition, the Superintendent shall identify any technical corrections to the budget that must be made. On or before August 15, the Superintendent of Public Instruction shall approve or disapprove the budget and, in the event of a disapproval, transmit to the county office of education in writing his or her recommendations regarding revision of the budget and the reasons for those recommendations. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127,

the Superintendent, as a condition on approval of a county office of education budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(c) On or before September 8, the county board of education shall revise the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the Superintendent of Public Instruction, shall adopt the revised budget, and shall file the revised budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. Prior to revising the budget, the county board of education shall hold a public hearing regarding the proposed revisions, which shall be made available for public inspection not less than three working days prior to the hearing. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection. The revised budget, and supporting data, shall be maintained and made available for public review.

(d) The Superintendent of Public Instruction shall examine the revised budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets and, no later than October 8, shall approve or disapprove the revised budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the Superintendent, as a condition on approval of a county office of education budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(e) Notwithstanding any other provision of this section, the budget review for a county office of education shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (c) and (d), if the county board of education so elects, and notifies the Superintendent of Public Instruction in writing of that decision, no later than October 31 of the immediately preceding calendar year.

(1) In the event of the disapproval of the budget of a county office of education pursuant to subdivision (b), on or before September 8, the county superintendent of schools and the county board of education shall review the recommendations of the Superintendent of Public Instruction at a regularly scheduled meeting of the county board of education and respond to those recommendations. That response shall include the proposed actions to be taken, if any, as a result of those recommendations.

(2) No later than October 8, after receiving the response required under paragraph (1), the Superintendent of Public Instruction shall review that response and either approve or disapprove the budget of the county office of education. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623.

(3) Not later than 45 days after the Governor signs the annual Budget Act, the county office of education shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

SEC. 3. Section 2558.46 of the Education Code is amended to read:

2558.46. (a) (1) For the 2003–04 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 0.898 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 7.839 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.621 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.250 percent deficit factor.

(8) For the 2011–12 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 20.041 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each county superintendent of schools for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each county superintendent of schools for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(e) In computing the revenue limit for each county superintendent of schools for the 2012–13 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2011–12 fiscal year without being reduced by the deficit factor specified in subdivision (a).

SEC. 4. Section 8201 of the Education Code is amended to read:

8201. The purpose of this chapter is as follows:

(a) To provide a comprehensive, coordinated, and cost-effective system of child care and development services for children from infancy to 13 years of age and their parents, including a full range of supervision, health, and support services through full- and part-time programs.

(b) To encourage community-level coordination in support of child care and development services.

(c) To provide an environment that is healthy and nurturing for all children in child care and development programs.

(d) To provide the opportunity for positive parenting to take place through understanding of human growth and development.

(e) To reduce strain between parent and child in order to prevent abuse, neglect, or exploitation.

(f) To enhance the cognitive development of children, with particular emphasis upon those children who require special assistance, including bilingual capabilities to attain their full potential.

(g) To establish a framework for the expansion of child care and development services.

(h) To empower and encourage parents and families of children who require child care services to take responsibility to review the safety of the child care program or facility and to evaluate the ability of the program or facility to meet the needs of the child.

SEC. 5. Section 8203.5 of the Education Code is amended to read:

8203.5. (a) The Superintendent shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract.

(b) The Superintendent shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the department shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under

Section 8262 shall be responsible for maintaining developmental profiles upon entry through exit from a child development program.

(c) Notwithstanding any other provision of law, "moneys to be applied by the state," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, includes funds appropriated for the Child Care and Development Service Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6, whether or not those funds are allocated to school districts, as defined in Section 41302.5, or community college districts.

(d) This section is not subject to Part 34 (commencing with Section 62000).

(e) This section shall remain in effect only until July 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2011, deletes or extends that date.

SEC. 6. Section 8203.5 is added to the Education Code, to read:

8203.5. (a) The Superintendent shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract.

(b) The Superintendent shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the department shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under Section 8262 shall be responsible for maintaining developmental profiles upon entry through exit from a child development program.

(c) This section is not subject to Part 34 (commencing with Section 62000) of Division 4 of Title 2.

(d) This section shall become operative on July 1, 2011.

SEC. 7. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) "Alternative payment program" means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.1 to provide alternative payments and to provide support services to parents and providers.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain,

or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(i) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 13 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) General child care and development.

(2) Migrant child care and development.

(3) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 of Division 4 of Title 2).

(4) California state preschool program.

(5) Resource and referral.

(6) Child care and development services for children with exceptional needs.

(7) Family child care home education network.

(8) Alternative payment.

(9) Schoolage community child care.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) "Children with exceptional needs" means either of the following:

(1) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the Government Code. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.

(2) Children ages 3 to 21 years, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of Title 2, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of Title 2, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of Title 20 of the United States Code.

(m) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) "Cost" includes, but is not limited to, expenditures that are related to the operation of child care and development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Cost" may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) "Elementary school," as contained in former Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) "Family child care home education network" means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home providers and to provide educational and support services to those providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) "Health services" include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) "Intergenerational staff" means persons of various generations.

(t) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) "Parent" means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) "Proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(x) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) "Severely disabled children" are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. "Severely disabled children" also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 of Division 4 of Title 2 as it read on January 1, 1980.

(z) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(aa) (1) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented.

(2) For California state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a program director under both Sections 8244 and 8360.1 is also qualified under this subdivision.

(ab) "Standard reimbursement rate" means that rate established by the Superintendent pursuant to Section 8265.

(ac) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) "California state preschool program" means part-day and full-day educational programs for low-income or otherwise disadvantaged three- and four-year-old children.

(ae) "Support services" means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff

training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) "Teacher" means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) "Underserved area" means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent.

(ah) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

(ai) "Three-year-old children" means children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(aj) "Four-year-old children" means children who will have their fourth birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(ak) "Local educational agency" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

SEC. 8. Section 8263.2 of the Education Code is amended to read:

8263.2. (a) Notwithstanding any other law, effective July 1, 2011, the department shall reduce the maximum reimbursable amounts of the contracts for the Preschool Education Program, the General Child Care Program, the Migrant Day Care Program, the Alternative Payment Program, the CalWORKs Stage 3 Program, and the Allowance for Handicapped Program by 11 percent or by whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act. The department may consider the contractor's performance or whether the contractor serves children in underserved areas as defined in subdivision (ag) of Section 8208 when determining contract reductions, provided that the aggregate reduction to each program specified in this subdivision is 11 percent or by whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act.

(b) Notwithstanding any other law, effective July 1, 2011, families shall be disenrolled from subsidized child care services, consistent with the priorities for services specified in subdivision (b) of Section 8263. Families shall be disenrolled in the following order:

(1) Families whose income exceeds 70 percent of the state median income (SMI) adjusted for family size, except for families whose children are receiving child protective services or are at risk of being neglected or abused.

(2) Families with the highest income below 70 percent of the SMI, in relation to family size.

(3) Families that have the same income and have been enrolled in child care services the longest.

(4) Families that have the same income and have a child with exceptional needs.

(5) Families whose children are receiving child protective services or are at risk of being neglected or abused, regardless of family income.

SEC. 9. Section 8263.4 of the Education Code is amended to read:

8263.4. (a) The preferred placement for children who are 11 or 12 years of age and who are otherwise eligible for subsidized child care and development services shall be in a before or after school program.

(b) Children who are 11 or 12 years of age shall be eligible for subsidized child care services only for the portion of care needed that is not available in a before or after school program provided pursuant to Article 22.5 (commencing with Section 8482) or Article 22.6 (commencing with Section 8484.7). Contractors shall provide each family of an eligible 11 or 12 year old with the option of combining care provided in a before or after school program with subsidized child care in another setting, for those hours within a day when the before or after school program does not operate, in order to meet the child care needs of the family.

(c) Children who are 11 or 12 years of age, who are eligible for and who are receiving subsidized child care services, and for whom a before or after school program is not available, shall continue to receive subsidized child care services.

(d) A before or after school program shall be considered not available when a parent certifies in writing, on a form provided by the department that is translated into the parent's primary language pursuant to Sections 7295.4 and 7296.2 of the Government Code, the reason or reasons why the program would not meet the child care needs of the family. The reasons why a before or after school program shall be considered not available shall include, but not be limited to, any of the following:

(1) The program does not provide services when needed during the year, such as during the summer, school breaks, or intersession.

(2) The program does not provide services when needed during the day, such as in the early morning, evening, or weekend hours.

(3) The program is too geographically distant from the child's school of attendance.

(4) The program is too geographically distant from the parents' residence.

(5) Use of the program would create substantial transportation obstacles for the family.

(6) Any other reason that makes the use of before or after school care inappropriate for the child or burdensome on the family.

(e) If an 11 or 12 year old child who is enrolled in a subsidized child development program becomes ineligible for subsidized child care under subdivision (b) and is disenrolled from the before or after school program, or if the before or after school program no longer meets the child care needs of the family, the child shall be given priority to return to the subsidized child care services upon the parent's notification of the contractor of the need for child care.

(f) This section does not apply to an 11 or 12 year old child with a disability, including a child with exceptional needs who has an individualized education program as required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), or Part 30 (commencing with Section 56000) of Division 4 of Title 2.

(g) The savings generated each contract year by the implementation of the changes made to this section by the act amending this section during the 2005–06 Regular Session shall remain with each alternative payment program, child development center, or other contractor for the provision of child care services, except for care provided by programs pursuant to Article 15.5 (commencing with Section 8350). Each contractor shall report annually to the department the amount of savings resulting from this implementation, and the department shall report annually to the Legislature the amount of savings statewide resulting from that implementation.

SEC. 10. Section 8447 of the Education Code is amended to read:

8447. (a) The Legislature hereby finds and declares that greater efficiencies may be achieved in the execution of state subsidized child care and development program contracts with public and private agencies by the timely approval of contract provisions by the Department of Finance, the Department of General Services, and the State Department of Education and by authorizing the State Department of Education to establish a multiyear application, contract expenditure, and service review as may be necessary to provide timely service while preserving audit and oversight functions to protect the public welfare.

(b) (1) The Department of Finance and the Department of General Services shall approve or disapprove annual contract funding terms and conditions, including both family fee schedules and regional market rate schedules that are required to be adhered to by contract, and contract face sheets submitted by the State Department of Education not more than 30 working days from the date of submission, unless unresolved conflicts remain between the Department of Finance, the State Department of Education, and the Department of General Services. The State Department of Education shall resolve conflicts within an additional 30 working day time period. Contracts and funding terms and conditions shall be issued to child care contractors no later than June 1. Applications for new child care funding shall be issued not more than 45 working days after the effective date of authorized new allocations of child care moneys.

(2) Notwithstanding paragraph (1), the State Department of Education shall implement the regional market rate schedules based upon the county

aggregates, as determined by the Regional Market survey conducted in 2005.

(3) Notwithstanding paragraph (1), for the 2006–07 fiscal year, the State Department of Education shall update the family fee schedules by family size, based on the 2005 state median income survey data for a family of four. The family fee schedule used during the 2005–06 fiscal year shall remain in effect. However, the department shall adjust the family fee schedule for families that are newly eligible to receive or will continue to receive services under the new income eligibility limits. The family fees shall not exceed 10 percent of the family's monthly income.

(4) Notwithstanding any other law, the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years shall be adjusted to reflect the income eligibility limits specified in subdivision (b) of Section 8263.1 for the 2011–12 fiscal year, and shall retain a flat fee per family. The revised family fee schedule shall begin at income levels at which families currently begin paying fees. The revised family fees shall not exceed 10 percent of the family's monthly income. The State Department of Education shall first submit the adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.

(5) It is the intent of the Legislature to fully fund the third stage of child care for former CalWORKs recipients.

(c) With respect to subdivision (b), it is the intent of the Legislature that the Department of Finance annually review contract funding terms and conditions for the primary purpose of ensuring consistency between child care contracts and the child care budget. This review shall include evaluating any proposed changes to contract language or other fiscal documents to which the contractor is required to adhere, including those changes to terms or conditions that authorize higher reimbursement rates, that modify related adjustment factors, that modify administrative or other service allowances, or that diminish fee revenues otherwise available for services, to determine if the change is necessary or has the potential effect of reducing the number of full-time equivalent children that may be served.

(d) Alternative payment child care systems, as set forth in Article 3 (commencing with Section 8220), shall be subject to the rates established in the Regional Market Rate Survey of California Child Care Providers for provider payments. The State Department of Education shall contract to conduct and complete a Regional Market Rate Survey no more frequently than once every two years, consistent with federal regulations, with a goal of completion by March 1.

(e) By March 1 of each year, the Department of Finance shall provide to the State Department of Education the State Median Income amount for a four-person household in California based on the best available data. The State Department of Education shall adjust its fee schedule for child care providers to reflect this updated state median income; however, no changes based on revisions to the state median income amount shall be implemented midyear.

(f) Notwithstanding the June 1 date specified in subdivision (b), changes to the regional market rate schedules and fee schedules may be made at any other time to reflect the availability of accurate data necessary for their completion, provided these documents receive the approval of the Department of Finance. The Department of Finance shall review the changes within 30 working days of submission and the State Department of Education shall resolve conflicts within an additional 30 working day period. Contractors shall be given adequate notice prior to the effective date of the approved schedules. It is the intent of the Legislature that contracts for services not be delayed by the timing of the availability of accurate data needed to update these schedules.

(g) Notwithstanding any other provision of law, no family receiving CalWORKs cash aid may be charged a family fee.

SEC. 11. Section 8499 of the Education Code is amended to read:

8499. For purposes of this chapter, the following definitions shall apply:

(a) "Block grant" means the block grant contained in Title VI of the Child Care and Development Fund, as established by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

(b) "Child care" means all licensed child care and development services and license-exempt child care, including, but not limited to, private for-profit programs, nonprofit programs, and publicly funded programs, for all children up to and including 12 years of age, including children with exceptional needs and children from all linguistic and cultural backgrounds.

(c) "Child care provider" means a person who provides child care services or represents persons who provide child care services.

(d) "Community representative" means a person who represents an agency or business that provides private funding for child care services, or who advocates for child care services through participation in civic or community-based organizations but is not a child care provider and does not represent an agency that contracts with the State Department of Education to provide child care and development services.

(e) "Consumer" means a parent or person who receives, or who has received within the past 36 months, child care services.

(f) "Department" means the State Department of Education.

(g) "Local planning council" means a local child care and development planning council as described in Section 8499.3.

(h) "Public agency representative" means a person who represents a city, county, city and county, or local educational agency.

SEC. 12. Section 41202 of the Education Code is amended to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld,

impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent of Public Instruction, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any

reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent of Public Instruction, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed

pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

(i) For the purposes of calculating the 4 percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

(j) This section shall remain in effect only until July 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2011, deletes or extends that date.

SEC. 13. Section 41202 is added to the Education Code, to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld, impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for

allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for part-day California state preschool programs under Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1, and the After School Education and Safety Program established pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district, regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for part-day California state preschool programs under Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 or the After School Education and Safety Program established pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

(4) With the exception of the programs identified in paragraph (1), commencing with the 2011–12 fiscal year, any funds appropriated for the Child Care and Development Services Act, pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1.

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

(i) For purposes of calculating the 4-percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

(j) This section shall become operative on July 1, 2011.

SEC. 14. Section 41202.5 is added to the Education Code, to read:

41202.5. (a) The finds and declares as follows:

(1) The Legislature acted to implement Proposition 98 soon after its passage by defining "total allocations to school districts and community college districts from General Fund proceeds of taxes" to include the entirety of programs funded under the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1).

(2) In California Teachers Assn. v. Hayes (1992) 5 Cal.App.4th 1513, the Court of Appeal permitted the inclusion of child care within the Proposition 98 minimum funding guarantee but left open the possibility of excluding particular child care programs that did not directly advance and support the educational mission of school districts.

(b) It is the intent of the Legislature to clarify that the part-time state preschool programs and the After School Education and Safety Program fall within the Proposition 98 guarantee and to fund other child care programs less directly associated with school districts from appropriations that do not count toward the Proposition 98 minimum guarantee.

(c) Notwithstanding any other provision of law, for purposes of making the computations required by subdivision (b) of Section 8 of Article XVI of the California Constitution in the 2011–12 fiscal year and each subsequent fiscal year, both of the following apply:

(1) For purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, the term "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87" does not include General Fund revenues appropriated for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482). The Director of Finance shall adjust accordingly "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87," for purposes of applying that percentage in the 2011–12 fiscal year and each subsequent fiscal year in making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) General Fund revenues appropriated in the 2010–11 fiscal year or any subsequent fiscal year for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482), are not included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for purposes of paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

SEC. 15. Section 41210 is added to the Education Code, to read:

41210. (a) The revenues transferred pursuant to Section 6015.15 and 6201.15 of the Revenue and Taxation Code are not "General Fund revenues" as that term is used in Section 8 of Article XVI of the California Constitution.

(b) This section shall be operative for the 2011–12 fiscal year and subsequent years so long as one or more ballot measures approved before November 17, 2012, authorize the determination in subdivision (a) and provide funding for school districts and community college districts in an

amount equal to that which would have been provided if the revenues referenced in subdivision (a) were General Fund revenues for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 16. Section 41211 is added to the Education Code, to read:

41211. The following shall apply if Section 41210 is rendered inoperative because the ballot measure or measures described in subdivision (b) of that section are not approved:

(a) Before December 17, 2012, the Director of Finance, in consultation with the Superintendent, shall determine the amount of funding that would have been provided in the 2011–12 fiscal year to school districts and community college districts if the revenues described in subdivision (a) of Section 41210 were General Fund revenues for purposes of Section 8 of Article XVI of the California Constitution.

(b) For each of the 2012–13 to 2016–17, inclusive, fiscal years, 17.8 percent of the amount determined in subdivision (a) is appropriated from the General Fund to the Superintendent and shall be distributed in the following priority:

(1) To reduce amounts deferred under Section 14041.6.

(2) To repay obligations to school districts and county offices of education under Section 6 of Article XIII B of the California Constitution.

(3) To use for other one-time purposes as provided by statute enacted after the effective date of this section.

(c) For each of the 2012–13 to 2016–17, inclusive, fiscal years, 2.2 percent of the amount determined in subdivision (a) is appropriated from the General Fund to the Chancellor of the California Community Colleges and shall be distributed in the following priority:

(1) To reduce amounts deferred under Section 84321.6.

(2) To repay obligations to community college districts under Section 6 of Article XIII B of the California Constitution.

(3) To use for other one-time purposes as provided by statute enacted after the effective date of this section.

(d) For the 2011–12 fiscal year and subsequent fiscal years, the computations required by Section 8 of Article XVI of the California Constitution shall include the amount determined in subdivision (a).

SEC. 17. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(A) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(B) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget and supporting data shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets. The county superintendent shall identify, if necessary, any technical corrections that are required to be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. In addition to his or her own analysis of the budget of each school district, the county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school district that were commissioned by the district, the county superintendent, the Superintendent, and state control agencies and that contain evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. The county superintendent of schools shall either conditionally approve or disapprove a budget that does

not provide adequate assurance that the district will meet its current and future obligations and resolve any problems identified in studies, reports, evaluations, or audits described in this paragraph.

(d) On or before August 15, the county superintendent of schools shall approve, conditionally approve, or disapprove the adopted budget for each school district. If a school district does not submit a budget to the county superintendent of schools, the county superintendent of schools shall, at district expense, develop a budget for that school district by September 15 and transmit that budget to the governing board of the school district. The budget prepared by the county superintendent of schools shall be deemed adopted, unless the county superintendent of schools approves any modifications made by the governing board of the school district. The approved budget shall be used as a guide for the district's priorities. The Superintendent shall review and certify the budget approved by the county. If, pursuant to the review conducted pursuant to subdivision (c), the county superintendent of schools determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall conditionally approve or disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations, including, but not limited to, the amounts of any budget adjustments needed before he or she can conditionally approve that budget. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. In addition, if the adopted budget is disapproved pursuant to subdivision (d), the governing board and the county superintendent of schools shall review the disapproval and the recommendations of the county superintendent of schools regarding revision

of the budget at the public hearing. The revised budget and supporting data shall be maintained and made available for public review.

(1) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(2) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, (3) satisfies all conditions established by the county superintendent of schools in the case of a conditionally approved budget, and (4) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. If no budget is adopted by November 30, the Superintendent may adopt a budget for the school district. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, the date the adopted budget is anticipated, and whether the Superintendent has or will exercise his or her authority to adopt a budget for the school district. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to

demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a

school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 18. Section 42238.146 of the Education Code is amended to read:

42238.146. (a) (1) For the 2003–04 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each school district determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.892 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 7.844 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 18.355 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 17.963 percent deficit factor.

(8) For the 2011–12 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 19.754 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each school district for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each school district for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(e) In computing the revenue limit for each school district for the 2012–13 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2011–12 fiscal year without being reduced by the deficit factors specified in subdivision (a).

SEC. 19. Section 42251 is added to the Education Code, to read:

42251. (a) The Superintendent shall make the following calculations for the 2011–12 fiscal year:

(1) Determine the amount of funds that will be restricted after the Superintendent makes the deduction pursuant to Section 52335.3 for each county office of education pursuant to subdivision (e) of Section 2558 as of June 30, 2012.

(2) Divide fifty million dollars ($50,000,000) by the statewide sum of the amounts determined pursuant to paragraph (1). If the fraction is greater than one it shall be deemed to be one.

(3) Multiply the fraction determined pursuant to paragraph (2) by the amount determined pursuant to paragraph (1) for each county office of education.

(b) The auditor-controller of each county shall distribute the amounts determined in paragraph (3) of subdivision (a)

to the Supplemental Revenue Augmentation Fund created within the county pursuant to Section 100.06 of the Revenue and Taxation Code. The aggregate amount of transfers required by this subdivision shall be made in two equal shares, with the first share being transferred no later than January 15, 2012, and the second share being transferred after that date but no later than May 1, 2012.

(c) The moneys transferred to the Supplemental Revenue Augmentation Fund in the 2011–12 fiscal year shall be transferred by the county office of education to the Controller, in amounts and for those purposes as directed by the Director of Finance, exclusively to reimburse the state for the costs of providing trial court services and costs until those moneys are exhausted.

SEC. 20. Section 42606 of the Education Code is repealed.

SEC. 21. Section 42606 is added to the Education Code, to read:

42606. (a) To the extent funds are provided, for the 2010–11 to the 2014–15 fiscal years, inclusive, the Superintendent shall allocate a supplemental categorical block grant to a charter school that began operation during or after the 2008–09 fiscal year. These supplemental categorical block grant funds may be used for any educational purpose. Commencing in the 2011–12 fiscal year, a locally or direct funded charter school that converted from a preexisting school between the 2008–09 and 2014–15 fiscal years, inclusive, is not eligible for funding specified in this section. A charter school that receives funding pursuant to this subdivision shall not

receive additional funding for programs specified in paragraph (2) of subdivision (a) of Section 42605, with the exception of the program funded pursuant to Item 6110-211-0001 of Section 2.00 of the annual Budget Act.

(b) (1) For the 2010–11 fiscal year, the supplemental categorical block grant shall equal one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the 2010–11 second principal apportionment for charter schools commencing operations during or after the 2008–09 fiscal year. A locally funded charter school that converted from a preexisting school during or after the 2008-09 fiscal year is not eligible for funding specified in this section.

(2) For the 2011–12 to the 2014–15 fiscal years, inclusive, the supplemental categorical block grant shall equal one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the current year second principal apportionment for charter schools commencing operations during or after the 2008–09 fiscal year. In lieu of this supplemental grant, a school district shall provide new conversion charter schools that commenced operations within the district during or after the 2008–09 fiscal year, one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the current year second principal apportionment. This paragraph does not preclude a school district and a new conversion charter school from negotiating an alternative funding rate. Absent agreement from both parties on an alternative rate, the school district shall be obligated to provide funding at the one hundred twenty-seven dollars ($127) per average daily attendance rate.

SEC. 22. Section 44955.5 of the Education Code is amended to read:

44955.5. (a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive.

SEC. 23. Section 46201.3 is added to the Education Code, to read:

46201.3. (a) For the 2011–12 school year, the minimum number of instructional days and minutes school districts, county offices of education, and charter schools are required to offer as set forth in Sections 41420, 46200, 46200.5, 46201, 46201.5, 46202, and 47612.5 shall be reduced by up to seven days.

(b) Implementation of the reduction in the number of instructional days offered by a school district, county office of education, and charter school that is subject to collective bargaining pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall be achieved through the bargaining process, provided that the agreement has been completed and reductions implemented no later than June 30, 2012.

(c) The revenue limit for each school district, county office of education, and charter school determined pursuant to Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1, Article 2 (commencing with Section 42238) of Chapter 7 of Part 24 of Division 3, and Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 of Division 4 shall be reduced by the product of 4 percent and the fraction determined pursuant to paragraph (2).

(1) Subtract the revenue forecast determined pursuant to subdivision (a) of Section 3.94 of the Budget Act of 2011 from eighty-six billion four hundred fifty-two million five hundred thousand dollars ($86,452,500,000).

(2) Divide the lesser of two billion dollars ($2,000,000,000) or the amount calculated in paragraph (1) by two billion dollars ($2,000,000,000).

(d) This section does not affect the number of instructional days or instructional minutes that may be reduced pursuant to Section 46201.2.

(e) The revenue limit reductions authorized by this section, when combined with the reductions applied under subdivision (c) of Section 3.94 of the Budget Act of 2011, may not be applied so as to reduce school funding below the requirements of Section 8 of Article XVI of the California Constitution based on the applicable revenues estimated by the Department of Finance pursuant to Section 3.94 of the Budget Act of 2011.

(f) This section shall be operative on February 1, 2012, only for the 2011–12 school year and only if subdivision (c) of Section 3.94 of the Budget Act of 2011 is operative.

SEC. 24. Section 56139 of the Education Code is amended to read:

56139. (a) The Superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The Superintendent shall collaborate with the Director of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 56325 of the Education Code is amended to read:

56325. (a) (1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(b) (1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school.

(c) If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends.

SEC. 26. Section 56331 of the Education Code is amended to read:

56331. (a) A pupil who is suspected of needing mental health services may be referred to a community mental health service in accordance with Section 7576 of the Government Code.

(b) Prior to referring a pupil to a county mental health agency for services, the local educational agency shall follow the procedures set forth in Section 56320 and conduct an assessment in accordance with Sections 300.301 to 300.306, inclusive, of Title 34 of the Code of Federal Regulations. If an individual with exceptional needs is identified as potentially requiring mental health services, the local educational agency shall request the participation of the county mental health agency in the individualized education program. A local educational agency shall provide any specially designed instruction

required by an individualized education program, including related services such as counseling services, parent counseling and training, psychological services, or social work services in schools as defined in Section 300.34 of Title 34 of the Code of Federal Regulations. If the individualized education program of an individual with exceptional needs includes a functional behavioral assessment and behavior intervention plan, in accordance with Section 300.530 of Title 34 of the Code of Federal Regulations, the local educational agency shall provide documentation upon referral to a county mental health agency. Local educational agencies shall provide related services, by qualified personnel, unless the individualized education program team designates a more appropriate agency for the provision of services. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service agency in determining the need for mental health services and the level of services needed.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 60422.3 of the Education Code is amended and renumbered to read:

60049. (a) Notwithstanding subdivision (i) of Section 60200, Section 60422, or any other provision of law, for the 2008–09 to the 2014–15 fiscal years, inclusive, the governing board of a school district is not required to provide pupils with instructional materials by a specified period of time following adoption of those materials by the state board.

(b) Notwithstanding subdivision (a), this section does not relieve school districts of their obligations to provide every pupil with textbooks or instructional materials, as provided in Section 1240.3.

(c) This section does not relieve school districts of the obligation to hold a public hearing or hearings pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 60119.

(d) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 28. Section 69432.7 of the Education Code is amended to read:

69432.7. As used in this chapter, the following terms have the following meanings:

(a) An “academic year” is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) “Access costs” means living expenses and expenses for transportation, supplies, and books.

(c) “Award year” means one academic year, or the equivalent, of attendance at a qualifying institution.

(d) "College grade point average" and "community college grade point average" mean a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree.

(e) "Commission" means the Student Aid Commission.

(f) "Enrollment status" means part- or full-time status.

(1) "Part time," for purposes of Cal Grant eligibility, means 6 to 11 semester units, inclusive, or the equivalent.

(2) "Full time," for purposes of Cal Grant eligibility, means 12 or more semester units or the equivalent.

(g) "Expected family contribution," with respect to an applicant, shall be determined using the federal methodology pursuant to subdivision (a) of Section 69506 (as established by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.)) and applicable rules and regulations adopted by the commission.

(h) "High school grade point average" means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, "high school grade point average" includes senior year coursework.

(i) "Instructional program of not less than one academic year" means a program of study that results in the award of an associate or baccalaureate degree or certificate requiring at least 24 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(j) "Instructional program of not less than two academic years" means a program of study that results in the award of an associate or baccalaureate degree requiring at least 48 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(k) "Maximum household income and asset levels" means the applicable household income and household asset levels for participants, including new applicants and renewing recipients, in the Cal Grant Program, as defined and adopted in regulations by the commission for the 2001–02 academic year, which shall be set pursuant to the following income and asset ceiling amounts:

CAL GRANT PROGRAM INCOME CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent and Independent students with dependents*		
Family Size		

Six or more	$74,100	$40,700
Five	$68,700	$37,700
Four	$64,100	$33,700
Three	$59,000	$30,300
Two	$57,600	$26,900
Independent		
Single, no dependents	$23,500	$23,500
Married	$26,900	$26,900

*Applies to independent students with dependents other than a spouse.

CAL GRANT PROGRAM ASSET CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent**	$49,600	$49,600
Independent	$23,600	$23,600

**Applies to independent students with dependents other than a spouse.

The commission shall annually adjust the maximum household income and asset levels based on the percentage change in the cost of living within the meaning of paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution. The maximum household income and asset levels applicable to a renewing recipient shall be the greater of the adjusted maximum household income and asset levels or the maximum household income and asset levels at the time of the renewing recipient's initial Cal Grant award. For a recipient who was initially awarded a Cal Grant for an academic year before the 2011–12 academic year, the maximum household income and asset levels shall be the greater of the adjusted maximum household income and asset levels or the 2010–11 academic year maximum household income and asset levels. An applicant or renewal recipient who qualifies to be considered under the simplified needs test established by federal law for student assistance shall be presumed to meet the asset level test under this section. Prior to disbursing any Cal Grant funds, a qualifying institution shall be obligated, under the terms of its institutional participation agreement with the commission, to resolve any conflicts that may exist in the data the institution possesses relating to that individual.

(*l*) (1) "Qualifying institution" means an institution that complies with paragraphs (2) and (3) and is any of the following:

(A) A California private or independent postsecondary educational institution that participates in the Pell Grant Program and in at least two of the following federal campus-based student aid programs:

(i) Federal Work-Study.

(ii) Perkins Loan Program.

(iii) Supplemental Educational Opportunity Grant Program.

(B) A nonprofit institution headquartered and operating in California that certifies to the commission that 10 percent of the institution's operating budget, as demonstrated in an audited financial statement, is expended for purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges, and that meets any other state-required criteria adopted by regulation by the commission in consultation with the Department of Finance. A regionally accredited institution that was deemed qualified by the commission to participate in the Cal Grant Program for the 2000–01 academic year shall retain its eligibility as long as it maintains its existing accreditation status.

(C) A California public postsecondary educational institution.

(2) (A) The institution shall provide information on where to access California license examination passage rates for the most recent available year from graduates of its undergraduate programs leading to employment for which passage of a California licensing examination is required, if that data is electronically available through the Internet Web site of a California licensing or regulatory agency. For purposes of this paragraph, "provide" may exclusively include placement of an Internet Web site address labeled as an access point for the data on the passage rates of recent program graduates on the Internet Web site where enrollment information is also located, on an Internet Web site that provides centralized admissions information for postsecondary educational systems with multiple campuses, or on applications for enrollment or other program information distributed to prospective students.

(B) The institution shall be responsible for certifying to the commission compliance with the requirements of subparagraph (A).

(3) (A) The commission shall certify by October 1 of each year the institution's latest three-year cohort default rate as most recently reported by the United States Department of Education.

(B) For purposes of the 2011–12 academic year, an otherwise qualifying institution with a 2008 trial three-year cohort default rate reported by the United States Department of Education as of February 28, 2011, that is equal to or greater than 24.6 percent shall be ineligible for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(C) For purposes of the 2012–13 academic year, and every academic year thereafter, an otherwise qualifying institution with a three-year cohort default rate that is equal to or greater than 30 percent, as certified by the commission on October 1, 2011, and every year thereafter, shall be ineligible

for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(D) (i) An otherwise qualifying institution that becomes ineligible under this paragraph for initial and renewal Cal Grant awards may regain its eligibility for the academic year following an academic year in which it satisfies the requirements established in subparagraph (B) or (C), as applicable.

(ii) If the United States Department of Education corrects or revises an institution's three-year cohort default rate that originally failed to satisfy the requirements established in subparagraph (B) or (C), as applicable, and the correction or revision results in the institution's three-year cohort default rate satisfying those requirements, that institution shall immediately regain its eligibility for the academic year to which the corrected or revised three-year cohort default rate would have been applied.

(E) An otherwise qualifying institution for which no three-year cohort default rate has been reported by the United States Department of Education shall be provisionally eligible to participate in the Cal Grant Program until a three-year cohort default rate has been reported for the institution by the United States Department of Education.

(F) An institution that is ineligible for initial and renewal Cal Grant awards at the institution under subparagraph (B) or (C) shall be eligible for renewal Cal Grant awards for recipients who were enrolled in the ineligible institution during the academic year before the academic year for which the institution is ineligible and who choose to renew their Cal Grant awards to attend the ineligible institution. Cal Grant awards subject to this subparagraph shall be reduced as follows:

(i) The maximum Cal Grant A and B awards specified in the annual Budget Act shall be reduced by 20 percent.

(ii) The reductions specified in this subparagraph shall not impact access costs as specified in subdivision (b) of Section 69435.

(G) Notwithstanding any other law, the requirements of this paragraph shall not apply to institutions with 40 percent or less of undergraduate students borrowing federal student loans, using information reported to the United States Department of Education for the academic year two years prior to the year in which the commission is certifying the three-year cohort default rate pursuant to subparagraph (A).

(H) By January 1, 2013, the Legislative Analyst shall submit to the Legislature a report on the implementation of this paragraph. The report shall be prepared in consultation with the commission, and shall include policy recommendations for appropriate measures of default risk and other direct or indirect measures of quality or effectiveness in educational institutions participating in the Cal Grant Program, and appropriate scores for those measures. It is the intent of the Legislature that appropriate policy and fiscal committees review the requirements of this paragraph and consider changes thereto.

(m) "Satisfactory academic progress" means those criteria required by applicable federal standards published in Title 34 of the Code of Federal

Regulations. The commission may adopt regulations defining "satisfactory academic progress" in a manner that is consistent with those federal standards.

SEC. 29. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be thirty-six dollars ($36) per unit per semester, effective with the fall term of the 2011–12 academic year.

(2) The board of governors shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the board of governors may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750.5, the board of governors shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The board of governors shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates

eligibility according to income standards established by regulations of the board of governors.

(3) Paragraphs (1) and (2) may be applied to a student enrolled in the 2005–06 academic year if the student is exempted from nonresident tuition under paragraph (3) of subdivision (a) of Section 76140.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 of Division 5 for determining nonresident and resident tuition.

(*l*) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California

Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive. It is the intent of the Legislature that funds provided pursuant to this subdivision be used to support the determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. It also is the intent of the Legislature that the funds provided pursuant to this subdivision directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers). Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

(o) This section shall be inoperative and is repealed on January 1, 2012, only if Section 3.94 of the Budget Act of 2011 is operative.

SEC. 30. Section 76300 is added to the Education Code, to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be forty-six dollars ($46) per unit per semester, effective with the fall term of the 2011–12 academic year.

(2) The board of governors shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the board of governors may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750.5, the board of governors shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The board of governors shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by regulations of the board of governors.

(3) Paragraphs (1) and (2) may be applied to a student enrolled in the 2005–06 academic year if the student is exempted from nonresident tuition under paragraph (3) of subdivision (a) of Section 76140.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. “Active service of the state,” for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United

Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 of Division 5 for determining nonresident and resident tuition.

(*l*) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains 30 years of age.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive. It is the intent of the Legislature that funds provided pursuant to this subdivision be used to support the determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. It also is the intent of the Legislature that the funds provided pursuant to this subdivision directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers). Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

(o) This section shall become operative on January 1, 2012, only if Section 3.94 of the Budget Act of 2011 is operative.

SEC. 31. Section 7911.1 of the Family Code is amended to read:

7911.1. (a) Notwithstanding any other law, the State Department of Social Services or its designee shall investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out-of-state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. This authority shall include the authority to interview children or staff in private or review their file at the out-of-state facility or wherever the child or files may be at the time of the investigation. Notwithstanding any other law, the State Department of Social Services or its designee shall require certified out-of-state group homes to comply with the reporting requirements applicable to group homes licensed in California pursuant to Title 22 of the California Code of Regulations for each child in care regardless of whether he or she is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes. The Compact Administrator within one business day of receiving a serious events report shall verbally notify the appropriate placement agencies and within five working days of receiving a written report from the out-of-state group home, forward a copy of the written report to the appropriate placement agencies.

(b) Any contract, memorandum of understanding, or agreement entered into pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children regarding the placement of a child out of state by a California county social services agency or probation department shall include the language set forth in subdivision (a).

(c) The State Department of Social Services or its designee shall perform initial and continuing inspection of out-of-state group homes in order to either certify that the out-of-state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety. Any failure by an out-of-state group home facility to make children or staff available as required by subdivision (a) for a private interview or make files available for review shall be grounds to deny or discontinue the certification. The State Department of Social Services shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has more than six California children placed by a county social services agency or probation department by August 19, 1999. The department shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has six or fewer California children placed by a county social services agency or probation department by February 19, 2000. Certifications made pursuant to this subdivision shall be reviewed annually.

(d) Within six months of the effective date of this section, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team for each child in an out-of-state group home facility. On or after March 1, 1999, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home facility.

(e) Any failure by an out-of-state group home to obtain or maintain its certification as required by subdivision (c) shall preclude the use of any public funds, whether county, state, or federal, in the payment for the placement of any child in that out-of-state group home, pursuant to the Interstate Compact on the Placement of Children.

(f) (1) A multidisciplinary team shall consist of participating members from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county.

(2) Participants shall have knowledge or experience in the prevention, identification, and treatment of child abuse and neglect cases, and shall be qualified to recommend a broad range of services related to child abuse or neglect.

(g) (1) The department may deny, suspend, or discontinue the certification of the out-of-state group home if the department makes a finding that the group home is not operating in compliance with the requirements of subdivision (c).

(2) Any judicial proceeding to contest the department's determination as to the status of the out-of-state group home certificate shall be held in California pursuant to Section 1085 of the Code of Civil Procedure.

(h) The certification requirements of this section shall not impact placements of emotionally disturbed children made pursuant to an individualized education program developed pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) if the placement is not funded with federal or state foster care funds.

(i) Only an out-of-state group home authorized by the Compact Administrator to receive state funds for the placement by a county social services agency or probation department of any child in that out-of-state group home from the effective date of this section shall be eligible for public funds pending the department's certification under this section.

SEC. 32. Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of occupational therapy and physical therapy. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations

developed by the State Department of Health Services in consultation with the State Department of Education.

(c) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) If an assessment has been conducted pursuant to subdivision (b), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivision (b). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing

with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code.

(d) Whenever a related service or designated instruction and service specified in subdivision (b) is to be considered for inclusion in the child's individualized educational program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (c). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

SEC. 33. Section 7572.5 of the Government Code is amended to read:

7572.5. (a) If an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.8 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available that address the needs identified in the assessment and that will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program that calls for residential placement, the individualized education program shall include all of the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated county mental health department. The county

mental health department shall retain financial responsibility for the provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 34. Section 7572.55 of the Government Code is amended to read:

7572.55. (a) Residential placements for a child with a disability who is seriously emotionally disturbed may be made out-of-state only after in-state alternatives have been considered and are found not to meet the child's needs and only when the requirements of Section 7572.5, and subdivision (e) of Section 56365 of the Education Code have been met. The local education agency shall document the alternatives to out-of-state residential placement that were considered and the reasons why they were rejected.

(b) Out-of-state placements shall be made only in a privately operated school certified by the California Department of Education.

(c) A plan shall be developed for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. If the child is a ward or dependent of the court, this plan shall be documented in the record.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or a community mental health service, as described in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, is responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the educational and

mental health treatment needs of the pupil in a manner that is cost effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, "parent" is as defined in Section 56028 of the Education Code.

(b) A local educational agency, individualized education program team, or parent may initiate a referral for assessment of the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs, as defined in Section 56026 of the Education Code, and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that satisfy all of the following:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services.

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local educational agency, pursuant to Section 56331 of the Education Code, has provided appropriate counseling and guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code, or behavioral intervention as specified in Section 56520 of the Education Code, as specified in the individualized education program and the individualized

education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of these services were considered and why they were determined to be inadequate or inappropriate.

(c) If referring a pupil to a community mental health service in accordance with subdivision (b), the local educational agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the individualized education program of the pupil, including the initiation, duration, and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local educational agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service if a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(e) If referring a pupil to a community mental health service in accordance with subdivision (d), the local educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.34 and 300.39 of Title 34 of the Code of Federal Regulations.

(5) An explanation of the reasons that counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision does not change the identification and referral responsibilities imposed on local educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for the provision of necessary services. The procedures described in this subdivision shall not delay or impede the referral and assessment process.

(h) A county mental health agency does not have fiscal or legal responsibility for costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

(i) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 36. Section 7576.2 of the Government Code is amended to read:

7576.2. (a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter.

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 7576.3 of the Government Code is amended to read:

7576.3. (a) It is the intent of the Legislature that the Director of the State Department of Mental Health collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices for delivering mental health services to disabled pupils. The best practices may include, but are not limited to:

(1) Interagency agreements in urban, suburban, and rural areas that result in clear identification of responsibilities between local educational agencies and county mental health agencies and result in efficient and effective delivery of services to pupils.

(2) Procedures for developing and amending individualized education programs that include mental health services that provide flexibility to educational and mental health agencies and protect the interests of children in obtaining needed mental health needs.

(3) Procedures for creating ongoing communication between the classroom teacher of the pupil and the mental health professional who is directing the mental health program for the pupil.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 7576.5 of the Government Code is amended to read:

7576.5. (a) If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used

exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 39. Section 7582 of the Government Code is amended to read:

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Care Services, or its designated local agencies, rendered to a child referred by a local education agency for an assessment or a disabled child or youth with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

SEC. 40. Section 7585 of the Government Code is amended to read:

7585. (a) Whenever a department or local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575, and specified in the pupil's individualized education program, the parent, adult pupil, if applicable, or a local educational agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of California Health and Human Services.

(b) When either the Superintendent or the secretary receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The Superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local educational agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the Superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the Superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the director, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local educational agency, either party may appeal to the director, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service

or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent and the secretary shall ensure that funds are available for the provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) This section does not prevent a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

SEC. 41. Section 7586.5 of the Government Code is amended to read:

7586.5. (a) Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency jointly shall submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 42. Section 7586.6 of the Government Code is amended to read:

7586.6. (a) The Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency shall ensure that the State Department of Education and the State Department of Mental Health enter into an interagency agreement by January 1, 1998. It is the intent of the Legislature that the agreement include, but not be limited to, procedures for ongoing joint training, technical assistance for state and local personnel responsible for implementing this chapter, protocols for monitoring service delivery, and a system for compiling data on program operations.

(b) It is the intent of the Legislature that the designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time. It is the intent of the Legislature that the state and local interagency agreements be updated at least every three years or earlier as necessary.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 7586.7 of the Government Code is amended to read:

7586.7. (a) The Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency jointly shall prepare and implement within existing resources a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 7588 of the Government Code is repealed.

SEC. 45. Section 12440.1 of the Government Code is amended to read:

12440.1. (a) The trustees, in conjunction with the Controller, shall implement a process that allows any campus or other unit of the university to make payments of obligations of the university from its revolving fund directly to all of its vendors. Notwithstanding Article 5 (commencing with Section 16400) of Chapter 2 of Part 2 of Division 4 of Title 2, or any other law, the trustees may draw from funds appropriated to the university, for use as a revolving fund, amounts necessary to make payments of obligations of the university directly to vendors. In any fiscal year, the trustees shall obtain the approval of the Director of Finance to draw amounts in excess of 10 percent of the total appropriation to the university for that fiscal year for use as a revolving fund.

(b) Notwithstanding Sections 925.6, 12410, and 16403, or any other law, the trustees shall maintain payment records for three years and make those records available to the Controller for postaudit review, as needed.

(c) (1) Notwithstanding Section 8546.4 or any other law, the trustees shall contract with one or more public accounting firms to conduct a systemwide annual financial statement audit in accordance with generally accepted accounting principles (GAAP), as well as other required compliance audits without obtaining the approval of any other state officer or entity.

(2) The statement of net assets, statement of revenues, expenses, changes in net assets, and statement of cashflows of each campus shall be included as an addendum to the annual systemwide audit. Summary information on transactions with auxiliary organizations for each campus shall also be included in the addendum. Any additional information necessary shall be provided upon request.

(d) The internal and independent financial statement audits of the trustees shall test compliance with procurement procedures and the integrity of the payments made. The results of these audits shall be included in the biennial report required by Section 13405.

(e) As used in this section:

(1) "Trustees" means the Trustees of the California State University.

(2) "University" means the California State University.

SEC. 46. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district or community college district shall not be required to implement or give effect to the statutes, or a portion of the statutes, identified in subdivision (c) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or a portion of the statute, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts or

community college districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or a portion of the statute, or the test claim number utilized by the commission, specifically has been identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered specifically to have been identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it specifically is identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute or executive order, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section.

(c) This section applies only to the following mandates:

(1) School Bus Safety I (CSM-4433) and II (97-TC-22) (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) County Treasury Withdrawals (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

(3) Grand Jury Proceedings (98-TC-27; and Chapter 1170 of the Statutes of 1996, Chapter 443 of the Statutes of 1997, and Chapter 230 of the Statutes of 1998).

(4) Law Enforcement Sexual Harassment Training (97-TC-07; and Chapter 126 of the Statutes of 1993).

(5) Health Benefits for Survivors of Peace Officers and Firefighters (Chapter 1120 of the Statutes of 1996 and 97-TC-25).

(d) This section applies to the following mandates for the 2010–11, 2011–12, and 2012–13 fiscal years only:

(1) Removal of Chemicals (Chapter 1107 of the Statutes of 1984 and CSM 4211 and 4298).

(2) Scoliosis Screening (Chapter 1347 of the Statutes of 1980 and CSM 4195).

(3) Pupil Residency Verification and Appeals (Chapter 309 of the Statutes of 1995 and 96-384-01).

(4) Integrated Waste Management (Chapter 1116 of the Statutes of 1992 and 00-TC-07).

(5) Law Enforcement Jurisdiction Agreements (Chapter 284 of the Statutes of 1998 and 98-TC-20).

(6) Physical Education Reports (Chapter 640 of the Statutes of 1997 and 98-TC-08).

(7) 98.01.042.390-Sexual Assault Response Procedures (Chapter 423 of the Statutes of 1990 and 99-TC-12).

(8) 98.01.059.389-Student Records (Chapter 593 of the Statutes of 1989 and 02-TC-34).

SEC. 47. Section 5651 of the Welfare and Institutions Code is amended to read:

5651. The proposed annual county mental health services performance contract shall include all of the following:

(a) The following assurances:

(1) That the county is in compliance with the expenditure requirements of Section 17608.05.

(2) That the county shall provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585).

(3) That the county shall comply with all requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700), and that the county shall submit cost reports and other data to the department in the form and manner determined by the department.

(4) That the local mental health advisory board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Section 5604.2.

(5) That the county shall comply with all provisions and requirements in law pertaining to patient rights.

(6) That the county shall comply with all requirements in federal law and regulation pertaining to federally funded mental health programs.

(7) That the county shall provide all data and information set forth in Sections 5610 and 5664.

(8) That the county, if it elects to provide the services described in Chapter 2.5 (commencing with Section 5670), shall comply with guidelines established for program initiatives outlined in that chapter.

(9) Assurances that the county shall comply with all applicable laws and regulations for all services delivered.

(b) The county's proposed agreement with the department for state hospital usage as required by Chapter 4 (commencing with Section 4330) of Part 2 of Division 4.

(c) Any contractual requirements needed for any program initiatives utilized by the county contained within this part. In addition, any county may choose to include contract provisions for other state directed mental health managed programs within this performance contract.

(d) Other information determined to be necessary by the director, to the extent this requirement does not substantially increase county costs.

SEC. 48. Section 5701.3 of the Welfare and Institutions Code is amended to read:

5701.3. (a) Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to

this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001–02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 5701.6 of the Welfare and Institutions Code is amended to read:

5701.6. (a) Counties may utilize money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) This section is declaratory of existing law.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 50. Section 11323.2 of the Welfare and Institutions Code is amended to read:

11323.2. (a) Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment or the participant shall have good cause for not participating under subdivision (f) of Section 11320.3. As provided in the welfare-to-work plan entered into between the county and participant pursuant to this article, supportive services shall include all of the following:

(1) Child care.

(A) Paid child care shall be available to every participant with a dependent child in the assistance unit who needs paid child care if the child is 10 years of age or under, or requires child care or supervision due to a physical, mental, or developmental disability or other similar condition as verified by the county welfare department, or who is under court supervision.

(B) To the extent funds are available paid child care shall be available to a participant with a dependent child in the assistance unit who needs paid child care if the child is 11 or 12 years of age.

(C) Necessary child care services shall be available to every former recipient for up to two years, pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code.

(D) A child in foster care receiving benefits under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) or a child who would become a dependent child except for the receipt of federal Supplemental Security Income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) shall be deemed to be a dependent child for the purposes of this paragraph.

(E) The provision of care and payment rates under this paragraph shall be governed by Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code. Parent fees shall be governed by subdivisions (g) and (h) of Section 8263 of the Education Code.

(2) Transportation costs, which shall be governed by regional market rates as determined in accordance with regulations established by the department.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing specifically required for the job, fees, and other necessary costs.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the welfare-to-work plan entered into pursuant to this article shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(b) If provided in a county plan, the county may continue to provide case management and supportive services under this section to former participants who become employed. The county may provide these services for up to the first 12 months of employment to the extent they are not available from other sources and are needed for the individual to retain the employment.

SEC. 51. Section 18356.1 is added to the Welfare and Institutions Code, to read:

18356.1. This chapter shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 52. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services or the State Department of Education may implement Section 4, Sections 7 to 11, inclusive, and Section 50 of this act, through all-county letters, management bulletins, or other similar instructions.

SEC. 53. Notwithstanding any other law, the implementation of Section 4, Sections 7 to 11, inclusive, and Section 50 of this act is not subject to the appeal and resolution procedures for agencies that contract with the State Department of Education for the provision of child care services or the due process requirements afforded to families that are denied services specified in Chapter 19 (commencing with Section 18000) of Division 1 of Title 5 of the California Code of Regulations.

SEC. 54. It is the intent of the Legislature that funding provided in provisions 18 and 26 of Item 6110-161-0001 and provision 9 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2011 for educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) shall be exclusively available for these services only for the 2011–12 and 2012–13 fiscal years.

SEC. 55. (a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are no longer supported by statute due to the amendments in Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(b) The State Department of Education and the appropriate departments within the California Health and Human Services Agency shall review regulations to ensure the appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(c) The State Department of Education and the appropriate departments within the California Health and Human Services Agency may adopt regulations to implement Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Education and the appropriate departments within the California Health and Human Services Agency are hereby exempted, for this purpose, from the requirements of subdivision (b) of Section 11346.1 of the Government Code. For purposes of subdivision (e) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

SEC. 56. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 57. There is hereby appropriated one thousand dollars ($1,000) from the General Fund to the State Department of Education for purposes

of funding the award grants pursuant to Section 49550.3 of the Education Code to school districts, county superintendents of schools, or entities approved by the department for nonrecurring expenses incurred in initiating or expanding a school breakfast program or a summer food service program.

SEC. 58. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O

Hearing Date: October 28, 2016
J:\MANDATES\2015\AEDD\15-AEDD-01\Appeal\TOC 102816.docx

ITEM 2

PROPOSED DECISION

APPEAL OF EXECUTIVE DIRECTOR DECISION

Executive director dismissal of incorrect reduction claim for lack of jurisdiction based on determination that the filing was untimely and, therefore, incomplete.

15-AEDD-01

County of San Diego, Appellant

TABLE OF CONTENTS

RECEIVED
December 28, 2015
Commission on State Mandates

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

KYLE SAND
Senior Deputy
Direct Dial: (619) 531-4894
E-Mail: kyle.sand@sdcounty.ca.gov

December 28, 2015

VIA E-FILING
(hhtp://csm.ca.gov/dropbox.shtml)

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

Re: Appeal of Executive Director's Notice of Untimely Filed Incorrect Reduction Claim.

To the Commission on State Mandates:

The County of San Diego submits this "Appeal of Executive Director's Notice of Untimely Filed Incorrect Reduction Claim." The County submitted an Incorrect Reduction Claim on December 10, 2015 challenging the State Controller's disallowance of costs claimed under Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils Program for the time period of July 1, 2006-June 30, 2009. On December 18, 2015, the Executive Director sent a "Notice of Untimely Filed Incorrect Reduction Claim" instead of a determination of completeness.

Enclosed please find the County of San Diego's appeal of the Executive Director's decision. If you have any questions please do not hesitate to contact the undersigned at (619) 531-6296.

Sincerely,

THOMAS E. MONTGOMERY, County Counsel

By

KYLE SAND, Senior Deputy

11-01866

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SAN DIEGO
THOMAS E. MONTGOMERY
KYLE SAND (SBN 221862)
1600 Pacific Highway, Room 355
San Diego, CA 92101
Telephone: (619) 531-6296
Facsimile: (619) 531-6005

Attorneys for
COUNTY OF SAN DIEGO

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

HANDICAPPED AND DISABLED STUDENTS, HANDICAPPED AND DISABLED STUDENTS II, SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES. FY 06-07, FY 07-08, AND FY 08-09.	**APPEAL OF EXECUTIVE DIRECTOR'S NOTICE OF UNTIMELY FILED INCORRECT REDUCTION CLAIM**

I. Basis for Appeal:

Government Code section 17553, subdivision (d), requires the Commission to determine within ten days of receipt whether an incorrect reduction claim is complete. However, no such determination has yet been made. Instead, the Executive Director deemed the December 10, 2015 filing of the County's Incorrect Reduction Claim ("Claim") to be untimely despite the fact that it was filed within three years of the State Controller's Revised Final Audit Report dated December 18, 2012. (See December 18, 2015 Letter, EXHIBIT "A".)

The plain language of Title 2, Section 1185.1 (c) of the Code of Regulations states that the time to file a claim is "three years from the date of the … final state audit report." By arguing that the date of an earlier report controls, the Executive Director's ignores the plain and ordinary meaning of the word "final" in Section 1185.1 (c). Furthermore, the State Controller was clear that it's December 18, 2012 Revised Final Audit Report was the final determination in this matter and "supersedes our previous report." (EXHIBIT "B".)

The Executive Director incorrectly deemed the County's claim untimely; therefore, the Commission must proceed with the County's claim. If the Commission wishes to address the Executive Director's statute of limitations argument, it should do so at a full hearing of the Commission.

II. Requested Action:

The County of San Diego requests that the Commission find the incorrect reduction claim to be complete and timely.

III. Applicable Facts:

- In December 2012, the County of San Diego received a bound 46 page report from the California State Controller entitled *San Diego County Revised Audit Report.* (EXHIBIT "B") This report superseded a prior report entitled *San Diego County Audit Report* dated March 2012.
- The bound cover of the *Revised Audit Report* is dated "December 2012."
- The first two pages of the *Revised Audit Report* consist of a formal letter from the State Controller's Office dated December 18, 2012. The letter is addressed to the

Chairman of the San Diego County Board of Supervisors and is signed by Jeffrey V. Brownfield, Chief, Division of Audits. The letter states: "This revised final report supersedes our previous report dated March 7, 2012." (Emphasis added.)

- Included in the Revised Audit Report are the following:
  - "Revised Schedule 1"; (EXHIBIT B, Page 6, emphasis added) and
  - "Revised Findings and Recommendations." (EXHIBIT "B", Page 7, emphasis added.)
- The Revised Final Report contained contains recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009.
- The County filed its incorrect reduction claim in this matter on December 10, 2015.
- On Friday, December 18, 2015, Commission staff served a *Notice of Untimely Filed Incorrect Reduction Claim* via email. (EXHIBIT "A".)

IV. Applicable Regulation:

The time period to file an incorrect reduction claim is found in Title 2, Section 1185.1, subdivision (c), of the California Code of Regulations. Section 1185.1 (c) states in plain and unequivocal language:

> "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 to a reimbursement claim." (Emphasis added.)

///
///
///

V. Analysis:

1. The December 2012 "Revised Audit" was the "final state audit report" for the purposes of Section 1185.1(c).

The Claim filed on December 10, 2015 was timely because it was filed "no later than three years" following the date of the final audit report. (Section 1185.1(c).) The December 18, 2012 report *was* the final audit report. The State Controller voided its prior report and stated that "[t]his revised final report supersedes our previous report." (State Controller's Letter, EXHIBIT "B", emphasis added.) "Supersede" means "to annul, make void, or repeal by taking the place of." (Black's Law Dictionary 1497 (8th ed. 2004).) The State Controller could not have been clearer that the December 2012 report was the *final* determination of the matter. The Executive Director's legal conclusion to the contrary is at odds with the undisputed facts and plain language of the Commission's own regulation.

2. Section 1185.1 does not authorize the Executive Director to disregard a superseding revised final report based on a determination that it had "no fiscal effect."

The Executive Director is not merely attempting to interpret a state regulation; she is adding a new qualification that does not presently exist. "Generally, an agency's interpretation of its own regulation is entitled to considerable judicial deference." (*Motion Picture Studio Teachers & Welfare Workers v. Millan* (1996) 51 Cal. App. 4th 1190, 1195, "*Motion Picture Studio*".) However, "the principle of deference is not without limit; it does not permit the agency to disregard the regulation's plain language." (*Ibid.*) The court in *Motion Picture Studio* further stated:

"An agency may not alter a regulation except by the APA process [citation omitted], which is similar to the procedures that govern its adoption. The procedures for adoption, amendment and repeal of a regulation parallel the law applicable to statutory changes. If a state agency believes that the regulation it adopted ought to be changed, it may only accomplish that result through the APA procedure, a process that ordinarily requires advance publication and an opportunity for public comment. (See Gov. Code, § 11346.4, 11346.5, 11346.8.) It may not do so by interpreting the regulation in a manner inconsistent with its plain language." (*Motion Picture Studio, supra*, 51 Cal. App. 4th at 1195 (Emphasis added).)

The Commission has revised Section 1185.1 (c) and its predecessor several times. If the Commission wishes to have the filing period run from the earliest report, letter, or notice that has a "fiscal effect" then the Commission presumably knows how to do so. As is stands today, the Commission promulgated a specific time period in which to file an incorrect reduction claim ("three years following the date of the … final audit report…"). The County's claim was filed during that time period.

3. Reliance on general tort statute of limitations cases is misapplied when the Commission's own regulation sets forth a more specific time period for filing an incorrect reduction claim.

The Executive Director relies on various judicial interpretations of general tort statute of limitations provisions contained in the Code of Civil Procedure. Code of Civil Procedure Section 318 states: "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

In contrast, the Commission adopted a more specific limitations period as promulgated through the Code of Regulations. "'It is well settled ... that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.'" (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 quoting *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724.)

Since the Commission has adopted very a specific limitation period (three years following the date of the ... final audit report) for incorrect reduction claims, reliance on case law interpreting general tort statute of limitation statutes is unnecessary. In addition, the Commission has never interpreted the current version of Section 1185.1 and need not do so now other than to look to the plain meaning of the regulation.

4. Prior Commission Decisions do not support the Executive Director's position.

   A. *Handicapped and Disabled Students* (*County of Orange*) (2011) (05-4282-I-02 and 09-4282-I-04). (EXHIBIT "C")

In *Handicapped and Disabled Students*, the Commission interpreted a predecessor to current Section 1185.1. This prior regulation stated:

> "All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction." (Code of Regulations, title 2, section 1185, subdivision (b) (as amended by Register 2003, No. 17, operative April 21, 2003)

In finding that an incorrect reduction claim was timely filed, the Commission stated: "section 1185 of the Commission's regulations does not require the running of the time period from when a claimant *first* receives notice; but simply states that the time runs from either the remittance advice *or* other notice of adjustment." (*Handicapped Disabled Students* (2011), p. 9) (Emphasis by Commission.) "Thus, when viewed in a light most favorable to the County, and based on the policy determined by the courts favoring the disposition of cases on their merits rather than on procedural grounds, staff finds that the County timely filed the incorrect reduction claim...". (*Ibid.*)

Handicapped and Disabled Students interpreted the plain language of the relevant regulation to find that nothing required the filing period to run from an earlier date; Instead the Commission found that the plain language of the regulation allowed the claim to be filed from *either* the remittance advance *or* notice of adjustment.

B. *Collective Bargaining* (05-4425-I-11). (EXHIBIT "D")

In *Collective Bargaining*, the Commission took a more narrow view of the relevant time period to submit a claim when interpreting even earlier predecessor to Section 1185.1. Former section 1185 (b) stated:

> "All incorrect reduction claims shall be submitted to the commission no later than (3) years following the date of the State Controller's remittance advance notifying the claimant of the reduction." (Code of Regulations, title 2, section 1185 (Register 1999, No. 38).)

In analyzing former Section 1185 (b), the Commission noted that the plain language stated that "notifying the claimant of the adjustment" was the triggering event. (*Collective Bargaining*, p. 19) The Commission stated: "[b]ased on the plain language of

the provision, the Commission's regulation on point is consistent with the general rule that the period of limitation to file an IRC begins to run when the claimant receives notice of a reduction." (*Ibid.*) However, unlike the current regulation, this former regulation clearly stated that "notifying the claimant of the adjustment" through a remittance advance was the triggering event. In contrast, Section 1185.1 states that a claim may be filed "no later than three years following the date of the State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim other conditions". (Section 1185.1 (c).) Therefore, *Collective Bargaining* is not factually applicable to the Claim because it was interpreting entirely different regulatory language.

C. *Handicapped and Disabled Students (County of San Mateo)*(2015) (05-4282-I-03) (EXHIBIT "E")

Recently, in *Handicapped and Disabled Students* (*San Mateo*), the Commission rejected an argument that the County of San Mateo filed an untimely claim involving the same regulation that was applicable in *Handicapped and Disabled Students* (*County of Orange*). The Commission considered the plain language of the State Controller's cover letters, final audit report, and remittance in finding when the final determination occurred. The Commission found that although an earlier audit report "identifies the claim components adjusted, the amounts, and the reasons for adjustment, and constitutes 'other notice of adjustment notifying the claimant of a reduction,' the language inviting further informal dispute resolution supports the finding that the audit report did not

constitute the Controller's final determination on the subject claims." (*Handicapped and Disabled Students* (*San Mateo*), p. 14)

The Commission further stated: "[b]ased on the evidence in the record, the remittance advice letters could be interpreted as 'the last essential element,' and the audit report could be interpreted as not truly final based on the plain language of the cover letter." (*Ibid., emphasis added.*) In addition, both San Mateo County and the State Controller's Office relied on the date of the later document. (*Ibid.*)

Similarly here, the State Controller's Office issued subsequent new document that became the final determination on the subject claims. The plain language of the Revised Final Audit Report including its title, cover letter, Revised Schedule 1, and Revised Findings and Recommendations indicate that it was State Controller's final determination on the subject claim.

Furthermore, both the County and the State Controller appear to have relied on the date of the final report. For example, the State Controller's website indicates that the date of their report is actually "12/20/12". (Available at: <http://www.sco.ca.gov/aud_mancost_la_costrpt.html>, as of 12/24/15.) (EXHIBIT "F".) Accordingly, December 2012 is the operative date of the "final report" for the purposes of Section 1185.1.

VI. Conclusion:

The County's filed its incorrect reduction claim no later than three years from the final audit report in compliance with Section 1185.1 (c). The December 2012 final audit report was the State Controller's final determination on the subject claims. The State

Controller specifically stated that the "revised final report supersedes our previous report." The County's position is consistent with the plain language of the regulation, case law, and the Commission's prior decisions. Therefore, the Commission must direct the Executive Director to deem the County's incorrect reduction claim complete.

Dated:

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By

KYLE SAND, Senior Deputy
Attorneys for the County of San Diego

EXHIBIT "A"

Sand, Kyle

Subject: FW: Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services IRC Filing
Attachments: Untimely Filed Letter.pdf

From: Jill Magee [mailto:jill.magee@csm.ca.gov]
Sent: Friday, December 18, 2015 2:41 PM
To: Macchione, Lisa M
Cc: Heidi Palchik
Subject: Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services IRC Filing

Good Afternoon Ms. Macchione,

Please find the attached letter regarding the incorrect reduction claim filing you submitted on behalf of the County of San Diego for the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program. Commission staff has determined that this filing is untimely.

Please contact me if you have any questions.

Thank you,
Jill

Jill Magee
Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
www.csm.ca.gov
Phone: (916) 323-3562
Fax: (916) 445-0278

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

December 18, 2015

Ms. Lisa Macchione
County of San Diego, Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

Mr. Alfredo Aguirre
County of San Diego
Behavioral Health Services
3255 Camino Del Rio South
San Diego, CA 92108

Re: Notice of Untimely Filed Incorrect Reduction Claim
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)
Government Code Sections 7570-7588; Statutes 1984, Chapter 1741; Statutes1985, Chapter 1274; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654;
California Code of Regulations, Title 2, Sections 60000-60610 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No.33])
Fiscal Years 2006-2007, 2007-2008, and 2008-2009
County of San Diego, Claimant

Dear Ms. Macchione and Mr. Aguirre:

On December 10, 2015, the Commission on State Mandates (Commission) received an incorrect reduction claim (IRC) filing on the *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) consolidated program on behalf of the County of San Diego (claimant). On December 16, 2015, claimant revised the filing to include the consolidated parameters and guidelines.

Commission staff has reviewed this filing and determined that it is not timely filed. Section 1185.1(c), of the Commission's regulations states: "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 to a reimbursement claim."

The incorrect reduction claim was filed with the Commission more than three years following the State Controller's Final Audit Report, dated March 7, 2012. Although the filing includes a letter dated December 18, 2012, from the State Controller, indicating that the Revised Audit Report superseded the previous report and included a recalculation of offsetting revenue for fiscal year 2008-2009, the revision had no fiscal effect on the reductions made for fiscal year 2008-2009 and it appears that no further reductions were made by the revised audit.

The California Supreme Court has said, "Critical to applying a statute of limitations is determining the point when the limitations period begins to run."[1] Generally, "a plaintiff must

[1] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

file suit within a designated period after the cause of action accrues."[2] The cause of action accrues, the Court said, "when [it] is complete with all of its elements."[3] Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"[4] For IRCs, the "last element essential to the cause of action" which begins the running of the period of limitation pursuant to Government Code section 17558.5 and section 1185.1 of the Commission's regulations, is a written notice to the claimant of the adjustment that explains the reason for the adjustment. This interpretation is consistent with previously adopted Commission decisions.[5]

Here, the State Controller's Final Audit Report, dated March 7, 2012, provided claimant written notice of the adjustment and reasons for the adjustment, triggering the three-year limitation to file an IRC. Therefore, the IRC would have to have been filed on or before March 9, 2015 to be timely filed. A later revised audit which incorporates the prior audit findings and makes no new reductions does not trigger a new period of limitation for those earlier reductions.

Pursuant to the Commission's regulations, you may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

The appeal may be submitted electronically via the Commission's e-filing system pursuant to section 1181.3 of the Commission's regulations. Please see the Commission's website at http://www.csm.ca.gov/dropbox.shtml.

Sincerely,

Heather Halsey
Executive Director

---

[2] *Ibid* [citing Code of Civil Procedure section 312].

[3] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[4] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

[5] See Commission on State Mandates, Decision, *Collective Bargaining*, 05-4425-I-11, adopted December 5, 2014, and Decision, *Handicapped and Disabled Students*, 05-4282-I-03 adopted September 25, 2015.

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 December 18, 2015, I served via email to lisa.macchione@sdcounty.ca.gov the:

> **Notice of Untimely Filed Incorrect Reduction Claim**
> *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)
> Government Code Sections 7570-7588; Statutes 1984, Chapter 1741; Statutes1985, Chapter 1274; Statutes 1994, Chapter 1128; Statutes 1996, Chapter 654;
> California Code of Regulations, Title 2, Sections 60000-60610 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No.33])
> Fiscal Years 2006-2007, 2007-2008, and 2008-2009
> County of San Diego, Claimant

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 December 18, 2015 at Sacramento, California.

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

EXHIBIT "B"

SAN DIEGO COUNTY

Revised Audit Report

CONSOLIDATED HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SEDP PROGRAM

Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654 Statutes of 1996

July 1, 2006, through June 30, 2009

JOHN CHIANG
California State Controller

December 2012

JOHN CHIANG
California State Controller

December 18, 2012

Honorable Ron Roberts, Chairman
Board of Supervisors
County Administration Center
San Diego County
1600 Pacific Highway, Room 335
San Diego, CA 92101

Dear Mr. Roberts:

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654, Statutes of 1996) for the period of July 1, 2006, through June 30, 2009.

This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.

The county claimed $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable. The costs are unallowable because the county overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated offsetting reimbursements. The State paid the county $4,106,959. The State will pay allowable costs claimed that exceed the amount paid, totaling $7,544,932, contingent upon available appropriations.

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 website 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,

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/bf

cc: Jim Lardy, Finance Officer
Health and Human Services Agency
San Diego County
Alfredo Aguirre, Deputy Director
Mental Health Services
Health and Human Services Agency
San Diego County
Lisa Macchione, Senior Deputy Counsel
Finance and General Government
County Administration Center
San Diego County
Randall Ward, Principal Program Budget Analyst
Mandates Unit, Department of Finance
Carol Bingham, Director
Fiscal Policy Division
California Department of Education
Erika Cristo
Special Education Program
Department of Mental Health
Chris Essman, Manager
Special Education Division
California Department of Education
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

Contents

Revised Audit Report

Summary

The State Controller's Office audited the costs claimed by San Diego County for the legislatively mandated Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1128, Statutes of 1994; and Chapter 654 Statutes of 1996) for the period of July 1, 2006, through June 30, 2009.

The county claimed $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable. The costs are unallowable because the county overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated other reimbursements. The State paid the county $4,106,959. The State will pay allowable costs claimed that exceed the amount paid, totaling $7,544,932, contingent upon available appropriations.

Background

Handicapped and Disabled Students (HDS) Program

Chapter 26 of the Government Code, commencing with section 7570, and Welfare and Institutions Code section 5651 (added and amended by Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) require counties to participate in the mental health assessment for "individuals with exceptional needs," participate in the expanded "Individualized Education Program" (IEP) team, and provide case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed." These requirements impose a new program or higher level of service on counties.

On April 26, 1990, the Commission on State Mandates (CSM) adopted the statement of decision for the HDS Program and determined that this legislation imposed a state mandate reimbursable under Government Code section 17561. The CSM adopted the parameters and guidelines for the HDS Program on August 22, 1991, and last amended it on January 25, 2007.

The parameters and guidelines for the HDS Program state that only 10% of mental health treatment costs are reimbursable. However, on September 30, 2002, Assembly Bill 2781 (Chapter 1167, Statutes of 2002) changed the regulatory criteria by stating that the percentage of treatment costs claimed by counties for fiscal year (FY) 2000-01 and prior fiscal years is not subject to dispute by the SCO. Furthermore, this legislation states that, for claims filed in FY 2001-02 and thereafter, counties are not required to provide any share of these costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Welfare and Institutions Code section 17600 et seq. (realignment funds).

Furthermore, Senate Bill 1895 (Chapter 493, Statutes of 2004) states that realignment funds used by counties for the HDS Program "are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services" and that the finding by the Legislature is "declaratory of existing law" (emphasis added).

The CSM amended the parameters and guidelines for the HDS Program on January 26, 2006, and corrected them on July 21, 2006, allowing reimbursement for out-of-home residential placements beginning July 1, 2004.

Handicapped and Disabled Students (HDS) II Program

On May 26, 2005, the CSM adopted a statement of decision for the HDS II Program that incorporates the above legislation and further identified medication support as a reimbursable cost effective July 1, 2001. The CSM adopted the parameters and guidelines for this new program on December 9, 2005, and last amended them on October 26, 2006.

The parameters and guidelines for the HDS II Program state that "Some costs disallowed by the State Controller's Office in prior years are now reimbursable beginning July 1, 2001 (e.g., medication monitoring). Rather than claimants re-filing claims for those costs incurred beginning July 1, 2001, the State Controller's Office will reissue the audit reports." Consequently, we are allowing medication support costs commencing on July 1, 2001.

Seriously Emotionally Disturbed Pupils (SEDP) Program

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

On May 25, 2000, the CSM adopted the statement of decision for the SEDP Program and determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561. The CSM adopted the parameters and guidelines for the SEDP Program on October 26, 2000. The CSM determined that the following activities are reimbursable:

- Payment of out-of-state residential placements;
- Case management of out-of-state residential placements (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 IEP; and
- Program management, which includes parent notifications as required; payment facilitation; and all other activities necessary to ensure that a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The CSM consolidated the parameters and guidelines for the HDS, HDS II, and SEDP Programs for costs incurred commencing with FY 2006-07 on October 26, 2006, and last amended them on September 28, 2012. On September 28, 2012, the CSM stated that Statutes of 2011, Chapter 43, "eliminated the mandated programs for counties and transferred responsibility to school districts, effective July 1, 2011. Thus, beginning July 1, 2011, these programs no longer constitute reimbursable state-mandated programs for counties." The consolidated program replaced the prior HDS, HDS II, and SEDP mandated programs. The parameters and guidelines establish the state mandate and define reimbursable criteria. In compliance with Government Code section 17558, the SCO issues claiming instructions 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 Consolidated HDS, HDS II, and SEDP Program for the period of July 1, 2006, through June 30, 2009.

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 $14,484,766 ($14,494,766 less a $10,000 penalty for filing a late claim) for costs of the Consolidated HDS, HDS II, and SEDP Program. Our audit disclosed that $11,651,891 is allowable and $2,832,875 is unallowable.

For the FY 2006-07 claim, the State paid the county $4,106,959. Our audit disclosed that $5,687,326 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $1,580,367, contingent upon available appropriations.

For the FY 2007-08 claim, the State made no payment to the county. Our audit disclosed that $5,964,565 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling $5,964,565, contingent upon available appropriations.

For the FY 2008-09 claim, the State made no payment to the county. Our audit disclosed that claimed costs are unallowable.

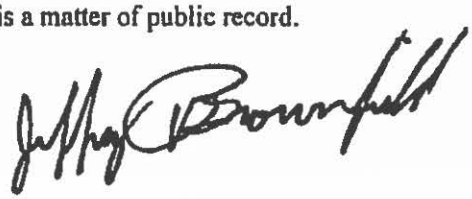
Views of Responsible Officials

We issued a draft audit report on February 6, 2012. Lisa Macchione, Senior Deputy County Counsel, responded by letter dated February 29, 2012 (Attachment), disagreeing with the audit results for Finding 2. The county did not respond to Findings 1, 3, and 4. We issued the final report on March 7, 2012.

Subsequently, we revised our audit report based on finalized Early and Periodic, Screening, Diagnosis and Treatment revenues for FY 2008-09. We recalculated offsetting reimbursements and revised Finding 4. The revision has no effect on allowable total program costs for FY 2008-09. On October 30, 2012, we advised Chona Penalba, Principal Accountant, Fiscal Services Division, of the revisions. This revised final report includes the county's response to our March 7, 2012, final report.

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.



JEFFREY V. BROWNFIELD
Chief, Division of Audits

December 20, 2012

Revised Schedule 1—
Summary of Program Costs
July 1, 2006, through June 30, 2009

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference[1]
July 1 2006, through June 30, 2007				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)	Finding 1
Transfers and interim placements	1,923,625	1,890,217	(33,408)	Findings 1, 2
Authorize/issue payments to providers	5,802,928	4,741,441	(1,061,487)	Finding 2
Psychotherapy/other mental health services	7,868,926	7,837,430	(31,496)	Finding 1
Participation in due process hearings	5,330	-	(5,330)	Finding 3
Total direct and indirect costs	16,484,971	15,349,258	(1,135,713)	
Less offsetting reimbursements	(9,887,542)	(9,651,932)	235,610	Finding 4
Total claimed amount	6,597,429	5,697,326	(900,103)	
Less late claim penalty	(10,000)	(10,000)	-	
Total program cost	$ 6,587,429	5,687,326	$ (900,103)	
Less amount paid by State[3]		(4,106,959)		
Allowable costs claimed in excess of (less than) amount paid		$ 1,580,367		
July 1 2007, through June 30, 2008				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 1,040,292	$ 1,032,856	$ (7,436)	Finding 1
Transfers and interim placements	1,827,332	1,822,587	(4,745)	Findings 1, 2
Authorize/issue payments to providers	6,738,212	6,257,153	(481,059)	Finding 2
Psychotherapy/other mental health services	8,565,332	8,514,338	(50,994)	Finding 1
Participation in due process hearings	10,071	-	(10,071)	Finding 3
Total direct and indirect costs	18,181,239	17,626,934	(554,305)	
Less offsetting reimbursements	(11,589,942)	(11,662,369)	(72,427)	Finding 4
Total claimed amount	6,591,297	5,964,565	(626,732)	
Total program cost	$ 6,591,297	5,964,565	$ (626,732)	
Less amount paid by State[3]		-		
Allowable costs claimed in excess of (less than) amount paid		$ 5,964,565		
July 1 2008, through June 30, 2009				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 1,625,079	$ 1,207,589	$ (417,490)	Finding 1
Transfers and interim placements	722,633	548,944	(173,689)	Findings 1, 2
Authorize/issue payments to providers	6,224,038	6,125,362	(98,676)	Finding 2
Psychotherapy/other mental health services	9,749,679	9,198,502	(551,177)	Finding 1
Participation in due process hearings	46,636	46,636	-	
Total direct and indirect costs	18,368,065	17,127,033	(1,241,032)	
Less offsetting reimbursements	(17,062,025)	(17,382,168)	(320,143)	Finding 4
Total claimed amount	1,306,040	(255,135)	(1,561,175)	
Adjustment to eliminate negative balance	-	255,135	255,135	
Total program cost	$ 1,306,040	-	$(1,306,040)	
Less amount paid by State[3]		-		
Allowable costs claimed in excess of (less than) amount paid		$ -		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference[1]
Summary: July 1 2006 through June 30, 2009				
Direct and indirect costs:[2]				
Referral and mental health assessments	$ 3,549,533	$ 3,120,615	$ (428,918)	
Transfers and interim placements	4,473,590	4,261,748	(211,842)	
Authorize/issue payments to providers	18,765,178	17,123,956	(1,641,222)	
Psychotherapy/other mental health services	26,183,937	25,550,270	(633,667)	
Participation in due process hearings	62,037	46,636	(15,401)	
Total direct and indirect costs	53,034,275	50,103,225	(2,931,050)	
Less offsetting reimbursements	(38,539,509)	(38,696,469)	(156,960)	
Total claimed amount	14,494,766	11,406,756	(3,088,010)	
Adjustment to eliminate negative balance	-	255,135	255,135	
Less late claim penalty	(10,000)	(10,000)	-	
Total program cost	$ 14,484,766	11,651,891	$ (2,832,875)	
Less amount paid by State[3]		(4,106,959)		
Allowable costs claimed in excess of (less than) amount paid		$ 7,544,932		

[1] See the Findings and Recommendations section.

[2] The county incorrectly claimed indirect costs associated with each cost component under the direct cost component.

[3] County received Categorical payment from the California Department of Mental Health from FY 2009-10 budget.

Revised Findings and Recommendations

FINDING 1— Overstated mental health services unit costs and indirect (administrative) costs

The county overstated mental health services unit costs and indirect (administrative) costs by $1,261,745 for the audit period.

The county claimed mental health services costs to implement the mandated program that were not fully based on actual costs. The county determined its service costs based on preliminary units and rates. The county ran unit-of-service reports to support its claims. These reports did not fully support the units of service claimed and contained duplicated units and unallowable costs including crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services.

The county claimed rehabilitation costs for individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services. The services are provided in accordance with a definition that includes a broad range of services, including certain fringe services such as social skills, daily living skills, meal preparation skills, personal hygiene, and grooming. Based on the Commission on State Mandate's (CSM) statement of decision dated May 26, 2011, the portions of rehabilitation services related to socialization are not reimbursable under the parameters and guidelines. The statement of decision relates to an incorrect reduction claim filed by Santa Clara County for the Handicapped and Disabled Students (HDS) Program. In light of the CSM decision, the county must separate the ineligible portions of the service. To date, the county has not provided our office with sufficient documentation to identify the eligible portion of claimed rehabilitation services.

We recalculated mental health services unit costs based on actual, supportable units of service provided to eligible clients using the appropriate unit rates that represented actual cost to the county. We excluded duplicated units and ineligible crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation evaluation services.

The county incorrectly capped its administrative rates at 15% and applied the rates to costs based on preliminary units and rates. For fiscal year (FY) 2007-08 and FY 2008-09 the county understated its administrative rate by incorrectly capping it at 15%. Additionally, the county incorrectly used FY 2007-08 data when computing its FY 2008-09 administrative rate.

We recalculated administrative cost rates using a method that is consistent with the cost reports submitted to the California Department of Mental Health (DMH) and by not capping the rates at 15%. We applied the rates to eligible direct costs.

The following table summarizes the overstated mental health services unit costs and indirect (administrative) costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Referral and mental health assessments				
Units of service/unit rates	$ (3,406)	$ (10,025)	$ (423,591)	$ (437,022)
Administrative costs	(586)	2,589	6,101	8,104
Total referral and mental health assessments	(3,992)	(7,436)	(417,490)	(428,918)
Transfers and interim placements				
Units of service/unit rates	(18,165)	(9,455)	(178,999)	(206,619)
Administrative costs	(2,561)	4,710	5,310	7,459
Total transfers and interim placements	(20,726)	(4,745)	(173,689)	(199,160)
Psychotherapy/other mental health services				
Rehabilitation costs	-	-	(129,585)	(129,585)
Units of service/unit rates	(27,089)	(52,308)	(425,730)	(505,127)
Administrative costs	(4,407)	1,314	4,138	1,045
Total psychotherapy/other mental health services	(31,496)	(50,994)	(551,177)	(633,667)
Audit adjustment	$ (56,214)	$ (63,175)	$ (1,142,356)	$ (1,261,745)

The program's parameters and guidelines specify that the State will reimburse only actual increased costs incurred to implement the mandated activities that are supported by source documents that show the validity of such costs. The parameters and guidelines do not identify crisis intervention as an eligible service.

The parameters and guidelines (section IV.H.) reference Title 2, *California Code of Regulations* (CCR), section 60020, subdivision (i), for reimbursable psychotherapy or other mental health treatment services. This regulation does not include socialization services. The CSM's May 26, 2011 statement of decision also states that the portion of the services provided that relate to socialization are not reimbursable.

The parameters and guidelines further specify that to the extent the DMH has not already compensated reimbursable administrative costs from categorical funding sources, the costs may be claimed.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

- Ensure that only actual and supported costs for program-eligible clients are claimed in accordance with the mandate program.
- Compute indirect cost rates using a method that is consistent with the cost allocations in the cost report submitted to the DMH and apply administrative cost rates to eligible and supported direct costs.
- Apply all relevant administrative revenues to valid administrative costs.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

FINDING 2— Overstated residential placement costs

The county overstated residential placement costs by $1,653,904 for the audit period.

The county claimed board-and-care costs and mental health treatment "patch" costs for residential placements in out-of-state facilities that are operated on a for-profit basis. Only placements in facilities that are operated on a not-for-profit basis are eligible for reimbursement.

The county claimed board-and-care costs for clients incurred outside of the clients' authorization period. Only payments made for clients with a valid authorization for placement in a residential facility are eligible for reimbursement.

The county claimed board-and-care costs net of the California Department of Social Services reimbursement (40% state share). However, the county did not consider Local Revenue Funds applied to SED costs when computing its net costs.

We adjusted costs claimed for residential placements in out-of-state facilities that are operated on a for-profit basis, as well as costs associated with board-and-care costs for clients incurred outside of the clients' authorization period. Additionally, we applied Local Revenue Funds to eligible board-and-care costs in order to arrive at the county's net cost.

The following table summarizes the overstated residential placement costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Transfers and interim placements				
Local revenue funds	$ (12,682)	$ -	$ -	$ (12,682)
Total transfers and interim placements	(12,682)	-	-	$ (12,682)
Authorize/issue payments to providers				
Ineligible placements				
Board and care	(451,719)	(251,128)	(50,777)	(753,624)
Treatment	(373,380)	(215,136)	(44,955)	(633,471)
Local revenue funds	(217,649)	-	-	(217,649)
Unauthorized payments	(18,739)	(14,795)	(2,944)	(36,478)
Total authorize/issue payments to providers	(1,061,487)	(481,059)	(98,676)	(1,641,222)
Audit adjustment	$(1,074,169)	$(481,059)	$ (98,676)	$(1,653,904)

The parameters and guidelines (section IV.C.1) specify that the mandate is to reimburse counties for payments to vendors providing mental health services to pupils in out-of-state residential placements as specified in Government Code section 7576, and Title 2, 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 be paid only to a group home, organized, and operated on a nonprofit basis.

The parameters and guidelines (section IV.G.) reference Welfare and Institutions Code (WIC), section 18355.5, which prohibits a county from claiming reimbursement for its 60% share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in WIC section 17600 and receives these funds.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county take steps to ensure that:
>
> - Only actual and supported costs for program eligible clients are claimed in accordance with the mandate program.
> - It only claims out-of-state residential placements that are in agencies owned and operated on a non-profit basis.
> - Each residential placement has a valid authorization for placement.
> - Costs claimed are reduced by the portion funded with Local Revenue Funds.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

> The State's position is that the County overstated residential placement costs by $1,653,904 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of $1,387,095 (board and care costs of $753,624 and treatment costs of $633,471) for out-of-state residential placement of SED pupils owned and operated for profit [*sic*]. 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 for Out-of-State Residential Placements for Profit facilities for July 1, 2006 – June 30, 2009 attached hereto as Exhibit A-4. 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*. Theses [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 Are 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 Covet 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 waivered 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 California 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 of 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 comment.

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 was not organized and operated on a nonprofit basis until its Articles of Incorporation as a nonprofit entity in the state of Utah were approved on January 6, 2009. We only allowed costs incurred by the county for residential placements made at the Provo Canyon facility when it became a nonprofit.

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 the finding and our previous response, 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. The unallowable treatment and board-and-care vendor payments claimed result from the county placement of clients in non-reimbursable out-of-state residential facilities. The 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 3— Duplicate due process hearing costs

The county claimed $15,401 in duplicate due process hearing costs for the audit period.

The county claimed allowable due process hearing costs. For FY 2006-07 and FY 2007-08 the county included these costs in the pool of direct costs used to compute the unit rates in the county's cost reports submitted to the DMH. Consequently, due process hearing costs claimed for FY 2006-07 and FY 2007-08 were also allocated through the unit rates to various mental health programs, including the Consolidated HDS, HDS II, and SEDP Program claims. Allowing the FY 2006-07 and FY 2007-08 due process hearing costs would result in duplicate reimbursement.

We did not allow the claimed FY 2006-07 and FY 2007-08 due process hearing costs because they resulted in a duplication of claimed costs.

The following table summarizes the duplicated due process hearing costs claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
Participation in due process hearings	$ (5,330)	$ (10,071)	$ -	$ (15,401)
Audit adjustment	$ (5,330)	$ (10,071)	$ -	$ (15,401)

The parameters and guidelines specify that the State will reimburse only actual increased costs incurred to implement the mandated activities and supported by source documents that show the validity of such costs.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county ensure that only actual and supported costs for program-eligible clients are claimed in accordance with the mandate program. Furthermore, we recommend that the county only claim reimbursement for allowable direct costs that are not included as a part of its total cost used to compute the unit rates.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

FINDING 4— Understated offsetting reimbursements

The county understated other reimbursements by $156,960 for the audit period.

The county understated Individuals with Disabilities Education Act (IDEA) grant reimbursements for the audit period, and DMH Categorical grant reimbursements for FY 2008-09, by claiming preliminary grant amounts.

The county overstated Short-Doyle/Medi-Cal Federal Financing Participation Funds (SD/MC FFP), and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) reimbursements by applying the funding shares to service costs not fully based on actual costs. The county determined its service costs based on preliminary units and rates. The county ran unit-of-service reports to support its claims. These reports did not fully support the units of service claimed and contained duplicate units and unallowable costs including crisis intervention, individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation-evaluation services.

The county claimed costs for individual rehabilitation, group rehabilitation, family rehabilitation, and rehabilitation-evaluation services that may include ineligible socialization services that are not reimbursable under the parameters and guidelines. Based on the CSM's statement of decision dated May 26, 2011, the portions of rehabilitation services related to socialization are not reimbursable under the parameters and guidelines. The county must separate the ineligible portions of the rehabilitation service. To date, the county has not provided our office with any documentation to identify the eligible portion of claimed rehabilitation services. Therefore, we are excluding the portion of reimbursements that relate to claimed rehabilitation services.

The following table summarizes the overstated offsetting reimbursements claimed:

	Fiscal Year			
	2006-07	2007-08	2008-09	Total
IDEA	$ 202,469	$ (90,847)	$ (487,781)	$ (376,159)
DMH Categorical payment	-	-	(406,984)	(406,984)
SD/MC FFP:				
Rehabilitation costs			48,090	48,090
Units of service/unit rates	(11,373)	(17,438)	11,132	(17,679)
EPSDT:				
Rehabilitation costs			24,326	24,326
Units of service/unit rates	44,514	35,858	491,074	571,446
Total other reimbursements	$ 235,610	$ (72,427)	$ (320,143)	$ (156,960)

The parameters and guidelines specify that any direct payments (Categorical funds, SD/MC FFP, EPSDT, IDEA, and other offsets such as private insurance) received from the State that are specifically allocated to the program, and/or any other reimbursement received as a result of the mandate, must be deducted from the claim.

Recommendation

In our previous final report dated March 7, 2012, we recommended the following:

> We recommend that the county ensure that appropriate revenues are identified and applied to valid costs.

No recommendation is applicable for this revised report as the consolidated program no longer is mandated.

County's Response

The county did not respond to the audit finding.

SCO's Comment

Subsequent to the issuance of our final report on March 7, 2012, the DMH issued its EPSDT settlement for FY 2008-09. We recalculated offsetting reimbursements and revised Finding 4 to reflect the actual funding percentage. As a result, the finding was reduced by $184,731.

Attachment—
County's Response to
Draft Audit Report

THOMAS E. MONTGOMERY
COUNTY COUNSEL

DEBORAH A. McCARTHY
ASSISTANT COUNTY COUNSEL

NATHAN C. NORTHUP
CLAUDIA ANZORES
C. ELLEN PILSECKER
CHIEF DEPUTIES

County of San Diego
OFFICE OF COUNTY COUNSEL

COUNTY ADMINISTRATION CENTER
1600 PACIFIC HIGHWAY, ROOM 355
SAN DIEGO, CALIFORNIA 92101-2469
(619) 531-4860 FAX (619) 531-6005

February 29, 2012

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

Re: Response to Consolidated Handicapped and Disabled Students (HDS), HDS II, and SEDP Program Audit for the Period of July 1, 2006 through June 30, 2009

Dear Mr. Spano:

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 Consolidated Handicapped and Disabled Students (HDS), HDS II, and SEDP Program Audit for the Period of July 1, 2006 through June 30, 2009. The County received the report on February 7, 2012 and received an extension from Mr. Jim L. Spano, Chief, Mandated Audits Bureau to submit its response to the report on or before February 29, 2012. The County is submitting this response and its management representation letter in compliance with that extension on February 29, 2012.

As directed in the draft report, the County's response will address the accuracy of the audit findings. There were four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs. The County claimed $14,484,766 for the mandated programs for the audit period and $4,106,959 has already been paid by the State. The State Controller's Office's audit found that $11,651,891 is allowable and $2,832,875 is unallowable. The unallowable costs as determined by State Controller's Office occurred primarily because the State alleges the County overstated residential placement costs by $1,653,904 (the County disputes

$1,387,095) for the audit period. As stated above, the County disputes Finding 2 and asserts that $1,387,095 are allowable costs that are due the County for the audit period.

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

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By L. M. Macchione
LISA M. MACCHIONE, Senior Deputy

LMM:vf
11-01866
Encs.

COUNTY OF SAN DIEGO'S RESPONSE TO LEGISLATIVELY MANDATED CONSOLIDATED HANDICAPPED AND DISABLED STUDENTS (HDS), HDS II, AND SERIOUSLY EMOTIONALLY DISTURBED PUPILS (SEDP) PROGRAM AUDIT FOR THE PERIOD OF JULY 1, 2006 THROUGH JUNE 30, 2009

Summary

The State Controller's Office audited the costs claimed by County for the legislatively mandated Consolidated handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (SEDP) Program for the period of July 1, 2006 through June 30, 2009. The County claimed $14,484,766 for the mandated program, and the State found $11,651,891 is allowable and $2,832,875 is unallowable. The State alleges that the unallowable costs occurred because the County overstated mental health services costs, administrative costs, and residential placement costs, duplicated due process hearing costs, and understated other reimbursements. The State has broken down the unallowable costs claimed into four findings. The County disputes the second finding regarding the alleged overstated residential placement costs and does not dispute the first finding relating to overstated mental health services unit costs and indirect (administrative) costs, the third finding relating to duplicate due process hearing costs or the fourth finding relating to understated other reimbursements.

The County disputes Finding 2 – overstated residential placement costs - 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).

Response To Finding 2 – Overstated Residential Placement Costs

The State's position is that the County overstated residential placement costs by $1,653,904 for the audit period; and the County disputes this finding. The County specifically disputes the finding that it claimed ineligible vendor payments of $1,387,095.00 (board and care costs of $753,624 and treatment costs of $633,471) 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 for Out-of-State Residential Placements for Profit facilities for July 1, 2006 - June 30, 2009 attached hereto as Exhibit A-4.

In support of its position, the County provides the following arguments and Exhibits A through C attached hereto.[1]

1. California Law Prohibiting For-Profit Placements is Inconsistent with Both Federal Law, Which Does Not Have 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:

---

[1] County acknowledges that as of July 1, 2011 the various sections of the Government Code, Welfare and Institutions Code, Education Code and Family Code mandating that counties provide educationally related mental health services to students on individualized education plans ("IEP") became inoperative and as of January 1, 2012 these sections were repealed. It should be made clear, however, that counties were still mandated to provide educationally related mental health services to eligible students on IEPs during the audit period and therefore, all arguments made within this audit response are relevant and valid for the audit period.

"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(o)(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*. Theses 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 Are 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 is therefore 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 waivered 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 $1,387,095.00 as set forth in Exhibits A-1 through A-4 should be allowed.

Dated: February 29, 2012

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By

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

Summary of July 01 2006- June 30 2007	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 884,162	$ 880,170	$ (3,992)
Transfers and interim placements	$ 1,923,825	$ 1,890,217	$ (33,408)
Psychotherapy /other mental health services	$ 7,868,926	$ 7,837,430	$ (31,496)
Authorize/else payments to providers:			$ -
Vendor Reimbursement	$ 5,768,131	[redacted]	$ (1,081,487)
Travel	$ 14,797	$ 14,797	$ -
Participation in due process hearings	$ 6,330	$ -	$ (6,330)
Sub-Total program costs	$ 16,464,971	$ 15,349,258.00	$ (1,135,713)
Less: Other reimbursements	$ (9,887,542)	$ (9,651,932)	$ 235,610
Total claimed amount	$ 6,597,429	$ 5,697,326	$ (900,103)
Less: Late filing penalty	$ (10,000)	$ (10,000)	$ -
Total Program Costs	$ 6,587,429	$ 5,687,326	$ (900,103)
Less: Amount paid by the State		$ (4,106,959)	
Allowable costs claimed in excess of amount paid		$ 1,580,367	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 373,380.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 481,719.00	
Total		[redacted]	

Summary of July 01 2007- June 30 2008	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,040,292	$ 1,032,858	$ (7,438)
Transfers and interim placements	$ 1,827,532	$ 1,822,587	$ (4,745)
Psychotherapy /other mental health services	$ 8,565,332	$ 8,514,338	$ (50,994)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 8,724,027	[redacted]	$ (481,059)
Travel	$ 14,185	$ 14,185	$ -
Participation in due process hearings	$ 10,071	$ -	$ (10,071)
Sub-Total program costs	$ 18,181,239	$ 17,626,934	$ (554,305)
Less: Other reimbursements	$ (11,589,942)	$ (11,962,369)	$ (72,427)
Total claimed amount	$ 6,591,297	$ 5,964,565	$ (626,732)
Total Program Costs	$ 6,591,297	$ 5,964,565	$ (626,732)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ 5,964,565	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325		$ 218,136.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325		$ 251,128.00	
Total		[redacted]	

Exh. A-2

Summary of July 01 2008- June 30 2009	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 1,625,079	$ 1,207,589	$ (417,490)
Transfers and interim placements	$ 722,833	$ 546,944	$ (175,889)
Psychotherapy /other mental health services	$ 9,749,679	$ 9,198,502	$ (551,177)
Authorize/issue payments to providers:			$ -
Vendor Reimbursement	$ 8,211,566	[redacted]	$ (98,676)
Travel	$ 12,472	$ 12,472	$ -
Participation in due process hearings	$ 46,536	$ 46,536	$ -
Sub-Total program costs	$ 18,368,086	$ 17,127,033	$ (1,241,032)
Less: Other reimbursements	$ (17,062,025)	$ (17,666,899)	$ (604,874)
Total claimed amount	$ 1,306,040	$ (439,866)	$ (1,745,906)
Adjustment to eliminate negative balance	$ -	$ 439,866	$ 439,866
Total Program Costs	$ 1,306,040	$ -	$ (1,306,040)
Less: Amount paid by the State		$ -	
Allowable costs claimed in excess of amount paid		$ -	
Allowable per State Audit (Residential Placement Costs)		[redacted]	
Amount being appealed (Payments to Profit Facility)		[redacted]	
Breakdown:			
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#508325		$ 44,966.00	
Out of State Residential Placement (Room and Board) Provo Canyon PO#508325		$ 50,777.00	
Total		[redacted]	

Exh. A-3

Summary of July 01 2006- June 30 2009	Actual Costs Claimed	Allowable	Adjustments
Direct and Indirect Costs:			
Referral and mental health assessments	$ 3,549,533	$ 3,120,815	$ (428,718)
Transfers and interim placements	$ 4,473,590	$ 4,261,748	$ (211,842)
Psychotherapy /other mental health services	$ 26,183,937	$ 25,550,270	$ (633,667)
Authorize/Issue payments to providers:			
Vendor Reimbursement	$ 18,723,724	$ 17,082,502	$ (1,641,222)
Travel	$ 41,454	$ 41,454	$ -
Participation in due process hearings	$ 82,037	$ 66,636	$ (15,401)
Sub-Total program costs	$ 53,034,275	$ 50,103,225	$ (2,931,050)
Less: Other reimbursements	$ (38,539,509)	$ (38,881,200)	$ (341,691)
Total claimed amount	$ 14,494,766	$ 11,222,025	$ (3,272,741)
Adjustment to eliminate negative balance		439,866	439,866
Less: Late filing penalty	$ (10,000)	$ (10,000)	
Total Program Costs	$ 14,484,766	$ 11,661,891	$ (2,832,876)
Less: Amount paid by the State		$ (4,108,959)	
Allowable costs claimed in excess of amount paid		$ 7,544,932	

Allowable per State Audit (Residential Placement Costs)	$ 17,082,502.00
Total amount being appealed (Payments to Profit Facility)	$ 1,387,095.00
Breakdown:	
Out of State Residential Placement (Treatment Cost) Provo Canyon PO#506325	$ 633,471.00
Out of State Residential Placement (Room and Board) Provo Canyon PO#506325	$ 753,624.00
Grand Total	$ 1,387,095.00

Administration

MAY 0 7 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:
877-829-5500
Federal Identification Number:

Dear Sir or Madam:

This is in response to your request of April 28, 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

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

EXHIBIT B

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVSION
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 C

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 FACTS[1]

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 assesament 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 requirement 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

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

EXHIBIT "C"

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7570-7588 Statutes 1984, Chapter 1747 (AB 3632) Statutes 1985, Chapter 1274 (AB 882) California Code of Regulations, Title 2, Sections 60000-60610 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28 Fiscal Years 1997-1998, 1998-1999, 2000-2001 County of Orange, Claimant.	Case Nos.: 05-4282-I-02 and 09-4282-I-04 *Handicapped and Disabled Students* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted July 28, 2011)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Dated: August 1, 2011

DREW BOHAN
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7570-7588 Statutes 1984, Chapter 1747 (AB 3632) Statutes 1985, Chapter 1274 (AB 882) California Code of Regulations, Title 2, Sections 60000-60610 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28 Fiscal Years 1997-1998, 1998-1999, 2000-2001 County of Orange, Claimant.	Case Nos.: 05-4282-I-02 and 09-4282-I-04 *Handicapped and Disabled Students* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted July 28, 2011)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim during a regularly scheduled hearing on July 28, 2011. The claimant did not make an appearance and submitted the case on the record. Mr. Jim Spano appeared for the State Controller's Office.

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

The Commission adopted the staff analysis at the hearing by a vote of 6 to 0 to deny this incorrect reduction claim.

Summary of Findings

This is an incorrect reduction claim filed by the County of Orange regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in three fiscal years (1997-1998, 1998-1999, and 2000-2001), in the total amount of $2,676,659 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

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

The State Controller's Office contends that medication monitoring is not a reimbursable activity during the audit period, and did not become reimbursable until fiscal year 2001-2002. The State Controller's Office also argues that the County's first incorrect reduction claim filed for fiscal years 1997-1998 and 1998-1999 was not timely filed.

The County disagrees with the State Controller's Office. The County seeks a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's Office incorrectly reduced the claim, and requests that the Controller reinstate the $2,676,659 reduced for fiscal years 1997-1998 through 2000-2001.

The Commission finds that the County timely filed the first incorrect reduction claim for the 1997-1998 and 1998-1999 fiscal year costs.

The Commission further finds that the State Controller's Office correctly reduced the County's reimbursement claims for medication monitoring costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001. The *Handicapped and Disabled Students* program has a long and complicated history. However, the substantive issue presented in this claim relates to the sole issue of whether providing medication monitoring services is reimbursable in fiscal years 1997-1998, 1998-1999, and 2000-2001. As described in the analysis, the Commission has previously addressed the issue of medication monitoring and decisions have been adopted on the issue. These decisions are now final and must be followed here. Thus, the Commission finds that the County is not eligible for reimbursement for providing medication monitoring services until July 1, 2001.

BACKGROUND

This is an incorrect reduction claim filed by the County of Orange for costs incurred in three fiscal years (1997-1998, 1998-1999, and 2000-2001) to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.[1] The State Controller's Office reduced the County's reimbursement claims in the amount of $2,676,659, arguing that medication monitoring is not a reimbursable activity during the audit period, and did not become reimbursable until fiscal year 2001-2002.

Position of the Parties

Position of the State Controller's Office

The State Controller's Office contends that medication monitoring is not a reimbursable activity under the parameters and guidelines in effect during the audited years. The State Controller's Office further argues that the County's incorrect reduction claim filed for the fiscal year

---

[1] The reduction of costs for medication monitoring for these fiscal years are as follows:

Fiscal year	Amount of Reduction
1997-1998	$ 759,114
1998-1999	$ 870,701
2000-2001	$1,046,844
Total	$2,676,659

1997-1998 and 1998-1999 costs (05-4282-I-02) was filed after the time required in the Commission's regulations, and should therefore not be considered by the Commission.

Claimant's Position

The County disagrees with the reduction of costs by the State Controller's Office and contends that medication monitoring is a reimbursable activity during the audit period in question. The County argues that the parameters and guidelines state that "any" costs related to the mental health treatment services rendered under the Short-Doyle Act are reimbursable and, while "medication monitoring" is not specifically identified, it is not excluded either. The County asserts that "medication monitoring" has always been part of the treatment services rendered under the Short-Doyle Act. The County further asserts that the Commission clarified this point when it adopted the parameters and guidelines in *Handicapped and Disabled Students II*, specifically listing "medication monitoring" as a reimbursable activity.

The County further argues that its first incorrect reduction claim on this issue (05-4282-I-02) was filed within the statute of limitations.

The County seeks a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's Office incorrectly reduced the claim, and requests that the Controller reinstate the $2,676,659 reduced for fiscal years 1997-1998, 1998-1999, and 2000-2001.

II. COMMISSION FINDINGS

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

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

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

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

A. The State Controller's Office correctly reduced the County's reimbursement claims for the costs incurred to provide medication monitoring services in fiscal years 1997-1998, 1998-1999, and 2000-2001.

Costs incurred for this program in fiscal years 1997-1998, 1998-1999, and 2000-2001 are eligible for reimbursement under the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282). The test claim in *Handicapped and Disabled Students* was filed on Government Code section 7570 et seq., as added and amended by Statutes 1984 and 1985, and on the initial emergency regulations adopted in 1986 by the Departments of Mental Health and

Education to implement this program.[2] In 1990 and 1991, the Commission approved the test claim and adopted parameters and guidelines, authorizing reimbursement for mental health treatment services as follows:

> Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act:
>
> 1. The scope of the mandate is ten (10) percent reimbursement.
> 2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):
>   a. Individual therapy;
>   b. Collateral therapy and contacts;
>   c. Group therapy;
>   d. Day treatment; and
>   e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
> 3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

While the County acknowledges that medication monitoring is not expressly listed as a reimbursable activity in the parameters and guidelines, the County argues that medication monitoring is a reimbursable activity and that the parameters and guidelines authorize reimbursement for "any costs related to mental health treatment services rendered …."

The County's interpretation of the issue, however, conflicts with prior final decisions of the Commission on the issue of medication monitoring.

The *Handicapped and Disabled Students* (CSM 4282) decision addressed Government Code section 7576 and the implementing regulations as they were originally adopted in 1986. Government Code section 7576 required the county to provide psychotherapy or other mental health services when required by a pupil's IEP. Former section 60020 of the Title 2 regulations defined "mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health's Title 9 regulations. (Former Cal. Code Regs., tit. 2, § 60020(a).) Section 543 defined outpatient services to include "medication." "Medication" was defined to include "prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process," and "shall include the evaluation of side effects and results of medication."

In 2004, the Commission was directed by the Legislature to reconsider its decision in *Handicapped and Disabled Students*. On reconsideration of the program in *Handicapped and Disabled Students* (04-RL-4282-10), the Commission found that the phrase "medication

---

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

monitoring" was not included in the original test claim legislation. "Medication monitoring" was added to the regulations for this program in 1998 (Cal. Code Regs. tit. 2, § 60020). The Commission determined that:

> "Medication monitoring" is part of the new, and current, definition of "mental health services" that was adopted by the Departments of Mental Health and Education in 1998. The current definition of "mental health services" and "medication monitoring" is the subject of the pending test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and will not be specifically analyzed here.[3]

Thus, the Commission did not approve reimbursement for medication monitoring in *Handicapped and Disabled Students* (CSM 4282) or on reconsideration of that program (04-RL-4282-10).

The 1998 regulations were pled in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), however. *Handicapped and Disabled Students II* was filed in 2003 on subsequent statutory and regulatory changes to the program, including the 1998 amendments to the regulation that defined "mental health services." On May 26, 2005, the Commission adopted a statement of decision finding that the activity of "medication monitoring," as defined in the 1998 amendment of section 60020, constituted a new program or higher level of service *beginning July 1, 2001*. The Commission's decision in *Handicapped and Disabled Students II* states the following:

> The Department of Finance argues that "medication monitoring" does not increase the level of service provided by counties. The Department states the following:
>
> > It is our interpretation that there is no meaningful difference between the medication requirements under the prior regulations and the new regulations of the test claim. The existing activities of "dispensing of medications, and the evaluation of side effects and results of medication" are in fact activities of medication monitoring and seem representative of all aspects of medication monitoring. To the extent that counties are already required to evaluate the "side effects and results of medication," it is not clear that the new requirement of "medication monitoring" imposes a new or higher level of service. [footnote omitted.]
>
> The Commission disagrees with the Department's interpretation of section 60020, subdivisions (i) and (f), of the regulations, and finds that "medication monitoring" as defined in the regulation increases the level of service required of counties.
>
> The same rules of construction applicable to statutes govern the interpretation of administrative regulations. [Footnote omitted.] Under the rules of statutory construction, it is presumed that the Legislature or the administrative agency intends to change the meaning of a law or regulation when it materially alters the language used. [Footnote omitted.] The courts will not infer that the intent was

[3] Statement of decision, *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), page 42.

only to clarify the law when a statute or regulation is amended unless the nature of the amendment clearly demonstrates the case. [Footnote omitted.]

In the present case, the test claim regulations, as replaced in 1998, materially altered the language regarding the provision of medication. The activity of "dispensing" medications was deleted from the definition of mental health services. In addition, the test claim regulations deleted the phrase "evaluating the side effects and results of the medication," and replaced the phrase with "monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness." The definitions of "evaluating" and "monitoring" are different. To "evaluate" means to "to examine carefully; appraise."[4] To "monitor" means to "to keep watch over; supervise."[5] The definition of "monitor" and the regulatory language to monitor the "psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness" indicate that the activity of "monitoring" is an ongoing activity necessary to ensure that the pupil receives a free and appropriate education under federal law. This interpretation is supported by the final statement of reasons for the adoption of the language in section 60020, subdivision (f), which state that the regulation was intended to make it clear that "medication monitoring" is an educational service that is provided pursuant to an IEP, rather than a medical service that is not allowable under the program.[6]

Neither the Department of Mental Health nor the Department of Education, agencies that adopted the regulations, filed substantive comments on this test claim. Thus, there is no evidence in the record to contradict the finding, based on the rules of statutory construction, that "medication monitoring" increases the level of service on counties.

Therefore, the Commission finds that the activity of "medication monitoring," as defined in section 60020, subdivisions (f) and (i), constitutes a new program or higher level of service.[7]

In 2001, the Counties of Los Angeles and Stanislaus filed separate requests to amend the parameters and guidelines for the original program in *Handicapped and Disabled Students* (CSM 4282). As part of the requests, the Counties wanted the Commission to apply the 1998 regulations, including the provision of medication monitoring services, to the original parameters and guidelines. On December 4, 2006, the Commission denied the request, finding that the 1998 regulations were not pled in original test claim, and cannot by law be applied retroactively to the original parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282). The analysis adopted by the Commission on the issue states the following:

---

[4] Webster's II New College Dictionary (1999) page 388.

[5] *Id.* at page 708.

[6] Final Statement of Reasons, page 7.

[7] Statement of decision, *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), pages 37-39.

The counties request that the Commission amend the provision in the parameters and guidelines for mental health services to include the current regulatory definition of "mental health services," medication monitoring, and crisis intervention. The counties request the following language be added to the parameters and guidelines:

> For each eligible claimant, the following cost items, for the provision of services when required by a child's individualized education program in accordance with Section 7572(d) of the Government Code: psychotherapy (including outpatient crisis-intervention psychotherapy provided in the normal course of IEP services when a pupil exhibits acute psychiatric symptoms, which, if untreated, presents an imminent threat to the pupil) as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management are reimbursable (Government Code 7576). "Medication monitoring" includes medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness. [Footnote omitted.]

The counties' proposed language, however, is based on regulations amended by the Departments of Mental Health and Education effective July 1, 1998. (Cal. Code Regs., tit. 2, § 60020, subds. (i) and (f).) The 1998 regulations were considered by the Commission in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and approved for the following activities beginning July 1, 2001:

- Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
- Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

The Commission's findings in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), approving reimbursement for medication monitoring and psychotherapy services as currently defined in the regulations were not included in the original test claim (CSM 4282) and, thus, cannot be applied retroactively to the original parameters and guidelines. Based on Government Code section 17557, subdivision (e), the reimbursement period for the activities

approved by the Commission in *Handicapped and Disabled II* begins July 1, 2001.

Therefore, the proposed amendment to add language based on the current definition of "mental health services," including medication monitoring, is inconsistent with, and not supported by the Commission's original 1990 Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).[8]

These decisions of the Commission are final, binding decisions and were never challenged by the parties. Once "the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as judicial decisions."[9] Accordingly, based on these decisions, counties are not eligible for reimbursement for medication monitoring until July 1, 2001.

Therefore, the State Controller's Office correctly reduced the reimbursement claims of the County of Orange for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

B. The County's first incorrect reduction claim (05-4282-I-02) was filed within the time required by the Commission's regulations and, thus, the Commission has jurisdiction to determine the claim.

The State Controller's Office argues that the County failed to file the incorrect reduction claim for fiscal years 1997-1998 and 1998-1999 (05-4282-I-02) within the time required by the Commission's regulations. The Controller's Office states the following:

> Section 1185, subdivision (b) states that "[a]ll incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction." In this case, the remittance advice and accompanying letter were dated April 28, 2003 (See pages 2-5 of Exhibit C of the Claimant's IRC). Therefore, the last date to file an IRC was April 28, 2003. However, the Claimant did not file its claim until May 1, 2003, outside the time frame provided, and thus, the IRC is precluded by the limitations provision of Section 1185.

Using the date of the remittance advice, the County's filing is timely. Section 1181.1(g) of the Commission's regulations defines "filing date" as follows:

> . . . the date of delivery to the commission office during normal business hours. For purposes of meeting the filing deadlines required by statute, the filing is timely if:
>
> (1) The filing is submitted by certified or express mail or a common carrier promising overnight delivery, and

---

[8] Analysis adopted by Commission on December 4, 2006, in 00-PGA-03/04.

[9] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

(2) The time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight deliver as shown on the carrier's receipt.

Section 1181.2 further states that "service by mail is complete when the document is deposited in the mail."

In this case, the County mailed the incorrect reduction claim (05-4282-I-02) by express mail with a postmark of April 28, 2006, three years to the day of the remittance advice. Although the Commission received the filing on May 1, 2006, the claim would still be considered timely, when using the date of the remittance advice. The time for filing had not expired when the claim was deposited in the mail on April 28, 2006.

However, at the time the County filed its incorrect reduction claim, section 1185 of the Commission's regulations provided that the three year deadline to file an incorrect reduction claim starts to run from "the date of the Office of State Controller's remittance advice *or other notice of adjustment notifying the claimant of a reduction*." The audit report for the County's reimbursement claims filed for fiscal years 1997-1998 and 1998-1999 identifies the Controller's intention to reduce the County's claims for medication monitoring and is dated December 26, 2002, four months earlier than the remittance advice. Three years from the date of the audit report would be December 26, 2005 (more than four months before the County filed its claim).

The Controller's Office does not base its statute of limitations argument on the date of the audit report, however. Moreover, section 1185 of the Commission's regulations does not require the running of the time period from when a claimant *first* receives notice; but simply states that the time runs from either the remittance advice *or* other notice of adjustment.

Thus, when viewed in a light most favorable to the County, and based on the policy determined by the courts favoring the disposition of cases on their merits rather than on procedural grounds,[10] staff finds that the County timely filed the incorrect reduction claim for the fiscal year 1997-1998 and 1998-1999 costs.

III. CONCLUSION

The Commission concludes that the State Controller's Office correctly reduced the County's reimbursement claims for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001, for providing medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

[10] *O'Riordan v. Federal Kemper Life Assurance* (2005) 36 Cal.4th 281, 284; *California Department of Corrections and Rehabilitation v. State Personnel Board* (2007) 147 Cal.App.4th 797, 805.

EXHIBIT "D"

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

December 11, 2014

Mr. Keith B. Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: **Decision**
Collective Bargaining, 05-4425-I-11
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961
Fiscal Year 1995-1996
Gavilan Joint Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

On December 5, 2014, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 3540-3549.9 Statutes 1975, Chapter 961 Fiscal Year 1995-1996 Gavilan Joint Community College District, Claimant.	Case No.: 05-4425-I-11 *Collective Bargaining* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted December 5, 2014*) (*Served December 11, 2014*)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 5, 2014. Keith Petersen appeared on behalf of the claimant. Jim Spano and Jim Venneman appeared on behalf of the Controller.

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

The Commission adopted the proposed decision to deny the IRC at the hearing by a vote of six to zero.

Summary of the Findings

This IRC was filed in response to two letters received by Gavilan Joint Community College District (claimant) from the State Controller's Office (Controller), notifying the claimant of an adjustment to the claimant's fiscal year 1995-1996 reimbursement claim; one on July 30, 1998, which notified the claimant that $126,146 was due the state, and a second on July 10, 2002, notifying the claimant that $60,597 was now due to the claimant as a result of the Controller's review of the claim and "prior collections."

The Commission finds that this IRC was not timely filed. The time for filing an IRC, in accordance with the Commission's regulations, is "no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction."[1] Government Code section 17558.5 requires the Controller's notice to the claimant of a reduction to identify the claim components adjusted and the reason(s) for adjustment.[2] Here, the claimant

[1] Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

[2] Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

first received notice of the adjustment to its 1995-1996 reimbursement claim on July 30, 1998, and received a second notice dated July 10, 2002, and did not file this IRC until December 16, 2005. Though the parties dispute which notice triggers the running of the limitation, that issue need not be resolved here since this claim was filed beyond the limitation in either case. Therefore, the IRC is denied.

COMMISSION FINDINGS

I. Chronology

01/24/1996	Controller notified claimant of a $275,000 payment toward estimated reimbursement for the 1995-1996 fiscal year.[3]
11/25/1996	Claimant submitted its fiscal year 1995-1996 reimbursement claim for $348, 966.[4]
01/30/1997	Controller notified claimant that it would remit an additional $15,270 for a total payment of $290,270 for fiscal year 1995-1996.[5]
07/30/1998	Controller notified claimant of reduction to the fiscal year 1995-1996 reimbursement claim of $184,842, resulting in $126,146 due the state.[6]
08/05/1998	Claimant notified Controller that it was appealing the reduction.[7]
08/08/2001	Controller notified claimant that it was reducing payments for the *Open Meetings Act* mandate in partial satisfaction of the reduction for the 1995-1996 fiscal year reimbursement claim for the *Collective Bargaining* mandate.[8]
07/10/2002	Controller notified claimant of its review of the 1995-1996 reimbursement claim for the *Collective Bargaining* mandate, and its findings that the claim was properly reduced by $124,245, rather than $184,842, and that $60, 597 was now due the claimant.[9]
12/16/2005	Claimant filed this IRC.[10]
12/27/2005	Commission staff notified claimant that the claim was not timely, and deemed it incomplete.[11]

[3] Exhibit A, Incorrect Reduction Claim page 14.

[4] Exhibit A, Incorrect Reduction Claim pages 4-5.

[5] Exhibit A, Incorrect Reduction Claim page 5.

[6] Exhibit A, Incorrect Reduction Claim pages 5; 15.

[7] Exhibit A, Incorrect Reduction Claim pages 5; 21.

[8] Exhibit A, Incorrect Reduction Claim pages 5; 17.

[9] Exhibit A, Incorrect Reduction Claim pages 5-6; 18.

[10] Exhibit A, Incorrect Reduction Claim page 1.

[11] See Exhibit B, Claimant Rebuttal Comments, page 1.

12/30/2005	Claimant submitted rebuttal comments seeking the full Commission's determination on the timeliness of the claim.[12]
03/09/2006	Commission staff deemed the IRC complete and issued a request for comments.
03/23/2010	Controller submitted comments on the IRC.[13]
09/25/2014	Commission staff issued the draft proposed decision.[14]
10/03/2014	The Claimant filed comments on the draft proposed decision.[15]

II. Background

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times.[16] The reimbursement claim at issue in this IRC was filed for the 1995-1996 fiscal year, and at the time that claim was prepared and submitted, the parameters and guidelines effective on July 22, 1993 were applicable.[17] The 1993 parameters and guidelines provided for reimbursement of costs incurred to comply with sections 3540 through 3549.1, and "regulations promulgated by the Public Employment Relations Board," including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the even the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: Reimbursable functions include – receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;

---

[12] Exhibit B, Claimant Rebuttal Comments.

[13] Exhibit C, Controller's Comments.

[14] Exhibit D, Draft Proposed Decision, issued September 25, 2014.

[15] Exhibit E, Claimant's Comments on Draft Proposed Decision.

[16] Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000. However, this later decision and the consolidated parameters and guidelines are not relevant to this IRC since the IRC addressed reductions in the 1995-1996 fiscal year.

[17] Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC.

- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract;
- Unfair labor practice adjudication process and public notice complaints.[18]

III. Positions of the Parties

The issues raised in this IRC, and the comments filed in response and rebuttal, include the scope of the Controller's audit authority; the notice owed to a claimant regarding both the sufficiency of supporting documentation and the reasons for reductions; and the audit standards applied. However, the threshold issue is whether the IRC filing is timely in the first instance, with respect to which the parties maintain opposing positions.

Gavilan Joint Community College District, Claimant

The claimant argues that the Controller's reductions are not made in accordance with due process, in that the Controller "has not specified how the claim documentation was insufficient for purposes of adjudicating the claim." The letters that claimant cites "merely stated that the District's claim had 'no supporting documentation.'"[19] The claimant further argues that the adjustments made to the fiscal year 1995-1996 claim are "procedurally incorrect in that the Controller did not audit the records of the district…"[20] In addition, the claimant argues that "[t]he Controller does not assert that the claimed costs were excessive or unreasonable, which is the only mandated cost audit standard in statute." The claimant asserts that "[i]f the Controller wishes to enforce other audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act."[21]

Addressing the statute of limitations issue, the claimant states that "the incorrect reduction claim asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured…" The claimant asserts that any "evidence regarding the date of last payment action, notice, or remittance advice, is in the possession of the Controller."[22]

In comments on the draft proposed decision, the claimant argues that "[w]ell after the incorrect reduction claim was filed, the District received a February 26, 2011, Controller's notice of adjudication of the FY 1995-96 annual claim." The claimant asserts that based on this later notice "the three year statute of limitations for the incorrect reduction claim would be moved forward to February 26, 2014, which is more than eight years after the incorrect reduction claim was filed." The claimant states: "It would seem that the Commission is now required to address

[18] Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9.

[19] Exhibit A, Incorrect Reduction Claim, page 9.

[20] Exhibit A, Incorrect Reduction Claim, page 9.

[21] Exhibit A, Incorrect Reduction Claim, page 10.

[22] Exhibit B, Claimant's Rebuttal Comments, page 2.

the first issue of what constitutes 'notice of adjustment,' that is, the Controller's adjudication of an annual claim, for purposes of the statute of limitations for filing an incorrect reduction claim."[23]

State Controller's Office

The Controller argues that it "is empowered to audit claims for mandated costs and to reduce those that are 'excessive or unreasonable.'" The Controller continues: "If the claimant disputes the adjustments made by the Controller pursuant to that power, the burden is upon them to demonstrate that they are entitled to the full amount of the claim."[24] The Controller notes that the claimant "asserts that a mere lack of documentation is an insufficient basis to reduce a claim…" but the Controller argues that "a claim that is unsupported by valid documentation is both excessive and unreasonable."[25] The Controller further asserts that the claimant "sought reimbursement for activities that are outside the scope of reimbursable activities as defined in the Parameters and Guidelines," including salary costs for expenses of school district officials.[26]

Furthermore, the Controller argues that the IRC is not timely. The Controller notes that the statute of limitations pursuant to section 1185 of the Commission's regulations is "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice[,] or other written notice of adjustment…"[27] The Controller argues that based on the first notice sent to the claimant on July 30, 1998, "the time to file a claim would have expired on July 30, 2001."[28] Alternatively, "[e]ven if we accept the Claimant's implied argument that a subsequent letter from the Controller's Office dated July 10, 2002, started a new Statute of Limitations, the claim was still time barred."[29] The Controller concludes that "that time period would have expired on July 10, 2005, five months before this claim was actually filed."[30]

And finally, the Controller argues: "Not satisfied with two bites at the apple, Claimant asserts that the period of the Statute of Limitations 'will be measured from the date of the last payment action…'" and that there is no law to support that position.[31]

---

[23] Exhibit E, Claimant's Comments on Draft Proposed Decision, page 2.

[24] Exhibit C, Controller's Comments, page 1.

[25] Exhibit C, Controller's Comments, pages 1-2.

[26] Exhibit C, Controller's Comments, page 2.

[27] Exhibit C, Controller's Comments, page 2 [citing California Code of Regulations, title 2, section 1185 (as amended, Register 2007, No. 19)].

[28] Exhibit C, Controller's Comments, page 2.

[29] Exhibit C, Controller's Comments, page 2.

[30] Exhibit C, Controller's Comments, page 2.

[31] Exhibit C, Controller's Comments, page 2.

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[32] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[33]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion by a state agency.[34] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[35]

---

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

[33] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[34] *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[35] *American Bd. of Cosmetic Surgery, Inc, supra,* 162 Cal.App.4th at 547-548.

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [36] In addition, section 1185.2(c) of the Commission's regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[37]

This Incorrect Reduction Claim Was Not Timely Filed.

The general rule in applying and enforcing a statute of limitations is that a period of limitation for initiating an action begins to run when the last essential element of the cause of action or claim occurs. There are a number of recognized exceptions to the accrual rule, each of which is based in some way on the wronged party having notice of the wrong or the breach that gave rise to the action.

In the context of an IRC, the last essential element of the claim is the notice to the claimant of a reduction, as defined by the Government Code and the Commission's regulations, which begins the period of limitation; the same notice also defeats the application of any of the notice-based exceptions to the general rule.

Here, there is some question as to whether the reasons for the reduction were stated in the earliest notice, as required by section 17558.5 and the Commission's regulations. The evidence in the record indicates that the claimant had actual notice of the reduction and of the reason for the reduction ("no supporting documentation") as of July 30, 1998.[38] However, the July 10, 2002 letter more clearly states the Controller's reason for reduction.[39] Ultimately, whether measured from the date of the earlier notice, or the July 10, 2002 notice, the period for filing an IRC on this audit expired no later than July 10, 2005, a full seven months before the IRC was filed. The analysis herein also demonstrates that the period of limitation is not unconstitutionally retroactive, as applied to this IRC. The IRC is therefore untimely.

1. <u>The period of limitation applicable to an IRC begins to run at the time an IRC can be filed, and none of the exceptions or special rules of accrual apply.</u>

    a. The general rule is that a statute of limitations attaches and begins to run at the time the cause of action accrues.

The threshold issue in this IRC is when the right to file an IRC based on the Controller's reductions accrued, and consequently when the applicable period of limitation began to run against the claimant. The general rule, supported by a long line of cases, is that a statute of

---

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

[37] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[38] Exhibit A, IRC 05-44254-I-11, pages 5; 21.

[39] Exhibit A, IRC 05-4425-I-11, page 19.

limitations attaches when a cause of action arises; when the action can be maintained.[40] The California Supreme Court has described statutes of limitations as follows:

> A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): "[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."[41]

The Court continued: "Critical to applying a statute of limitations is determining the point when the limitations period begins to run."[42] Generally, the Court noted, "a plaintiff must file suit within a designated period after the cause of action accrues."[43] The cause of action accrues, the Court said, "when [it] is complete with all of its elements."[44] Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"[45]

Here, the "last element essential to the cause of action," pursuant to Government Code section 17558.5 and former section 1185 (now 1185.1) of the Commission's regulations, is a notice to the claimant of the adjustment, which includes the reason for the adjustment. Government Code section 17558.5(c) provides, in pertinent part:

> 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 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... [46]

---

[40] See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 ["[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time."]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 ["A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time."].

[41] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, at p. 797.

[42] *Ibid.*

[43] *Ibid* [citing Code of Civil Procedure section 312].

[44] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[45] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

[46] Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)).

Accordingly, former section 1185 of the Commission's regulations provides that incorrect reduction claims shall be filed not later than three years following the notice of adjustment, and that the filing must include a detailed narrative describing the alleged reductions and a copy of any "written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance."[47] Therefore, the Commission finds that the last essential element of an IRC is the issuance by the Controller of a notice of adjustment that includes the reason for the adjustment.

b. More recent cases have relaxed the general accrual rule or recognized exceptions to the general rule based on a plaintiff's notice of facts constituting the cause of action.

Historically, the courts have interpreted the application of statutes of limitation very strictly: in a 1951 opinion, the Second District Court of Appeal declared that "[t]he courts in California have held that statutes of limitation are to be strictly construed and that if there is no express exception in a statute providing for the tolling of the time within which an action can be filed, the court cannot create one."[48] That opinion in turn cited the California Supreme Court in *Lambert v. McKenzie* (1901), in which the Court reasoned that a cause of action for negligence did not arise "upon the date of the discovery of the negligence," but rather "[i]t is the date of the act and fact which fixes the time for the running of the statute."[49] The Court continued:

> Cases of hardship may arise, and do arise, under this rule, as they arise under every statute of limitations; but this, of course, presents no reason for the modification of a principle and policy which upon the whole have been found to make largely for good... And so throughout the law, except in cases of fraud, it is the time of the act, and not the time of the discovery, which sets the statute in operation.[50]

Accordingly, the rule of *Lambert v. McKenzie* has been restated simply: "Generally, the statute of limitations begins to run against a claimant at the time the act giving rise to the injury occurs rather than at the time of discovery of the damage."[51] This historically-strict interpretation of statutes of limitation accords with the plain language of the Code of Civil Procedure, section 312, which states that "[c]ivil actions, *without exception*, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."[52]

However, more recently, courts have applied a more relaxed rule in appropriate circumstances, finding that a cause of action accrues when the plaintiff has knowledge of sufficient facts to

---

[47] Code of Regulations, title 2, section 1185 (Register 99, No. 38).

[48] *Marshall v. Packard-Bell Co.* (1951) 106 Cal.App.2d 770, 774.

[49] (1901) 135 Cal. 100, 103 [overruled on other grounds, *Wennerholm v. Stanford University School of Medicine* (1942) 20 Cal.2d 713, 718].

[50] *Ibid.*

[51] *Solis v. Contra Costa County* (1967) 251 Cal.App.2d 844, 846 [citing *Lambert v. McKenzie*, 135 Cal. 100, 103].

[52] Enacted, 1872; Amended, Statutes 1897, chapter 21 [emphasis added].

make out a cause of action: "there appears to be a definite trend toward the discovery rule and away from the strict rule in respect of the time for the accrual of the cause of action..."[53] For example, in *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, the court presumed "the inability of the layman to detect" an attorney's negligence or misfeasance, and therefore held that "in an action for professional malpractice against an attorney, the cause of action does not accrue until the plaintiff knows, or should know, all material facts essential to show the elements of that cause of action."[54] Similarly, in *Seelenfreund v. Terminix of Northern California, Inc.*, the court held that where the cause of action arises from a negligent termite inspection and report: "appellant, in light of the specialized knowledge required [to perform structural pest control], could, with justification, be ignorant of his right to sue at the time the termite inspection was negligently made and reported..."[55]

Also finding justification for delayed accrual in an attorney malpractice context, but on different grounds, is *Budd v. Nixen*, in which the court framed the issue as a factual question of when actual or appreciable harm occurred: "mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm - not yet realized - does not suffice to create a cause of action for negligence."[56] Accordingly, in *Allred v. Bekins Wide World Van Services*, it was held that the statute of limitations applicable to a cause of action for the negligent packing and shipping of property should be "tolled until the Allreds sustained damage, and discovered or should have discovered, their cause of action against Bekins."[57]

These cases demonstrate that the plaintiff's *knowledge* of sufficient facts to make out a claim is sometimes treated as the last essential element of the cause of action. Or, alternatively, actual damage must be sustained, and knowledge of the damage, before the statute begins to run.

Here, a delayed discovery rule is inconsistent with the plain language of the Commission's regulations and of section 17558.5, and illogical in the context of an IRC filing, but notice of the reduction and the reason for it constitute the last essential element of the claim. Former section 1185 of the Commission's regulations provides for a period of limitation of three years following the date of a document from the Controller "notifying the claimant of a reduction."[58] Likewise, Government Code section 17558.5 requires the controller to notify the claimant in writing and specifies that the notice must provide "the claim components adjusted, the amounts

---

[53] *Warrington v. Charles Pfizer & Co.*, (1969) 274 Cal.App.2d 564, 567 [citing delayed accrual based on discovery rule for medical, insurance broker, stock broker, legal, and certified accountant malpractice and misfeasance cases].

[54] 6 Cal.3d at p. 190.

[55] (1978) 84 Cal.App.3d 133, 138.

[56] *Budd v. Nixen* (1971) 6 Cal.3d 195, 200-201 [superseded in part by statute, Code of Civil Procedure section 340.6 (added, Stats. 1977, ch. 863) which provides for tolling the statute of limitations if the plaintiff has not sustained actual injury].

[57] (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra*, 6 Cal.3d at p. 190; *Budd v. Nixen, supra*, 6 Cal.3d at pp. 200-201].

[58] Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

adjusted...and the reason for the adjustment."[59] Moreover, an IRC is based on the reduction of a claimant's reimbursement during a fiscal year, and the claim could not reasonably be filed before the claimant was aware that the underlying reduction had been made. Therefore, the delayed discovery rules developed by the courts are not applicable to an IRC, because by definition, once it is possible to file the IRC, the claimant has sufficient notice of the facts constituting the claim.

c. Other recent cases have applied the statute of limitations based on the later accrual of a distinct injury or wrongful conduct.

Another line of legal reasoning, which rests not on delayed accrual of a cause of action, but on a new injury that begins a new cause of action and limitation period, is represented by cases alleging more than one legally or qualitatively distinct injury arising at a different time, or more than one injury arising on a recurring basis.

In *Pooshs v. Philip Morris USA, Inc.*, the Court held that applying the general rule of accrual "becomes rather complex when...a plaintiff is aware of both an injury and its wrongful cause but is uncertain as to how serious the resulting damages will be or whether *additional injuries* will later become manifest."[60] In *Pooshs*, the plaintiff was diagnosed with successive smoking-related illnesses between 1989 and 2003. When diagnosed with lung cancer in 2003 she sued Phillip Morris USA, and the defendant asserted a statute of limitations defense based on the initial smoking-related injury having occurred in 1989. The Ninth Circuit Court of Appeals, hearing a motion for summary judgment, certified a question to the California Supreme Court whether the later injury (assuming for purposes of the summary judgment motion that the lung cancer diagnosis was indeed a separate injury) triggered a new statute of limitations, despite being caused by the same conduct. The Court held that for statute of limitations purposes, a later physical injury "can, in some circumstances, be considered 'qualitatively different...'"[61] Relying in part on its earlier decision in *Grisham v. Philip Morris*,[62] in which a physical injury and an economic injury related to smoking addiction were treated as having separate statutes of limitation, the Court held in *Pooshs*:

> As already discussed...we emphasized in *Grisham* that it made little sense to require a plaintiff whose only known injury is economic to sue for personal injury damages based on the speculative possibility that a then latent physical injury might later become apparent. (*Grisham*, *supra*, 40 Cal.4th at pp. 644–645.) Likewise, here, no good reason appears to require plaintiff, who years ago suffered a smoking-related disease that is not lung cancer, to sue at that time for lung cancer damages based on the speculative possibility that lung cancer might later arise.[63]

---

[59] Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)).

[60] *Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [emphasis added].

[61] *Id*, at p. 792.

[62] (2007) 40 Cal.4th 623.

[63] *Pooshs*, *supra*, at p. 802.

However, the Court cautioned: "We limit our holding to latent disease cases, without deciding whether the same rule should apply in other contexts."[64] No published cases in California have sought to extend that holding. In effect, the *Pooshs* holding is not an exception to the rule of accrual of a cause of action, but a recognition that in certain limited circumstances (such as latent diseases) a new cause of action, with a new statute of limitations, can arise from the same underlying facts, such as smoking addiction or other exposure caused by a defendant.

A second, and in some ways similar exception to the general accrual rule, can occur in the context of a continuing or recurring injury or wrongful conduct, such as a nuisance or trespass. Where a nuisance or trespass is considered permanent, such as physical damage to property or a hindrance to access, the limitation period runs from the time the injury first occurs; but if the conduct is of a character that may be discontinued and repeated, each successive wrong gives rise to a new action, and begins a new limitation period.[65] The latter rule is similar to the latent physical injury cases described above, in that a continuing or recurring nuisance or trespass could have the same or similar cause but the cause of action is not stale because the injury is later-incurred or later-discovered. However, in the case of a continuing nuisance or trespass, the statute of limitations does not bar the action completely, but limits the remedy to only those injuries incurred within the statutory period; a limitation that would not be applicable to these facts, because the subsequent notice does not constitute a new injury, as explained below.

In *Phillips v. City of Pasadena*,[66] the plaintiff brought a nuisance action against the City for blocking a road leading to the plaintiff's property, which conduct was alleged to have destroyed his resort business. The period of limitation applicable to a nuisance claim against the City was six months, and the trial court dismissed the action because the road had first been blocked nine months before the claim was filed. On appeal, the court treated the obstruction as a continuing nuisance, and thus allowed the action, but limited the recovery to damages occurring six months prior to the commencement of the action, while any damages prior to that were time-barred.[67] In other words, to the extent that the city's roadblock caused injury to the plaintiff's business, Phillips was only permitted to claim monetary damages incurred during the statutory period preceding the initiation of the action.

Here, there is no indication that the "injury" suffered by the claimant is of a type that could be analogized to *Pooshs* or *Phillips*. Although the first notice of adjustment in the record of this IRC is vague as to the reasons for reduction,[68] and the Controller did alter the reduction (i.e.,

---

[64] *Id*, at p. 792.

[65] See *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104 ["Where a nuisance is of such a character that it will presumably continue indefinitely it is considered permanent, and the limitations period runs from the time the nuisance is created."]; *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84 ["When a nuisance is continuing, the injured party is entitled to bring a series of successive actions, each seeking damages for new injuries occurring within three years of the filing of the action..."].

[66] (1945) 27 Cal.2d 104.

[67] *Id*, at pp. 107-108.

[68] Exhibit A, IRC 05-4425-I-11, page 15.

reduced the reduction) in a later notice letter,[69] there is no indication that the injury to the claimant is qualitatively different, as was the case in *Pooshs*. Moreover, the later letter in the record in fact provides for a *lesser* reduction, rather than an increased or additional reduction, which would be recoverable under the reasoning of *Phillips*. It could be argued that the Controller has the authority to mitigate or retract its reduction at any time, only to impose a new or increased reduction, but no such facts emerge on this record. Moreover, in cases that apply a continuing or recurring harm theory, only the incremental or increased harm that occurred during the statutory period is recoverable, as in *Phillips*. Here, as explained above, the later notice of reduction (July 10, 2002) indicates a smaller reduction than the earlier, and therefore no incremental increase in harm can be identified during the period of limitation (i.e., three years prior to the filing date of the IRC, December 19, 2005).

d. The general rule still places the burden on the plaintiff to initiate an action even if the full extent or legal significance of the claim is not known.

Even as "[t]he strict rule…is, in various cases, relaxed for a variety of reasons, such as implicit or express representation; fraudulent concealment, fiduciary relationship, continuing tort, continuing duty, and progressive and accumulated injury, all of them excusing plaintiff's unawareness of what caused his injuries…",[70] the courts have continued to resist broadening the discovery rule to excuse a dilatory plaintiff[71] when sufficient facts to make out a claim or cause of action are apparent.[72] And, the courts have held that the statute may commence to run before *all* of the facts are available, or before the legal significance of the facts is fully understood. For example, in *Jolly v. Eli Lilly & Co.*, the Court explained that "[u]nder the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something to her."[73] The Court continued:

> A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide

---

[69] Exhibit A, IRC 05-4425-I-11, pages 18-19.

[70] *Warrington v. Charles Pfizer & Co.*, (1969) 274 Cal.App.2d 564, 567.

[71] *Regents of the University of California v. Superior Court* 20 Cal.4th 509, 533 [Declining to apply doctrine of fraudulent concealment to toll or extend the time to commence an action alleging violation of Bagley-Keene Open Meetings Act].

[72] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 ["Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations."]. See also, *Royal Thrift and Loan Co v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 ["Generally, statutes of limitation are triggered on the date of injury, and the plaintiff's ignorance of the injury does not toll the statute… [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to-detect injuries* or the breach of a fiduciary relationship." (Emphasis added, internal citations and quotations omitted)].

[73] (1988) 44 Cal.3d 1103, 1110.

> whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.[74]

Accordingly, in *Goldrich v. Natural Y Surgical Specialties, Inc.*, the court held that the statute of limitations applicable to the plaintiff's injuries for negligence and strict products liability had run, where "...Mrs. Goldrich must have suspected or certainly should have suspected that she had been harmed, and she must have suspected or certainly should have suspected that her harm was caused by the implants."[75] Therefore, even though in some contexts the statute of limitations is tolled until discovery, or in others the last element essential to the cause of action is interpreted to include notice or awareness of the facts constituting the claim, *Jolly, supra*, and *Goldrich, supra*, demonstrate that the courts have been hesitant to stray too far from the general accrual rule.[76]

Accordingly, here, the claimant argues that "[t]he Controller has not specified how the claim documentation was insufficient for purposes of adjudicating the claim..." and the Controller provides "no notice for the basis of its actions..." However, the history of California jurisprudence interpreting and applying statutes of limitation does not indicate that the claimant's lack of understanding of the "basis of [the Controller's] actions" is a sufficient reason to delay the accrual of an action and the commencement of the period of limitation. In accordance with the plain language of Government Code section 17558.5, the Controller is required to specify the claim components adjusted and the reasons for the reduction; and, former section 1185 of the Commission's regulations requires an IRC filing to include a detailed narrative and a copy of any written notice from the Controller explaining the reasons for the reduction.[77] As long as the claimant has notice of the reason for the adjustment, the underlying factual bases are not necessary for an IRC to lie. Indeed, as discussed above, the courts have held that as a general rule, a plaintiff's ignorance of the person causing the harm, or the harm itself, or the legal significance of the harm, "does not prevent the running of the statute of limitations."[78] Based on the foregoing, the claimant is not required to have knowledge of the "basis of [the Controller's] actions" for the period of limitation to run, as long as a *reason* for the reduction is stated.

e. Where the cause of action is to enforce an obligation or obtain an entitlement, the claim accrues when the party has the right to enforce the obligation.

More pertinent, and more easily analogized to the context of an IRC, are those cases in which an action is brought to enforce or resolve a claim or entitlement that is in dispute, including one administered by a governmental agency. In those cases, the applicable period of limitation attaches and begins to run when the party's right to enforce the obligation accrues.

---

[74] *Id*, at p. 1111.

[75] (1994) 25 Cal.App.4th 772, 780.

[76] See *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."];

[77] Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)). Code of Regulations, title 2, section 1185 (Register 99, No. 38).

[78] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566.

For example, in cases involving claims against insurance companies, the courts have held that the one-year period of limitation begins to run at the "inception of the loss," defined to mean when the insured *knew or should have known* that appreciable damage had occurred and a reasonable person would be aware of his duty under the policy to notify the insurer.[79] This line of cases does not require that the *total extent of the damage*, or the *legal significance* of the damage, is known at the time the statute commences to run.[80] Rather, the courts generally hold that where the plaintiff knows or has reason to know that damage has occurred, and a reasonable person would be aware of the duty to notify his or her insurer, the statute commences to run at that time.[81] This line of reasoning is not inconsistent with *Pooshs*, *Grisham*, and *Phillips v. City of Pasadena*, discussed above, because in each of those cases the court found (or at least presumed) a recurring injury, which was legally, qualitatively, or incrementally distinct from the earlier injury and thus gave rise to a renewed cause of action.[82]

An alternative line of cases addresses the accrual of claims for benefits or compensation from a government agency, which provides a nearer analogy to the context of an IRC. In *Dillon v. Board of Pension Commissioners of the City of Los Angeles*, the Court held that a police officer's widow failed to bring a timely action against the Board because her claim to her late husband's pension accrued at the time of his death: "At any time following the death she could demand a pension from the board and upon refusal could maintain a suit to enforce such action."[83] Later, *Phillips v. County of Fresno* clarified that "[a]lthough the cause of action accrues in pension cases when the employee first has the power to demand a pension, the limitations period is tolled or suspended during the period of time in which the claim is under consideration by the pension board."[84] In accord is *Longshore v. County of Ventura*, in which the Court declared that "claims for compensation due from a public employer may be said to accrue only when payment thereof can be legally compelled."[85] And similarly, in *California Teacher's Association v. Governing Board*, the court held that "unlike the salary which teachers were entitled to have as they earned

---

[79] See *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 685; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094.

[80] *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord's belated discovery of that his homeowner's policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 ["It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations."].

[81] *Ibid.*

[82] *Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788; *Grisham*, *supra*, 40 Cal.4th at pp. 644–645; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104.

[83] *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430.

[84] (1990) 225 Cal.App.3d 1240, 1251.

[85] (1979) 25 Cal.3d 14, 30-31.

it...their right to use of sick leave depended on their being sick or injured."[86] Therefore, because they "could not legally compel payment for sick leave to the extent that teachers were not sick, their claims for sick leave did not accrue."[87] This line of cases holds that a statute of limitations to compel payment begins to run when the plaintiff is entitled to demand, or legally compel, payment on a claim or obligation, but the limitation period is tolled while the agency considers that demand.

Here, an IRC cannot lie until there has been a reduction, which the claimant learns of by a notice of adjustment, and the IRC cannot reasonably be filed under the Commission's regulations until at least some reason for the adjustment can be detailed.[88] The claimant's reimbursement claim has already at that point been considered and rejected (to some extent) by the Controller. There is no analogy to the tolling of the statute, as discussed above; the period of limitation begins when the claim is reduced, by written notice, and the claimant is therefore entitled to demand payment through the IRC process.

f. Where the cause of action arises from a breach of a statutory duty, the cause of action accrues at the time of the breach.

Yet another line of cases addresses the accrual of an action on a breach of statutory duty, which is closer still to the contextual background of an IRC. In *County of Los Angeles v. State Department of Public Health*, the County brought actions for mandate and declaratory relief to compel the State to pay full subsidies to the County for the treatment of tuberculosis patients under the Tuberculosis Subsidy Law, enacted in 1915.[89] In 1946 the department adopted a regulation that required the subsidy to a county hospital to be reduced for any patients who were able to pay toward their own care and support, but the County ignored the regulation and continued to claim the full subsidy.[90] Between October 1952 and July 1953 the Controller audited the County's claims, and discovered the County's "failure to report on part-pay patients in the manner contemplated by regulation No. 5198..."[91] Accordingly, the department reduced the County's semiannual claims between July 1951 and December 1953.[92] When the County brought an action to compel repayment, the court agreed that the regulation requiring reduction for patients able to pay in part for their care was inconsistent with the governing statutes, and therefore invalid;[93] but the court was also required to consider whether the County's claim was time-barred, based on the effective date of the regulation. The court determined that the date of the *reduction*, not the effective date of the regulation, triggered the statute of limitations to run:

---

[86] (1985) 169 Cal.App.3d 35, 45-46.

[87] *Ibid.*

[88] Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)); Code of Regulations, title 2, section 1185 (Register 99, No. 38).

[89] (1958) 158 Cal.App.2d 425, 430.

[90] *Id*, at p. 432.

[91] *Id*, at p. 433.

[92] *Ibid.*

[93] *Id*, at p. 441.

> Appellants invoke the statute of limitations, relying on Code of Civil Procedure § 343, the four-year statute. Counsel argue [*sic*] that rule 5198 was adopted in August, 1946, and the County's suit not brought within four years and hence is barred. Respondent aptly replies: "In this case the appellants duly processed and paid all of the County's subsidy claims through the claim for the period of ending [*sic*]June 30, 1951...The first time that Section 5198 was asserted against Los Angeles County was when its subsidy claim for the period July 1, 1951, to December 31, 1951, was reduced by application of this rule of July 2, 1952...This action being for the purpose of enforcing a liability created by statute is governed by the three-year Statute of Limitations provided in Code of Civil Procedure Section 338.1. Since this action was filed May 4, 1954, it was filed well within the three-year statutory period, which commenced July 2, 1952." We agree. Neither action was barred by limitation.[94]

Similarly, in *Snyder v. California Insurance Guarantee Association (CIGA)*,[95] the accrual of an action to compel payment under the Guarantee Act was interpreted to require first the rejection of a viable claim. CIGA is the state association statutorily empowered and obligated to "protect policyholders in the event of an insurer's insolvency."[96] Based on statutory standards, "CIGA pays insurance claims of insolvent insurance companies from assessments against other insurance companies...[and] '[i]n this way the insolvency of one insurer does not impact a small segment of insurance consumers, but is spread throughout the insurance consuming public..."[97] "[I]f CIGA improperly denies coverage or refuses to defend an insured on a 'covered claim' arising under an insolvent insurer's policy, it breaches its statutory duties under the Guarantee Act."[98] Therefore, "[i]t follows that in such a case a cause of action *accrues* against CIGA when CIGA denies coverage on a submitted claim."[99] Thus, in *Snyder*, the last essential element of the action was the denial of a "covered claim" by CIGA, which is defined in statute to include obligations of an insolvent insurer that "remain unpaid despite presentation of a timely claim in the insurer's liquidation proceeding." And, the definition in the code excludes a claim "to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured."[100] Therefore a claimant is required to pursue "any other insurance" before filing a claim with CIGA, and CIGA must reject that claim, thus breaching its statutory duties, before the limitation period begins to run.

Here, an IRC may be filed once a claimant has notice that the Controller has made a determination that the claim must be reduced, and notice of the reason(s) for the reduction.

---

[94] *Id*, at pp. 445-446.

[95] (2014) 229 Cal.App.4th 1196.

[96] *Id*, at p. 1203, Fn. 2.

[97] *Ibid.*

[98] *Id*, at p. 1209 [quoting *Berger v. California Insurance Guarantee Association* (2005) 128 Cal.App.4th 989, 1000].

[99] *Id*, at p. 1209 [emphasis added].

[100] *Ibid* [citing Insurance Code §1063.1].

Government Code section 17551 provides that the Commission "shall hear and decide upon" a local government's claim that the Controller incorrectly reduced payments pursuant to section 17561(d)(2), which in turn describes the Controller's audit authority.[101] Moreover, section 1185.1 (formerly section 1185) of the Commission's regulations states that "[t]o 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."[102] And, section 1185.1 further requires that an IRC filing include "[a] written detailed narrative that describes the alleged incorrect reduction(s)," including "a comprehensive description of the reduced or disallowed area(s) of cost(s)." And in addition, the filing must include "[a] copy of any final state audit report, letter, remittance advice, or other written notice of adjustment form the Office of State Controller that explains the reason(s) for the reduction or disallowance."[103] Therefore, the Controller's reduction of a local government's reimbursement claim is the underlying cause of an IRC, and the notice to the claimant of the reduction and the reason for the reduction is the "last element essential to the cause of action,"[104] similar to *County of Los Angeles v. State Department of Public Health*, and *Snyder v. California Insurance Guarantee Association*, discussed above.

2. As applied to this IRC, the three year period of limitation attached either to the July 30, 1998 notice of adjustment or the July 10, 2002 notice of adjustment, and therefore the IRC filed December 16, 2005 was not timely.

As discussed above, the general rule of accrual of a cause of action is that the period of limitations attaches and begins to run when the claim accrues, or in other words upon the occurrence of the last element essential to the cause of action. The above analysis demonstrates that the general rule, applied consistently with Government Code section 17558.5 and Code of Regulations, title 2, section 1185.1 (formerly 1185) means that an IRC accrues and may be filed when the claimant receives notice of a reduction and the reason(s) for the reduction. And, as discussed above, none of the established exceptions to the general accrual rule apply as a matter of law to IRCs generally. However, the claimant has here argued that later letters or notices of payment action in the record control the time "from which the ultimate regulatory period of limitation is to be measured…" The Commission finds that the claimant's argument is unsupported.

a. The general accrual rule must be applied consistently with Government Code section 17558.5(c).

---

[101] Government Code section 17551 (Stats. 1985, ch. 179; Stats. 1986, ch. 879; Stats 2002, ch. 1124 (AB 3000); Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)); 17561(d)(2) (Stats. 1986, ch. 879; Stats. 1988, ch. 1179; Stats. 1989, ch. 589; Stats. 1996, ch. 45 (SB 19); Stats. 1999, ch. 643 (AB 1679); Stats. 2002, ch. 1124 (AB 3000); Stats. 2004, ch. 313 (AB 2224); Stats 2004, ch. 890 (AB 2856); Stats. 2006, ch. 78 (AB 1805); Stats. 2007, ch. 179 (SB 86); Stats. 2007, ch. 329 (AB 1222); Stats. 2009, ch. 4 (SBX3 8)).

[102] Code of Regulations, title 2, section 1185.1(a) (Register 2014, No. 21.

[103] Code of Regulations, title 2, section 1185.1(f) (Register 2014, No. 21.

[104] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

As noted above, the period of limitation for filing an IRC was added to the Commission's regulations effective September 13, 1999. As amended by Register 99, No. 38, section 1185(b) provided:

> All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice *notifying the claimant of a reduction.*[105]

Based on the plain language of the provision, the Commission's regulation on point is consistent with the general rule that the period of limitation to file an IRC begins to run when the claimant receives notice of a reduction.

However, Government Code section 17558.5, as explained above, provides that the Controller must issue written notice of an adjustment, which includes the claim components adjusted and the reasons for adjustment. And, accordingly, section 1185.1 (formerly 1185) requires an IRC filing to include a detailed narrative which identifies the alleged incorrect reductions, and any copies of written notices specifying the reasons for reduction.

Therefore, a written notice identifying the reason or reasons for adjustment is required to trigger the period of limitation. Here, there is some question whether the July 30, 1998 notice provided sufficient notice of the reason for the reduction. The claimant states in its IRC that the claim was "reduced by the amount of $184,842 due to 'no supporting documentation.'"[106] In addition, the claimant provided a letter addressed to the audit manager at the Controller's Office from the District, stating that "Gavilan College has all supporting documentation to validate our claim..." and "[i]t is possible you need additional information..."[107] However, the notice of adjustment included in the record, issued on July 30, 1998, does not indicate a reason for the adjustment.[108]

The July 10, 2002 letter, however, does more clearly state the reason for adjustment, as "no supporting documentation."[109] And again, the claimant states in its IRC that the later letter reduced the claim "by the amount of $124,245 due to 'no supporting documentation.'"[110]

The issue, then, is whether the claimant had actual notice as early as July 30, 1998 of the adjustment and the reason for the adjustment, or whether the Controller's failure to clearly state the reason means the period of limitation instead commenced to run on July 10, 2002. The case law described above would seem to weigh in favor of applying the period of limitation to the earlier notice of adjustment, even if the reason for the adjustment was not known at that time.[111] Additionally, the evidence in the record indicates that the claimant may have had *actual* notice of

---

[105] Code of Regulations, title 2, section 1185(b) (Register 1999, No. 38) [emphasis added].

[106] Exhibit A, IRC 05-4425-I-11, page 5.

[107] Exhibit A, IRC 05-4425-I-11, page 21.

[108] Exhibit A, IRC 05-4425-I-11, page 15.

[109] Exhibit A, IRC 05-4425-I-11, page 19.

[110] Exhibit A, IRC 05-4425-I-11, pages 5-6.

[111] See *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."]

the reason for the reduction, even if the Controller's letter dated July 30, 1998 does not clearly state the reason.[112] However, section 17558.5 requires the Controller to specify the reasons for reduction in its notice, and section 1185.1 of the regulations requires a claimant to include a copy of any such notice in its IRC filing.

Ultimately, the Commission is not required to resolve this question here, because the period of limitation attaches *no later than* the July 10, 2002 notice, which does contain a statement of the reason for the reduction. And, pursuant to the case law discussed above, even if the reason stated is cursory or vague, the period of limitation would commence to run where the claimant knows or has reason to know that it has a claim.[113]

b. None of the exceptions to the general accrual rule apply, and therefore the later notices of adjustment in the record do not control the period of limitation.

As discussed at length above, a cause of action is generally held to accrue at the time an action may be maintained, and the applicable statute of limitations attaches at that time.[114] Here, claimant argues that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record: "the incorrect reduction claim asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured, which the claimant has so alleged."[115] In its comments on the draft, the claimant identifies a new "notice of adjustment" received by the claimant on February 26, 2011,[116] which the claimant argues "now becomes the last Controller's adjudication notice letter," and sets the applicable period of limitation.[117]

There is no support in law for the claimant's position. As discussed above, statutes of limitation attach when a claim is "complete with all its elements."[118] Exceptions have been carved out when a plaintiff is justifiably unaware of facts essential to the claim,[119] but even those exceptions are limited, and do not apply when the plaintiff has sufficient facts to be on inquiry or

---

[112] Exhibit A, IRC 05-4425-I-11, pages 5-6; 15; 21.

[113] See, e.g., *Allred v. Bekins Wide World Van Services* (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra*, 6 Cal.3d at p. 190; *Budd v. Nixen, supra*, 6 Cal.3d at pp. 200-201].

[114] *Lambert v. McKenzie, supra*, (1901) 135 Cal. 100, 103.

[115] Exhibit B, Claimant Comments, page 2.

[116] The notice in the record is dated February 26, 2011 but stamped received by the District on March 14, 2011.

[117] Exhibit E, Claimant Comments on Draft Proposed Decision, page 2.

[118] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[119] *Allred v. Bekins Wide World Van Services*, (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra*, 6 Cal.3d at p. 190; *Budd v. Nixen, supra*, 6 Cal.3d at pp. 200-201].

constructive notice that a wrong has occurred and that he or she has been injured.[120] The courts do not accommodate a plaintiff merely because the full extent of the claim, or its legal significance, or even the identity of a defendant, may not be yet known at the time the cause of action accrues.[121] Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate an IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation.

The discussion above also explains that in certain circumstances a new statute of limitations is commenced where a new injury results, even from the same or similar conduct, and in such circumstances a plaintiff may be able to recover for the later injury even when the earlier injury is time-barred.[122] Here, the later letters in the record do not constitute either a new or a cumulative injury. The first notice stated a reduction of the claim "by the amount of $184,842..." and stated that "$126,146 was due to the State."[123] The later letters notified the claimant that funds were being offset from other programs,[124] but did not state any new reductions. And the notice dated July 10, 2002 stated that the Controller had further reviewed the claim, and now $60,597 was due the claimant, which represented a reduction of the earlier adjustment amount.[125] The letter that the claimant received on March 14, 2011,[126] states no new reductions, or new reasoning for existing reductions, with respect to the 1995-1996 annual

---

[120] *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient's body, and not medical devices implanted it it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord's belated discovery of that his homeowner's policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 ["It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations."].

[121] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 ["Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations."]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."].

[122] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104.

[123] Exhibit A, IRC 05-4425-I-11, pages 5; 15.

[124] Exhibit A, IRC 05-4425-I-11, pages 5; 16-17.

[125] Exhibit A, IRC 05-4425-I-11, pages 5; 18.

[126] The claimant refers to this in Exhibit E as a February 26, 2011 letter, but the letter is stamped received by the District on March 14, 2011.

claims for the *Collective Bargaining* program; it provides exactly as the notice dated July 10, 2002: that $60,597 is due the claimant for the program.[127]

Based on the foregoing, the Commission finds none of the exceptions to the commencement or running of the period of limitation apply here to toll or renew the limitation period.

c. The three year period of limitation found in former Section 1185 of the Commission's regulations is applicable to this incorrect reduction claim, and does not constitute an unconstitutional retroactive application of the law.

Former section 1185[128] of the Commission's regulations, pertaining to IRCs, contained no applicable period of limitation as of July 30, 1998.[129] Neither is there any statute of limitations for IRC filings found in the Government Code.[130] Moreover, the California Supreme Court has held that "the statutes of limitations set forth in the Code of Civil Procedure...do not apply to administrative proceedings."[131] Therefore, at the time that the claimant in this IRC first received notice from the Controller of a reduction of its reimbursement claim, there was no applicable period of limitation articulated in the statute or the regulations.[132]

However, in 1999, the following was added to section 1185(b) of the Commission's regulations:

---

[127] Compare Exhibit A, IRC 05-4425-I-11, pages 5; 18, with Exhibit E, Claimant Comments on Draft Proposed Decision, page 4.

[128] Section 1185 was amended and renumbered 1185.1 effective July 1, 2014. However, former section 1185, effective at the time the IRC was filed, is the provision applicable to this IRC.

[129] Code of Regulations, title 2, section 1185 (Register 1996, No. 30).

[130] See Government Code section 17500 et seq.

[131] *Coachella Valley Mosquito and Vector Control District v. Public Employees' Retirement System* (2005) 35 Cal.4th 1072, 1088 [citing *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29; *Robert F. Kennedy Medical Center v. Department of Health Services* (1998) 61 Cal.App.4th 1357, 1361-1362 (finding that Code of Civil Procedure sections 337 and 338 were not applicable to an administrative action to recover overpayments made to a Medi-Cal provider); *Little Co. of Mary Hospital v. Belshe* (1997) 53 Cal.App.4th 325, 328-329 (finding that the three year audit requirement of hospital records is not a statute of limitations, and that the statutes of limitations found in the Code of Civil Procedure apply to the commencement of civil actions and civil special proceedings, "which this was not"); *Bernd v. Eu*, *supra* (finding statutes of limitations inapplicable to administrative agency disciplinary proceedings)].

[132] *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 45 [The court held that PERS' duties to its members override the general procedural interest in limiting claims to three or four years: "[t]here is no requirement that a particular type of claim have a statute of limitation."]. See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 516 ["There is no specific time limitation statute pertaining to the revocation or suspension of a notary's commission."].

> All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction.[133]

The courts have held that "[i]t is settled that the Legislature may enact a statute of limitations 'applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable."[134] A limitation period is "within the jurisdictional power of the legislature of a state," and therefore may be altered or amended at the Legislature's prerogative.[135] The Commission's regulatory authority must be interpreted similarly.[136] However, "[t]here is, of course, one important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect."[137]

The California Supreme Court has explained that "[a] party does not have a vested right in the time for the commencement of an action."[138] And neither "does he have a vested right in the running of the statute of limitations prior to its expiration."[139] If a statute "operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party."[140] In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one year is more than sufficient, but has cited to decisions in other jurisdictions providing as little as thirty days.[141]

---

[133] Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

[134] *Scheas v. Robertson* (1951) 38 Cal.2d 119, 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, 414].

[135] *Scheas, supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, 324].

[136] *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10 [Regulations of an agency that has quasi-legislative power to make law are treated with equal dignity as to statutes]; *Butts v. Board of Trustees of the California State University* (2014) 225 Cal.App.4th 825, 835 ["The rules of statutory construction also govern our interpretation of regulations promulgated by administrative agencies."].

[137] *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 122.

[138] *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

[139] *Liptak, supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468].

[140] *Rosefield Packing Co., supra*, at pp. 122-123.

[141] See *Rosefield Packing Co., supra*, at p. 123 ["The plaintiff, therefore, had practically an entire year to bring his case to trial..."]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead*

Here, the regulation imposing a period of limitation was adopted and became effective on September 13, 1999.[142] As stated above, the section requires that an IRC be filed no later than three years following the date of the Controller's notice to the claimant of an adjustment. The courts have generally held that the date of accrual of the claim itself is excluded from computing time, "[e]specially where the provisions of the statute are, as in our statute, that the time shall be computed *after* the cause of action shall have accrued.[143] Here, the applicable period of limitation states that an IRC must be filed "no later than three (3) years *following* the date..."[144] The word "following" should be interpreted similarly to the word "after," and "as fractions of a day are not considered, it has been sometimes declared in the decisions that no moment of time can be said to be after a given day until that day has expired."[145] Therefore, applying the three year period of limitation to the July 30, 1998 initial notice of adjustment means the limitation period would have expired on July 31, 2001, twenty-two and one-half months after the limitation was first imposed by the regulation. In addition, if the 2002 notice is considered to be the first notice that provides a reason for the reduction, thus triggering the limitation, then the limitation is not retroactive at all. Based on the cases cited above, and those relied upon by the California Supreme Court in its reasoning, that period is more than sufficient to satisfy any due process concerns with respect to application of section 1185 of the Commission's regulations to this IRC.

Based on the foregoing, the Commission finds that the regulatory period of limitation applies from the date that it became effective, and based on the evidence in this record that application does not violate the claimant's due process rights.

V. Conclusion

Based on the foregoing, the Commission finds that this IRC is not timely filed, and is therefore denied.

(1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

[142] Code of Regulations, title 2, section 1185 (Register 99, No. 38).

[143] *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App. 503, 503-504 [Emphasis Added].

[144] Code of Regulations, title 2, section 1185 (Register 99, No. 38).

[145] *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App., at pp. 503-504 [Emphasis Added].

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

RE: **Decision**

Collective Bargaining, 05-4425-I-11
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961
Fiscal Year 1995-1996
Gavilan Joint Community College District, Claimant

On December 5, 2014, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: December 11, 2014

Heather Halsey, Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 December 11, 2014, I served the:

Decision
Collective Bargaining, 05-4425-I-11
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961
Fiscal Year 1995-1996
Gavilan Joint Community College District, 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 December 11, 2014 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 05-4425-I-11

Matter: Collective Bargaining

Claimant: Gavilan Joint Community College District

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.)

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

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

Ed Hanson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Frederick Harris, Gavilan Vice President, *Gavilan Joint Community College District*
5055 Santa Teresa Boulevard, Gilroy, CA 95020

Phone: (408) 848-4715
fharris@gavilan.edu

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.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

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analystâ€™s Office*
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
Claimant Representative
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Nicolas Schweizer, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
nicolas.schweizer@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

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

EXHIBIT "E"

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

September 30, 2015

Mr. Patrick J. Dyer
MGT of America
2251 Harvard Street, Suite 134
Sacramento, CA 95815

Ms. Jill Kanemasu
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: **Decision**
Handicapped and Disabled Students, 05-4282-I-03
Government Code Sections 7570-7588; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Sections 60000-60200 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28])
Fiscal Years 1996-1997, 1997-1998, and 1998-1999
County of San Mateo, Claimant

Dear Mr. Dyer and Ms. Kanemasu:

On September 25, 2015, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7570-7588 Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882) California Code of Regulations, Title 2, Sections 60000-60200 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28]) Fiscal Years 1996-1997, 1997-1998, and 1998-1999 County of San Mateo, Claimant	Case No.: 05-4282-I-03 *Handicapped and Disabled Students* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted September 25, 2015*) (*Served September 30, 2015*)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on September 25, 2015. Patrick Dyer, John Klyver, and Glenn Kulm appeared on behalf of the claimant, the County of San Mateo (claimant). Shawn Silva and Chris Ryan appeared on behalf of the State Controller's Office (Controller).

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

The Commission adopted the proposed decision to partially approve the IRC at the hearing by a vote of 5-1 as follows:

Member	Vote
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Richard Chivaro, Representative of the State Controller, Vice Chairperson	No
Mark Hariri, Representative of the State Treasurer	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

Summary of the Findings

This analysis addresses reductions made by the Controller to reimbursement claims filed by the claimant for costs incurred during fiscal years 1996-1997 through 1998-1999 for the *Handicapped and Disabled Students* program. Over the three fiscal years in question, reductions totaling $3,940,249 were made, based on alleged unallowable services claimed and understated offsetting revenues.

The Commission partially approves this IRC, finding that reductions for medication monitoring in all three fiscal years, and for crisis intervention in fiscal year 1998-1999 were correct as a matter of law, but that reductions for eligible day treatment services inadvertently miscoded as "skilled nursing" and "residential, other" are incorrect, and reductions for fiscal years 1996-1997 and 1997-1998 for crisis intervention are incorrect. And, the Commission finds that reduction of the entire amount of Early and Periodic Screening, Diagnosis, and Testing (EPSDT) program funds is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support. The Commission requests the Controller to reinstate costs reduced for services and offsetting revenues as follows:

- $91,132 originally claimed as "Skilled Nursing" or "Residential, Other," costs which have been correctly stated in supplemental documentation, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.
- That portion of $224,318 reduced for crisis intervention services which is attributable to fiscal years 1996-1997 and 1997-1998, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.
- Recalculate EPSDT offsetting revenues based on the amount of EPSDT state share funding actually received and attributable to the services provided to pupils under this mandated program during the audit period.

COMMISSION FINDINGS

I. Chronology

12/26/2002	Controller issued the final audit report.[1]
04/28/2003	Controller issued remittance advice letters for each of the three fiscal years.[2]
04/27/2006	Claimant filed the IRC.[3]
05/04/2009	Controller submitted written comments on the IRC.[4]
03/15/2010	Claimant submitted rebuttal comments.[5]

[1] Exhibit A, IRC 05-4282-I-03, page 71.

[2] Exhibit A, IRC 05-4282-I-03, pages 1; 373-377.

[3] Exhibit A, IRC 05-4282-I-03, page 1.

[4] Exhibit B, Controller's Comments on the IRC.

[5] Exhibit C, Claimant's Rebuttal Comments.

05/28/2015	Commission staff issued the draft proposed decision.[6]
06/17/2015	Claimant submitted comments on the draft proposed decision and a request for postponement, which was denied.[7]
07/9/2015	Upon further review, Commission staff postponed the hearing to September 25, 2015.
07/28/2015	Commission staff issued the revised draft proposed decision.[8]
08/14/2015	Controller requested an extension of time to file comments on the revised draft proposed decision, which was approved for good cause.
08/25/2015	Claimant filed comments on the revised draft proposed decision.[9]
08/26/2015	Controller filed comments on the revised draft proposed decision.[10]

II. Background

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

The *Handicapped and Disabled Students* test claim was filed on Government Code section 7570 et seq., as added by Statutes 1984, chapter 1747 (AB 3632) and amended by Statutes 1985, chapter 1274 (AB 882); and on the initial emergency regulations adopted in 1986 by the Departments of Mental Health and Education to implement this program.[11] Government Code section 7576 required the county to provide psychotherapy or other mental health services when required by a pupil's IEP. Former section 60020 of the Title 2 regulations defined "mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health's (DMH's) Title 9 regulations.[12] In 1990 and 1991, the

---

[6] Exhibit D, Draft Proposed Decision.

[7] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Request for Postponement.

[8] Exhibit F, Revised Draft Proposed Decision.

[9] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision.

[10] Exhibit H, Controller's Comments on Revised Draft Proposed Decision.

[11] California Code of Regulations, title 2, division 9, sections 60000-60200 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

[12] Former California Code of Regulations, title 2, section 60020(a).

Commission approved the test claim and adopted parameters and guidelines, authorizing reimbursement for the mental health treatment services identified in the test claim regulations.[13]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM-4282.[14] In May 2005, the Commission adopted a statement of decision on reconsideration (04-RL-4282-10), and determined that the original statement of decision correctly concluded that the 1984 and 1985 test claim statutes and the original regulations adopted by the Departments of Mental Health and Education impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 statement of decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. On reconsideration, the Commission agreed with its earlier decision that Government Code section 7576 and the initial regulations adopted by the Departments of Mental Health and Education required counties to provide psychotherapy or other mental health treatment services to a pupil, either directly or by contract, when required by the pupil's IEP. The Commission further found that the regulations defined "psychotherapy and other mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health title 9 regulations. These services included day care intensive services, day care habilitative (counseling and rehabilitative) services, vocational services, socialization services, collateral services, assessment, individual therapy, group therapy, medication (including the prescribing, administration, or dispensing of medications, and the evaluation of side effects and results of the medication), and crisis intervention.

Controller's Audit and Summary of the Issues

The Controller issued its "final audit report" on December 26, 2002, which proposed reductions to claimed costs for fiscal years 1996-1997 through 1998-1999 by $3,940,249, subject to "an informal review process to resolve a dispute of facts." Though claimant did participate in the informal review process, the Controller made no changes to its findings in the "final audit report" and thereafter issued remittances, reducing claimed costs consistently with the audit findings. The Controller's audit report made the following findings.

In Finding 1, the Controller determined that $518,337 in costs were claimed in excess of amounts paid to its contract providers. The claimant does not dispute this finding.

In Finding 2, the Controller determined that the claimant had claimed ineligible costs for treatment services, represented in the claim forms by "mode and service function code" as follows: 05/10 Hospital Inpatient ($38,894); 05/60 Residential, Other ($76,223); 10/20 Crisis Stabilization ($3,251); 10/60 Skilled Nursing ($21,708); 15/60 Medication [Monitoring] ($1,007,332); and 15/70 Crisis Intervention ($224,318). The claimant concurred with the findings regarding Hospital Inpatient and Crisis Stabilization and, thus, those reductions are not addressed in this decision. However, the claimant disputes the reductions with respect to "skilled nursing" and "residential, other," "medication monitoring," and "crisis intervention." The

---

[13] *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49 was filed in 2003 on subsequent statutory and regulatory changes to the program, including 1998 amendments to the regulation that defined "mental health services" but those changes are not relevant to this IRC.

[14] Statutes 2004, chapter 493 (SB 1895).

Controller's audit rejected costs claimed for "skilled nursing" and "residential, other" based on the service function codes recorded on the reimbursement claim forms, because those services are ineligible for reimbursement. Additionally, the Controller determined that medication monitoring and crisis intervention were not reimbursable activities because they were not included in the original test claim decision or parameters and guidelines. The Controller's audit reasons that while several other treatment services are defined in title 9, section 543 of the Code of Regulations, including medication monitoring and crisis intervention, and some are expressly named in the parameters and guidelines, medication monitoring and crisis intervention were excluded from the parameters and guidelines, which the Controller concludes must have been intentional.[15]

In Finding 3, the Controller determined that the claimant failed to report state matching funds received under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program to reimburse for services provided to Medi-Cal clients, as well as funding received from the State Board of Education for school expenses (referred to as AB 599 funds); and that the claimant incorrectly deducted Special Education Pupil funds (also called AB 3632 funds). The adjustment to the claimant's offsetting revenues totaled $2,445,680. The claimant does not dispute the adjustment for AB 599 funds, and does not address the correction of the allocation of Special Education Pupil funds, but does dispute the Controller's reduction of the entire amount received under the EPSDT program as offsetting revenue since EPSDT funds may be allocated to a wide range of services, in addition to the mandated program, and many of the students receiving services under the mandated program were not Medi-Cal clients.

Finally, in Finding 4, the Controller determined that the claimant's offsetting revenue reported from Medi-Cal funds required adjustment based on the disallowances of certain ineligible services for which offsetting revenues were claimed. The claimant requests that if any of the costs for the disallowed services are reinstated as a result of this IRC, the offsetting Medi-Cal revenues would need to be further adjusted.

Accordingly, based on the claimant's response to the audit report and its IRC filing, the following issues are in dispute:

- Reductions based on services claimant alleges were inadvertently miscoded as "skilled nursing" and "residential, other" on its original reimbursement claim forms;
- Whether costs for medication monitoring and crisis intervention are eligible for reimbursement; and
- Whether reductions of the full amount of revenues and disbursements received by claimant under the EPSDT program are correct as a matter of law and supported by evidence in the record.

[15] Exhibit A, IRC 05-4282-I-03, page 79.

III. Positions of the Parties

County of San Mateo

First, with respect to the Controller's assertion that the IRC was not timely filed, the claimant argues that "[i]n fact, our IRC was initially received by the Commission on April 26, 2006."[16] The claimant states that "[w]e were then requested to add documentation solely to establish the final date by which the IRC must have been submitted in order to avoid the [statute of limitations] issue." The claimant points out that "[t]he SCO asserts that the basis of the [statute of limitations] issue is that the IRC was not submitted by the deadline of April 28, 2006." The claimant continues: "The confirmation of this deadline by the SCO supports the timeliness of the initial presentation of our IRC to the Commission."[17]

The draft proposed decision recommended denial of the entire IRC based on the three year limitation period to file an IRC with the Commission, applied to the December 26, 2002 audit report; based on that date, the IRC filed April 27, 2006 was not timely. In response, the claimant submitted written comments requesting that the matter be continued to a later hearing and the decision be revised. Specifically, the claimant argued that the IRC was timely filed based on the plain language of the Commission's regulations, and based on the interpretation of those regulations in the Commission's "Guide to State Mandate Process", a public information document available for a time on the Commission's web site. The claimant argued that while the IRC was filed "within three years of issuance of the...remittance advice..." the "Commission [staff] now asserts, though, that the IRC should have been filed within three years of the issuance of the SCO's final audit report because, based on the Commission's *present* interpretation, the final audit report constitutes 'other notice of adjustment' notifying the County of a reduction of its claim."[18] The claimant argued that this "is contrary to both well-settled practice and understanding and the Commission's own precedents." The claimant further pointed out that neither party has raised the issue of whether the IRC was timely filed based on the audit report, and that both the claimant and the Controller relied on the remittance advice to determine the regulatory period of limitation.

In addition, the claimant argues that "even after issuance of the SCO's final audit report, the County may submit further materials and argument to the SCO with respect to its claim..." The claimant characterizes this process as "the ongoing administrative process after the preparation of the SCO's final audit report..." and argues that "it is inappropriate to conclude that the report constitutes a 'notice of adjustment' as that term is used in Section 1185."[19]

Furthermore, the claimant argues that denying this IRC based on the regulatory period of limitation applied to the December 26, 2002 audit report is inconsistent with a prior Commission

---

[16] Exhibit C, Claimant's Rebuttal Comments, pages 3-4. The IRC is in fact stamped received on April 27, 2006. (See Exhibit A, page 3.)

[17] Exhibit C, Claimant's Rebuttal Comments, pages 3-4.

[18] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Request for Postponement, page 2 [emphasis in original].

[19] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Request for Postponement, page 2.

decision on the same program. The claimant argues that "the Commission, construing the same regulatory text at issue here, under remarkably similar circumstances, rejected a claim that a county's IRC was untimely."[20] The claimant argues that while statutes of limitation do provide putative defendants repose, and encourage diligent prosecution of claims: "A countervailing factor…is the policy favoring disposition of cases on the merits rather than on procedural grounds."[21] Therefore, the claimant concludes that the period of limitation must be calculated from the later remittance advice, rather than the audit report, and the Commission should decide this IRC on its merits.

With regard to the merits, claimant asserts that the Controller incorrectly reduced claimed costs totaling $3,232,423 for the audit period.[22]

The claimant asserts that disallowed costs for "skilled nursing" and "residential, other" were merely miscoded on the reimbursement claim forms, and in fact were eligible day treatment services that should have been reimbursed, totaling $91,132.[23]

Referring to "medication monitoring" and "crisis intervention," the claimant argues that the Controller "arbitrarily excluded eligible activities for all three fiscal years…" (incorrectly reducing costs claimed by a total of $1,231,650)[24] based on an "overly restrictive Parameters and Guidelines interpretation…" The claimant maintains:

> The activities in question were clearly a part of the original test claim, statement of decision and are based on changes made to Title 2, Division 9, Chapter 1 of the California Code of Regulations, Section 60020, Government Code 7576 and Interagency Code of Regulations, and part of activities included in the Parameters and Guidelines. [*sic*][25]

The disallowance, the claimant argues, "is based on an errant assumption that these activities were intentionally excluded…" Rather, the claimant argues, "the Parameters and Guidelines for this program, like many other programs of the day, were intended to guide locals to broad general areas of activity within a mandate without being the overly restrictive litigious documents as they have become today."[26]

---

[20] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Request for Postponement, page 3.

[21] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Request for Postponement, page 4 [citing *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.).

[22] Exhibit A, IRC 05-4282-I-03, pages 2; 8.

[23] Exhibit A, IRC 05-4282-I-03, page 115. [However, as noted below, the claimant concedes that of the $97,931 in miscoded services, only $91,132 "should have been approved…" and the claimant disputes only that amount of the disallowance. (See Exhibit A, IRC 05-4282-I-03, page 114.)]

[24] This amount includes $1,007,332 for medication monitoring and $224,318 for crisis intervention. (See Exhibit A, IRC 05-4282-I-03, pages 8; 78-79.)

[25] Exhibit A, IRC 05-4282-I-03, page 7.

[26] Exhibit A, IRC 05-4282-I-03, page 7.

The claimant therefore concludes that medication monitoring and crisis intervention activities are reimbursable, when necessary under an IEP, because these are defined in the regulations and not specifically excluded in the parameters and guidelines.[27]

In addition, with regard to offsets, the claimant asserts that EPSDT revenues "only impact 10% of the County's costs for this mandate." However, the Controller "deducted 100% of the EPSDT revenue from the claim." Therefore, the claimant "disagrees with the SCO and asks that $1,902,842 be reinstated."[28]

The claimant explains the issue involving the EPSDT offset as follows:

> In the SCO's audit report, the SCO stated "...if the County can provide an accurate accounting of the number of Medi-Cal units of services applicable to the mandate, the SCO auditor will review the information and adjust the audit finding as appropriate." We have provided this data as requested by the SCO. The State auditor also recalculated the data, but no audit adjustments were made.
>
> Here is a brief chronology of the calculation of the offset amount:
>
> - The County initially estimated the offset for the three-year total to be $166,352.
> - The State SB 90 auditor, utilizing a different methodology, then calculated the offset separately, and came to a three-year total for the offset of $665,975.
> - Subsequently, in FY 2003-04 the Department of Mental Health (DMH) developed a standard methodology for calculating EPSDT offset for SB90 claims. Applying this approved methodology the EPSDT offset is $524,389, resulting in $1,544,805 being due to the County. This methodology is supported by the State and should be accepted as the final calculation of the accurate EPSDT offset and resulting reimbursement due to the County.[29]

In comments filed on the revised draft proposed decision, the claimant further explains that the Controller's calculation of the EPSDT offset conflicts with DMH guidance, and does not reflect the intent of the Legislature to provide EPSDT revenue for growth above the baseline year. In addition, the claimant stresses that the Controller has asked for documentation to audit the baseline calculations made by the County, but those figures have been accepted by the state and federal government, and based on the passage of time, should be deemed true and correct, and not revisited at this time.[30]

---

[27] Exhibit A, IRC 05-4282-I-03, page 8.

[28] Exhibit A, IRC 05-4282-I-03, page 12.

[29] Exhibit C, Claimant's Rebuttal Comments, pages 1-2.

[30] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision, page 2.

State Controller's Office

As a threshold issue, the Controller asserts that the IRC was not timely filed, in accordance with the Commission's regulations. The Controller argues that section 1185 requires an IRC to be filed no later than three years following the date of the Controller's remittance advice or other notice of adjustment. The Controller states that this IRC was filed on May 25, 2006, and is not timely based on the remittance advice letters issued to the claimant on April 28, 2003.

The Controller further maintains that "[t]he subject claims were reduced because the Claimant included costs for services that were not reimbursable under the Parameters and Guidelines in effect during the audited years." In addition, the Controller asserts that "the Claimant failed to document to what degree AB3632 students were also Medi-Cal beneficiaries, requiring that EPSDT revenues be offset." The Controller holds that the reductions "were appropriate and in accordance with law."[31]

Specifically, the Controller asserts that the "county did not furnish any documentation to show that ["skilled nursing" and "residential, other"] services represented eligible day treatment services that had been miscoded."[32]

The Controller further argues that while medication monitoring and crisis intervention "were defined in regulation…at the time the parameters and guidelines on the Handicapped and Disabled Students (HDS) program were adopted…" those activities "were not included in the adoption of the parameters and guidelines as reimbursable costs."[33] The Controller asserts that medication monitoring costs were not reimbursable until the Commission made findings on the regulatory amendments and adopted revised parameters and guidelines for the *Handicapped and Disabled Students II* program on May 26, 2005 (test claim decision) and December 9, 2005 (parameters and guidelines decision). The Commission, the Controller notes, "defined the period of reimbursement for the amended portions beginning July 1, 2001." Therefore, the Controller concludes, "medication monitoring costs claimed prior July 1, 2001 [*sic*] are not reimbursable."[34]

In addition, the Controller notes that "[i]n 1998, the Department of Mental Health and Department of Education changed the definition of mental health services, pursuant to section 60020 of the regulations, which deleted the activity of crisis intervention." Therefore, the Controller concludes, "the regulation no longer includes crisis intervention activities as a mental health service."[35]

With respect to offsetting revenues, the Controller argues that the claimant "did not report state-matching funds received from the California Department of Mental Health under the EPSDT program to reimburse the county for the cost of services provided to Medi-Cal clients." The Controller states that its auditor "deducted all such revenues received from the State because the county did not provide adequate information regarding how much of these funds were applicable

---

[31] Exhibit B, Controller's Comments on the IRC, page 1.

[32] Exhibit A, IRC 05-4282-I-03, page 79.

[33] Exhibit B, Controller's Comments on the IRC, page 17.

[34] Exhibit B, Controller's Comments on the IRC, page 17.

[35] Exhibit B, Controller's Comments on the IRC, page 17.

to the mandate." The Controller states that "if the county can provide an accurate accounting of the number of Medi-Cal units of service applicable to the mandate, the SCO auditor will review the information and adjust the audit finding as appropriate."[36]

In response to the revised draft proposed decision, the Controller argues that the Commission should not analyze the alleged miscoded costs for "Residential, Other" and "Skilled Nursing" services, because these costs were not alleged specifically in the IRC narrative. The Controller argues that "the Commission's regulations require the claimant to request a determination that the SCO incorrectly reduced a reimbursement claim..."[37] In addition, the Controller disagrees with the finding in the decision to remand the EPSDT offset question to the Controller. The Controller states that because the claimant did not sufficiently support its estimate of EPSDT offsetting revenue applied to the mandate, "we believe that the only reasonable course of action is to apply the mental health related EPSDT revenues received by the county, totaling $2,069,194, as an offset."[38]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[39] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[40]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

---

[36] Exhibit B, Controller's Comments on the IRC, page 18.

[37] Exhibit H, Controller's Comments on Revised Draft Proposed Decision, page 2.

[38] Exhibit H, Controller's Comments on Revised Draft Proposed Decision, page 4.

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

[40] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[41] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[42]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[43] In addition, sections 1185.1(f) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[44]

A. The Incorrect Reduction Claim Was Timely Filed.

The Controller contends that this IRC was filed on May 25, 2006, the date the IRC was deemed complete, and it was therefore not timely based on the remittance advice letters issued to the claimant on April 28, 2003. Thus, the Controller asserts that the Commission does not have jurisdiction to hear and determine this IRC. As described below, the Commission finds that the IRC was timely filed.

At the time pertinent to this IRC, section 1185 of the Commission's regulations stated as follows: "All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction."[45]

Based on the date of the "final audit report", the draft proposed decision issued May 28, 2015 concluded that the IRC was not timely filed, presuming that the "final audit report" was the first

---

[41] *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[42] *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th 534, 547-548.

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

[44] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[45] Code of Regulations, title 2, section 1185 (as amended by Register 2003, No. 17, operative April 21, 2003). This section has since been renumbered 1185.1.

notice of adjustment.[46] However, upon further review, the final audit report contains an express invitation for the claimant to participate in further dispute resolution, and invites the claimant to submit additional documentation to the Controller: "The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report."[47] The language inviting further informal dispute resolution supports the finding that the audit report did not constitute the Controller's *final* determination on the subject claims and thus did not provide the first notice of an actual reduction.[48]

The County of San Mateo filed its IRC on April 27, 2006, and, after requesting additional documentation, Commission staff determined that filing to be complete on May 25, 2006.[49] Both the claimant and the Controller rely on the remittance advice letters dated April 28, 2003[50] as beginning the period of limitation for filing the IRC.[51] Based the date of the remittance advice letters, a claim filed on or before April 28, 2006 would be timely, being "no later than three (3) years following the date..." of the remittance advice.

However, based on the date of the "final audit report", the draft proposed decision issued May 28, 2015 concluded that the IRC was not timely filed, presuming that the "final audit report" was the first notice of adjustment.[52] The general rule in applying and enforcing a statute of

---

[46] The Commission has previously found that the earliest notice of an adjustment which also provides a reason for the adjustment triggers the period of limitation to run. See Adopted Decision, *Collective Bargaining*, 05-4425-I-11, December 5, 2014 [The claimant in that IRC argued that the *last* notice of a reduction should control the regulatory period of limitation for filing its IRC, but the Commission found that the earliest notice in the record which also contains a reason for the reduction, controls the period of limitation. The claimant, in that case, received multiple notices of reduction for the subject claims between January 24, 1996 and August 8, 2001, but none of those contained an adequate explanation of the reasons for the reduction. Finally, on July 10, 2002, the claimant received remittance advice that included a notation that the claim was being denied due to a lack of supporting documentation; based on that date, a timely IRC would have to be filed by July 10, 2005, and the claimant's December 16, 2005 filing was not timely.].

[47] Exhibit A, IRC 05-4282-I-03, page 71.

[48] Code of Regulations, title 2, section 1185 (Register 2003, No. 17).

[49] Exhibit I, Completeness Letter, dated June 6, 2006.

[50] Exhibit A, IRC 05-4282-I-03, pages 373-377; Exhibit B, Controller's Comments on the IRC, page 19.

[51] See Exhibit B, Controller's Comments on the IRC, page 19; Exhibit C, Claimant's Rebuttal Comments, page 4.

[52] The Commission has previously found that the earliest notice of an adjustment which also provides a reason for the adjustment triggers the period of limitation to run. See Adopted Decision, *Collective Bargaining*, 05-4425-I-11, December 5, 2014 [The claimant in that IRC argued that the *last* notice of a reduction should control the regulatory period of limitation for filing its IRC, but the Commission found that the earliest notice in the record which also contains a reason for the reduction, controls the period of limitation. The claimant, in that case, received multiple notices of reduction for the subject claims between January 24, 1996 and August 8,

limitations is that a period of limitation for initiating an action begins to run when the last essential element of the cause of action or claim occurs, and no later.[53,54] In the context of an IRC, the last essential element of the claim is the notice to the claimant of a reduction, as defined by the Government Code and the Commission's regulations. Government Code section 17558.5 requires that the Controller notify a claimant in writing of an adjustment resulting from an audit, and requires that the notice "shall specify the claim components adjusted, the amounts adjusted...and the reason for the adjustment."[55] Generally, a final audit report, which provides the claim components adjusted, the amounts, and the reasons for the adjustments, satisfies the notice requirements of section 17558.5, since it provides the first notice of an actual reduction.[56]

However, here, as the claimant points out, the final audit report issued December 26, 2002 contains an express invitation for the claimant to participate in further dispute resolution: "The SCO has established an informal audit review process to resolve a dispute of facts." The letter further invites the claimant to submit additional documentation to the Controller: "The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report."[57] Accordingly, the claimant submitted its response to the final audit report on February 20, 2003, along with additional documentation and argument.[58] Therefore, although the audit report issued on December 26, 2002, identifies the claim components adjusted, the amounts, and the reasons for adjustment, and constitutes "other notice of adjustment notifying the claimant of a reduction," the language inviting further

---

2001, but none of those contained an adequate explanation of the reasons for the reduction. Finally, on July 10, 2002, the claimant received remittance advice that included a notation that the claim was being denied due to a lack of supporting documentation; based on that date, a timely IRC would have to be filed by July 10, 2005, and the claimant's December 16, 2005 filing was not timely.].

[53] See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 ["[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time."]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 ["A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time."].

[54] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 ["A cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"] [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

[55] Government Code section 17558.5.

[56] See former Code of Regulations, title 2, section 1185(c) (Register 2003, No. 17). Thus, the draft proposed decision issued on May 28, 2015, found that the final audit report dated December 26, 2002, triggered period of limitation for filing the IRC and that the IRC filing on April 27, 2006, was not therefore not timely. (Exhibit D.)

[57] Exhibit A, IRC 05-4282-I-03, page 71.

[58] Exhibit A, IRC 05-4282-I-03, pages 107-140.

informal dispute resolution supports the finding that the audit report did not constitute the Controller's *final* determination on the subject claims.[59]

Based on the evidence in the record, the remittance advice letters could be interpreted as "the last essential element," and the audit report could be interpreted as not truly final based on the plain language of the cover letter. Based on statements in the record, both the claimant and the Controller relied on the April 28, 2003 remittance advice letters, which provide the Controller's final determination on the audit and the first notice of an adjustment to the claimant following the informal audit review of the final audit report. Thus, based on the April 28, 2003 date of the remittance advice letter, an IRC filed by April 28, 2006 is timely.

The parties dispute, however, when the IRC was actually considered filed. The claimant asserts that the IRC was actually received, and therefore filed with the Commission, on April 27, 2006, and that additional documentation requested by Commission staff before completeness is certified does not affect the filing date. The Controller argues that the May 25, 2006 completeness determination establishes the filing date, which would mean the filing was not timely.

Pursuant to former section 1185 of the Commission's regulations, an incomplete IRC filing may be cured within thirty days to preserve the original filing date. Thus, even though the IRC in this case was originally deemed incomplete, the filing was cured by the claimant in a timely manner and the IRC is considered filed on April 27, 2006, within the three year limitation period for filing IRCs.

Based on the evidence in the record, the remittance advice letters issued April 28, 2003 began the period of limitation, and this claim, filed April 27, 2006, was timely.

B. Some of the Controller's Reductions Based on Ineligible Activities Are Partially Correct.

Finding 2 of the Controller's audit report reduced reimbursement by $1,329,581 for skilled nursing, "residential, other", medication monitoring, and crisis intervention, which the Controller determined are not reimbursable under program guidelines.[60]

The claimant states in the audit report that it does not concur with the Controller's findings with respect to $76,223 reduced for "Residential, Other" services; and $21,708 reduced for "Skilled Nursing" services, which the claimant asserts were in fact "eligible, allowable day treatment service costs that were miscoded."[61] More importantly, the claimant disputes the Controller's reductions of $1,007,332 for "Medication Monitoring," and $224,318 for "Crisis Intervention," which the claimant states are mandated activities within the scope of the approved regulations, and an essential part of "mental health services" provided to handicapped and disabled students under the applicable statutes and regulations.[62]

---

[59] Code of Regulations, title 2, section 1185 (Register 2003, No. 17).

[60] Exhibit A, IRC 05-4282-I-03, page 78 [Final Audit Report].

[61] Exhibit A, IRC 05-4282-I-03, page 78 [Final Audit Report].

[62] Exhibit A, IRC 05-4282-I-03, pages 11; 78-79 [Final Audit Report].

1. *The Controller's reductions for "Residential, Other" and "Skilled Nursing," totaling $91,132 for the audit period, are incorrect as a matter of law, and are arbitrary, capricious, and entirely lacking in evidentiary support.*

The Controller reduced costs claimed for "Residential, Other" and "Skilled Nursing" services by $76,223 and $21,708, respectively, on the ground that these services were ineligible for reimbursement, and the claim forms reflected units of service and costs claimed for these ineligible activities. The claimant, in response to the draft audit report, and in a letter responding to the final audit report that requested informal review, argued that these costs were simply miscoded on the claim forms, and the costs in question were actually related to eligible day treatment services. As a result, the claimant requested the Controller to reinstate $91,132, which the claimant alleged "should have been approved claims for services recoded to reflect provided service."[63]

The claimant did not expressly raise these reductions in its IRC narrative. However, the claimant continues to seek reimbursement for disallowed activities and costs in the amount of $1,329,581, which necessarily includes not only $1,007,332 for medication monitoring and $224,318 for crisis intervention; it also includes $97,931, which is the combined total of $76,223 for "Residential, Other" and $21,708 for "Skilled Nursing."[64] The Controller challenges the Commission's entire analysis of these cost reductions as "a cause of action that is not before the Commission to resolve and, thus, beyond the Commission's responsibility to address…"[65] However, based on the dollar amount identified in the IRC that the claimant has alleged to be incorrectly reduced, and the evidence in the audit report and this record, the claimant has provided sufficient notice that these reductions are in dispute and have been challenged in this IRC.

The Controller did not change its audit finding in response to the claimant's letter explaining the miscoding. The audit report states that the "county did not furnish any documentation to show that these services represented eligible day treatment services that had been miscoded."[66] The Controller's comments on the IRC assert that "[t]he county did not dispute the SCO adjustment…" related to skilled nursing or residential, other activities.[67] However, the claimant's letter in response to the final audit report disputes these adjustments and offers additional documentation and evidence, and the IRC requests reinstatement of all costs reduced for claimed treatment services, including the $91,132 reduced for "Residential, Other" and "Skilled Nursing" services.[68]

---

[63] Exhibit A, IRC 05-4282-I-03, pages 112-114.

[64] Exhibit A, IRC 05-4282-I-03, page 78 [Final Audit Report]. Note that this amount is slightly different from the $91,132 that the claimant alleged to be properly reimbursable after the final audit report. (Exhibit A, IRC 05-4282-I-03, pages 112-114.)

[65] Exhibit H, Controller's Comments on Revised Draft Proposed Decision, page 2.

[66] Exhibit A, IRC 05-4282-I-03, page 79.

[67] Exhibit B, Controller's Comments on the IRC, page 15.

[68] Exhibit A, IRC 05-4282-I-03, pages 6-8 and 113.

The Commission finds that the Controller's reductions for "Residential, Other" and "Skilled Nursing," are incorrect as a matter of law, and arbitrary, capricious, and entirely lacking in evidentiary support.

The parameters and guidelines do not authorize reimbursement for residential placement or skilled nursing, but do authorize reimbursement for the "mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement."[69] The parameters and guidelines permit claimants to prepare their annual reimbursement claims based on actual costs, or "based on the agency's annual cost report and supporting documents...prepared based on regulations and format specified in the State of California Department of Mental Health Cost Reporting/Data Collection (CR/DC) Manual." This method relies on accounting methods and coding used to report to DMH and track services provided at the county level. Not all of the services reported to DMH in the annual cost report are reimbursable state-mandated services included within the *Handicapped and Disabled Students* mandate.

Further, the parameters and guidelines state, under "Supporting Documentation," that "all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs."[70] The court in *Clovis Unified School District v. Chiang*[71] found that the Controller's attempt to require additional or more specific documentation than that required by the parameters and guidelines constituted an unenforceable underground regulation, and that "certifications and average time accountings to document...mandated activities...can be deemed akin to worksheets."[72]

Here, the audit report indicates that the claimant used the annual cost report method, and the documentation included with the IRC filing includes certain documentation filed with the claimant's original reimbursement claims showing the providers and costs for "treatment" services, which, as in *Clovis Unified*, "can be deemed akin to worksheets."[73] The reimbursement claim forms submitted to the Controller show units of service and costs claimed and marked as "treatment services," but identify codes "05/60" and "10/85", which the parties agree represent residential and skilled nursing services not eligible for reimbursement.[74] The claimant submitted documentation in response to the final audit report stating that it mistakenly coded the treatment services as residential and skilled nursing alleging as follows:

> In our earlier appeal, we mentioned that some of the disallowance of claimed amounts were due to the miscoding of services in our MIS system. This occurred in 1996-97 for Victor (provider 4194), Edgewood (provider 9215) and St.

---

[69] Exhibit A, IRC 05-4282-I-03, page 163.

[70] See Exhibit A, IRC 05-4282-I-03, page 165.

[71] (2010) 188 Cal.App.4th 794, 803-804.

[72] *Id*, page 804.

[73] See, e.g., Exhibit A, IRC 05-4282-I-03, pages 47-49 [Fiscal Year 1996-1997 claim].

[74] See, e.g., Exhibit A, IRC 05-4282-I-03, page 23 [Fiscal Year 1996-1997 Reimbursement Claim]. See also, Exhibit A, IRC 05-4282-I-03, pages 78 [Final Audit Report]; 112 [Claimant's response to audit report].

> Vincent's School (provider 9224). Likewise, this occurred for Victor (provider 4194) and Quality Group Home (provider 9232) in 1997-98. This situation continued for Victor (provider 4192) in 1998-99.
>
> Victor and St. Vincent's were erroneously coded in MIS as MOS5, service function 60 (residential, other), even though they provided SB90 billable treatment services, which is what we contracted for. Our mistake was that, since the pupils receiving these services were in a residential setting, we coded the services as residential, while they were in fact, either day treatment (Victor) or outpatient mental health services (St. Vincent's). Victor provided billable rehabilitative day treatment (10/95) on weekdays, supplemented by non-billable residential days on weekends. St. Vincent's had been also coded 05/06, residential. The actual services provided were Mental Health Services, 15/45, all claimable under SB 90.
>
> The following table shows the correct recoding of services and the consequent reallocation of costs. Similar data are provided to show the correct service recoding for 1997-98 (Victor and Quality Group Home) and 1998-99 (Victor). Backup detail is provided in Exhibit A.[75]

Exhibit A attached to the letter shows the original coding and the corrected coding, with notes to indicate that rehabilitative day treatment and mental health services were provided.[76] The attachment also breaks down the miscoded amounts, the units of service associated with the dollar amounts, the provider(s) of services, and dates of service.[77]

It is not clear why the Controller was not satisfied with the additional documentation. The Commission finds that the claimant's worksheets provided in Exhibit A to the claimant's letter show evidence of the validity of the costs claimed and, thus, satisfy the documentation requirements of the parameters and guidelines.[78] As indicated above, the parameters and guidelines simply require supporting documentation *or* worksheets, and the documentation provided satisfies the definition of a worksheet. The documentation contains the name of the provider, identifies the service provided with day treatment codes, the dates the services were provided, and the costs paid. The parameters and guidelines do not require declarations, contracts, or billing statements from the treatment provider.

Based on the foregoing, the Commission finds that the Controller's reduction of $91,132 in costs claimed for allowable day treatment services, as reflected in the corrected documentation submitted by the claimant, is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, and should be reinstated, adjusted for the appropriate offset amount for Medi-Cal funding attributable to the reinstated treatment service costs.[79]

---

[75] Exhibit A, IRC 05-4282-I-03, page 112, emphasis in original.

[76] Exhibit A, IRC 05-4282-I-03, page 118.

[77] Exhibit A, IRC 05-4282-I-03, pages 118-130.

[78] See Exhibit A, IRC 05-4282-I-03, page 165.

[79] In Finding 4 of the audit report, the Controller adjusted, in the claimant's favor, the amount of Medi-Cal offsetting revenue reported, based on the Controller's disallowance of certain

2. *The Controller's reduction of costs to provide medication monitoring services to seriously emotionally disturbed pupils under the Handicapped and Disabled Students program is correct as a matter of law.*

The Controller reduced all costs claimed for medication monitoring ($1,007,332) for the audit period.[80] The claimant argues that the disallowed activity is an eligible component of the mandated program, and that the Controller's decision to reduce these costs relies on a too-narrow interpretation of the parameters and guidelines.[81] The Commission finds, based on the analysis herein, that the claimant's interpretation of the parameters and guidelines conflicts with a prior final decision of the Commission with respect to the activity of medication monitoring, and that the Controller correctly reduced these costs.

The *Handicapped and Disabled Students*, CSM-4282 decision addressed Government Code section 7576[82] and the implementing regulations as they were *originally adopted* in 1986.[83] Government Code section 7576 required the county to provide psychotherapy or other mental health services when required by a pupil's IEP. Former section 60020 of the regulations defined "mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health's Title 9 regulations.[84] Section 543 defined outpatient services to include "medication." "Medication," in turn, was defined to include "prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process," and "shall include the evaluation of side effects and results of medication."[85]

In 2004, the Commission was directed by the Legislature to reconsider its decision in *Handicapped and Disabled Students*. On reconsideration of the program in *Handicapped and Disabled Students*, 04-RL-4282-10, the Commission found that the phrase "medication monitoring" was not included in the original test claim legislation or the implementing regulations. Medication monitoring was added to the regulations for this program in 1998 (Cal. Code Regs. tit. 2, § 60020). The Commission determined that:

> "Medication monitoring" is part of the new, and current, definition of "mental health services" that was adopted by the Departments of Mental Health and Education in 1998. The current definition of "mental health services" and

---

treatment services claimed for which Medi-Cal revenues were received and reported by the claimant. Based on the reinstatement of $91,132 in eligible services, at least some of which are Medi-Cal eligible services, the amount of the offset must be further adjusted to take account of Medi-Cal revenues received by the claimant for the services reinstated. (See Exhibit A, IRC 05-4282-I-03, pages 14; 81.)

[80] Exhibit A, IRC 05-4282-I-03, pages 78-79.

[81] Exhibit A, IRC 05-4282-I-03, pages 11-13.

[82] Added, Statutes 1984, chapter 1747; amended Statutes 1985, chapter 1274.

[83] Register 87, No. 30.

[84] Former California Code of Regulations, title 2, section 60020(a) (Reg. 87, No. 30).

[85] California Code of Regulations, title 9, section 543 (Reg. 83, No. 53; Reg. 84, No. 15; Reg. 84, No. 28; Reg. 84, No. 39).

> "medication monitoring" is the subject of the pending test claim, *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, and will not be specifically analyzed here.[86]

Thus, the Commission did not approve reimbursement for medication monitoring in *Handicapped and Disabled Students*, CSM-4282 or on reconsideration of that program (04-RL-4282-10).

The 1998 regulations were pled in *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, however. *Handicapped and Disabled Students II* was filed in 2003 on subsequent statutory and regulatory changes to the program, including the 1998 amendments to the regulation that defined "mental health services." On May 26, 2005, the Commission adopted a statement of decision finding that the activity of "medication monitoring," as defined in the 1998 amendment of section 60020, constituted a new program or higher level of service *beginning July 1, 2001.*

In 2001, the Counties of Los Angeles and Stanislaus filed separate requests to amend the parameters and guidelines for the original program in *Handicapped and Disabled Students*, CSM-4282. As part of the requests, the Counties wanted the Commission to apply the 1998 regulations, including the provision of medication monitoring services, to the original parameters and guidelines. On December 4, 2006, the Commission denied the request, finding that the 1998 regulations were not pled in original test claim, and cannot by law be applied retroactively to the original parameters and guidelines in *Handicapped and Disabled Students*, CSM-4282.[87]

These decisions of the Commission are final, binding decisions and were never challenged by the parties. Once "the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as judicial decisions."[88] Accordingly, based on these decisions, counties are not eligible for reimbursement for medication monitoring until July 1, 2001, in accordance with the decisions on *Handicapped and Disabled Students II.*[89]

Moreover, the claimant expressly admits that "[w]e again point out that we are not claiming reimbursement under HDS II, but rather under the regulations in place at the time services were provided."[90] However, as the above analysis indicates, the Commission has already determined that "Medication Monitoring" is only a reimbursable mandated activity under the *Handicapped and Disabled Students II* test claim and parameters and guidelines, and only on or after July 1, 2001.[91]

---

[86] Statement of Decision, Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, page 42.

[87] Commission Decision Adopted December 4, 2006, in 00-PGA-03/04.

[88] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

[89] See Statement of Decision, *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, pages 37-39; Statement of Decision, 00-PGA-03/04.

[90] Exhibit C, Claimant's Rebuttal Comments, page 3.

[91] Finally, even if the amended regulations were reimbursable immediately upon their enactment, absent the *Handicapped and Disabled Students II* test claim, or a parameters and guidelines amendment to the *Handicapped and Disabled Students* program, the amended regulations upon

Based on the foregoing, the Commission finds that the Controller correctly reduced the reimbursement claims of the County of San Mateo for costs incurred in fiscal years 1996-1997, 1997-1998, and 1998-1999 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

3. *The Controller's reduction of costs for crisis intervention in fiscal years 1996-1997 and 1997-1998 only is incorrect as a matter of law.*

The Controller reduced all costs claimed during the audit period for crisis intervention ($224,318) on the ground that crisis intervention is not a reimbursable service.[92] The claimant argues that it "provided mandated . . . crisis intervention services under the authority of the California Code of Regulations – Title 2, Division 9, Joint Regulations for Handicapped Children."[93] The claimant cites the test claim regulations, which incorporate by reference section 543 of title 9, which expressly included crisis intervention as a service required to be provided if the service is identified in a pupil's IEP. Claimant argues that these services were provided under the mandate, even though the parameters and guidelines did not expressly provide for them.[94]

The Commission finds that the Controller's reduction of costs for crisis intervention, for fiscal years 1996-1997 and 1997-1998 only, is incorrect, and conflicts with the Commission's 1990 test claim decision.

The *Handicapped and Disabled Students*, CSM-4282 decision addressed Government Code section 7576[95] and the implementing regulations as they were *originally adopted* in 1986.[96] Government Code section 7576 required the county to provide psychotherapy or other mental health services when required by a pupil's IEP. Former section 60020 of the regulations defined "mental health services" to include those services identified in sections 542 and 543 of the Department of Mental Health's Title 9 regulations.[97] Section 543 defined "Crisis Intervention," as "immediate therapeutic response which must include a face-to-face contact with a patient exhibiting acute psychiatric symptoms to alleviate problems which, if untreated, present an imminent threat to the patient or others."[98]

---

which the claimant relies were effective July 1, 1998, as shown above, and therefore could only be considered mandated for the last of the three audit years.

[92] Exhibit A, IRC 05-4282-I-03, page 78.

[93] Exhibit C, Claimant's Rebuttal Comments, page 2.

[94] Exhibit A, IRC 05-4282-I-03, page 12.

[95] Added, Statutes 1984, chapter 1747; amended Statutes 1985, chapter 1274.

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

[97] Former California Code of Regulations, title 2, section 60020(a) (Reg. 87, No. 30).

[98] California Code of Regulations, title 9, section 543 (Reg. 83, No. 53; Reg. 84, No. 15; Reg. 84, No. 28; Reg. 84, No. 39).

The Commission's 1990 decision approved the test claim with respect to section 60020 and found that providing psychotherapy and other mental health services required by the pupil's IEP was mandated by the state. The 1990 Statement of Decision states the following:

> The Commission concludes that, to the extent that the provisions of Government Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs," such legislation and regulations impose a new program or higher level of service upon a county. Moreover, the Commission concludes that any related participation on the expanded IEP team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Government Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county. ... The Commission concludes that the provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Government Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. *In addition, such services include psychotherapy and other mental health services provided to "individuals with exceptional needs," including those designated as "seriously emotionally disturbed," and required in such individual's IEP. ...*[99]

The parameters and guidelines adopted in 1991 caption all of sections 60000 through 60200 of the title 2 regulations, and specify in the "Summary of Mandate" that the reimbursable services "include psychotherapy and other mental health services provided to 'individuals with exceptional needs,' including those designated as 'seriously emotionally disturbed,' and required in such individual's IEP."[100]

Therefore, even if the parameters and guidelines adopted in 1991 were vague and non-specific with respect to the reimbursable activities, crisis intervention was within the scope of the mandate approved by the Commission.

Moreover, the Legislature's direction to the Commission to reconsider the original test claim "relating to included services" is broadly worded and required the Commission to reconsider the entire test claim and parameters and guidelines to resolve a number of issues with the provision of service and funding of services to the counties.[101] On reconsideration, the Commission found that the original decision correctly approved the program, as pled, as a reimbursable state-

---

[99] Statement of Decision, Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, page 26.

[100] Exhibit A, IRC 05-4282-I-03, page 160.

[101] See Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, pages 7; 12; Assembly Committee on Education, Bill Analysis, SB 1895 (2004) pages 4-7 [Citing Stanford Law School, Youth and Education Law Clinic Report].

mandated program, but that the original decision did not fully identify all of the activities mandated by the state.[102]

As the reconsideration decision and parameters and guidelines note, however, crisis intervention was repealed from the regulations on July 1, 1998.[103] For that reason this activity was not approved in the reconsideration decision, which had a period of reimbursement beginning July 1, 2004, or in *Handicapped and Disabled Students II*, which had a period of reimbursement beginning July 1, 2001.[104] Here, because the requirement was expressly repealed as of July 1, 1998; it is no longer a reimbursable mandated activity, and thus the costs for crisis intervention are reimbursable under the prior mandate finding only through June 30, 1998.

Based on the foregoing, the Commission finds that crisis intervention is within the scope of reimbursable activities approved by the Commission through June 30, 1998, and the Controller's reduction of costs in fiscal years 1996-1997 and 1997-1998 for crisis intervention costs based on its strict interpretation of the parameters and guidelines is incorrect as a matter of law. The Commission therefore requests that the Controller reinstate costs claimed for crisis intervention for fiscal years 1996-1997 and 1997-1998 only, adjusted for Medi-Cal offsetting revenues attributable to this mandated activity.[105]

C. The Controller's Reductions Based on Understated Offsetting State EPSDT Revenues Are Partially Correct, But the Reduction Based on the Full Amount of EPSDT Revenues Received Is Arbitrary, Capricious, and Entirely Lacking in Evidentiary Support.

The 1991 parameters and guidelines identify the following potential offsetting revenues that must be identified and deducted from a reimbursement claim for this program: "any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc."[106]

Finding 3 of the Controller's final audit report states that the claimant did not account for or identify the portion of Medi-Cal funding received from the state under the Early Periodic Screening, Diagnosis, and Testing (EPSDT) program as offsetting revenue. The auditor deducted the entire amount of state EPSDT revenues received ($2,069,194) by the claimant during the audit period "because the claimant did not provide adequate information regarding how much of these funds were actually applicable to the mandate."[107] The claimant disputes the

---

[102] Statement of Decision, Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, page 26.

[103] Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, page 41.

[104] Reconsideration of *Handicapped and Disabled Students*, 04-RL-4282-10, page 42; *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, page 37.

[105] As noted above, Finding 4 of the audit report adjusted the Medi-Cal offsetting revenues claimed based on treatment services disallowed. To the extent crisis intervention is a Medi-Cal eligible service for which the claimant received state Medi-Cal funds, the reinstatement of costs must also result in an adjustment to the Medi-Cal offsetting revenues reported by the claimant.

[106] Exhibit A, IRC 05-4282-I-03, page 163.

[107] Exhibit A, IRC 05-4282-I-03, page 79.

reduction and states that the Controller "incorrectly deducted all of the EPSDT state general fund revenues, even though a significant portion of that EPSDT revenue was not linked to the population served in the claim."[108] The claimant estimates the portion of EPSDT revenue attributable to the mandate at approximately, or less than, ten percent.[109] Although the claimant agrees that it failed to identify any of the state's share of revenue received under the EPSDT program (estimated at 10 percent of the revenue), it continues to request reimbursement for the entire amount reduced.

1. *The Controller's reduction of the full amount of EPSDT state matching funds received is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support.*

EPSDT is a shared cost program between the federal, state, and local governments, providing comprehensive and preventive health care services for children under the age of 21 who are enrolled in Medicaid. According to the Department of Health Care Services, "EPSDT mental health services are Medi-Cal services that correct or improve mental health problems that your doctor or other health care provider finds, even if the health problem will not go away entirely," and "EPSDT mental health services are provided by county mental health departments." Services include individual therapy, crisis counseling, case management, special day programs, and "medication for your mental health." Counseling and therapy services provided under EPSDT may be provided in the home, in the community, or in another location.[110] Under the federal program, states are required to provide comprehensive services and furnish all Medicaid coverable, appropriate, and medically necessary services needed to correct and ameliorate health conditions, including developmental and behavioral screening and treatment.[111] The scope of EPSDT program services includes vision services, dental services, and "treatment of all physical and mental illnesses or conditions discovered by any screening and diagnostic procedures."[112]

Both the claimant and the Controller agree that EPSDT mental health services may overlap or include services provided to or required by special education pupils within the scope of the *Handicapped and Disabled Students* mandated program.[113] However, EPSDT mental health services and funds are available to all "full-scope" Medi-Cal beneficiaries under the age of 21

---

[108] Exhibit A, IRC 05-4282-I-03, page 13.

[109] Exhibit A, IRC 05-4282-I-03, pages 13-14; 81.

[110] Exhibit I, EPSDT Mental Health Services Brochure, published by Department of Health Care Services.

[111] Exhibit I, Early and Periodic Screening, Diagnostic, and Treatment, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Early-and-Periodic-Screening-Diagnostic-and-Treatment.html, accessed July, 14, 2015.

[112] Exhibit I, Early and Periodic Screening, Diagnostic, and Treatment, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Early-and-Periodic-Screening-Diagnostic-and-Treatment.html, accessed July, 14, 2015.

[113] Exhibit A, IRC 05-4282-I-03, pages 13-14; 79-81.

based on the recommendation of a doctor, clinic, or county mental health department.[114] This is a much broader population than the group served by this mandated program. A student need not be a Medi-Cal client, eligible for EPSDT funding, to be entitled to services under *Handicapped and Disabled Students* program.[115] Conversely, not all persons under 21 eligible for EPSDT program services are also so-called "AB 3632" pupils (i.e., pupils eligible for services under the *Handicapped and Disabled Students* mandated program).

The Commission finds that the Controller's application of all state EPSDT funds received by claimant as an offset is not supported by the law or evidence in the record. There is no evidence in the record, and the Controller has made no finding or assertion, that *all* EPSDT funds received by the claimant are for services provided to pupils within the *Handicapped and Disabled Students* program. In response to the revised draft proposed decision, the Controller merely states that in the absence of evidence supporting the estimated EPSDT offset, "we believe that the only reasonable course of action is to apply the mental health related EPSDT revenues received by the county, totaling $2,069,194, as an offset."[116]

As discussed above, EPSDT program services and funding are much broader than the services and requirements of the *Handicapped and Disabled Students* mandated program, and thus treating the full amount of the state EPSDT funding as a necessary offset is not supported by the law or the record. The Commission's findings must be based on substantial evidence in the record, and the Commission's regulations require that "[a]ll written representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief."[117] The Controller has not satisfied the evidentiary standard necessary for the Commission to uphold this reduction.

Based on the foregoing, the Commission finds that the Controller's reduction of the entire amount of EPSDT funding for the audit period is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support.

2. *The Controller must exercise its audit authority to determine a reasonable amount of EPSDT state matching funds to be applied as an offset during the audit period.*

The state's share of EPSDT funding was first made available during fiscal year 1995-1996 as a result of an agreement between the Department of Mental Health and the Department of Health Services, arising from a settlement of federal litigation. The agreement provides state matching funds for "most of the nonfederal growth in EPSDT program costs." The counties' share "often referred to as the county baseline – is periodically adjusted for inflation and other cost

---

[114] Exhibit I, EPSDT Mental Health Services Brochure, published by Department of Health Care Services.

[115] Exhibit I, Excerpt from Mental Health Medi-Cal Billing Manual, July 17, 2008, page 7 ["County mental health clients who are AB 3632-eligible may/may not be Medi-Cal eligible."].

[116] Exhibit H, Controller's Comments on Revised Draft Proposed Decision, page 4.

[117] Code of Regulations, title 2, section 1187.5 (Register 2014, No. 21).

factors."[118] Since state and federal funding under the EPSDT program may, by definition, be used for mental health treatment services for children under the age of 21, the funding received can be applied to the treatment of pupils under the *Handicapped and Disabled Students* mandate and, when it is so applied, would reduce county costs under the mandate.

The issue in this IRC, however, is the calculation of that offset. In short, the claimant appears, based on the evidence in the record, to have no contemporaneous documentation for the Controller to audit, instead relying on its prior calculations of its baseline spending under the EPSDT program, which the claimant asserts have been accepted by DMH and the federal government for purposes of Medi-Cal reimbursement. On the other hand, the Controller has made no attempt to determine a reasonable amount for the offset, or to explain why none of the claimant's estimates are acceptable, instead choosing to offset the entire amount of EPSDT funding, which the Commission finds, above, to be incorrect as a matter of law, and arbitrary, capricious, and entirely lacking in evidentiary support.

Based on the evidence in the record, the claimant identified as an offset the *federal* share of EPSDT funding it claimed was attributable to this mandated program, and the audit did not make adjustments to that offset. However, the claimant failed to identify any *state* matching EPSDT funds in its reimbursement claims.[119] The final audit report states that the claimant then estimated state EPSDT offsetting revenue for this program during the audit period at $166,352, but the Controller rejected that estimate because it lacked "an accounting of the number of Medi-Cal units of service applicable to the mandate."[120]

In response to the final audit report, the claimant explained that it "spent considerable time analyzing and refining the EPSDT units of service."[121] The claimant then developed a methodology to calculate the offset which determined for the "baseline" 1994-1995 year the total EPSDT Medi-Cal units of service for persons under 21 years of age, and the EPSDT Medi-Cal units of service attributable to the mandate: "We then calculated the increases over 1994-95 baseline units for 3632 under-21 Medi-Cal and total under-21 Medi-Cal units…" to determine a growth rate year over year for the audit period which was attributable to "3632 units" (i.e., EPSDT Medi-Cal services provided to children within the *Handicapped and Disabled Students* program).[122] Based on this methodology, the claimant calculated that the "amount of EPSDT [revenue] attributable to [the] 3632 [program] over the three audit years was $55,407." The claimant explains that "[t]his amount is due to small changes from [the 1994-1995] baseline for 3632 under-age-21 Medi-Cal services, with most increases in under-21 Medi-Cal services occurring for non-3632 youth."[123]

---

[118] Exhibit I, Legislative Analyst's Office Analysis of 2001-02 Budget, Department of Mental Health, page 3.

[119] Exhibit A, IRC 05-4282-I-03, page 80.

[120] Exhibit A, IRC 05-4282-I-03, page 81.

[121] Exhibit A, IRC 05-4282-I-03, page 115.

[122] Exhibit A, IRC 05-4282-I-03, page 115.

[123] Exhibit A, IRC 05-4282-I-03, page 115.

The claimant asserts, in rebuttal comments on the IRC, that "[t]he State SB90 auditor, utilizing a different methodology, then calculated the offset separately, and came to a three-year total for the offset of $665,975."[124] And finally, the claimant states that it recalculated the offset again at $524,389, based on a Department of Mental Health methodology as follows:

> Subsequently, in FY 2003-04 the Department of Mental Health (DMH) developed a standard methodology for calculating EPSDT offset for SB 90 claims. Applying this approved methodology the EPSDT offset is $524,389, resulting in $1,544,805 being due to the County. This methodology is supported by the State and should be accepted as the final calculation of the accurate EPSDT offset and resulting reimbursement due to the County.[125]

The Controller has not acknowledged these proposed offsets, and maintains that the claimant still has not provided an adequate accounting of actual offsetting revenue attributable to this program.[126] And, although the claimant has identified four different offset amounts for the state EPSDT funds for this program, the claimant continues to request reinstatement of the entire adjustment of $1,902,842.[127]

The Commission finds, based on the evidence in the record, that *some* EPSDT state matching funds were received by the claimant and applied to the program, and that the claimant has acknowledged that "an appropriate amount of this revenue should be offset."[128] The claimant agrees that it did not identify the state general fund EPSDT match as an offset, as it should have. However, referring to the population served by this mandated program, the claimant asserts that "[o]nly a small percentage of the AB 3632 students in this claim are Medi-Cal beneficiaries, and thus, the actual state EPSDT revenue offset is quite small and less than 10% of what the SCO offset from the claim."[129] In rebuttal comments, the claimant further explains that the Controller stated that if the County could provide an accurate accounting "of the number of Medi-Cal units of services applicable to the mandate, the SCO auditor will review the information and adjust the audit finding as appropriate."[130] The claimant asserts that "[w]e have provided this data as requested by the SCO…but no audit adjustments were made."[131]

Based on the evidence in the record, the Commission is unable to determine the amount of state EPSDT funding received by the claimant that must be offset against the claims for this program during the audit period based on evidence in the record. No evidence has been submitted by the parties to show the number of EPSDT eligible pupils receiving mental health treatment services under the *Handicapped and Disabled Students* program during the audit years, or how much

---

[124] Exhibit C, Claimant's Rebuttal Comments, page 2.

[125] Exhibit C, Claimant's Rebuttal Comments, page 2.

[126] Exhibit B, Controller's Comments on the IRC, pages 18-19.

[127] Exhibit A, IRC 05-4282-I-03, page 80.

[128] Exhibit A, IRC 05-4282-I-03, page 114.

[129] Exhibit A, IRC 05-4282-I-03, pages 13-14.

[130] Exhibit C, Claimant's Rebuttal Comments, page 1.

[131] Exhibit C, Claimant's Rebuttal Comments, page 1.

EPSDT funds were applied to the program. As indicated above, four different estimates have been offered by the claimant as the correct offset amount for the state matching EPSDT funds, based on methodologies allegedly developed by the claimant, the Controller, and DMH. In this respect, the claimant has asserted that the offset for state EPSDT funding should be anywhere from $55,407,[132] to $166,352,[133] to $524,389,[134] to $665,975.[135]

The Controller states that the claimant "has not provided documentation to support the calculations."[136] On the other hand, the claimant argues that the Controller's "proposed methodology for offsetting EPSDT revenue conflicts with prior guidance issued by [DMH] on this subject." In addition, the claimant argues that due to the passage of time, the Controller's "attempt to audit those baseline and prior DMH reports after three years is subject to laches, as the delay in making the request is unreasonable and presumptively prejudicial to the County."[137] Furthermore, the claimant asserts, but provides no evidence, that "those baseline numbers (from 1994-95) as well as prior DMH cost reports for the fiscal years under SCO audit have been accepted by the state and federal government[s]." Therefore, the claimant reasons that its methodology for estimating baseline costs is no longer subject to revision.[138]

The Commission rejects the claimant's argument that laches applies. "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay."[139] Here, the claimant has asserted that the delay is "presumptively prejudicial to the County," but there is no showing that the delay was unreasonable in the first instance. The Controller initiated the audit within its statutory deadlines, and reasonably requested documentation to support the offsetting revenues that the claimant acknowledged it failed to properly claim. Moreover, the claimant cites Welfare and Institutions Code section 14170, in support of its assertion that "data older than three years is deemed true and correct."[140] But the Welfare and Institutions Code provisions that the claimant cites impose a three year time limit on audits by "the department" of "cost reports and other data submitted by providers…" for Medi-Cal services; the section does not limit the Controller's

---

[132] Exhibit A, IRC 05-4282-I-03, page 115 [Claimant's response to audit report].

[133] Exhibit A, IRC 05-4282-I-03, page 80 [Final Audit Report].

[134] Exhibit C, Claimant's Rebuttal Comments, page 7 [Claimant's recalculation using "new methodology developed by DMH"].

[135] Exhibit C, Claimant's Rebuttal Comments, page 7 ["Rosemary's" (the auditor) recalculation].

[136] Exhibit H, Controller's Comments on Revised Draft Proposed Decision, page 4.

[137] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision, page 2.

[138] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision, page 2.

[139] *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68.

[140] Welfare and Institutions Code section 14170 (Stats. 2000, ch. 322) ["The department shall maintain adequate controls to ensure responsibility and accountability for the expenditure of federal and state funds. … the cost reports and other data for cost reporting periods beginning on January 1, 1972, and thereafter shall be considered true and correct unless audited or reviewed within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later."].

authority to audit state mandate claims, which is described in Government Code section 17558.5.[141]

The Commission also takes notice of DMH's subsequent explanation that pupils receiving special education services may or may not be Medi-Cal eligible, and that "[a] Mental Health Medi-Cal 837 transaction has no embedded information that indicates the claim specifically relates to an AB 3632-eligible child."[142] In other words, DMH appears to recognize that Medi-Cal cost reports or cost claims do not necessarily identify themselves as also reimbursable state-mandated costs. DMH continues: "Nevertheless, Cost Report settlement with SEP funding and California Senate Bill 90 (SB 90) claims for state-mandated reimbursements required information on AB 3632 Medi-Cal costs and receivables." Therefore, "each county must be able to distinguish AB 3632 Medi-Cal claims from other Medi-Cal claims information."[143]

Nevertheless, the claimant implies throughout the record that it has no documentation to prove the actual amount of EPSDT funding applied to this program in the claim years (i.e., "to distinguish AB 3632 Medi-Cal claims from other Medi-Cal claims information"). Claimant further states that documentation "to audit baseline calculations of the County" for the receipt of the state's portion of EPSDT funding is not available, and the Controller should accept the baseline calculations that "have been accepted by the state and federal government."[144] The claimant argues that "[a]udit staff can verify the County methods by examining prior cost reports and should not employ a new methodology without an amendment to the program's parameters and guidelines."[145] The claimant argues that DMH has issued guidance on how to calculate the EPSDT baseline, which, the claimant asserts, "was to be used as the supporting documentation for SB90 State Mandate Claims," and that the claimant has provided "worksheets" substantiating its baseline calculations:

> In the Short-Doyle Medi-Cal Cost Report instructions for each of the years at issue, DMH provided a specific methodology for determining the appropriate EPSDT offset for Special Education Program (SEP) costs and included directions stating that the DMH process was to be used as the supporting documentation for SB90 State Mandate Claims. That prescribed methodology accounts for baseline program size and appropriate offset of all EPSDT revenue. Those instructions were provided to the County and are posted on the DHCS Information Technology Web Services (ITWS) website. The County used this prescribed DMH methodology to determine the EPSDT offset for SB90 claims for each of

---

[141] Government Code section 17558.5 (Stats. 2004, ch. 890 (AB 2856)).

[142] Exhibit I, Excerpt from Mental Health Medi-Cal Billing Manual, July 17, 2008, page 7 ["County mental health clients who are AB 3632-eligible may/may not be Medi-Cal eligible."].

[143] Exhibit I, Excerpt from Mental Health Medi-Cal Billing Manual, July 17, 2008, page 7 ["County mental health clients who are AB 3632-eligible may/may not be Medi-Cal eligible."].

[144] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision, page 2.

[145] Exhibit G, Claimant's Comments on Revised Draft Proposed Decision, page 2.

the audited years. *The DMH Short-Doyle Cost Report instructions and worksheets have also been provided to the SCO by the County.*[146]

However, the claimant does not cite to those worksheets in the record, nor provide them in its comments on the revised draft proposed decision. In addition, the claimant argues that its baseline EPSDT calculations have been accepted by DMH and the federal government, for purposes of its Medi-Cal cost reports, and have been audited by DMH and the Department of Health Care Services. The claimant states that the audited reports "have been provided to SCO staff to confirm that there were no findings related to baseline or EPSDT revenues, methods or calculations…"

The claimant has not provided any documentation to substantiate these assertions, and the Controller has not acknowledged any such documentation being provided. Indeed, despite the fact that the EPSDT program is far broader than the *Handicapped and Disabled Students* mandated program, the Controller insists that "we believe that the only reasonable course of action is to apply the [entire] mental health related EPSDT revenues received by the county, totaling $2,069,194, as an offset."[147] However, if the claimant's assertions are true, that its baseline calculation has already been accepted by the state and federal governments, and if DMH has developed a methodology to estimate the amount applied this mandated program, then the Controller could take official notice of DMH's guidance and methodology; and, the worksheets provided to the Controller might satisfy the Commission's evidentiary standards for a finding on the proper amount of the EPSDT offsets.

Based on the foregoing, the Commission finds that some amount of EPSDT funding is applicable to the mandates. Therefore the Commission remands the issue back to the Controller to determine the most accurate amount of state EPSDT funds received by the claimant and attributable to services received by pupils within the *Handicapped and Disabled Students* program during the audit period, based on the information that is currently available, which must be offset against the costs claimed for those years.

V. Conclusion

Based on the foregoing, the Commission finds that the IRC was timely filed and partially approves this IRC. The Commission finds that the Controller's reduction of costs claimed for medication monitoring is correct as a matter of law.

However, the reductions listed below are not correct as a matter of law, or are arbitrary, capricious, and entirely lacking in evidentiary support. As a result, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate the costs reduced as follows:

- $91,132 originally claimed as "Skilled nursing" or "Residential, other," costs which have been correctly stated in supplemental documentation, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.

---

[146] Exhibit G, Claimant's Comments on the Revised Draft Proposed Decision, page 2 [emphasis added].

[147] Exhibit H, Controller's Comments on the Revised Draft Proposed Decision, page 4.

- That portion of $224,318 reduced for crisis intervention services which is attributable to fiscal years 1996-1997 and 1997-1998, adjusted for state Medi-Cal revenues received and attributable to the reinstated services.
- Recalculate EPSDT offsetting revenues based on the amount of EPSDT state share funding actually received and attributable to the services provided to pupils under this mandated program during the audit period and reinstate the portion of the EPSDT funds which exceed those actually applied to the mandated services.

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

RE: **Decision**

Handicapped and Disabled Students, 05-4282-I-03
Government Code Sections 7570-7588; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Sections 60000-60200 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28])
Fiscal Years 1996-1997, 1997-1998, and 1998-1999
County of San Mateo, Claimant

On September 25, 2015, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.

Heather Halsey, Executive Director

Dated: September 30, 2015

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 September 30, 2015, I served the:

Decision
Handicapped and Disabled Students, 05-4282-I-03
Government Code Sections 7570-7588; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Sections 60000-60200 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28])
Fiscal Years 1996-1997, 1997-1998, and 1998-1999
County of San Mateo, 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 September 30, 2015 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

EXHIBIT "F"

Consolidated Handicapped and Disabled Students (HDS), HDSII, and SEDP Program

- Alameda County 06/13/2014
- Contra Costa County 06/02/2014
- El Dorado County 03/12/2013
- Fresno County 12/20/2012
- Kern County 12/21/2012
- Los Angeles County 06/13/2014
- Marin County 02/26/2013
- Merced County 12/20/2012
- Monterey County 04/29/2013
- Orange County 12/03/2012
- Placer County 09/11/2014
- Riverside County 08/27/2013
- San Diego County 12/20/2012
- San Francisco, City and County 06/23/2014
- San Mateo County 10/20/2014
- Santa Barbara County 08/20/2013
- Santa Clara County 10/21/2014
- Solano County 03/12/2013
- Sonoma County 08/19/2014
- Stanislaus County 08/27/2013
- Ventura County 06/09/2014

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 January 21, 2016, I served the:

Draft Proposed Decision on Appeal of Executive Director Decision and Appeal of Executive Director Decision
Appeal of Executive Director Decision, 15-AEDD-01
County of San Diego, Appellant

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 January 21, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/20/16

Claim Number: 15-AEDD-01

Matter: Appeal of Executive Director Decision

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.)

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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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

achinncrs@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

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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Artiano Shinoff & Holtz, APC*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

Kyle Sand, Senior Deputy, *County of San Diego*
Claimant Representative
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4894
kyle.sand@sdcounty.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, *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

Evelyn Suess, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
evelyn.suess@dof.ca.gov

STATE OF CALIFORNIA — *EDMUND G. BROWN JR., Governor*

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

January 21, 2016

Mr. Kyle Sand, Senior Deputy
County of San Diego
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

Ms. Lisa Macchione
County of San Diego,
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

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

Re: **Draft Proposed Decision on Appeal of Executive Director Decision**
Appeal of Executive Director Decision, 15-AEDD-01
County of San Diego, Appellant

Dear Mr. Sand and Ms. Macchione:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **February 5, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

Hearing

This matter is set for hearing on **Friday, March 25, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about March 11, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: March 25, 2016
J:\MANDATES\IRC\2015\Untimely\Appeal\Draft PD.doc

ITEM 2

DRAFT PROPOSED DECISION

APPEAL OF EXECUTIVE DIRECTOR DECISION

Executive director dismissal of incorrect reduction claim for lack of jurisdiction based on determination that the filing was untimely and, therefore, incomplete.

15-AEDD-01

County of San Diego, Appellant

Executive Summary

This is an appeal of the executive director's decision (AEDD) that the County of San Diego's (appellant's) incorrect reduction claim (IRC) filing was untimely and, therefore, incomplete. Section 1181.1(c) of the Commission's regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present at the hearing. The Commission's decision shall be final and not subject to reconsideration. Within ten days of the Commission's decision, the executive director shall notify the appellant in writing of the decision.

Background

The underlying facts are not in dispute. On February 6, 2012, the Controller issued a draft audit report on appellant's fiscal year 2006-2007 through 2008-2009 reimbursement claims for the consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II*, and *Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program, which contains four audit findings.[1] Appellant received the draft audit report on February 7, 2012.[2] Appellant submitted its response to the draft audit report on February 29, 2012.[3] The response states that "[t]here are four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs."[4] On March 7, 2012, the Controller issued a final audit report.[5] With a letter dated

[1] Exhibit A, Appeal of Executive Director Decision, page 25 (Controller's Revised Final Audit Report, page 4).

[2] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[3] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[4] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[5] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1).

December 18, 2012, the Controller issued a revised final audit report, which "supersedes our previous report dated March 7, 2012."[6] As explained by the Controller and the appellant, the revised audit report recalculated offsetting revenues from the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year 2008-2009 (in Finding 4) and had no fiscal effect on allowable total program costs for that fiscal year.[7] No other revisions to the Controller's findings were made.

On December 10, 2015, the Commission received an IRC filing from the appellant relating to an audit conducted by the Controller on appellant's fiscal year 2006-2007 through 2008-2009 reimbursement claims for the consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II*, and *Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program challenging the Controller's reduction under Finding 2.[8] On December 18, 2015, the executive director issued a notice of untimely filed IRC.[9]

On December 28, 2015, the county filed this appeal of the executive director's decision, contending that the IRC was timely filed based on the Controller's revised final audit report dated December 18, 2012, and requests that the Commission direct the executive director to deem the IRC timely and complete.[10]

Staff Analysis

Staff finds that the executive director's determination that appellant's IRC filing was untimely and, therefore, incomplete is correct as a matter of law.

A reimbursement claim for actual costs filed by a local agency is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5. Government Code section 17558.5(c) requires the Controller to notify 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."[11] Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

[6] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1). The summary in the revised final audit report is dated December 20, 2012, however. (Exhibit A, Appeal of Executive Director Decision, page 25.) The discrepancy in the dates is not material to the issue in this appeal.

[7] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1); see also, page 3, where appellant states that "[t]he Revised Final Audit Report contained contains [sic] recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009."

[8] Exhibit A, Appeal of Executive Director Decision, page 3.

[9] Exhibit A, Appeal of Executive Director Decision, pages 13-16.

[10] Exhibit A, Appeal of Executive Director Decision.

[11] Government Code section 17558.5(c).

In 2012, when the final audit report and revised final audit report were issued, section 1185(c) of the Commission's regulations, required IRCs to be filed "no later than three (3) 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."[12] Today, section 1185.1(c) contains substantially the same language. An IRC is deemed incomplete by Commission staff and returned by the executive director if it is not timely filed.[13]

Appellant argues that the Commission's regulations do not require the running of the limitation period from when a claimant *first* receives notice and does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had "no fiscal effect." Appellant's interpretation of the Commission's regulation is not consistent with the law.

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.[14] The general rule of interpretation, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.[15] The cause of action accrues, the Court said, "when [it] is complete with all of its elements."[16] Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"[17]

Under the statutory mandates scheme, an IRC can be maintained and filed with the Commission to challenge the Controller's findings pursuant to Government Code sections 17551 and 17558.7, as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the reason for adjustment in accordance with Government Code section 17558.5. The Commission's regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5 to file an IRC with the Commission, which must include a detailed narrative describing the alleged reductions and a copy of any "written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance."[18]

Here, appellant admits that the Controller issued a final audit report on March 7, 2012, which reduced costs claimed for fiscal years fiscal year 2006-2007 through 2008-2009 under Finding 2 for overstated residential placement costs. Appellant was first made aware of the Controller's proposed Finding 2 when it received the Controller's draft audit report on February 7, 2012, and

[12] California Code of Regulations, title 3, section 1185(c) (Register 2010, No. 44).

[13] California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

[14] *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

[15] See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430.

[16] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[17] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133.

[18] California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

provided a detailed legal response disputing the finding on February 29, 2012. Although the March 7, 2012 final audit report is not in the record for this appeal, the Controller's revised audit report issued December 18, 2012, states that only Finding 4 was revised to reflect offsetting revenues as follows:

> This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.[19]

The other findings remained as they were without change. Thus, appellant had sufficient information to file its IRC on Finding 2 upon receipt of the March 7, 2012 final audit report.

Appellant argues, however, that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record (the revised final audit report issued December 18, 2012) since the Controller stated that the revised final audit report "supersedes" the March 7, 2012 audit report. There is no support in law for the appellant's position. As discussed above, statutes of limitation attach when a claim can be maintained and is "complete with all its elements."[20] Government Code sections 17551 and 17558.7 allow a claimant to file an IRC as soon as the Controller issues a notice reducing a claim for reimbursement and specifies the reason for adjustment in accordance with Government Code section 17558.5. Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional injuries later become manifest,[21] those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or she has been injured.[22] The courts do not toll the statute of limitation even in cases where the full extent of the claim, or its legal significance, or even the identity of a defendant, are not yet known at the time the cause of action accrues.[23] Here, there is no question that the earliest notice (the final audit report issued March 7, 2012) provided sufficient information to initiate an IRC. And there no evidence that the appellant suffered any additional

[19] Exhibit A, Appeal of Executive Director's Decision, page 19; see also page 25.

[20] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[21] *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43; *Pooshs, supra,* (2011) 51 Cal.4th 788, 792 and 802.

[22] *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534; *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804.

[23] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566; *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321.

reductions with respect to the disputed finding or that any fact essential to appellant's challenge of audit finding 2 was not manifested until the issuance of the revised audit report.[24]

In addition, and as explained in the analysis, the executive director's determination and notice of untimely filing is consistent with recent Commission decisions in *Collective Bargaining* IRC (05-4424-I-11, adopted December 5, 2014) and *Handicapped and Disabled Students* IRC (05-4282I-03, adopted September 25, 2015).

Accordingly, the period of limitation began accruing against the appellant in this case with the March 7, 2012 final audit report, and the later revised final audit report does not toll or suspend the operation of the period of limitation. Thus, the December 10, 2015 filing was beyond the three-year period of limitation and is not timely.

Conclusion

Staff recommends that the Commission uphold the executive director's decision to reject the appellant's IRC filing as untimely and incomplete, and authorize staff to make any technical, non-substantive changes following the hearing.

[24] See *Royal Thrift and Loan Co. v. County Escrow, Inc.*, *supra*, 123 Cal.App.4th 24, 43; *Pooshs, supra*, (2011) 51 Cal.4th 788, 792 and 802.

BEFORE THE
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE APPEAL OF EXECUTIVE DIRECTOR DECISION: Executive director dismissal of incorrect reduction claim for lack of jurisdiction based on determination that the filing was untimely and, therefore, incomplete. County of San Diego, Appellant	Case No.: 15-AEDD-01 *APPEAL OF EXECUTIVE DIRECTOR DECISION* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted March 25, 2016*)

DRAFT PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this appeal of executive director decision (AEDD) during a regularly scheduled hearing on March 25, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law. Specifically, California Code of Regulations, Title 2, section 1181.1(c) provides that a real party in interest to a matter may appeal to the Commission for review of actions and decisions of the executive director on that matter.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision]. The Commission voted as follows:

Member	**Vote**
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

COMMISSION FINDINGS

I. Chronology

02/06/2012 Controller issued the draft audit report.

02/07/2012 Appellant received the draft audit report.

02/29/2012 Appellant submitted comments on the draft audit report.

03/07/2012 Controller issued the final audit report.

12/18/2012 Controller issued the revised final audit report.

12/10/2015 Appellant filed the IRC.

12/18/2015 Commission's executive director issued a notice of untimely IRC, and rejected the filing as incomplete for lack of jurisdiction.

12/28/2015 Appellant filed appeal of the executive director's notice of untimely filed IRC.[25]

II. Background

The underlying facts are not in dispute. On February 6, 2012, the Controller issued a draft audit report on appellant's fiscal year 2006-2007 through 2008-2009 reimbursement claims for the consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II*, and *Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program, which contain four audit findings.[26] Appellant received the draft audit report on February 7, 2012.[27] Appellant submitted its response to the draft audit report on February 29, 2012.[28] The response states that "[t]here are four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs."[29] On March 7, 2012, the Controller issued the final audit report.[30] With a letter dated December 18, 2012, the Controller issued the revised final audit report, which "supersedes our previous report dated March 7, 2012."[31] As explained by the Controller and the appellant, the

[25] Exhibit A, Appeal of Executive Director Decision.

[26] Exhibit A, Appeal of Executive Director Decision, page 25 (Controller's Revised Final Audit Report, page 4).

[27] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[28] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[29] Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego's response to draft audit report, dated February 29, 2012).

[30] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1).

[31] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1. The summary in the revised final audit report is dated December 20, 2012, however. (Exhibit A, Appeal of Executive Director Decision, page 25.) The discrepancy in the dates is not material to the issue in this appeal.

revised audit report recalculated offsetting revenues from the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year 2008-2009 (in Finding 4 of the Audit Report) and had no fiscal effect on allowable total program costs for that fiscal year.

> Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-2009. We recalculated EPSDT revenues for FY 2008-2009 and revised Finding 4 [understated offsetting reimbursements] to reflect actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-2009.[32]

No other revisions to the Controller's findings were made.

The appellant filed the IRC on December 10, 2015.[33] On December 18, 2015, the executive director issued a notice of untimely filed IRC, which states in relevant part as follows:

> Commission staff has reviewed this filing and determined that it is not timely filed. Section 1185.1(c), of the Commission's regulations states: "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 to a reimbursement claim."
>
> The incorrect reduction claim was filed with the Commission more than three years following the State Controller's Final Audit Report, dated March 7, 2012. Although the filing includes a letter dated December 18, 2012, from the State Controller, indicating that the Revised Audit Report superseded the previous report and included a recalculation of offsetting revenue for fiscal year 2008-2009, the revision had no fiscal effect on the reductions made for fiscal year 2008-2009 and it appears that no further reductions were made by the revised audit.
>
> The California Supreme Court has said, "Critical to applying a statute of limitations is determining the point when the limitations period begins to run." Generally, "a plaintiff must file suit within a designated period after the cause of action accrues." The cause of action accrues, the Court said, "when [it] is complete with all of its elements." Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'" For IRCs, the "last element essential to the cause of action" which begins the running of the period of limitation pursuant to Government Code section 17558.5 and section 1185.1 of the Commission's regulations, is a written notice to the claimant of the adjustment that explains the reason for the

[32] Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller's Revised Final Audit Report, page 1); see also, page 3, where appellant states that "[t]he Revised Final Audit Report contained contains [sic] recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009."

[33] Exhibit A, Appeal of Executive Director Decision, page 3.

adjustment. This interpretation is consistent with previously adopted Commission decisions.

Here, the State Controller's Final Audit Report, dated March 7, 2012, provided claimant written notice of the adjustment and reasons for the adjustment, triggering the three-year limitation to file an IRC. Therefore, the IRC would have to have been filed on or before March 9, 2015 to be timely filed. A later revised audit which incorporates the prior audit findings and makes no new reductions does not trigger a new period of limitation for those earlier reductions.[34]

On December 28, 2015, the county filed this appeal of the executive director's decision.[35]

III. Appellant's Position

Appellant contends that the IRC was timely filed based on the Controller's revised final audit report dated December 18, 2012, and requests that the Commission direct the executive director to deem the IRC timely and complete. The appellant supports its appeal with the following allegations:

- Although the Controller issued a final audit report on March 7, 2012, that audit report was superseded and made void by the Controller's issuance of the December 18, 2012 revised final audit report. The December 18, 2012 revised final audit report was the Controller's final determination of the matter and is the report that triggers the running of the statute of limitations in section 1185.1(c) of the Commission's regulations.[36]
- Section 1185.1 requires the filing of an IRC three years following the date of the final audit report. The statute of limitations in the regulation does not say that the filing period runs from the earliest report, letter, or notice that has a fiscal effect. Thus, the regulation does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had "no fiscal effect."[37]
- Reliance on general tort statute of limitations cases is misapplied when the Commission's own regulations set forth a more specific period for filing an IRC.[38]
- Prior Commission decisions do not support the executive director's decision.[39]
- Both the County and the Controller appear to have relied on the date of the revised final audit. The Controller's website indicates that the date of their report is actually "12/20/12." "Therefore, December 2012 is the operative date of the 'final report' for purposes of Section 1185.1."[40]

[34] Exhibit A, Appeal of Executive Director Decision, pages 14-15.

[35] Exhibit A, Appeal of Executive Director Decision.

[36] Exhibit A, Appeal of Executive Director Decision, page 4.

[37] Exhibit A, Appeal of Executive Director Decision, pages 4-5.

[38] Exhibit A, Appeal of Executive Director Decision, pages 5-6.

[39] Exhibit A, Appeal of Executive Director Decision, pages 6-9.

[40] Exhibit A, Appeal of Executive Director Decision, page 9.

IV. The Commission Should Uphold the Executive Director's Decision

As described below, the executive director's determination that appellant's IRC filing was untimely and, therefore, incomplete is correct as a matter of law.

A reimbursement claim filed by a local agency is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5. Government Code section 17558.5(c) requires the Controller to notify 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."[41] Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

In 2012, when the final audit report and revised final audit report were issued in this case, section 1185(c) of the Commission's regulations required IRCs to be filed "no later than three (3) 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."[42] Currently, section 1185.1(c) similarly provides that "[a]ll 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 to a reimbursement claim." An IRC is deemed incomplete by Commission staff and returned by the executive director if it is not timely filed.[43]

Appellant argues that the Commission's regulations do not require the running of the limitation period from when a claimant *first* receives notice and does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had "no fiscal effect." To support this argument, the appellant cites a 2011 decision adopted by the Commission on an IRC for the *Handicapped and Disabled Students* program (05-4282-I-02 and 09-4282-1-04, adopted July 28, 2011), where the Commission stated that "section 1185 of the Commission's regulations does not require the running of the time period from when a claimant first receives notice; but simply states that the time runs from either the remittance advice *or* other notice of adjustment."[44] This prior decision was not challenged and, thus, remains the final binding decision for that matter.[45]

However, the Commission's prior decision is not precedential and does not comport with more recent interpretations by the Commission of the statute of limitations for IRCs. The law is clear that administrative agencies "may overrule prior decisions or practices and may initiate new policy or law through adjudication."[46] Therefore, the Commission is free to depart from its

[41] Government Code section 17558.5(c).

[42] California Code of Regulations, title 3, section 1185(c) (Register 2010, No. 44).

[43] California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

[44] Exhibit A, Appeal of Executive Director Decision, page 66, 75.

[45] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

[46] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776; 72 Ops.Cal.Atty.Gen. 173, 178, Fn. 2 ("We do not question the power of an administrative agency to reconsider a prior

reasoning in a prior decision so long as the decision that so departs, is correct as a matter of law and not arbitrary, capricious, or without evidentiary support.

As explained below, appellant's interpretation of the Commission's regulation is not consistent with the law. The statute of limitations in this case began to accrue with the March 7, 2012 final audit report, which appellant admits was received. Thus, an IRC filed December 10, 2015, more than three years later, is not timely. The Commission, therefore, does not have jurisdiction to hear and decide the merits of appellant's IRC submittal and should uphold the executive director's decision.

1. <u>The period of limitation applicable to an IRC begins to run at the time an IRC can be filed under the Government Code, and none of the exceptions or special rules for a delayed accrual apply.</u>

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.[47] The California Supreme Court has described statutes of limitations as follows:

> A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): "[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."[48]

The general rule, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.[49] Generally, the Court noted, "a plaintiff must file suit within a designated period after the cause of action accrues."[50] The

decision for the purpose of determining whether that decision should be overruled in a subsequent case. It is long settled that due process permits substantial deviation by administrative agencies from the principle of stare decisis.").

[47] *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

[48] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

[49] See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 ["[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time."]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 ["A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time."].

[50] *Ibid*.

cause of action accrues, the Court said, "when [it] is complete with all of its elements."[51] Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"[52]

For IRCs, the "last element essential to the cause of action" which begins the running of the period of limitation pursuant to former section 1185 (now § 1185.1) of the Commission's regulations, is a notice to the claimant of the adjustment that includes the reason for the adjustment, as required by Government Code section 17558.5. Government Code section 17558.5(c), the substance of which was also in effect at the time the audit report was issued, provides in pertinent part:

> 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 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…[53]

Under the statutory scheme, an IRC can be maintained and filed with the Commission to challenge the Controller's findings pursuant to Government Code sections 17551 and 17558.7, as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the reason for adjustment in accordance with Government Code section 17558.5. The Commission's regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5 to file an IRC with the Commission, which must include a detailed narrative describing the alleged reductions and a copy of any "written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance," or otherwise be barred from such action.[54]

Here, appellant admits that the Controller issued a final audit report on March 7, 2012, which reduced costs claimed for fiscal years fiscal year 2006-2007 through 2008-2009 under Finding 2 for overstated residential placement costs. Appellant was first made aware of the Controller's Finding 2 when it received the Controller's draft audit report on February 7, 2012, and provided a detailed legal response disputing the finding on February 29, 2012. Although the March 7, 2012 final audit report is not in the record for this appeal, the Controller's revised audit report issued December 18, 2012, states that only Finding 4 was revised to reflect offsetting revenues as follows:

> This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and

[51] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[52] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

[53] See Government Code section 17558.5(c) (last amended by Stats. 2004, ch. 890).

[54] California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

> Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.[55]

The other findings remained unchanged. Thus, appellant had sufficient information to file an IRC upon receipt of the March 7, 2012 final audit report.

Appellant argues, however, that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record (the revised final audit report issued December 18, 2012) since the Controller stated that the revised final audit report "supersedes" the March 7, 2012 audit report. There is no support in law for the appellant's position. As discussed above, statutes of limitation attach when a claim can be maintained and is "complete with all its elements." [56] Government Code sections 17551 and 17558.7 allow a claimant to file an IRC as soon as the Controller issues a notice reducing a claim for reimbursement and specifies the reason for adjustment in accordance with Government Code section 17558.5. Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional injuries later become manifest,[57] those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or she has been injured.[58] The courts do not toll a statute of limitation

[55] Exhibit A, Appeal of Executive Director's Decision, page 19; see also page 25.

[56] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[57] *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 ["Generally, statutes of limitation are triggered on the date of injury, and the plaintiff's ignorance of the injury does not toll the statute… [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to detect injuries or the breach of fiduciary relationship*." (Emphasis added.)]; *Pooshs, supra,* (2011) 51 Cal.4th 788, 802, where the court held that for statute of limitations purposes, a later physical injury caused by the same conduct "can, in some circumstances, be considered 'qualitatively different'." The court limited its holding to latent disease cases, and did not decide whether the same rule applied in other contexts. (*Id*. at page 792.)

[58] *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient's body, and not medical devices implanted it it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord's belated discovery of that his homeowner's policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 ["It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations."].

because the full extent of the claim, or its legal significance, or even the identity of a defendant, is not yet known at the time the cause of action accrues.[59] Here, there is no question that the earliest notice (the final audit report issued March 7, 2012) provided sufficient information to initiate an IRC. Nor is there any evidence that the appellant suffered any additional reductions with respect to the disputed finding or that any fact essential to appellant's challenge of audit finding 2 was not manifested until the issuance of the revised audit report.[60]

Accordingly, the period of limitation began accruing against the appellant in this case with the March 7, 2012 final audit report, and the later revised final audit report does not toll or suspend the operation of the period of limitation. Thus, the December 10, 2015 filing was filed beyond the three-year period of limitation and is not timely.

2. Recent Commission decisions support the Executive Director's determination and notice of untimely filing.

Despite arguments by the appellant to the contrary, the executive director's decision is consistent with recent decisions of the Commission in *Collective Bargaining* IRC (05-4424-I-11, adopted December 5, 2014)[61] and *Handicapped and Disabled Students* IRC (05-4282I-03, adopted September 25, 2015).[62]

In the *Collective Bargaining* IRC, the Commission fully analyzed the period of limitation for filing IRCs, consistent with the analysis above. The Commission found that the Commission's regulation follows the courts' general rule for statutes of limitations; i.e., that the period of limitation to file an IRC begins to run when the IRC can be filed; that is, when the claimant receives notice of an adjustment, which includes the reason for the adjustment.[63]

Appellant argues, however, that the Commission's decision in *Collective Bargaining* does not factually apply here since the regulation in effect at the time of that IRC (Register 1999, No. 38), stated only that "All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's *remittance advice* notifying the claimant of a reduction."[64] Appellant's interpretation is wrong. It is correct that the regulation governing the period of limitation for filing IRCs has been amended over time. Each amendment, however, has been made only to clarify the type of written documents the Controller can issue to provide notice to the claimant of an adjustment and the reason for the adjustment.

[59] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 ["Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations."]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute…begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."].

[60] See *Royal Thrift and Loan Co. v. County Escrow, Inc.*, *supra*, 123 Cal.App.4th 24, 43; *Pooshs, supra*, (2011) 51 Cal.4th 788, 792 and 802.

[61] Exhibit A, Appeal of Executive Director's Decision, pages 77, et al.

[62] Exhibit A, Appeal of Executive Director's Decision, pages 108, et al.

[63] Exhibit A, Appeal of Executive Director's Decision, pages 85-86, 95-99.

[64] Exhibit A, Appeal of Executive Director's Decision, page 8.

The amendments do not change the requirement that the limitation period begins to accrue when the claimant can file an IRC pursuant to Government Code sections 17551 and 17558.7. For example, in 2003, the Commission amended title 2, section 1185, to provide "All incorrect reduction claims shall be ~~submitted to~~ filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction."[65] In 2007, the regulation was amended as follows: "All incorrect reduction claims shall be filed with the commission no later than three (3) 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."[66] In 2014, the period of limitation was added to section 1185.1(c), with minor non-substantive amendments as follows: "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 to a reimbursement claim."[67] These amendments do not change the requirement that the limitation period begins to accrue when the claimant can file an IRC following written notice by the Controller (either through a final audit report, letter, remittance advice, or other written notice) of the adjustment and the reason for the adjustment as required by Government Code section 17558.5.

Appellant also asserts that the Commission's decision in *Handicapped and Disabled Students* IRC (05-4282I-03), which found that an earlier audit was not the Controller's final determination of the claim because it contained an express invitation for the claimant to participate in further dispute resolution, applies in this case. The Commission's findings on the issue in *Handicapped and Disabled* stated the following:

> However, here, as the claimant points out, the final audit report issued December 26, 2002 contains an express invitation for the claimant to participate in further dispute resolution: "The SCO has established an informal audit review process to resolve a dispute of facts." The letter further invites the claimant to submit additional documentation to the Controller: "The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." [Citation omitted.] Accordingly, the claimant submitted its response to the final audit report on February 20, 2003, along with additional documentation and argument. [Citation omitted.] Therefore, although the audit report issued on December 26, 2002, identifies the claim components adjusted, the amounts, and the reasons for adjustment, and constitutes "other notice of adjustment notifying the claimant of a reduction," the language inviting further informal dispute resolution supports the finding that the audit report did not constitute the Controller's *final* determination on the subject claims. [Citation omitted.]
>
> Based on the evidence in the record, the remittance advice letters could be interpreted as "the last essential element," and the audit report could be interpreted as not truly final based on the plain language of the cover letter.

[65] Register 2003, No. 17.

[66] Register 2007, No. 19.

[67] Register 2014, No. 21.

> Based on statements in the record, both the claimant and the Controller relied on the April 28, 2003 remittance advice letters, which provide the Controller's final determination on the audit and the first notice of an adjustment to the claimant following the informal audit review of the final audit report. Thus, based on the April 28, 2003 date of the remittance advice letter, an IRC filed by April 28, 2006 is timely.[68]

There is no evidence in the record here that the Controller invited the appellant to participate in further informal dispute resolution after issuing the March 7, 2012 *final* audit report or otherwise called into question the finality of that final audit report. The Controller simply issued a revised final audit report to reflect the correct offsetting EPSDT reimbursement for fiscal year 2008-2009, and did not change its adjustment in Finding 2. The record does not show any further informal discussions between the parties regarding Finding 2 following the March 7, 2012 final audit report.

Thus, the executive director's decision and notice in this case is consistent with these prior Commission decisions.

V. Conclusion

Based on the foregoing, staff recommends that the Commission uphold the executive director's decision to reject the appellant's IRC filing as untimely and incomplete.

[68] Exhibit A, Appeal of Executive Director Decision, pages 120-121.

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 January 21, 2016, I served the:

Draft Proposed Decision on Appeal of Executive Director Decision and Appeal of Executive Director Decision
Appeal of Executive Director Decision, 15-AEDD-01
County of San Diego, Appellant

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 January 21, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/20/16

Claim Number: 15-AEDD-01

Matter: Appeal of Executive Director Decision

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.)

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

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.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

achinncrs@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

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 & 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@sdcounty.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

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Artiano Shinoff & Holtz, APC*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@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

Kyle Sand, Senior Deputy, *County of San Diego*
Claimant Representative
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4894
kyle.sand@sdcounty.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, *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

Evelyn Suess, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
evelyn.suess@dof.ca.gov

ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, March 25, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

KEN ALEX
Director
Office of Planning & Research

JOHN CHIANG
State Treasurer

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 13)

HEIDI PALCHIK
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel
(Items 2, 3, 5, and 12)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF
continued

JULIA BLAIR
Senior Commission Counsel
(Item 7)

ERIC FELLER
Senior Commission Counsel
(Item 6)

MATTHEW B. JONES
Commission Counsel
(Items 4 and 8)

KERRY ORTMAN
Program Analyst
(Item 11)

CRISTINA BARDASU
Program Analyst

PAUL LUKACS
Senior Commission Counsel

PUBLIC TESTIMONY

Appearing Re Item 2:

For Claimants:

LISA M. MACCHIONE
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

KYLE E. SAND
Senior Deputy County Counsel
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 2:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Interim Chief, Financial Audits Bureau
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 3:

For Department of Finance:

REBECCA HAMILTON
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

Appearing Re Item 4:

For Claimants Santa Ana Unified School District, Plumas County of Education, Plumas Unified School District, Porterville Unified School District, and Vallejo City Unified School District:

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For California School Boards Association:

KEITH J. BRAY
General Counsel
California School Boards Association
3251 Beacon Blvd
West Sacramento, California 95691

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Department of Finance:

AMBER ALEXANDER
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

Appearing Re Item 5:

For Department of Finance:

REBECCA HAMILTON
Department of Finance

Appearing Re Item 6:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Interim Chief, Financial Audits Bureau
State Controller's Office

MASHA VOROBYOVA
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7 and Item 8:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Interim Chief, Financial Audits Bureau
State Controller's Office

MASHA VOROBYOVA
Audit Manager, Division of Audits
State Controller's Office

CHRISTOPHER B. RYAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

ERRATA SHEET

Page	Line	Correction
32	3-4	reduction. It is the reduction itself that is the cause of action.
38	25	vote?
70	1	Commission Counsel
73	18	new Commission employees.

I N D E X

I N D E X

Proceedings **Page**

I N D E X

I N D E X

BE IT REMEMBERED that on Friday, March 25, 2016, commencing at the hour of 10:00 a.m., thereof, at the State Capitol, Room 447, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

CHAIR ORTEGA: Let's go ahead and get started. I assume that Mr. Chivaro will join us shortly.

I will call to order the March 25th meeting of the Commission on State Mandates.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Here.

MS. HALSEY: Mr. Chivaro?

(No response)

MS. HALSEY: Mr. Chiang?

MEMBER CHIANG: Good morning.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Here?

MS. HALSEY: Mr. Saylor?

(No response)

MS. HALSEY: And Ms. Ortega?

CHAIR ORTEGA: Here.

MS. HALSEY: I'm sorry.

CHAIR ORTEGA: That's okay. I was waiting.

MS. HALSEY: I'm trying to count if we have a quorum, and we do.

CHAIR ORTEGA: We do, yes.

So we have a quorum. We'll go ahead and get started.

The first item of business is the minutes from the January 22nd meeting.

Are there any corrections or suggestions on the minutes?

MEMBER OLSEN: I'll move adoption.

CHAIR ORTEGA: Okay, moved by Ms. Olsen.

MEMBER ALEX: Second.

CHAIR ORTEGA: Second by Mr. Alex.

All in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR ORTEGA: Minutes are adopted.

MS. HALSEY: And now we will take up public comment for matters not on the agenda.

Please note that the Commission cannot take action on items not on the agenda. However, it can schedule issues raised by the public for consideration at future meetings.

CHAIR ORTEGA: Okay, any public comment on

items not on the agenda?

(No response)

CHAIR ORTEGA: All right, seeing none, we will move to the Consent Calendar.

MS. HALSEY: Item 10 is proposed for consent.

CHAIR ORTEGA: Okay, any comments on Item 10 from the commissioners?

(No response)

CHAIR ORTEGA: Any public comment on the consent item, Item 10?

(No response)

CHAIR ORTEGA: All right, is there a motion?

MEMBER CHIANG: Move approval.

MEMBER RAMIREZ: Second.

MEMBER OLSEN: Second.

CHAIR ORTEGA: Moved and seconded.

All in favor of the Consent Calendar, say "aye."

(A chorus of "ayes" was heard.)

CHAIR ORTEGA: Okay, it passes unanimously.

MS. HALSEY: Item 2, Chief Legal counsel will present Item 2, the appeal of Executive Director decisions -- wait, sorry. I skipped the swearing-in. It's slightly important.

Okay, let's move to the Article 7.

Will the parties for Items 2, 3, 4, 5, 6, 7, and 8 please rise?

(Parties/witnesses stood to be sworn or affirmed.)

MS. HALSEY: Do you solemnly swear or affirm that the testimony which you are about to give is true and correct, based on your personal knowledge, information, or belief?

(A chorus of affirmative responses was heard.)

MS. HALSEY: Thank you.

Chief Legal Counsel will present Item 2, the Appeal of Executive Director Decision, for the dismissal of an incorrect reduction claim filed by the County of San Diego because it was not filed within the period of limitation.

MS. SHELTON: Good morning.

The Commission's regulations require that an incorrect reduction claim shall be filed no later than three years following the Controller's written notice of adjustment, reducing the claim for reimbursement. If the filing is not timely, the regulations provide that the filing be deemed incomplete and authorizes the Executive Director to return the filing for lack of jurisdiction.

In this case, the County of San Diego appeals the decision of the Executive Director to deem an incorrect reduction claim that was filed more than three years after the Controller's first final audit report as untimely and incomplete.

The County asserts that the three-year period of limitations should instead be measured from the Controller's second revised audit report and not from the first final audit report. The second revised audited report updated reimbursement percentages for offsetting revenues and had no fiscal effect on total allowable costs or on the reduction challenged by the County.

Staff recommends that the Commission adopt the proposed decision to uphold the Executive Director's decision to return the filing as incomplete.

Will the parties and witnesses please state your names for the record?

MS. MACCHIONE: I'm Lisa Macchione for the County of San Diego.

MR. SAND: And I'm Kyle Sand, Senior Deputy County Counsel from the County of San Diego.

MR. SPANO: I'm Jim Spano, Audit Bureau Chief of State Controller's Office, Division of Audits.

CHAIR ORTEGA: Okay, thank you.

Mr. Sand and Ms. Macchione?

MR. SAND: Well, first of all, I thank you for hearing us out today. This is our -- both of our first time here at the Commission, so this is a very interesting experience so far.

CHAIR ORTEGA: Welcome.

MR. SAND: Well, we'll keep our comments brief.

We've briefed the matter fully in our appeal; and the Commission staff has written a draft opinion.

Ultimately, our argument is quite simple: Is this report I have in my hand, the revised audit report, dated December 12th of 2012, the final determination of the matter? We argue that it is, based on the wording of the report, based on the language contained in the letter, that it is superseding the March report. And, you know, the plain meaning of the word *"supersede"* is to repeal and replace; that the March had, you know, essentially no effect.

So in calendaring the time in which to file our incorrect reduction claim in this matter, we reasonably relied on this report, that it was the final determination in the matter.

If you can see, it's a bound report. The cover letter says that it is superseding -- every page on it states that this is revised findings, revised Schedule 1.

Now, it's true that, as the Commission has

argued, the fiscal change did not occur between the March report, which we argue has been repealed by this report, and by the language that was used by the State Controller's Office.

(Mr. Chivaro entered the meeting room.)

MR. SAND: However, you know, as the -- words have meaning; and for the State Controller to say that this report supersedes the prior report, in our opinion, that means that this is their final determination on the matter. And, you know, this is the, I think, fourth matter in the past five or six years before this Commission regarding statute of limitations. And we believe, and we argue, and we ask the Commission to consider the policy of favoring disposition of matters on the merits rather than kicking out legitimate matters before this Commission based on procedural grounds.

This is consistent with recent decisions in San Mateo.

And with that -- unless, Ms. Macchione, if you have anything further to add --

MS. MACCHIONE: No, none.

MR. SAND: -- we'll entertain comments from staff and Commission Member questions.

CHAIR ORTEGA: Thank you.

Mr. Spano, do you have anything?

MR. SPANO: I'm here just addressing the factual question relating to the audit report.

CHAIR ORTEGA: Okay, are there any questions? Do you folks want to hear from Camille again?

Yes, Ms. Olsen?

MEMBER OLSEN: So I'm concerned about this in relation to our Item 10 that was on consent, in which it appears that we did want to clarify language related to this. So that does suggest that this is a gray area prior to our adoption of Item 10 and going forward to clarify the language.

So I'm kind of sympathetic here.

MS. SHELTON: Let me try to address that.

It is true that we've been -- as we've been doing more and more incorrect reduction claims, we've been noticing that the Controller's Office has issued many documents after the final audit report. We've had revised final audit reports. We've had computer-generated sheets that also discuss either the amount of the reduction, and sometimes it will state a reason and sometimes it does not. We've had letters. We've had situations with the final audit report that have said, "Well, we invite you to continue to participate in an informal discussion for a 60-day time period." And that has only been in a few final audit

reports. So it hasn't been clear.

And the Commission's regulations are written the way they are, that list many different types of written documents that the Controller has issued in the past, because we don't know what's going to happen on a case-by-case basis.

As we've talked about before, you know, the Controller's doesn't have regulations. So I don't know from case-to-case what is the final document.

Under the statutes, though, the final document for an incorrect reduction claim -- or for an audit that would trigger the time to accrue the filing for an incorrect reduction claim is any written document that identifies the reduction and the reason for the reduction.

And under the statutes, in this case, the first final audit report was issued or dated March 7th, 2012.

Under the statutes, the County could have filed an incorrect reduction claim the very next day. And the Commission's regulations provide for an additional three-year period of time.

So it wouldn't -- and the purpose of a statute of limitation is to promote finality in pleadings and in filings, so that claims don't become stale.

We can't keep moving the clock every time the

Controller issues something, when their very first report that identifies the reduction and the reason for the reduction is enough under the statutes to file an incorrect reduction claim.

So the whole purpose of Item 10 is to clarify that it is your first document, your first written notice that satisfies the requirements of Government Code section 17558.5. That triggers the accrual period. And that hasn't -- there is one decision we have identified in this proposed decision that was incorrect; and I agree, that is incorrect, where the Commission did accept a filing after the three-year period based on a later issued remittance advice. That's not a correct legal decision.

It is the first -- what is correct and what the Commission has been finding consistently is the first report that comes out, written notice to the claimant, that identifies the reduction and the reason for the reduction. And that's what starts the clock.

MEMBER OLSEN: And the March 7th report did say it was the final report, is that correct, so that should have triggered in the thinking of the County that -- of the claimant that our three-year time starts now; is that it?

MS. SHELTON: That is correct. But you can

verify with Mr. Spano.

MR. SPANO: That is correct.

MEMBER OLSEN: Okay.

CHAIR ORTEGA: Mr. Alex?

MEMBER ALEX: Would it be the same result if the later-in-time report had changed the reduction amount?

MS. SHELTON: No. We've said that in the analysis as well.

If it takes a new reduction, you know, it arguably has a completely different reasoning for a reduction, I think that would trigger a new statute of limitations.

This report changed just offsetting revenues, a finding that was never challenged by the County; and it didn't change the overall amount of reduction, and didn't change the Finding 2, I believe, that was being challenged in that filing. So there was no change with respect to the issue being challenged.

CHAIR ORTEGA: Ms. Ramirez?

MEMBER RAMIREZ: I have a question.

Could you review the precedential value of, should we accept the appeal?

MS. SHELTON: Under the law, the Commission's decisions are not precedential. And there is case law

from the California Supreme Court that does state that a quasi judicial agency is authorized to change their legal opinions through adjudicative matters as long as it's based on law, and it's correct as a matter of law. And that's what we're doing here. They're certainly going back in history. You're going to go back and find some decisions that, when you review them again, arguably may not be correct as a matter of law.

If they have not been challenged in court, they're still final decisions for that particular matter. But our decisions are not precedential.

MEMBER RAMIREZ: Thank you.

CHAIR ORTEGA: Okay, any other comments or questions from the Commission?

(No response)

CHAIR ORTEGA: Seeing none, Mr. Sand, did you have any…?

MR. SAND: Well, I would note that, clearly, there's a -- the people that are coming before the Commission are, you know, sophisticated in the sense that they're members of local government. The State is a professional entity -- counties, school districts, cities as well.

Now, clearly, there is an issue with the regulation. Clearly, there is an issue -- something's

going on here that we would have so many issues before this Commission, over the past few years, about whether a claim was timely.

Now, there's an easy solution to this, going forward. Even if you were to rule against us -- which I don't think you should today -- is that the regulation needs to be clarified. You know, a lot of -- you know, staff -- both local government and state staff are in a disagreement over what the regulation says.

There have been -- this is now the fourth time that somebody's come before this Commission, arguing whether or not the statute of limitation is completed prior to filing.

In two of those times previously, you've ruled in favor of local government. In the *Gallivan* case, which had a lengthy discussion of the statute of limitations, I believe -- and correct me if I'm wrong, Ms. Shelton -- but 13 or 14 years had passed before they had notice; and they kept arguing a later and later date.

Now, the County didn't do that. You had a final audit report in March of 2012. Six months later, the State Controller's Office -- and here's another solution, is don't use language like this if you're the State Controller's Office. Don't say that it supersedes. Don't infer that the March had no effect.

You know, I could go out and buy Christmas presents for my kids tomorrow; but I don't have to because it's not due. And we relied on this date. We relied on the language that the State Controller used in its cover letter. We relied on the face page of this report, which was bound and sent to us, in calendaring the date.

This was not the County shirking from its duties or missing a calendar date. It was reliance on what is said in the regulation, that we have three years from the date of the final audit report; the date of this report, which is December 2012; the language in the cover letter, saying that the March report has been superseded, and that this is the final audit report; the numerous references, stating that all the findings are revised.

Now, it's true that the amount didn't change; but if we were to look at the San Mateo case, which was decided within the past six months, this is fairly consistent with what happened in that case.

The reports, the letters that the State Controller issued indicated that the first -- the first report that went out was not the final one. And the only difference here is, you know, a couple months later, they said disregard March, and so that's what we relied on.

CHAIR ORTEGA: Okay, thank you.

Ms. Olsen?

MEMBER OLSEN: I'm actually swayed by the County's argument here. I really think that in a situation like this where, you know, it was nine months later that this second final audit report came out -- it's not like it was three years, minus four days later date, and the County then said, "Oh, the clock starts over. We can wait another three years." It's well within a reasonable time for them to have thought, "You know, this extended our period of time to put in our claim."

I don't quite understand why they waited until the very end to do it, but that's not really the germane point here. The point is that they're pleading something before the Commission; and there is a lot of blame to go around here, in the sense of clarity. And I think the Commission has a responsibility, in that sense, to find in favor of those who are bringing a case in front of the Commission.

So I'll support the County's point of view on this one.

CHAIR ORTEGA: Ms. Ramirez?

MEMBER RAMIREZ: Generally, I like to -- not just generally -- I always like to give a lot of deference to staff's really great work on this. But

saying that this doesn't have precedential value in the few occasions that we can have a little flexibility, I would support you, Ms. Olsen.

MS. SHELTON: Let me just clarify, too, this is a jurisdictional matter. So if we don't have jurisdiction, then any rulings on the substance of the incorrect reduction claim would be void.

So in order to go the direction that you're going, you're going to have to find, as a matter of law, that the final report that satisfied Government Code section 17558.5(c) was the revised final audit report, and not the first final audit report.

MEMBER RAMIREZ: And the consequences would be?

MS. SHELTON: It's, to me, a little bit more gray -- a lot more gray. I mean, it could set it up, you know, for litigation. It is a jurisdictional issue, so it has to be "yes" or "no."

MEMBER ALEX: So that actually is where my question goes to. It's staff's finding, as a matter of law, that the first report has to be the final report.

Can you say a little bit more about why?

MS. SHELTON: I agree. This part is confusing because, as I've indicated before, the Controller's office tends to issue different types of documents. And different -- each case has been factually different.

So when you're just -- forget the Commission's regulations for a minute and just look at the Government Code. And the Government Code allows an incorrect reduction claim to be filed as soon as the Controller issues some written notice that identifies a reduction and the reasons for the reduction.

Now, I did want to get back to -- I was recently looking at the Generally Accepted Government Accounting Principles, and one of those principles says that if you come across new information that may change your findings on an audit, then you should go back in an audit and issue a revised audit report. The problem is, I mean, that applies generally to every government audit.

These Government Code statutes, though, do have deadlines in them. You know, there's a deadline to complete the audit, and there's a deadline to file an incorrect reduction claim. So even -- you know, in this particular case, we've seen -- well, in this case, they did issue a revised audit report with respect to one finding that was never challenged, and then it also didn't change the bottom-line reduction.

So if it had changed the finding that was being challenged, most certainly, then that would trigger -- start the clock over again.

MEMBER ALEX: But let me explore that just a bit, because if the final -- the first report, the first final report had been filed, the County could still have filed the next day under the statute. But then a few months later, if the Controller had changed something to the bottom line, you're saying that would have triggered a new statute?

MS. SHELTON: Well, if they had filed one, they could amend their IRC to include the subsequent audit report. I mean, that's how we've done things in the past.

So it still preserves your -- it's just like filing a complaint, you're preserving your pleading. Even under the law for civil litigation, you can file a complaint even if you don't have all the information. And that's the purpose of discovery rules.

So, you know, you're protecting your pleading by filing it as soon as you have a final audit report that's issued that identifies the reasons and the reduction.

Again, factually different -- I just want to make it clear where we've gone before. Factually different if the Controller, in their letter, invites additional comment for 60 days, or some other days, like I guess the *San Mateo* case -- I don't remember them by

claimants -- but invites additional discussion or something, then it's not final if you're inviting additional discussion. But when you say this is the final audit report, it's final.

MEMBER ALEX: So what do you think about the issue of it being described as superseded? Because that -- you know, look, it does strike me, as a lawyer, looking at that, that that's a new final report.

MS. SHELTON: Right. I think it's definitely a reasonable argument. I'm not suggesting that it's not a reasonable argument. We just looked at it factually, and what happened factually. And nothing happened to the finding at all. It's the same finding. The same amount reduced, same reason for reduction.

MEMBER ALEX: You're looking at me.

Go ahead, Sarah.

MEMBER OLSEN: You know, I still think that Mr. Sand's argument is pretty compelling, in that they got a new report nine months later and it said it superseded. And in the absence of any clarification from anybody that that didn't apply, "supersedes" seems pretty clear to me from looking at it from their perspective. And so far, I haven't heard anything that would change my opinion there.

MS. SHELTON: It might be a good question for

Mr. Spano; but I believe all of their revised audit reports say they're superseding. So that we've had this before, it's just never been highlighted by a party in argument.

All of their revised reports say that they're superseding; is that correct?

MR. SPANO: I believe that's correct.

MEMBER OLSEN: So, Mr. Spano, can I ask a question about that?

So in your reports, do you say the specific -- just, for instance, I'm just going to make a "for instance." The 12/12 report would say, "With respect to the 3/7 report, these particular findings are superseded," or does it say, "The report is superseded"?

MR. SPANO: What we basically say is that the revised final report supersedes our previous report, so we do a generic statement. And the reason we do that, is that it becomes too confusing if we want to issue a revision to only Finding Number 4. So what we do, we make the revision in totality right now to clarify. Because the only thing -- like I said, the only thing that was actually changed, was just that Finding 4. But the net impact was zero because of offsetting revenues.

MS. HALSEY: I just wanted to say, the trigger for an incorrect reduction claim and what you're taking

jurisdiction over, is a reduction; and what triggers that, is a notice of that reduction, and the reason for the reduction is the reduction itself that is what the cause of action is.

MEMBER ALEX: But counsel did say that if the reasoning changed, even without a change to the reduction, that would still trigger a new --

MS. SHELTON: If it's a completely different reason. I mean, you'd have to look at the case factually. But I was going to tag back onto Ms. Olsen's question. And in this particular audit report, it does say that it does supersede the prior audit report. But it also, when you read it, explains exactly what they did: That it only changed Finding Number 4 with respect to updated the offsetting revenues.

Right?

MR. SPANO: That's correct. There was four findings right now. And we clarified in the report that the only finding that actually changed was 4 because of subsequent information provided to us by the Department of Health. It didn't have an impact on the finding; but for transparency purposes, we reissued a report to show the amounts. But there was sufficient offsetting revenues to not have an impact on the total report itself, or the total of Finding 4. So Finding 4 did not

change in dollars at all.

MS. SHELTON: And Finding 2 did not change in dollars; is that correct?

MR. SPANO: Actually, Finding 4 changed the offsetting revenues, but the -- yes, Finding 2 did not change at all. There was no impact on Finding 2. The only thing that changed was Finding 4.

MEMBER ALEX: So I have to say that it's sufficiently confusing that you found it appropriate to update the regulation, which I think is absolutely appropriate. I think we're all kind of struggling with this. And what I would say, in my observation, is while the claimant had the right to file the day after the first final report, I'm not sure that created an obligation to do so when there was this superseding report. So I think -- I'm trying to think this through, because clearly what you're saying is right, it's jurisdictional, so there has to be a legal basis for the Commission to have jurisdiction.

But I think a report that is issued by the Controller, that says "superseding report," even if it doesn't specifically change the outcome of the reduction, I think it's a pretty reasonable thing to assume that that is a new final report. That's my initial thought here.

MEMBER OLSEN: That's where I am.

CHAIR ORTEGA: Do you have any --

MS. HALSEY: Well, we would probably also want to look at that regulation proposal that we have, because that would be inconsistent with your interpretation, because it would no longer be the first notice of a reduction. I guess it would be any notice of a reduction.

MEMBER ALEX: But you can -- I mean, you've made a determination; and we put it on consent, and we've consented to it, so that's now, going forward, how we approach this, and I'm okay with that. We're giving notice to the world that that's the way we're proceeding. But we had to clarify that to make sure everybody's aware of it. And I think we're just looking at this particular case. And I fully understand -- I do wonder why they waited until the very end, but that's, again, not relevant here.

I understand why you would think that you have three years; and I think it's -- at least my current thought is that that's a reasonable thing to have decided.

CHAIR ORTEGA: I think one other thing that would be helpful for the Controller's office to think about, I know a lot of the IRCs we're looking at are from

past years, and different practices may have occurred. But the fact-specific nature of all of the cases that have come before us, and having to weigh when letters are received or what kind of document was received, that it might be helpful going forward if there was a standard communication plan, so that claimants and the Commission staff could start to see this kind of report is the final report. Additional back-and-forth is communicated in a specific way. If all of the IRCs going forward were treated the same way, I think it would make it a lot clearer for the Commission in future issues.

There are always going to be disputes about whether the reductions are accurate or not. But trying to kind of figure out what the communication has been and when different triggers are pulled, I think is getting complicated. So, something to think about going forward.

Okay, is there any additional public comment on this item?

(No response)

CHAIR ORTEGA: All right, we've heard everything here.

Is there a motion?

MEMBER RAMIREZ: Well, I supported Ms. Olsen.

So do you want to make a motion?

MEMBER OLSEN: I'll move -- I mean, I'm going

to vote against it.

CHAIR ORTEGA: Yes, I understand.

MEMBER OLSEN: But I'll move it -- move the staff recommendation in order to put this forward.

MEMBER RAMIREZ: You're moving to vote against the staff recommendation?

MEMBER OLSEN: Yes.

MEMBER RAMIREZ: That is, to grant the appeal? Or do you want to amend the staff recommendation?

CHAIR ORTEGA: Let's clarify. Well, I think you're welcome to make the motion that you want to make

MEMBER RAMIREZ: Grant the appeal?

MS. SHELTON: Can I just -- you can make whatever motion and vote today. If you choose to vote against the staff recommendation, I need to take it back and rewrite it.

MEMBER OLSEN: Oh, it needs to be taken back, anyway; right?

MS. HALSEY: No, It's an appeal, so you just vote against staff recommendation and we take jurisdiction and we go write an analysis for the IRC, yes. That's it.

CHAIR ORTEGA: Well, let's take a moment.

Procedurally, Camille, what is your advice to grant the appeal? I mean, that's the issue before us.

MS. SHELTON: Yes, if you vote against the decision, we would take it back and deal -- reverse the findings on what you have here, and then add the findings for the substantive challenge on the IRC.

MEMBER OLSEN: Is the appropriate motion to --

MS. SHELTON: The appropriate motion would be --

MEMBER OLSEN: -- to vote against?

I mean, if we --

MS. SHELTON: It's to grant the appeal.

MEMBER OLSEN: To the grant the appeal?

MS. SHELTON: To grant the appeal, and find that the Executive Director did not correctly return the filing and that there is jurisdiction, has been met.

MEMBER OLSEN: That's the motion I'm making.

MS. HALSEY: Based on the revised one.

MS. SHELTON: Based on the superseding revised final audit report.

MEMBER OLSEN: Right.

MEMBER RAMIREZ: Got it.

CHAIR ORTEGA: So we have a motion and a second by Ms. Ramirez.

Please call the roll.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Mr. Chivaro?
MEMBER CHIVARO: No.
MS. HALSEY: Ms. Olsen?
MEMBER OLSEN: Aye.
MS. HALSEY: Ms. Ortega?
CHAIR ORTEGA: No.
MS. HALSEY: Ms. Ramirez?
MEMBER RAMIREZ: Aye.
MS. HALSEY: Mr. Saylor?
(No response)
CHAIR ORTEGA: You didn't call Mr. Chiang.
MS. HALSEY: Oh, Mr. Chiang, sorry.
MEMBER CHIANG: No.
MS. HALSEY: No? So two "noes" then.
CHAIR ORTEGA: So the motion fails; right?
MEMBER RAMIREZ: We tied up.
MS. HALSEY: Oh, we have a tie.
MS. SHELTON: Okay, with a tie vote, under the Commission's regulations, there is no action taken on this item. The Commission's regulations require that you can make another motion, if you would like, or set it for another hearing.
MEMBER CHIANG: Can we take it under submission and let Don review the record and cast a vote?
MS. HALSEY: At the next hearing, let him vote.

MS. SHELTON: Yes, you absolutely can do that, sure.

CHAIR ORTEGA: All right, let's do that.

MEMBER OLSEN: So it will come back to us at the next hearing?

MS. SHELTON: When you have seven members.

MEMBER OLSEN: Yes.

CHAIR ORTEGA: Okay, do we need to vote on that, or can we do that as a --

MS. SHELTON: Or you can just continue it.

CHAIR ORTEGA: So we will continue that item until we have the necessary members.

MEMBER RAMIREZ: This is a first.

CHAIR ORTEGA: Thank you.

Okay, thank you, Mr. Sand, Ms. Macchione.

CHAIR ORTEGA: Item 3.

MS. HALSEY: Chief Legal Counsel Camille Shelton will present Item 3, the new test-claim decision on *Immunization Records: Hepatitis B*.

MS. SHELTON: Item 3. This is the second hearing on the Department of Finance's request for the Commission to adopt a new test-claim decision to supersede the original decision for this program, based on a 2010 statute that modifies the State's liability by providing that the full immunization against hepatitis B

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 15th day of April 2016.

Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Thursday, May 26, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

KEN ALEX
Director
Office of Planning & Research

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

SARAH OLSEN
Public Member

PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 10)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 9)

JULIA BLAIR
Senior Commission Counsel
(Item 5)

ERIC FELLER
Senior Commission Counsel
(Item 6)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF
continued

MATTHEW B. JONES
Commission Counsel
(Item 4)

KERRY ORTMAN
Program Analyst
(Item 8)

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimants:

KEITH B. PETERSEN
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

JIM VENNEMAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5:

For Claimants:

LISA M. MACCHIONE
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

KYLE E. SAND
Senior Deputy County Counsel
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

CHRISTOPHER B. RYAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 6:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Interim Chief, Financial Audits Bureau
State Controller's Office

MASHA VOROBYOVA
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

ERRATA SHEET

Page	Line	Correction
6		delete from Item 3 description: 14-MR-04
7		replace 12-4400-I-02 with 12-4499-I-02
29	5	replace Marsha with Masha

I N D E X

Are there any other members that want to make any comments?

(No response)

CHAIR ORTEGA: Any public comment to come before the Commission before we move into our items?

(No response)

CHAIR ORTEGA: Okay, seeing none, I'm going to recommend that we skip Item 2 for the moment, and see if Mr. Saylor joins us before we return to that item.

Given that it's returning to us because of a tie vote, it doesn't seem productive to discuss it at this moment.

So we will skip to Item 4 because Item 3 was withdrawn.

MS. HALSEY: Well, there are no items proposed for consent this morning. So let's move to the Article 7 portion of the hearing.

Please note that Item 3 was withdrawn by the claimant after the agenda issued.

Will the parties and witnesses for Items 2, 4, 5, and 6 please rise?

(Parties/witnesses stood to be sworn or affirmed.)

MS. HALSEY: Do you solemnly swear or affirm that the testimony which you are about to give is true

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

MS. HALSEY: Thank you.

CHAIR ORTEGA: So I'm going to return to Item 2. And you all will recall this item is before us because at the last meeting, we had a tie vote.

MEMBER OLSEN: Well, it won't be a tie anymore.

CHAIR ORTEGA: It won't be a tie, but we are unlikely to get the four votes -- again, making an assumption that people would continue to vote the way they did last time. We would not have four votes to take action on the item.

So I know Mr. Sand and Ms. Macchione are here. I think I'll invite you up.

If you have any additional or new information to provide, I think that might be helpful. But otherwise, it might make more sense to just defer any additional action on this item until another meeting.

Please.

MR. SAND: Yes, that's --

CHAIR ORTEGA: I know it's an unusual situation

but…

MR. SAND: We'd be willing to come back again to resolve the matter.

CHAIR ORTEGA: Okay. Any commissioners have any different thoughts on this? But it feels that we're going to end up at 3-2, and that would be a no action, so we would be back here either way. So we will not take any additional action or discussion on this item.

MR. SAND: Although, if you were to entertain a motion from the fourth vote, we would stick around.

CHAIR ORTEGA: Sure. We'll look to the Treasurer and Controller representatives to speak now, or we'll defer until the next meeting.

MS. MACCHIONE: Okay, thank you.

CHAIR ORTEGA: Yes, thank you.

MR. SAND: Thank you.

CHAIR ORTEGA: So Item 7.

MS. HALSEY: Item 7 is reserved for county applications for a finding of significant financial stress, or SB 1033 applications.

No SB 1033 applications have been filed.

Program Analyst Kerry Ortman will present Item 8, the Legislative Update.

MS. ORTMAN: Good morning.

There have been updates since we issued this

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 13th day of June 2016.

Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, September 23, 2016

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer
(Vice Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

SCOTT MORGAN
Representative for KEN ALEX
Director
Office of Planning & Research

SARAH OLSEN
Public Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member

PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 9)

CAMILLE N. SHELTON
Chief Legal Counsel
(Items 2, 3, and 8)

JULIA BLAIR
Senior Commission Counsel
(Item 4)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF
continued

PAUL KARL LUKACS
Senior Commission Counsel
(Item 5)

PUBLIC TESTIMONY

Appearing Re Item 2:

For Appellant County of San Diego:

KYLE E. SAND
Senior Deputy County Counsel
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

For State Controller's Office:

JIM L. SPANO
Interim Chief, Financial Audits Bureau
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 3:

For Claimant Oceanside Unified School District:

TODD McATEER
Director of Human Resources, Certificated Employee,
Oceanside Unified School District
2111 Mission Avenue
Oceanside, California 92058

ARTHUR M. PALKOWITZ
Artiano Shinoff
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

I N D E X

Proceedings
Page

issues raised by the public for consideration at future meetings.

CHAIR ORTEGA: Okay, is there any public comment on items not on the agenda?

(No response)

CHAIR ORTEGA: Seeing none, we'll move on.

There is no Consent Calendar.

EXECUTIVE DIRECTOR HALSEY: Okay, and let's move on to Article 7.

Will the parties and witnesses for Items 2, 3, 4, and 5 please rise?

(Parties/witnesses stood to be sworn or affirmed.)

EXECUTIVE DIRECTOR HALSEY: Do you solemnly swear or affirm that the testimony which you are about to give is true and correct, based on your personal knowledge, information, or belief?

(A chorus of affirmative responses was heard.)

EXECUTIVE DIRECTOR HALSEY: Thank you.

Chief Legal Counsel Camille Shelton will present Item 2, the appeal of an Executive Director decision for the dismissal of an incorrect reduction claim filed by the County of San Diego because it was not filed within the period of limitation.

MS. SHELTON: Good morning. This item was heard by

the Commission at the March and May hearings, but has not received a sufficient number of votes for action.

No changes have been made to the proposed decision.

The Commission's regulations require that an incorrect reduction claim shall be filed no later than three years following the Controller's written notice of adjustment, reducing a claim for reimbursement.

If the filing is not timely, the regulations require Commission staff to deem the filing incomplete and the filing will be returned by the Executive Director for lack of jurisdiction.

In this case, the County of San Diego appeals the decision of the Executive Director to deem an incorrect reduction claim that was filed more than three years after the Controller's first final audit report as untimely and incomplete. The Claimant argues that the Controller's revised final audit report supersedes the original report, and triggered the timely filing of the incorrect reduction claim.

Staff recommends that the Commission adopt the proposed decision to uphold the Executive Director's decision to deem the filing incomplete for lack of jurisdiction.

Will the parties and witnesses please state your names for the record?

MR. SAND: Kyle Sand, Senior Deputy County Counsel with the County of San Diego.

MR. SPANO: Jim Spano, State Controller's Office, Division of Audits.

CHAIR ORTEGA: Okay, thank you.

Mr. Sand, before we get started, I just wanted to mention to the members who were here when we had the conversation last time, I thought that since it had been so long since we first heard this issue in March, that it would make sense to kind of start over.

And we have folks here who were not here at the March meeting; and so we'll just begin with the item and see where it takes us.

Mr. Sand?

MR. SAND: Great. Well, thank you for having me. It's good to be here again.

Several years ago, on December 18th, 2012, the State Controller's Office issued this revised final audit report. And in the revised audit report, it indicated explicitly, it stated that it superseded an earlier report that was issued earlier in that year.

Now, under your regulations -- not the new regulations adopted -- and I believe it went into effect recently -- but the regulations in effect at the time and in effect at the time of the filing, we had three years

from the date of the final audit report.

Now, the County filed its claim on December 10th, 2015, which is within three years from the date of this report; and the Executive Director rejected our filing. Now, there had been, as many commissioners may remember, several issues within the past five to ten years regarding what is the appropriate filing date for these claims.

Now, I believe that the Commission has pretty much fixed that issue with the new regulations that went into effect. I was reading them again this morning; and I believe the language was added, *"no later from the date a claimant first receives the State Controller's report,"* which would infer that it was the first time we got one, not this revised one. I think that somewhat clarifies the issue. But based on the plain reading of the regulation in effect at the time and based on this report and the date on it and also the letter on the cover page, indicating that it superseded the prior report, this is the report. This is the final audit report, you know, in addition to the fact that every page in here indicates that it is a revised report.

So that is what the County of San Diego relied upon when we filed our claim in -- well, nine or ten months or so ago; but I submit, on the information provided and

our briefing on the issue -- and I believe we also have a transcript of the last time around. But I say a lot of -- I think I sound like Woody Allen when I read these things afterwards. So that was unpleasant to read. But it sounded a lot better the first time.

So with that, I'll take questions from the Commission.

CHAIR ORTEGA: Mr. Spano. Let's have Mr. Spano respond.

MR. SAND: Yes.

MR. SPANO: I have no general comments to make. I'm here basically if there are any questions regarding the factual accuracy or factual information, I can respond to.

CHAIR ORTEGA: Okay. So, Mr. Sand, I don't think it's pleasant for any of us to go back and look at the transcripts and see what we said.

So I'll open it up for any questions or comments at this point.

I think, as you all know from looking at the transcript, I'm sure we were left with a tie when we had taken up this issue twice before.

So is there any comment at this point?

MEMBER SAYLOR: I have some questions.

CHAIR ORTEGA: Okay. Yes, Mr. Saylor, please.

MEMBER SAYLOR: So I forgot -- let's see, the gentleman from San Diego, your name is Mr. Sand?

MR. SAND: Correct.

MEMBER SAYLOR: Okay, so you mentioned that there was a regulation that left some uncertainty for interpretation.

Is that an accurate statement?

MS. SHELTON: If you go to page 10 of the proposed decision, it outlines what the regulations said at the time. And at the time, it said your incorrect reduction claim shall be filed no later than three years following the date of the Office of the State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment. So it lists maybe various types of written documents that the Controller was issuing at that time, and didn't maybe clarify that it had to be your first notice, which would trigger the timing of filing your incorrect reduction claim within the statute of limitations.

This last year, clarifying regulations do go into effect beginning October 1st; and they say it's when the claimant first receives a written notice. So as we've seen through several incorrect-reduction-claim hearings, the Controller has issued what they call a final audit report; and then there are subsequent writings in various

forms. And we've had a lot of different factual situations in these incorrect reduction claims.

And here, we have a situation where they issued a final audit report in March 2012, and then issued a revised final audit report in December 2012.

And what is my understanding of the reading of the record is that the revision occurred to a finding dealing with offsetting revenues and did not deal with the reduction that was being challenged in this incorrect reduction claim. So there, nothing changed with respect to that reduction of costs.

MEMBER SAYLOR: Right. The regulation changed regarding the timing, when does that –- when was that effective?

MS. SHELTON: It becomes effective October of 1st.

MEMBER SAYLOR: So it's not effective yet?

MS. SHELTON: It's been deemed finalized and will be published by the Secretary of State's office and go into effect, correct.

MEMBER SAYLOR: So when San Diego County was reviewing this topic, they could reasonably have expected that the time-line would have started at the time the final revised report was given to them by the State Controller?

MS. SHELTON: That's argument that the County of

San Diego was making. But the intent of the regulation was not that, when you read that in light of all the case law on the purpose of statute of limitations. The statute of limitations is there to give some limitation as to when you are required to file something. It should not change every time a state agency issues new writings.

The whole idea of that is, when you first become aware of a wrong, that is the triggering of the clock. And all the law says, you can file even complaints in court without knowing all the facts. You know, they first became, you know, aware of the wrong in March -- and, actually, even before that, when the draft came out. The final audit report said that it's still the same, we are still reducing these costs. So at that point, that was when the time began to start.

MEMBER SAYLOR: Have we taken action on other incorrect reduction claims where the time -- have we taken action on other matters of this sort based on this interpretation you're describing?

MS. SHELTON: Yes, there have been several this year.

MEMBER SAYLOR: Okay, so the timeliness question has been applied uniformly in other circumstances that are analogous?

MS. SHELTON: Correct. Except I believe in this

particular claim, several years ago we issued one where, looking at it now, it was a wrong decision. It was one where the Commission took jurisdiction on a -- I think a subsequent written notice. And that is a wrong decision. But these decisions are not precedential.

This is a full analysis of the law dealing with statute of limitations; and we believe this is the legally correct conclusion.

MEMBER SAYLOR: Okay.

CHAIR ORTEGA: Go ahead, Ms. Olsen.

MEMBER OLSEN: Okay, so as I recall our discussion, way back -- was it March that we had the initial discussion? -- the discussion came down to -- after we had all talked a lot and asked a lot of questions and spoken at length, it came down to one word, and the word was that in the Controller's subsequent writings, they had used the word *"superseded,"* and they had used that word in relation to the entire report. They had not said it supersedes items blah-blah-blah and blah-blah-blah. They said, "This report supersedes the prior report." And that's where the concern came down. And that hasn't changed, because that's part of the historical record. The Controller used the language that the subsequent report superseded the prior report.

And I think that's compelling to me, because we're

in a really language-dependent job here. Our words have to matter; and they have to be -- you know, if they can be defined concretely, then they need to be defined that way. And "superseded" means superseded. So that's my concern about trying to interpret it any other way. Because it seems to me that "superseded" is a word that isn't really open to interpretation. It has a very discrete meaning.

CHAIR ORTEGA: I don't disagree that we've come down to this word on this one; but now having sat through numerous discussions about the timing questions and what seems to me the clear pattern of the Controller's office having a back-and-forth with the claimants during and after the final audit report is issued, that the use of "supersedes" means nothing more than any of the words or reports that have been issued by the Controller's Office, and then used in these discussions to explain why the timing is appropriate.

So I think I agree that that's what it comes down to here; but I see it differently, in that we've just seen example after example where it's treated differently, and so no one word means anything different than another. And it feels to me, that the final audit is as it's been described by Ms. Shelton.

MS. SHELTON: I was just going to say that. When

you look at the case law that we've described, just generally talking about statute of limitations, the key fact is when they had constructive notice of a wrong being done. And they had notice of that with the March report. And so whatever language the Controller uses, it didn't change the finding. So they had notice back in March 2012.

MEMBER SAYLOR: Why are we changing this regulation to change the way that this is treated? What's the reason for the regulation --

MS. SHELTON: It is a clarifying change. When the old regulation was written, it was written because we -- at the time, I don't believe the Controller's office was really consistently even issuing audit reports. They were issuing all kinds of written notices to the claimant community, to let them know that they had a reduction. So it was written to say, well, whatever type of written notice you have, you have to file it within three years.

We weren't aware of necessarily the interpretation by all the other claimant community until we started really doing these incorrect reduction claims. You know, we focused on those over the last two years. That they were -- some agencies were interpreting it to mean any subsequent reduction. But the clock can't keep changing, giving you more and more time because then at some point,

you're going to five, six, seven years. In this case, it's just a few months, yes.

MEMBER SAYLOR: It seems to me that we -- that the State acknowledges that there was an uncertainty and potential -- multiple potential interpretations of the regulation that was in place when San Diego County was considering this issue.

And so I think that, by itself, suggests that there is a reason to give a little bit of benefit of the doubt in interpretation. And if you receive this final report that supersedes the other ones, or all the other matters that came before, it seems like a reasonable interpretation that the County could have come forward earlier, sure, but they didn't. And probably a reason that they didn't, is that they thought they had until December. I mean, that seems like a reasonable interpretation of the facts.

Did you discover -- did San Diego County deliberately wait? Why didn't you file earlier, just to make sure you covered --

MR. SAND: Well, there were a lot of reasons we didn't file it earlier; but the main reason is that it wasn't due.

MEMBER SAYLOR: Okay, so you felt that -- you actually, honestly interpreted, is that what you're

telling me --

MR. SAND: Correct. We were quite surprised to get the decision.

MEMBER SAYLOR: Yes, I think that's a reasonable interpretation.

CHAIR ORTEGA: Go ahead.

MR. SAND: I believe the word "superseded" does have a specific meaning in this context. It's defined and has a legal definition of to nullify, to make void, to take the place of.

So this is the State Controller's report. When the regulation says three years from the date of the report, this is the report that we have three years from the date of. Not one that, for all intents and purposes, doesn't exist anymore. It doesn't appear on the State Controller's Web site. This report does, as the final audit report. And I do understand the appeal to case law that is being made. And I suppose if we were talking about a personal injury, where it said "three years from the date of injury," and I knew the date of that injury, then I would apply that same case law.

However, here, we're looking at a specific legal timeframe that's been written into your regulations; and it said "three years from the date of the report." Not "the first report" or "the date that the claimant first

receives." And I believe it's now "the final state audit report."

So that's our position.

MEMBER SAYLOR: Yes.

CHAIR ORTEGA: Ms. Shelton?

MEMBER SAYLOR: I'm not sure where we go. But I think, fairness ought to have a weight in what we do here. And I think it's fair to consider the lack of clarity in the regulation and what seems to be reasonable interpretation by the local government bringing this claim.

MS. SHELTON: Well, excuse me, it's certainly a gray issue. There is, you know, definitely both legal arguments on both sides.

And just to maybe reiterate, the writing of the old regulation can be definitely interpreted as meaning, three years from whatever written notice that you get on the reduction. And they certainly received a written notice of the reduction dated March 2012. They had notice of the reduction, which their particular reduction, the findings never changed.

You know, "supersede" means to replace. And if you look at a statute, when something is repealed and replaced, it stays in law until it's replaced. So nothing has changed. I mean, when you were looking --

it hadn't changed back to March 2012. So that's just the other interpretation.

MEMBER SAYLOR: Right.

CHAIR ORTEGA: And I think it is worth mentioning again that the superseding report doesn't actually change the incorrect reduction. It addresses other issues.

MS. SHELTON: Mr. Spano can clarify; but I believe it made no changes at all to the bottom line number as well.

MR. SPANO: Basically, what happened is when we did the audit initially, the Department of Health is very late in doing their *Early Periodic Screening Diagnostic and Treatment*, *EPSDT,* settlement. And so what happens is we agree to the time that once they do the settlement, we'll go back and we'll take a look it. And when we looked at it, we found out that the offsetting revenue was overstated by $184,000. But the fact of the matter is, the offsetting revenues in all the other categories far exceeded the expenditure incurred. So prior to the initial audit report -- this is for the 2008-2009 fiscal year -- allowable cost was zero.

When we reissued the audit, the allowable cost was zero. So we reissued it just to disclose the facts right now; but it had no dollar impact at all to the 2008-2009, or the entire three-year audit report that we audited.

It didn't affect the other two years, it only affected the one year. And our report, it was clear that it had no fiscal impact to the dollar findings at all.

MEMBER SAYLOR: But the issue is timeliness of the submittal. It doesn't matter what was in the report. So I think that if this was submitted -- if they had submitted their claim without regard to any date -- just an arbitrary delay or asleep at the switch or inadvertent action or even malicious action, to submit it late, that would be one thing. But they submitted it, timed with what they perceived to be a reasonable interpretation of the regulation in place.

So they just did it on time, based on a reasonable interpretation. It wasn't just, they're late or they're four years late or five years late, and want to catch up, or didn't have any regard to timing. I think they did it in a reasonable way. And I think we should be fair in our interpretations of the law. And I think they made -- I think we should consider the merits of the matter, taken into our jurisdiction, and weigh it in that manner. That's my view.

CHAIR ORTEGA: Okay, any other comments from commissioners?

(No response)

CHAIR ORTEGA: Any other public comment on this

item?

(No response)

CHAIR ORTEGA: All right, seeing none, if there is to be a motion, it's in order.

MEMBER SAYLOR: I move that we accept -- that we approve the appeal.

MEMBER OLSEN: Second.

MS. SHELTON: Can I clarify the grounds?

MEMBER SAYLOR: Okay.

MS. SHELTON: Because if the motion is granted, I'm going to have to rewrite the decision.

Is this being made on the ground that the regulation that existed at the time was understood differently by different parties, and it was later clarified; and the fact that the Controller's revised audit report superseded the earlier audit report?

MEMBER SAYLOR: Right.

CHAIR ORTEGA: Such is the motion by Mr. Saylor and seconded by Ms. Olsen.

Please call the roll.

EXECUTIVE DIRECTOR HALSEY: Mr. Morgan?

MEMBER MORGAN: Yes.

EXECUTIVE DIRECTOR HALSEY: Mr. Chivaro?

MEMBER CHIVARO: No.

EXECUTIVE DIRECTOR HALSEY: Mr. Hariri?

VICE CHAIR HARIRI: Abstain.
EXECUTIVE DIRECTOR HALSEY: Ms. Olsen?
MEMBER OLSEN: Yes.
EXECUTIVE DIRECTOR HALSEY: Ms. Ortega?
CHAIR ORTEGA: No.
EXECUTIVE DIRECTOR HALSEY: Mr. Saylor?
MEMBER SAYLOR: Yes.
CHAIR ORTEGA: It passes, 3 to 2.
MS. SHELTON: So it's 3 to 2 on Mr. Saylor's motion, which means that the appeal is granted.
And so I will have to take this --
EXECUTIVE DIRECTOR HALSEY: Don't you need 4?
MS. SHELTON: Oh, I'm sorry, I need 4.
I'm back to the same -- you're right, I'm very sorry, yes. Under the Commission's regulations, it does require four affirmative votes for an action. We have only three and two.
CHAIR ORTEGA: Okay.
MS. SHELTON: You can do another motion or you can --
CHAIR ORTEGA: I don't know what another motion might be.
MEMBER CHIVARO: Move the staff recommendation.
CHAIR ORTEGA: Okay, we can move the --
MEMBER CHIVARO: I will move the staff

recommendation.

CHAIR ORTEGA: I will second the staff recommendation.

So moved by Mr. Chivaro; seconded by myself.

Please call the roll for the staff recommendation.

EXECUTIVE DIRECTOR HALSEY: Mr. Morgan?

MEMBER MORGAN: No.

EXECUTIVE DIRECTOR HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

EXECUTIVE DIRECTOR HALSEY: Mr. Hariri?

VICE CHAIR HARIRI: Aye.

EXECUTIVE DIRECTOR HALSEY: Ms. Olsen?

MEMBER OLSEN: No.

EXECUTIVE DIRECTOR HALSEY: Ms. Ortega?

CHAIR ORTEGA: Aye.

EXECUTIVE DIRECTOR HALSEY: Mr. Saylor?

MEMBER SAYLOR: No.

MS. SHELTON: That’s a tie.

EXECUTIVE DIRECTOR HALSEY: So we still have no resolution of this matter at this time.

CHAIR ORTEGA: Despite our best efforts.

MR. SAND: It’s a pleasant morning flight.

And I have a fine collection of Southwest peanuts.

CHAIR ORTEGA: Okay, so procedurally, can I ask for a little guidance?

EXECUTIVE DIRECTOR HALSEY: We can put this on the next hearing, is what we --

MS. SHELTON: The Commission's regulations say that in a tie vote, basically, your first option would be just to put it over to the hearing when you have a full slate of the seven members, so that you don't have a tie with the seven members, assuming nobody abstains from the issue.

EXECUTIVE DIRECTOR HALSEY: Yes, this morning, I kept this on even though I knew Carmen wasn't coming, because there were different people, and I didn't know if they might vote differently than last time there was a vote taken.

CHAIR ORTEGA: Right.

EXECUTIVE DIRECTOR HALSEY: So sorry. But maybe we should just wait until I'm sure we have seven. If we don't have seven, I'll postpone the matter, so you don't need to fly up.

MR. SAND: Thank you.

EXECUTIVE DIRECTOR HALSEY: So that would be October 28th right now it would be tentatively set for.

Let us know if you have a conflict.

CHAIR ORTEGA: Thanks.

MR. SAND: Thank you.

CHAIR ORTEGA: Thank you, Mr. Sand and Mr. Spano.

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 7th day of October 2016.

Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor

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

January 26, 2005

Ms. Zoey Todd
Department of Mental Health
1600 9th Street, Room 150
Sacramento, CA 95814

Mr. Gerald Shelton
Department of Education
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

And Interested Parties
(See Enclosed Mailing List)

Re: Request for Final Statement of Reasons Filed with Rulemaking Record

***Handicapped and Disabled Students II Test Claim,* (02-TC-40 and 02-TC-49)**
Chapter 1747, Statutes 1984; Chapter 107, Statutes 1985; Chapter 1274, Statutes 1985; Chapter 1133, Statutes 1986; Chapter 759, Statutes 1992; Chapter 1128, Statutes 1994; Chapter 654, Statutes 1996; Chapter 691, Statutes 1998; Chapter 745, Statutes 2001; Chapter 585, Statutes 2002; Title 2, Division 9, California Code of Regulations, Sections 60000-60610; Government Code sections 7570, 7571, 7572, 7572.5, 7572.55, 7573, 7576, 7579, 7582, 7584, 7585, 7586, 7586.6, 7586.7, 7587, 7588

County of Stanislaus and County of Los Angeles, Claimants.

Dear Ms. Todd and Mr. Shelton:

We are in the process of analyzing and preparing the draft staff analysis for the *Handicapped and Disabled Students II* test claim. In order to complete our analysis, we are requesting the Final Statement of Reasons filed as part of the formal rulemaking record for the Joint Regulations for Pupils with Disabilities (Cal. Code of Regs., tit. 2, div. 9, ch. 1, arts. 1-9, §§ 60000-60610), on June 26, 1998, as emergency regulations with the Office of Administrative Law. The Certificate of Compliance for the emergency regulations was filed on August 9, 1999 (Register 99, No. 33).

The hearing on this consolidated test claim is tentatively scheduled for either May 26, 2005, or July 28, 2005. Therefore, please submit the Statement of Reasons to our office by February 9, 2005.

If you have any questions or concerns, please contact Camille Shelton, Senior Staff Counsel, at (916) 323-8215. Thank you for your assistance.

Sincerely,

PAULA HIGASHI
Executive Director

02-TC-40 & 02-TC-49

EXHIBIT A

FINAL STATEMENT OF REASONS

JOINT REGULATIONS FOR HANDICAPPED CHILDREN

GOVERNMENT CODE, TITLE 2, CHAPTER 26.5

DIVISION 9. JOINT REGULATIONS FOR HANDICAPPED CHILDREN

a) Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations Are Intended to Address

These proposed regulations implement, interpret, and make specific Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to children with disabilities.

The intent of these proposed regulations is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA, (20 U.S.C. Sections 1400 et seq.), its implementing regulations, including Sections 76.1 et seq., and 300.1 et seq. of Title 34 of the Code of Federal Regulations. These proposed regulations are supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities.

Chapter 26.5, Section 7587, mandated the development of regulations for each state department named in this chapter. Due to the interagency nature of the proposed regulations, it was necessary for the state departments to collaborate on the development of the proposed regulations. In addition, the legislature mandated that proposed regulations were to be developed with the maximum feasible opportunity for public participation and comments. During the development of these proposed regulations there have been various work groups and advisory bodies who have made regulatory suggestions.

Besides the legislative mandate, the California Department of Education (CDE) was party to the Butterfield vs. Honig law suit in 1989. The resulting decision made the CDE responsible for insuring that the terms of the Butterfield vs. Honig agreement were considered in the development of the proposed regulations for Chapter 26.5 of the Government Code.

Before the United States Office of Special Education Programs (OSEP) would accept the CDE state plan they required that regulations guaranteeing occupational therapy and physical therapy services to eligible disabled pupils be proposed. Concerns of OSEP are reflected in a CDE Program Advisory dated September 6, 1991, and also in the proposed regulations.

Current statute addresses, in part, interagency responsibilities for providing services to children with disabilities. These proposed regulations are necessary to clarify consistent procedures and criteria in the administration of related services to insure that effected state and local agencies and interested persons are informed of these procedures.

These proposed regulations reflect the change in name of the federal legislation from Education for all Handicapped Children Act of 1975 to Individuals with Disabilities Education Act of 1990 or IDEA. At this time, a change in nomenclature pursuant to IDEA alters the title to "Children with Disabilities" and deletes all references to "individuals with exceptional needs."

Emergency regulations were adopted in 1986 under the title, Division 9, Joint Regulations for Handicapped Children, Chapter 1, Interagency Responsibilities for Providing Services to Handicapped Children. The Legislature granted extensions of this emergency regulatory authority in the budget act annually to allow for the development of the permanent regulations until this year.

The proposed regulations reflect changes in California statute affecting Government Code Chapter 26.5 pursuant to: Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1133, Statutes of 1986; Chapter 677, Statutes of 1989; Chapter 182, Statutes of 1990; Chapter 223, Statutes of 1991; and Chapter 654, Statutes of 1996. These proposed regulations also include concerns expressed by the public users of the program regarding past program implementation.

These proposed regulations also reflect changes in Chapter 6 of the Welfare and Institutions Code: Chapter 1274, Statutes of 1985; Chapter 1294, Statutes of 1989; Chapter 46, Statutes of 1990; Chapter 737, Statutes of 1990.

The extensive duplication of statute throughout these proposed regulations is necessary due to the interagency nature of these proposed regulations. Many staff members at the various state and county departments have little knowledge of statutes that pertain to other departments. The audience for these proposed regulations also includes parents and advocates who may use these proposed regulations as the basis for a complaint and due process.

b) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

ADOPTION OF TITLE 2, DIVISION 9, CHAPTER 1, CALIFORNIA CODE OF REGULATIONS

Chapter 1. Interagency Responsibility for Providing Services to Children With Disabilities

Article 1. General Provisions

SECTION 60000 SCOPE

This section identifies the individuals to whom the provisions of this chapter apply and clarifies that the provisions of this chapter are intended to function in conjunction with state and federal laws and regulations regarding children with disabilities.

These proposed regulations reflect the federal Education for all Handicapped Children Act of 1975 (PL 94-142) as changed by the Individuals with Disabilities Education Act of 1990 and as reauthorized in 1997 (PL 105-17).

SECTION 60010 EDUCATION DEFINITIONS

The provisions of this section establish definitions for the terms used by the Department of Education. These definitions are necessary to insure that the terminology in the proposed regulations is consistent and will be understandable to pupils who are eligible for services, their parents and the state and local agency personnel responsible for providing the services.

Subsection (a) clarifies the meaning of simple or common words found in the chapter, the application of which may otherwise be confusing. This definition is included to assist the local agencies and the public in understanding these proposed regulations.

Subsection (b) clarifies the term "administrative designee" for non-education agency personnel having a responsibility to participate in the individualized education program (IEP) team meeting. This definition is also included to assist the public in understanding the specific role of the professional who is responsible for educational decisions.

Subsection (c) defines the meaning of the term "assessment" and references those sections of the Education Code that govern the assessment of children identified as pupils with a disability. This definition is included to assist community mental health service staff in understanding the nature of an educational assessment.

Subsection (d) defines the meaning of the term "assessment plan" and references that section of the law specifying the conditions to be observed and the procedures to be followed in the development of the assessment plan. This definition is included to alert non-education agencies before they assess a pupil that they are subject to education's procedural requirements when preparing assessment plans for related services pursuant to this chapter.

Final Modification:

Following the public hearing, in Section 60010(d), the references to sections of Title 34 of the Code of Federal Regulations were deleted as they were not necessary. The appropriate reference is to Education Code Section 56321.

Subsection (e) clarifies the term "confidentiality" to alert all professionals that implementation of the law requires each agency to conform with the confidentiality rules of the other agencies. These confidentiality rules provide not only for protection of information but also for access to information under certain circumstances. Professional staff in the fields of education, health, mental health and social services currently are familiar with the provisions of confidentiality governing their own separate areas of responsibility. The definition serves to inform all agency professional staff of their new, broader, procedural responsibilities in the area of confidentiality. Medical and clinical records are included in this list of records to be kept confidential to conform with confidentiality requirements in the Welfare and Institutions Code that pertain to these records.

Subsection (f) defines the term "county superintendent of schools" to conform with the Education Code. The county superintendent has responsibilities under this Chapter. This definition is included to inform non-education agencies about the specific role of this administrator.

Subsection (g) clarifies that the term "day" in this Chapter means calendar day rather than work day. This definition is included to inform non-education agencies of the educational definition of "day."

Subsection (h) defines the term "designated instruction and services" and clarifies the differences between "designated instruction and services" and "related services." These phrases are sometimes used interchangeably. This definition is included because the use of the two terms has greatly confused both non-educational professionals and lay persons.

Subsection (i) defines the term "individualized education program" or "IEP." The term references those pertinent code sections that must be adhered to when preparing an IEP. This clarification is necessary to assist non-education agencies in understanding their responsibilities under Chapter 26.5, Division 7 of Title 1 of the Government Code.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (j) is essential to define the term "individualized education program team" or "IEP team" for interagency coordination. This definition is included to assist non-education agency personnel in understanding the nature of the IEP team.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (k) defines the term "local education agency" or "LEA." This term clarifies for non-education agencies, the local education entities responsible for providing special education and related services.

Subsection (l) clarifies the term "local interagency agreement." Education Code, Section 56220 requires that local education agencies develop interagency agreements to define the process for coordination of services to pupils with disabilities. This definition is included to clarify the need for a written document and to briefly define the interagency process.

Subsection (m) clarifies the term "necessary to benefit from special education" to insure that the primary focus of related services is the pupil's school performance. This definition is included to inform non-education professionals and lay persons about the goal of related services under special education statutes.

Subsection (n) clarifies the term "nonpublic, nonsectarian agency" as defined for educational purposes. This definition is included because the term has had a different meaning in the mental health and social services programs.

Subsection (o) defines the term "nonpublic, nonsectarian school." This definition is included because the term is specific to education law.

Subsection (p) defines the term "parent" according to the statutory change in Government Code, Section 7579.5, to reflect the surrogate parents' responsibilities and clarify that they may legally sign a consent for services. This definition is included to assist non-education agency staff in understanding the educational definition of parent and to assure that pupils have appropriate educational representation at their IEP meeting.

Subsection (q) defines the term "pupil with a disability" by clarifying that it is a synonym of "child with a disability" and the plural "children with disabilities" as defined in the Individuals with Disabilities Education Act, formerly Education of the Handicapped Act. This change in nomenclature applies only to pupils who have IEPs, formerly known as "individuals with exceptional needs." This definition is included to inform non-education agencies about the specified conditions under which a pupil may be designated as a pupil with a disability.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (r) defines the term "qualified" as it is used to describe appropriate personnel providing special education services within their scope of practice. It is consistent with Title 5, Division 1, Chapter 3, Section 3001(x) of the California Code of Regulations. This regulation clarifies that graduate students and interns may provide services if they are properly registered and supervised.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (s) defines the term "related services" and references the federal law that further defines it, since this is an education term not used by other agencies. Related services also includes the term "designated instruction and services" which education agencies use to describe special education services which assist pupils with disabilities in benefiting from special education.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (t) defines the term "special education." This definition includes related services and references the pertinent section of the Education Code. This clarification is necessary to inform those local agencies which have the responsibility to provide related services that these services must only be included on the pupil's IEP if they are required in order for the child to benefit from his special education program.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (u) defines the term "special education local plan" to clarify for non-education agencies, the scope of services to be provided within the service area.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (v) identifies the area covered by the local plan as the "special education local plan area (SELPA)" within which the special education services are provided. This is the governmental agency financially responsible for assuring the provision of services.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

SECTION 60020 MENTAL HEALTH DEFINITIONS

Subsection (a) clarifies the meaning of "community mental health service" as some county mental health departments have contracted with private providers to provide treatment and assessment.

Subsection (b) defines "county of origin" as used by mental health personnel to describe the funding source for children with disabilities receiving mental health services. This definition is included for non-mental health programs where there may be a different criteria for identifying a funding source.

Final Modification:

Following the public hearing, this definition is being amended for clarity and consistency.

Subsection (c) defines the term "expanded IEP team" and clarifies this team's requirement to assess a pupil in all areas of suspected disability and to implement the placement of children identified as seriously emotionally disturbed in residential placements. This definition is included because local education agencies have been found to be out of compliance for failure to properly constitute an expanded IEP team, and to emphasize that this is a shared agency responsibility.

Subsection (d) defines "host county." The function of the host county is to provide services for children whose "county of origin" is elsewhere. This definition is included for the benefit of local education agencies because it is a mental health term.

Subsection (e) specifies that the "local mental health director" is the responsible agent of the community mental health service.

Subsection (f) clarifies that "medication monitoring" is a service that is provided pursuant to IEPs. It is also necessary to differentiate this service from the actual payment for the medications because this is not an allowable service under the special education pupils program as it is a strictly medical, and not an educational, service.

Subsection (g) defines the term "mental health assessment." This term clarifies for other agency personnel the nature and scope of mental health assessments as defined by the California Code of Regulations. Section 7576 of Chapter 26.5 of the Government Code requires such clarification.

Subsection (h) defines the term "mental health assessment plan." This definition is necessary to ensure that mental health assessments are conducted in a manner consistent with the requirements of the Education Code.

Subsection (i), which defines the term "mental health services," clarifies the nature and scope of such services, including assessments. Section 7576 of Chapter 26.5 of the Government Code requires such clarification.

Subsection (j), which defines the term "qualified mental health professional," identifies all mental health professionals who may provide mental health services and recommend mental health as a related service on the IEP. It clarifies that properly supervised MFCC and MSW interns may provide mental health services prior to licensure and that some services can be provided by a mental health rehabilitation specialist. It was also necessary to explain that the term "licensed practitioner of the healing arts" refers to a subset of the group defined in this subsection.

SECTION 60025 SOCIAL SERVICES DEFINITIONS

This Section is essential to assist education agencies and mental health programs to achieve a common understanding of terms used by the Department of Social Services in authorizing payment for residential placements for children.

Subsection (a) is defines the term, "care and supervision". The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes. The factual basis for the definition is that the definition of "care and supervision" is consistent with the statutory definition in Welfare and Institutions Code Section 11460.

Subsection (b) defines the term, "certified family home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes. The factual basis for the definition is that the definition of "certified family home" is consistent with the statutory definition in Welfare and Institutions Code Section 11400(c).

Subsection (c) defines the term, "certified, license-pending home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "certified family home" is as set forth in Welfare and Institutions Sections 361.2(h), 727(b), and 16507.5(b), and Health and Safety Code 1502(a).

Subsection (d) is necessary to specify the meaning of a community care facility which is consistent with Health and Safety Code Section 1502(a). The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "Community care facility" as set forth in Health and Safety Code Section 1502(a).

Subsection (e) defines, "Community treatment facility" as these are new facilities that the demanding population served by this program may need to utilize. It is also necessary to clarify that secure containment, restraint and seclusion are no longer illegal in group homes if they have this designation. The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "Community treatment facility" is as set forth in Welfare and Institutions Section 4094, and in Health and Safety Code 1502(a)(8).

Subsection (f) defines "foster family agency". The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is that the definition of "foster family agency" is consistent with the statutory definitions in Welfare and Institutions Code Section 11400(g), and in Health and Safety Code Section 1502(a)(4).

Subsection (g) defines "foster family home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes, where applicable. The factual basis for the definition is that the definition of "foster family home" is consistent with the statutory definition in Health and Safety Code 1502(a)(5), and for small family homes and homes of relatives Education Code Section 56155.5(b), and Welfare and Institutions Code Section 11402(a). Small family homes and the homes of relatives will rarely be used for placement of these children, but for the few cases that may be able to be placed in these homes they are included in this section.

Subsection (h) defines the term, "group home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is that the definition of "group home" is consistent with the statutory definition in Welfare and Institutions Code Sections 11400(h) and 17736(b), and Title 22 CCR, Section 80001(g)(1).

Subsection (i) defines the term, "licensed children's institution", for the mental health and social services agencies pursuant to Education Code Section 56155.5. "Licensed children's institutions" is the term used in the Education Code which most approximates the Social Services terms and is currently in use in the education community. The public problem is that there are four different agencies involved in this program with potentially four different uses of this term; this definition helps to clarify what is meant by this term for the purposes of this section. The factual basis for the definition is that the definition of "licensed children's institution" is consistent with the statutory definition in Education Code Section 56155.5.

Subsection (j) defines the term, "small family home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is that the definition of "small family home" is consistent with the statutory definition in Health and Safety Code Section 1502(a)(6).

Article 2. Mental Health Related Services

SECTION 60030 LOCAL MENTAL HEALTH AND EDUCATION INTERAGENCY AGREEMENT

Education Code Section 56220 (d) requires that local education agencies describe the process for coordinating services with other public agencies that are funded to serve pupils with disabilities. This description is not required to be submitted to the Superintendent of Public Instruction but is required to be a written statement.

This section sets forth the processes and procedures for determining which agency is responsible for services but will not be legally binding on the parties in excess of the requirements of Chapter 26.5 of the Government Code. This section does not preclude the parties to this local interagency agreement from increasing the scope of the agreement to meet the needs of the community.

This section on local interagency agreements has been expanded because experience in the field has shown that many local interagency agreements are not effective. The proposed requirements update the language to reflect recent changes in the Individuals with Disabilities Education Act of 1990 (reauthorized in 1997) and in state law.

Subsection (a) specifies the participants in the local interagency agreement.

Subsection (b) facilitates the implementation of this Chapter by requiring a review of the interagency agreement annually but allowing more frequent revisions as necessary. These proposed regulations require annual reviews because this program is dynamic and had numerous additional statutory changes. It is necessary for the parties to the local interagency agreement to meet and discuss the necessary changes to the local interagency agreement.

Final Modification:

Following the public hearing, text of Section 60030(b) was amended to read "according to a schedule developed at the local level between the agencies but no less frequently than every three years." "July 1 of each year" was deleted. Also, "The content of the agreement will remain in effect until the agencies mutually agree upon any revisions" was added to Section 60030(b) as suggested by testimony.

Subsection (c) (provisions 1 through 17) expands and clarifies the topics for inclusion in the required local interagency agreements. These provisions make clear to the parties, the essential components for a local interagency agreement to implement Chapter 26.5 of the Government Code. Practitioners in the field have indicated that the components should be specific in their content.

Local agencies must document and specify the separate and distinct roles of each agency responsible to plan for and provide services to pupils with disabilities pursuant to Section 7572 of the Government Code. The proposed provisions which are required for inclusion in the agreements are topics found to be most misunderstood between the two agencies. The Department of Education and the Department of Mental Health staff have found that those local agencies that included in their agreement such items as assessment, exchange of information, and participation in developing the individualized education program, etc. experienced fewer problems and greater cooperation and coordination.

Local agencies must develop their own agreements based upon the proposed 17 provisions. This provides them the opportunity for flexibility to address specific local problems and needs.

(c)(1) This regulation requires stronger interagency agreements in order to improve local agencies' ability to adhere to the timelines required by law. Recent court cases such as "Butterfield vs. Honig" have underscored the necessity for clearly articulated responsibilities with regard to timelines. Local mental health programs and local education agencies (LEAs) have complained about a lack of clarity with regard to timelines, and disputes and fair hearings have resulted.

(c)(2) Avoiding the interagency dispute resolution process at the state level through resolution of such disputes at the local level will enable services to be provided more quickly and preserve mental health staff and resources for treatment instead of litigation preparation. This provision should assist local interagency cooperation.

Final Modification:

Following the public hearing and in response to testimony, subsection (c)(2) is amended for clarity and consistency.

(c)(3) The local mental health service must be given a complete referral package by the local education agency in order to accurately assess a pupil. This provision clarifies what exactly must be in the referral package for it to be complete.

Final Modification:

Following the public hearing and in response to testimony (Testifier 7 [(b)]), Section 60030(c)(3) is amended to clarify time lines by deleting the "timely" references, and substituting a specific time line.

(c)(4) The field has identified problems associated with large numbers of probation and social service placed children who have special education and mental health needs. This provision addresses these problems by assigning responsibility to facilitate new referrals when a child with a disability is residentially placed by an agency other than education or mental health and is intended to prevent eligible pupils from being denied services due to their parent's residency in another county.

Final Modification:

Following the public hearing and in response to testimony (Testifier 7 [(b)]), Section 60030(c)(4) is amended to clarify time lines by deleting the "timely" reference and replacing it with a specific time line.

(c)(5) This regulation ensures that an assessment plan and its implementation are coordinated. This provision is added in consideration of the decision in the "Butterfield vs. Honig" court case. It is expected that this provision will prevent similar complaints in other counties.

(c)(6) This regulation ensures the adequate participation of the mental health professionals at the IEP team meetings and is intended to facilitate interagency cooperation and collaboration.

Final Modification:

The term "the" was added before "IEP team meetings" to improve clarity of Section 60030(c)(6).

(c)(7) This regulation requires that adequate notice of scheduled IEPs be provided representatives of local mental health service so that their participation at IEP meetings is facilitated. The field has advised the Department that LEAs sometimes fail to advise the local mental health service of upcoming IEP meetings or give such notice too close to the meeting time for local mental health to attend.

Final Modification:

Following the public hearing and in response to testimony (Testifier 7 [(b)], Section 60030(c)(7) is amended to clarify time lines by deleting the "adequate" reference and replacing it with a specific time line.

(c)(8) This regulation ensures that the interagency process for developing the IEP is in accordance with Education Code and is explained clearly for workers in the field.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

(c)(9) This regulation requires services to be delivered as soon as possible in accordance with federal regulations in order to avoid compliance complaints or lawsuits.

(c)(10) Related services must be provided when school is not in session during vacation periods when they are determined to be necessary by the IEP team. Transportation services are also required to continue during the summer if required by the IEP. The transportation requirement has been included in this regulation due to input regarding the necessity for it from the superior counties who face geographic barriers and who have poor public transportation systems.

Final Modification:

Section 60030(c)(10) was revised to read "Description of the length and duration of mental health services and transportation beyond the traditional school year including the extended year program."

(c)(11) This regulation requires that children with disabilities will be able to access their related services in accordance with federal accessibility requirements codified in the Americans with Disabilities Act.

(c)(12) This regulation ensures that schools will provide necessary space and staff support on school campuses for the delivery of related services. Due to class size reduction, space, in particular, on school campuses is a scarce resource.

(c)(13) In accordance with the Department's policy of allowing family participation and choice in their treatment, this regulation requires that pupils with disabilities and their parents be provided more than one option for their special education services. The phrase "continuum of placement options" and the requirement for non-residential, and therefore less restrictive, intervention options are also intended to facilitate family choices in treatment.

(c)(14) This regulation ensures a monitoring system for services on the IEP that are provided by a contractor. The use of contractors is increasing in response to the administration's "California competes" policy, and the need to provide oversight over such contractors is, therefore, increasing as well.

(c)(15) This regulation facilitates the timely completion of assessments through the development of a resource list of contract assessors. This provision is added in consideration of the "Butterfield vs. Honig" decision, and has also been identified by the field as necessary due to increasing community mental health utilization of contract assessors and contract

providers of other mental health services. It is anticipated that local agencies will have fewer compliance complaints if they include this provision in their interagency agreements.

(c)(16) This regulation ensures that the purpose for which a child is placed in a residential facility is to accomplish educationally related mental health treatment goals rather than to merely address dysfunctional family dynamics.

(c)(17) This regulation is intended to enhance the ability of education and mental health staff to understand and cooperate with one another because the required cross training teaches an appreciation of the differing perspectives and roles that characterize these different professions.

Final Modification:

"Mutual staff development for" was added and "The cross training of" was deleted from Section 60030(c)(17).

SECTION 60040 REFERRAL TO COMMUNITY MENTAL HEALTH SERVICES FOR RELATED SERVICES

The proposed regulations for Government Code, Chapter 26.5, Section 7572(c) included in this section are intended to ensure that a complete referral package is prepared by the LEA and forwarded to the community mental health service in a timely manner. This section requires local education agencies to include the necessary components of a referral from the education agency to a mental health program. The requirements in this section conform with Chapter 654, Statutes of 1996.

Subsection (a) clarifies who is responsible for the initiation of referrals for mental health services. For the purposes of Chapter 26.5 related services, it is necessary for a referral to be made by the LEA, IEP team or the parent.

Subsection (a)(1) clarifies that a pupil must have been assessed for special education by qualified education personnel in order to be eligible for related mental health services.

Subsection (a)(2) specifies the requirements that an LEA must comply with in order to refer a pupil to the community mental health service. A consent for referral, release and exchange of information, and permission for observation of the pupil by mental health must all be signed by the parent before a mental health referral can be made in order to protect the parent and pupils right to confidentiality.

Subsections (a)(3) (A, B, C, and D) require a pupil to have significant emotional or behavioral characteristics that are observed by qualified educational professionals in educational and other settings which impede their ability to benefit from special education in order for the pupil to meet eligibility criteria for mental health referral. This subsection also excludes students from mental health referral who are only socially maladjusted or who are experiencing temporary adjustment problems which could respond to short term counseling.

These restrictions are necessary to focus services upon a population that needs them and can benefit from them and to ensure that less restrictive interventions are attempted with the pupil prior to mental health involvement.

Final Modification:

Following the public hearing and in response to testimony (Testifier 29 [(a)(3)(d)], Section 60040(a)(3)(D) is being amended and new Section 60040(a)(3)(E) adopted to add clarity regarding the meaning of the term "short-term counseling."

Following the 15-day renotice, Section 60040(a)(3)(E) is amended to correct an inadvertent error to the second usage of the word cannot to "can" in this section.

Subsection (a)(4) requires a LEA to document that a pupil has sufficient cognitive functioning to benefit from mental health services before they may refer them to mental health. This is to prevent wasting scarce mental health resources on pupils who will not experience any increase in educational benefit as a result. In the past it has been common practice for community mental health services to exclude pupils from program eligibility who had an onset of their mental health problems prior to 30 months. This excluded developmentally disabled, and autistic children from receiving services on the basis of their diagnosis. This is contrary to IDEA which mandates that pupils must be considered for services on a case by case basis and not solely by their diagnosis. This practice is also inconsistent with the legal precedent set by the "Rachel H." case which has included the developmentally disabled in mainstream classes and schools, and, as a result, more pupils with developmental disabilities are requesting services from the special education pupils program. Programs currently exist in San Francisco and Ventura counties specifically designed for autistic children in spite of the past practice of exclusion utilized by many counties, and these programs are effectively ameliorating these pupils problems. These programs invalidate the argument in support of excluding all developmentally disabled and autistic pupils from the program because they lack the cognitive capacity to benefit from services.

Subsection (a)(5) requires a LEA to attempt and document less restrictive interventions with a pupil before referring them for mental health intervention. This section clarifies that a LEA is expected to provide assessments and designated instructional services within the educational system unless these interventions are clearly insufficient, as in the case of a pupil who experiences a psychotic break. In this latter case the LEA is required to document the reasons for not attempting less restrictive interventions in the mental health referral. The Department hopes to strengthen and encourage the use of the least restrictive effective intervention through these requirements.

Subsections (b) (1-4) explain the documentation which the LEA must provide the community mental health service when they refer a pupil. This documentation includes the IEP, assessments, and information from other agencies that the LEA possesses, the parents' consent for treatment, the less restrictive interventions attempted, and a description of the behaviors that make the pupil eligible for mental health treatment.

Subsections (c)(1 and 2) allow a LEA to make a referral to a community mental health service before the education assessments are completed provided that the information on these assessments documents that the pupil meets the eligibility requirements established in subsections (a)(2-4) and provided that the LEA has attempted less restrictive and reasonable accommodations to the student by utilizing related educational services and designated instruction and services such as school counseling, guidance, resource special programs, and psychological services. This section is an attempt to address complaints that parent advocates and protection and advocacy raised in the work group that a "double timeline" exists for pupils who need mental health services because they have to wait up to 65 days (15 days for an assessment plan and 50 for an assessment) for the LEA and for the community mental health service to assess pupils. For children who obviously require mental health intervention 130 days is a long time to wait and these subsections allow concurrent referral and therefore will shorten this period of time when appropriate.

Subsection (d), identifies the components of a complete referral package when the referred pupil has not already been determined to be eligible for special education but is merely suspected of being eligible. It is necessary to provide information which is as complete as possible in this instance to the community mental health service. This will facilitate the process for determining the need for a mental health assessment and other mental health services.

Subsection (d)(1), specifies that the results of the educational assessments and any relevant reports from other agencies treating the pupil should be included in the referral package from a LEA to a community mental health service.

Subsection (d)(2), requires the inclusion of parental consent as is required by state and federal law.

Subsection (d)(3), clarifies that the LEA must provide documentation of the pupil's behavioral characteristics that qualify him or her for mental health treatment and is necessary so that community mental health services are not burdened with assessing pupils who are clearly ineligible for services.

Subsection (d)(4), requires that the LEA justify the referral for mental health services by documenting why the less restrictive interventions which have been attempted by education have failed to ameliorate the pupil's behavioral and emotional problems. This is necessary to ensure the pupils right to be taught in the general population as much as possible and to not overburden the community mental health service with pupils who can benefit from less stigmatizing school services.

Subsection (e) emphasizes that the special education pupils program is not a crisis intervention program and that it will be necessary for parents and LEAs to make referrals to a county's usual crisis service network in the case of psychiatric emergencies. This is necessary to allow time for the required procedures to be followed before providing services so that they will be appropriate and meet the pupil's educational needs. It also clarifies for parents that this is an educational and not medical program.

Subsection (f) requires a community mental health service to accept referrals which meet the standards set by Subsections (a) and (c) and is necessary to clarify for community mental health services that a lack of resources or long waiting lists are not acceptable reasons for not accepting appropriate referrals.

Subsection (g) explains the responsibility of the county of origin to provide or arrange for the pupil's IEP designated mental health services and pay for them. It also describes the responsibility of the host county to immediately forward referrals it receives for assessment or treatment of pupils placed there by another county. Resolving inter-county disputes when pupils are placed out-of-county is a problem for this program well documented in the field. Placements made by probation and social service departments from other counties are particularly problematic in this regard as they frequently do not notify either the school district or SELPA in the sending or the receiving county. Without the clear delineation of responsibilities for this circumstance, program eligible pupils might not receive the services they are entitled to and compliance complaints or requests for mediation and fair hearing could increase as a result.

Final Modification:

Following the public hearing and in response to testimony, subsection (g) is amended for clarity and consistency with Government Code Section 7576(g). This amendment is necessary to clarify that the procedures relating to transfer of refer and provision of treatment to and from host counties and counties of origin do not extend time lines. In addition, the subsection was amended to clarify the meaning of the word "immediately."

SECTION 60045 ASSESSMENT TO DETERMINE THE NEED FOR MENTAL HEALTH SERVICES

This Section provides the detailed instructions that are necessary for the implementation of Government Code, Chapter 26.5, Section 7572 with regard to the components of the assessment plan and assessment.

Subsection (a) clarifies the responsibility of community mental health services when conducting assessments and specifies the time constraints for making the decision to conduct or not conduct mental health assessments. This subsection was requested by local education agencies and community mental health services to prevent misunderstandings resulting from unclear expectations.

Final Modification:

Following the public hearing and in response to testimony (Testifier 14 [(g)]), subsection (a) is being amended to modify the determination from 15 to 5 days.

Subsection (a)(1) requires the community mental health service to notify parents and the LEA should the community mental health service deem a mental health assessment to be unnecessary. This requirement is consistent with the Department's philosophy of parent

participation in treatment decisions because the documented refusal may inform parent's of less restrictive interventions which the LEA can attempt to help the pupil.

Subsection (a)(2) directs the community mental health service to obtain the parent's signature on the mental health assessment plan. This requirement is consistent with "consent for treatment" requirements for any mental health treatment.

Final Modification:

Following the public hearing and in response to testimony (Testifier 20 [(j)]), Section 60045(a)(2) is amended to clarify the time period.

Subsection (b) clarifies the time constraints for mental health assessment plans, and ensures that parents will be provided with information about what to expect from the mental health assessment process. It also establishes a standard for community mental health services regarding the components which must be included in the mental health assessment. This subsection is intended to facilitate the assessment process, ensure that community mental health services abide by timelines and ensure that all effected parties are informed when community mental health services agree to assess a pupil.

Final Modification:

Following the public hearing and in response to testimony (Testifier 15 [(e)]), Section 60045(b) is amended to include a consent form.

Subsection (c) is intended to ensure that, if the assessment process is impeded by the lack of parental permission, the LEA or the IEP team shall be advised. This avoids the inappropriate assignment of blame on the community mental health service, and may facilitate obtaining the parental consent or an understanding of why such consent was not granted. This provision may also facilitate a clarification to the parent and pupil of what this lack of consent means in terms of service eligibility.

Subsection (d) is necessary to establish a process to arrive at the date of the IEP meeting which signals the end of the assessment period. It clarifies that the timeline begins the moment that the community mental health receives parental consent to assess, not the moment that the parent signs such consent. This subsection is consistent with Section 56344 of the Education Code.

Final Modification:

Following the public hearing and in response to testimony (Testifier 14 [(i)]), Section 60045(d) is amended to clarify the time period.

Subsection (e) is intended to ensure that all parties are alerted to the community mental health service's problem with complying to mandated timelines midway through the IEP process. If the assessment cannot be completed, a waiver of the timeline may be requested of the parent but this subsection clearly establishes that this extension is at the sole discretion of the parent.

Final Modification:

The post-hearing amendment to subsection (e) is necessary to clarify that the extension of time lines is only acceptable if a parent agrees.

Subsections (f)(1) and (f)(2) ensure that the parents and members of the IEP team are appraised of the community mental health service assessor's service recommendations prior to the IEP meeting so that they can have the assessor attend the meeting to discuss them if they disagree. Section (f)(2) provides clarification that this recommendation will be the recommendation of the LEA staff present at the meeting. These requirements are also explained in Section 7572(d)(1) of Chapter 26.5 of the Government Code, but the statute has been repeated here as the statute alone has been unable to prevent frequent disagreements between LEA staff and mental health staff at IEPs regarding mental health recommendations. The Departments purpose in repeating this statute is to decrease the adversarial nature of such IEPs by putting the relevant statutory requirement in the more frequently referred to proposed regulations. Collaboration may be facilitated by clearly delineating the professional boundaries of the different staff members in the proposed regulations.

Subsection (g) requires the written assessment report to be provided to the IEP team so that, if the assessor is unable to attend the meeting, the other members of the team will be able to add the recommended mental health services to the pupil's IEP.

Subsection (h) ensures that the community mental health service from the pupil's county of origin reassesses the pupil every three years or whenever there is a substantial change in mental health services or a transfer of placement. This is necessary so that services remain appropriate to the changing needs of this population.

Final Modification:

Following the public hearing and in response to testimony (Testifier 20 [(l)]), Section 60045(h) is amended to clarify that the referrals and assessments are to be done in accordance with the requirements of this section.

SECTION 60050. INDIVIDUALIZED EDUCATION PROGRAM FOR MENTAL HEALTH SERVICES

Subsections (a)(1 - 4), revise many community mental health services' practice of listing services before goals and objectives in order to conform with the practices of the LEAs. This change is necessary to enable the mental health IEP recommendations to be consistent with the form utilized by the schools on IEPs. The previous inversion of the LEA order by the

community mental health services was confusing to contract and other service providers in the field and it is the Department's intention for this change to facilitate a more efficient coordination of services.

Subsection (a)(5) implements Section 7572 of Chapter 26.5 of the Government Code and is also consistent with other related California laws. This section requires a signed consent for treatment consistent with current practice and Health and Safety Code. This subsection is necessary because local education agencies were not aware of the statutes which require mental health programs to have signed consents for treatment which are separate from signed IEPs.

Subsection (b) is consistent with Education Code 56221(b)(2) which requires that an IEP be held any time that there is a change in related services from what was written at the last IEP meeting. It is also necessary to inform the parents and schools of this change so that they can consider if other, school based services will be required by the pupil to assist him or her with this change. Community mental health services also requested this provision to document the end of their responsibility for the treatment of a pupil and for any associated risk.

Final Modification:

The post-hearing amendments made to Section 60050(b) in response to testimony have provided for notice to families prior to termination of services.

SECTION 60055 TRANSFERS AND INTERIM PLACEMENTS

This section conforms with and implements Education Code Section 56325 which ensures that special education pupils continue to receive services after they transfer into a new school district or SELPA. This section is intended to address implementation problems in these situations reported by the field in which eligible pupils were denied services due to an inter-county transfer.

Subsection (a) requires the LEA to refer the pupil to the local community mental health service when they move into a new SELPA or county and have mental health services on an existing IEP. This requirement will help ensure the continuation of services pursuant to Education Code 56325 to children with existing IEPs when they move.

Subsection (b) requires local mental health programs to continue 30 day interim services to a pupil with a disability who has been made eligible in one SELPA and moves to another.

Subsection (c) requires that an IEP be convened in the new county to assess what mental health services the pupil continues to need to benefit from his or her special education. This provision will also allow the host county to consider the fit between the pupil's need and the services that they have to offer and will allow the county of origin to negotiate with the host county for scarce resources if necessary. Since counties vary considerably in resources and service philosophy the field felt that this reappraisal was necessary when a pupil is residentially placed outside his or her county of origin.

Article 3. Residential Placement

SECTION 60100 PLACEMENT OF A PUPIL WITH A DISABILITY WHO IS SERIOUSLY EMOTIONALLY DISTURBED

Final Modification:

The post-hearing amendment to the title is necessary to clarify the LEA as the entity that determines SED status necessary for residential placement eligibility. "With a Disability" is deleted and word order is changed to clarify the regulation title subject and to correct grammar.

Subsection (a) implements Section 7572.5 of Chapter 26.5 of the Government Code. The duplication of the phrase, "a pupil with a disability who is seriously emotionally disturbed", is necessary to prevent the use of the proposed regulations out of context and to emphasize that, for residential placement to be considered, the pupil must be deemed seriously emotionally disturbed by the LEA.

Final Modification:

Following the public hearing, subsection (b) is being amended. The post-hearing amendment is necessary to bring the regulation into compliance with Section 7572.5(a), California Government Code and for clarity. Also, the citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (b)(1) requires a representative of the local community mental health service to be assigned to participate on the IEP team. It has been the Department's experience in developing interagency agreements that tasks are seldom completed or even initiated unless a person with delegated authority is assigned to the task. The term authorized means that, rather than a contract provider, a community mental health case manager with the authority to make placement decisions is on the expanded IEP team.

Final Modification:

Following the public hearing and in response to testimony (Testifier 14 [(q)]), Section 60100(b)(1) is amended to bring the regulation into compliance with timelines pursuant to the California Education Code.

Subsection (b)(2) emphasizes the necessity for an authorized mental health representative to be on the expanded IEP team before this team may make placement recommendations. It requires the IEP team to reconvene if this representative is not present and establishes a timeline for this eventuality in order to ensure that coordination with local mental health can be effected.

Subsection (b)(3) provides community mental health departments with an opportunity to assess a pupil prior to making a placement recommendation if the pupil is unknown to them.

Subsection (c) implements Section 7572.5 (b)(1) of Chapter 26.5 of the Government Code. It clarifies the mandate that all combinations of less restrictive educational and mental health services shall be attempted and documented, or at least considered, before taking action on a recommendation for residential placement. Not only must the IEP team document the specific alternative interventions considered but also the reason for their rejection.

Subsection (d) requires the expanded IEP team to document the reasons why the services for the pupil cannot be provided elsewhere. Documentation is needed to provide the federally required audit trail to establish that other less restrictive programs were considered.

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (e) specifies that the responsibility for finding the least restrictive, cost effective residential placement alternative is the mental health case manager's. This subsection also clarifies that the mental health case manager must consult with the IEP team's administrative designee when making this determination. The need for a consultation was indicated by the field where conflicts concerning the assignment of financial responsibility for the placements have been a major problem in program implementation. This subsection also borrows some language from AB 2726 at the recommendation of Protection and Advocacy in the work group in order to be in compliance with the recent amendments to Chapter 26.5 pursuant to AB 2726.

Subsection (f) articulates the Department's policy preference for the location of the residential placement to be within or adjacent to the county of the parent's residence unless that is clearly impossible to achieve. This subsection provides a process to treat the pupil in the least restrictive environment and to thereby facilitate the goal of family reunification. It is anticipated that proximity of the family to the pupil will assist in obtaining this goal. Documentation is also required by this subsection to ensure compliance with Section 300.552(a)(3) of the Code of Federal Regulations which articulates that residential placements should be made as close to the pupils' home as possible. In addition, this subsection also cross references the type of placements in which pupils will be placed according to the definitions contained in Section 60025.

Subsection (g) implements Section 18350 of the Welfare and Institutions Code and specifies the type of residential facilities and their educational components that may be funded pursuant to this Chapter. Terms such as "licensed or certified" are essential to conform with the terms currently in use by the Department of Social Services.

Subsection (h) to clarifies that placements made out of the state of California will be non-medical and non-detention, and must be certified by the Department of Education. This requirement is necessary to alert members of the IEP team that they must carefully choose placements made out of the state of California and ensure that the residential facility is approved by the State Department of Social Services and the educational facility is approved by the State Department of Education. There is a need for clarification of this issue in these proposed regulations because the Community Care Facilities Act which governs the Social Services' 24-hour out-of-home placements pursuant to Welfare and Institutions Code, Chapter 6, Section 18350, sets the standard for facilities funded through the Department of Social Services and their local agencies. Welfare and Institutions Code Sections 11460(c)(2) through (c)(3) contain the requirements for the funding of placement by CDSS that are made in out-of-state facilities.

Subsection (i)(1) assures that the specific services and the expected duration they will be required by the pupil are properly written on the IEP to conform with all other IEPs and pursuant to Education Code Section 56345(a)(5). It was determined by the field that a regulatory process is necessary to ensure that community mental health services meet the education requirements described in the written IEPs.

Final Modification:

Following the public hearing and in response to testimony (Testifier 14 [(a)]), Section 60100(i)(1) is amended to reflect federal law.

Subsection (i)(2) ensures that the provision of mental health services is by qualified personnel to prevent the recurrence of services being provided by unqualified persons by some contracted agencies in the past.

Subsection (j) requires the IEP team's adherence to the licensed children's institution admission criteria when making their residential placements. The adoption of this section is necessary to specify that the IEP team's recommendations for residential placement must be in accordance with the governing regulations and statutes for the various types of community care facilities for children licensed by the California Department of Social Services. These facilities include group homes, foster family agencies and community treatment facilities as specified in Section 60025(h).

SECTION 60110 CASE MANAGEMENT FOR A PUPIL WITH A DISABILITY WHO IS SERIOUSLY EMOTIONALLY DISTURBED AND IS IN A RESIDENTIAL PLACEMENT

This section implements Section 7572.5 (c)(1-3) of Chapter 26.5 of the Government Code and clarifies the case management responsibilities of local mental health regarding SED pupils in residential placement.

Subsection (a) requires the community mental health service directors to appoint a case manager to facilitate the residential placement of the child.

Subsection (b) addresses the frequent urgency to complete the placement of a child. The mental health program case manager responsible for coordinating placement activities must process necessary paperwork quickly when formulating a placement plan. The IDEA requires that the placement must occur as soon as possible and the Butterfield versus Honig decision reiterated this requirement.

Subsection (b)(1) establishes that the residential placement plan must provide for all of the needs of the pupil as specified on the IEP, not merely those related to mental health.

Final Modification:

Following the public hearing and in response to testimony (Testifier 7 [(j)]), Section 60110(b)(1) is amended to clarify the mental health case manager's responsibility to arrange for any necesary medication.

Following the 15-day renotice and in response to testimony (Santa Clara County), an amendment is made to subsection (b)(1) by adding the word "monitoring" after psychotropic medication to clarify the meaning. This amendment is required to bring the subsection into conformity with the definition of "medication monitoring," found in Section 60020(f). Therefore, an additional public availability would not be required.

Subsection (b)(2) clarifies that, although the mental health case manager must plan for the pupil's educational needs, the LEA is ultimately responsible for arranging a way to meet the specific educational needs and any other non-mental health needs of a pupil who is residentially placed.

Subsection (b)(3) requires that the expanded IEP team adhere to the admission, continuing stay and discharge criteria of community treatment facilities. The adoption of this section is necessary to ensure that appropriate placements are made in a community treatment facility. There are many requirements that are unique to a community treatment facility which is a secure facility.

Subsections (c)(1-10) clarify the term "case management" for local education agency personnel and the expanded duties for mental health staff. This language specifies those activities that must be performed by the designated community mental health service case manager in order to meet the responsibilities of the participating agencies.

Subsection (c)(1) specifies the need to convene an IEP meeting to discuss appropriate residential placements pursuant to this Chapter. In the past there has been confusion in the field relating to medical placements.

Subsection (c)(2) implements Government Code Chapter 26.5, Section 7572.5 and federal law relating to the least restrictive environment. The subsection also requires the consultation with the IEP administrative designee to assure that the education agency is in agreement with the placement.

Subsections (c)(3-6) assure that the case managers complete payment authorizations and contracts, plan for the child's return to the community and facilitate enrollment in school.

Subsection (c)(7) outlines the case manager's responsibility to notify the LEA regarding transportation needs.

Subsections (c)(8-10) require contacts as required between the pupil and their case manager in order to provide monitoring of the child's placement, to determine that the residential treatment service remains appropriate, and to complete a case review within six months and at six month intervals after this initial review.

Subsection (c)(11) requires a presentation by the case manager to the interagency placement committee as the case manager will be most familiar with the case and best able to explain the necessity of this placement to the committee.

Article 4. Financial Provision for Mental Health Services, Special Education and Residential Placement

This Article describes the services for which financial support is a necessity.

SECTION 60200 FINANCIAL RESPONSIBILITIES

This Section sets forth the financial responsibilities of each agency providing special education instruction, related services, or residential placement. This is necessary as interagency coordination is complex and the staff of each agency often question who is financially responsible for providing services to children with disabilities. This section implements Section 18350 et seq. of Chapter 6 of the Welfare and Institutions Code.

Subsection (a) clarifies the purpose of this article.

Subsection (b) informs all agencies that parents are not to be charged for services received as a result of an IEP pursuant to Chapter 26.5 or IDEA.

Subsection (c) defines for all users and providers, the financial responsibilities of the community mental health service from the pupil's county of origin for providing mental health related services to pupils with disabilities. This section is inclusive of all IEP related mental health services provided in or out of California whether provided by the community mental health service or by contract. This differs from past program practice when related mental health services were required to be provided within the state of California or paid for by the LEA when in another state. This former prohibition against community mental health service payment for mental health services and case management outside the state of California did not have statutory authority. Chapter 26.5 of the Government Code is silent on the issue of out-of-state related mental health services, such as may be provided in residential placements in other states. This proposed regulation emphasizes the change from past practice by making the community mental health service from the county of origin financially responsible for related mental health services out of state as well as within the

state. It also clarifies that the county of origin and not the host county mental health service is financially and programatically responsible. Disputes over these responsibilities have frequently been problematic in the field, especially when pupils are residentially placed by agencies other than mental health or education, and sometimes result in eligible pupils not receiving services. This proposed regulation is intended to resolve this problem.

Subsections (c)(1-2) articulate the responsibilities of the host county to make their provider network known and available to the county of origin and to negotiate over scarce resources. The county of origin may negotiate a rate with a provider of their choosing not on the host counties provider network. This specificity in financial requirements and mechanisms is detailed to prevent failures to provide services to eligible pupils who are placed out of county.

Subsection (d) defines for all users and providers, the financial responsibilities of local education agencies related to the child's IEP and the placement of a child with a disability in a nonpublic, nonsectarian school, both in and out of California.

Subsection (d)(1) is specific to outpatient services and requires that transportation will be provided to these services by the LEA according to the IEP pursuant to Education Code Section 56221(b)(5).

Final Modification:

The citations to federal law in the regulations were updated to reflect the 1997 revisions to the Individuals with Disabilities Education Act (IDEA, Title 20, United States Code Section 1400 et seq.) and their implementing regulations (Title 34, Code of Federal Regulations, Section 300 et seq.).

Subsection (d)(2) specifies that the financial responsibility for transportation of the child to and from the child's residential placement site is the LEA's. The field is supportive of this regulation as it will resolve a frequent source of dispute.

Subsection (d)(3) assigns financial responsibility for related services provided by a contract NPS, SELPA, or LEA to the contracting LEA. This subsection also clarifies that education will no longer be paying for related mental health services when a child is placed outside of the state of California as they have in the past by stipulating that the LEA is only responsible for non-mental health related services.

Subsection (e) assigns the responsibility for authorizing payment for board and care to the community mental health service. It is the responsibility of the community mental health service to determine that the residential placement meets all of the criteria established in Sections 18350 through 18356 of the Welfare and Institutions Code. These sections of code also refer to Section 11460 of the Welfare and Institutions Code which state that rates will be established by CDSS, and outline certain requirements in order for facilities to be eligible for payment.

Subsection (f) establishes a process for payments in accordance with Section 18351 of the

Welfare and Institutions Code and specifies that county welfare bears the financial responsibility for this payment.

Article 5. Occupational Therapy and Physical Therapy

This Article is necessary to implement Section 7570, 7571, 7572, and 7575 of the Government Code, Chapter 26.5. These regulations reflect field input from a task force composed of parents, educators, therapists and state agencies' representatives.

SECTION 60300. CALIFORNIA CHILDREN SERVICES (CCS) MEDICAL THERAPY PROGRAM DEFINITIONS

This section is proposed to be adopted to provide definitions of the terms used by the California Children Services (CCS) program in describing the Medical Therapy Program in order that persons regulated may clearly understand these terms. The California Department of Education and CCS often times use different terminology to describe similar functions, such as use of "assessment" in education and "evaluation" in CCS terminology. This section is necessary in order to avoid confusion as to the meaning of a term used in CCS and to provide clear definitions to assist educators, parents, and therapists in delivering services to pupils with disabilities who are in public schools. Many of the functions that are required by IDEA and the California Education Code are new to CCS personnel. Since the California Education Code is clearer and more specific than the IDEA, references are made to the California Education Code.

Subsection (a) defines the term "assessment for medically necessary occupational therapy and physical therapy" which is necessary for conforming with Section 56320, et seq., of the Education Code and clarifying that CCS provides occupational therapy and physical therapy that is medically necessary as defined for the CCS program in Title 22, Section 41518.

Subsection (b) defines "assessment plan" which is necessary for meeting CCS's informed consent requirement and describes the CCS requirement to determine or redetermine medical eligibility for the Medical Therapy Program prior to referring a child for an assessment for the need for therapy. This section also conforms with the requirement of Section 56321 of the Education Code and IDEA for an "assessment plan" which is a new requirement for CCS.

Subsection (c) defines "assessment report for therapy" which is necessary to conform with the requirement of Section 56327 of the Education Code for an assessment report. This is a new requirement for CCS. The assessment report for therapy will convey assessment results to the IEP team to enable the team to coordinate services for the pupil.

Subsection (d) defines the term "California Children Services Panel" which is necessary to clearly identify that this group of medical providers has been approved because they meet CCS program standards for participation. This means that the providers have been determined by the CCS program to have the level of expertise necessary to treat the child's medical therapy program eligible condition.

Subsection (e) defines the term "dependent county agency" which is necessary to differentiate between local CCS programs that are administered jointly with the state rather than those administered solely by the county.

Subsection (f) defines the term "documented physical deficit" which is necessary to substantiate a pupil's eligibility for the medical therapy program. Requiring the substantiation of a suspected deficit on the special education referral will assist local education agencies in determining whether to refer a case to CCS.

Final Modification:

Subsection (f) is being amended following the public hearing to clarify the local education agency as the entity responsible for recording a pupil's motor dysfunction on the referral and for making referrals to CCS.

Subsection (g) defines the term "independent county agency" which is necessary to differentiate between local CCS programs that are administered solely by the county rather than administered jointly with the state.

Subsection (h) is necessary to define the term "medical therapy conference" as an interdisciplinary team meeting where the pupil's occupational therapy or physical therapy treatments are planned.

Subsection (i) defines the term "medical therapy conference team" which is necessary to identify the members who make up the team. This subsection also provides for the addition of other participants who, with parental consent, may assist in, or with, coordination of the pupil's medical case management.

Subsection (j) defines the term "medical therapy program eligible conditions" which is necessary to make clear which medical diagnoses are eligible for the CCS Medical Therapy Program services.

Subsection (k) (1-4) defines the term "medical therapy services" which is necessary to specify the range of services included in the term and that these services include treatment, consultation, and monitoring activities. This subsection also clearly explains what activities are included in each of the services.

Subsection (l) defines "medical therapy unit" which is necessary to identify where a medical therapy unit can be located and where the full scope of medical therapy services can be provided.

Subsection (m) defines "medical therapy unit satellite" which is necessary to identify the satellite as an extension of the medical therapy unit. The medical therapy unit satellite is limited in the provision of medical therapy services as it does not host medical therapy conference team meetings or comprehensive evaluations. Some Medical Therapy Units may have more than one satellite located in various public schools within the county.

Subsection (n) defines "medically necessary occupational therapy and physical therapy services" which is necessary for specifying that the CCS program will only approve services when it is determined to benefit the pupil's medical therapy program eligible condition.

Subsection (o) defines "necessary equipment" which is necessary to clarify which agency is responsible for providing the equipment for delivery of medically necessary occupational therapy and/or physical therapy by Medical Therapy Unit/satellite staff to pupils with Medical Therapy Program eligible conditions.

Subsection (p) defines "necessary space" which is necessary to clarify which agency is responsible for providing the space/facilities needed for the delivery of occupational therapy and/or physical therapy by Medical Therapy Unit/satellite staff to pupils with Medical Therapy Program eligible conditions.

Subsection (q) defines "occupational therapy and physical therapy" which is necessary to specify who can provide or supervise provision of occupational therapy and physical therapy services to pupils with a Medical Therapy Program eligible condition.

Subsection (r) defines "therapy plan" which is necessary to conform with the requirements of Education Code Section 56345 for related services on an IEP and the requirements of medical necessity of the CCS program in accordance with Title 22, Section 41518.

SECTION 60310 LOCAL INTERAGENCY AGREEMENTS BETWEEN CALIFORNIA CHILDREN SERVICES AND EDUCATION AGENCIES

This section is proposed to require cooperation and coordination between the local California Children's Services programs and local education agencies for the development and implementation of a local interagency agreement. The purpose of the local interagency agreement is to set forth the processes and procedures for coordinating the services for which each agency is responsible under the requirements of Chapter 26.5 of the Government Code.

Education Code Section 56220 (d) requires that local education agencies describe the process for coordinating services with other public agencies that are funded to serve pupils with disabilities. This description is not required to be submitted to the Superintendent of Public Instruction but is required to be a written statement.

Subsection (a) is necessary to ensure that liaisons are designated by both County Superintendent of Schools and/or SELPA director and the county CCS program in order to share responsibility for ensuring that the local education and CCS programs cooperate and provide needed therapy services to pupils in special education programs.

Subsection (b) is necessary to accommodate the divergent configurations of special education local plan areas that may span multiple counties while CCS is county-specific; and to define a process for collaborative decision making.

Subsection (c) is necessary to insure the development and implementation of the local interagency agreement. This plan requires that participants from the administration of both local agencies meet and jointly agree to the requirements and any other provisions of the local interagency agreement.

Subsection (c)(1) is necessary to specify in the local interagency agreement that one person in each agency will be responsible for coordinating the provisions of the agreement.

Subsection (c)(2) is necessary to assure the referral of appropriate candidates for occupational therapy and/or physical therapy to the CCS medical therapy program.

Subsection (c)(3) is necessary to include the exchange of "educational and medical" information between the LEA and county CCS programs. This provision is necessary to make specific the types of information to be exchanged and assure that the parents consent will be obtained pursuant to 56321(c) of the Education Code and Title 34, Code of Federal Regulations, Section 300.500.

Subsection (c)(4) is necessary to require the LEA to give adequate notice to CCS of IEP team meetings regarding all pupils served by the CCS medical therapy unit.

Subsection (c)(5) is necessary to enable the LEA to convene an IEP meeting when the services provided by CCS to the pupil may be changed. This subsection is required to ensure that services on an IEP will not be discontinued or changed without the participation of the IEP team and the parents pursuant to Education Code Section 56346. The Program Advisory from the Department of Education dated September 6, 1991, numbered SPB 91/92-03, was required by OSEP to bring California Department of Education into compliance in its state plan for special education.

Subsection (c)(6) is necessary to ensure that at the time the local interagency agreement is developed that information is included describing the method of the CCS program's participation in the IEP.

Subsection (c)(7) is necessary to comply with Section 56321 of the Education Code which requires that related services are a part of the IEP. It also complies with Section 56341 of the Education Code when therapy services on an IEP are amended. In the past, procedures have not been timely and participation in IEP meetings has been inconsistent.

Subsection (c)(8) is necessary to ensure that the interagency agreement will specify who has responsibility for the pupil's transportation when the pupil's educational placement is in a different location than the medical therapy unit and/or medical unit satellite.

Subsection (c)(9) is necessary to ensure communication will occur between the LEA and the county CCS program about proposed new, relocated or remodeled facilities. In the past, unilateral construction, relocation, and remodeling has occurred without proper notification to all the participants resulting in canceled therapy sessions, inconvenience to parents and staff, and the use of inappropriate facilities for providing therapy.

Subsection (c)(10) is necessary to ensure that the interagency agreement will clarify that CCS has priority for the use of the therapy space but to also make provision for allowing the space to be used by the local education agency when CCS is not on-site. When both agencies have therapists employed, it is important to maintain coordination in the use of the medical therapy unit and/or medical therapy unit satellite.

Subsection (c)(11) is necessary to include a provision in the interagency agreement to allow cross-training and coordination of staff development for both agencies which has been requested by both agencies to ensure mutual understanding.

Subsection (c)(12) is necessary to ensure that the interagency agreement will include methods of resolving conflicts prior to escalation of conflicts to the state level.

Subsection (c)(13) is necessary to ensure that the interagency agreements requires an annual review of the local interagency agreement and to keep it current with changes in program needs.

Subsection (d) outlines three additional requirements of local interagency agreements.

Subsection (d)(1) is necessary to ensure that the agreement identifies the local education agency(ies) responsible for providing space and equipment for a particular CCS medical therapy unit and/or medical therapy unit satellite.

Subsection (d)(2) is necessary to ensure that the agreement identifies the local education agency(ies) that have fiscal and administrative responsibility for providing and maintaining space and equipment for a particular medical therapy unit and/or medical therapy unit satellite.

Subsection (d)(3) is necessary to ensure that the agreement identifies the process to change the fiscal and/or administrative responsibility between local education agency(ies) for providing space and equipment for a particular medical therapy unit and/or medical therapy unit satellite.

SECTION 60320 REFERRAL AND ASSESSMENT

This section is necessary to clarify the application of procedures when the LEA makes a referral to the CCS program for an assessment based on the pupil's documented physical deficit as required by the Education Code and the Code of Federal Regulations.

Subsection (a) is necessary to change the emphasis from a referral for a specific service to a referral for assessment in an area of suspected disability, in conformity with the Title 34, Code of Federal Regulations, Section 300.532(f). There has been conflict between parents who request a specific service for their disabled pupil and local education agencies that believe that the child can be served with alternative methods. The proposed changes require that there be a deficit documented on the referral for special education assessment rather that a request for specific service.

Subsection (b) is necessary to assure that an assessment will be conducted in the area of suspected disability to determine if the service is needed as required by Title 34, Code of Federal Regulations, Section 300.532, even if the pupil is not eligible for CCS or has not been referred to CCS.

Subsection (c) requires that referrals received by the LEA be recorded and sent to CCS, accompanied by 1) a consent form signed by the parents which will allow for the exchange of information between the agencies; 2) the pupil's medical diagnosis and medical information to substantiate a medical therapy program eligible condition; and 3) an application for the CCS program that will assist CCS in making a determination of eligibility for services. The language of this section is necessary to ensure that the CCS program has the necessary information to determine medical eligibility.

Subsection (d) is necessary to clarify requirements for the CCS program to follow up if adequate information is not received to determine program medical eligibility and to notify the LEA that the county CCS program is unable to determine medical eligibility based on the information in the referral and that the patient will be referred for a complete neurological examination to determine eligibility.

Final Modification:

Subsection (d)(1) and subsection (e) are being amended following the public hearing to include the parent as part of the notification process as this is current CCS policy and procedure.

Subsection (e) is necessary to ensure that local education agencies are notified within five days when a referred pupil's diagnosis does not qualify them for the CCS medical therapy program in order to avoid delays in the development of an assessment plan by the LEA.

Final Modification:

Subsection (d)(1) and subsection (e) are being amended following the public hearing to include the parent as part of the notification process as this is current CCS policy and procedure.

Subsection (f) is necessary to describe the responsibilities of the county CCS program to notify the LEA and the parent of its determination of medical eligibility for the medical therapy program. This section is necessary to ensure that the time lines for performing therapy assessments are understood by all affected individuals.

Subsection (g) is necessary to monitor compliance with time lines to avoid further due process hearings, complaints, and citations from the Office of Civil Rights. This subsection gives both agencies responsibilities for tracking the progress of a referral, assessment, and IEP.

Subsection (h) is necessary for defining the role of county CCS programs in providing assessment information to the IEP team when it has been determined that the pupil requires medically necessary occupational therapy and/or physical therapy.

Subsection (i) is necessary to assure that all agencies are complying with the IDEA of 1990.

Final Modification:

Subsection (i) is being amended following the public hearing to clarify that the completed assessment report for therapy will be provided to LEA and the parent as this is current CCS policy and procedure.

SECTION 60323 MEDICAL THERAPY PROGRAM RESPONSIBILITIES

This section is proposed to delineate the processes and responsibilities of the medical therapy program.

Subsection (a) is necessary to describe who is responsible for assessing the medical necessity of occupational therapy and/or physical therapy and what is the basis for this determination.

Subsection (b) is necessary to ensure that therapy plans are reviewed for appropriate content by the medical therapy conference team.

Final Modification:

Subsection (b) is being amended following the public hearing to clarify which services are included in the therapy plan, but only those performed by CCS occupational and physical therapists.

Subsection (c) is necessary to ensure that therapy plans are approved by the medical therapy conference team and that all medical therapy prescriptions are subject to review by the medical therapy conference team physician.

Subsection (d) is necessary to identify that only physicians of the appropriate specialty and approved by the CCS program may write medical therapy prescriptions for pupils eligible for the medical therapy program.

Subsection (e) is necessary to explain how medical necessity will be determined when there is no medical therapy conference available.

Subsection (f) is necessary to specify that medical therapy services can only be provided by or under the supervision of a registered occupational therapist and/or licensed physical therapist. Also, it delineates therapy services that will not be provided by the Medical Therapy Program staff.

SECTION 60325 INDIVIDUALIZED EDUCATION PROGRAM FOR THERAPY SERVICES

This section is proposed to specify the steps that are required in the IEP process that are specific to the coordination of CCS and LEA for the provision of medically necessary occupational therapy and/or physical therapy services. This section is necessary to ensure consistency with other IEP processes.

Subsection (a) (1-5) is necessary to comply with the Education Code Section 56345 (a)(1-6) so that all information provided by county CCS programs to IEP teams will be complete and consistent, containing information on the pupils' level of function and the services that will be provided.

Final Modification:

Subsection (a)(4) is being amended following the public hearing to reiterate the responsibilities and requirements of the Medical Therapy Program.

Subsection (b) is necessary to ensure CCS participation in the IEP process.

Subsection (c) is necessary to define conditions and the time frame under which the IEP team must be notified by the county CCS program that changes are being made to related services so that the IEP team can be convened to make the needed modifications to the affected pupil's IEP.

Subsection (d) is necessary to define the circumstances under which the IEP team shall be convened. This subsection is necessary to conform with the Education Code Section 56343.

Subsection (e) is necessary to ensure an IEP team review determine if there is a need for an alternative service when a pupil is not eligible for services from CCS or if the service is no longer considered medically necessary.

Subsection (f) is necessary to ensure services that are determined necessary by the IEP team are included into the IEP and are provided by qualified personnel pursuant to Title 5, California Code of Regulations, Section 3051.6 and are noted on the IEP.

SECTION 60330 SPACE AND EQUIPMENT FOR OCCUPATIONAL THERAPY AND PHYSICAL THERAPY

This section is being proposed to clearly identify the responsibility of the LEA to provide space and equipment for medical therapy units and/or medical therapy unit satellites for the provision of medical therapy services to pupils in a public school environment.

Subsection (a) is necessary to identify specific functions of the medical therapy unit and/or medical therapy unit satellite that requires space and equipment. It clearly identifies that the specific amount of space and equipment is determined jointly according to county CCS program need.

Subsection (b) is necessary to assure that CCS has priority for the space and equipment in the medical therapy unit and/or medical therapy unit satellites but that the use of the space and equipment can be negotiated for use by the LEA when CCS staff is not present.

Subsection (c) is necessary to ensure that any decision about space and equipment, including the new construction, relocation, remodeling, and equipping of the medical therapy unit and medical therapy unit satellites must be mutually decided.

Article 6. Home Health Aide

SECTION 60400 SPECIALIZED HEALTH AIDE

This section is being proposed to identify when the State Department of Health Services is responsible for providing the services of a home health aide in the school to pupils with disabilities.

Subsection (a) (1-2) is necessary to clearly specify that the State Department of Health Services is responsible for the provision of home health aide services or services provided by specially trained personnel in the school to pupils with disabilities who are eligible for Medi-Cal.

Subsection (b) is necessary to define "life supporting medical services" so that those who are regulated shall understand what is meant by this term.

Subsection (c) is necessary to acknowledge that the State Department of Health Services shall determine the appropriate level of care that pupils with disabilities who are eligible for Medi-Cal may receive in the school.

Article 7. Exchange of Information Between Education and Social Services

This article is essential to describe the participation of the Department of Social Services in Chapter 26.5 of the Government Code.

SECTION 60505 COMMUNITY CARE FACILITIES

This section is essential to implement Section 7579 and 7580 of Chapter 26.5 of the Government Code.

Subsection (a) is essential to make specific the content of written information to be exchanged between the Department of Social Services and the Department of Education. It is required that the Department of Social Services biannually provide a rates list of group homes and foster family agencies to the Department of Education to comply with the requirement for consultation and exchange of information pursuant to Section 7580 of Chapter 26.5 of the Government Code. This subsection is proposed as a result of the use of the emergency regulations which were found to be unworkable and impractical because they gave substantial responsibility to Community Care Licensing at the local level but never communicated this

to the local level. Lists of proposed licensees, half of which are never granted licenses, are not useful to school districts. The emergency regulation requirements were ignored by the field as they imposed a significant burden on the Department of Social Services. Biannual rates lists of actual licensees are useful to school districts to assist in the placement of children. The responsibility for the exchange of information has been changed to the state level which then is made available to the local level through the education system.

Subsection (b) is essential to notify agencies other than education, that the Superintendent of Public Instruction has a responsibility to inform counties of the residential options in their counties. This is a responsibility described in the Education Code Section 56156 which corresponds with the consultation requirements of Government Code Section 7580.

Subsection (c) is essential to notify county superintendents to provide special education local plan administrators with the list of currently licensed children's institutions pursuant to Education Code 56156 that will coordinate with the list available from the Department of Social Services.

Subsection (d) is essential to provide notification of special education contact persons to directors of licensed children's institutions. This information should be available at any time from the special education local plan area administrators to facilitate communication and appropriate placements.

Subsection (e)(1) is essential to describe the types of educational information special education local plan areas are responsible to provide for the group or small family homes and to communicate with the social services agencies regarding the scope of the educational services.

Subsection (e)(2) is essential to notify the licensees that the local education agencies may not be able to respond immediately to appropriately meet the needs of a large number of new disabled students. The emergency regulations required a 15 day notification of the available special education services for the applicants for a Community Care license. This requirement is deleted because it imposed an unnecessary burden on the field and was beyond the scope of the statute.

Final Modification:

Following the public hearing and in response to testimony, subsection (e)(2) is being amended for clarity and consistency with Government Code Section 7580.

SECTION 60510 PRIOR NOTIFICATION

This section is essential to implement Section 7579 of Chapter 26.5 of the Government Code. It was inadvertently omitted from the emergency regulations. This omission is now being corrected with the following subsections by request of the field. Nothing in this section will hinder or prohibit the residential placement of a child with a disability.

Subsections (a)(1-8) are essential to effect a notification from an agency other than education to the local education agency prior to the residential placement of a pupil with disabilities in a licensed, or certified, license-pending home and before an educational placement is assured. Appropriate educational programs may not be available in all locations in California. This process for prior notification has been successfully implemented by the Department of Developmental Services for its Regional Centers. This information is available to the placing agents and will expedite the appropriate educational and residential placement of the child with a disability. The lack of information has been a serious problem in making appropriate educational placements and was requested by the field.

Subsection (b)(1) is essential to inform educational administrators of their responsibility to provide information to other agencies regarding the availability of residential and educational services and to affirm the authority of the IEP team. This has been a communication problem between agencies resulting in children being placed in rural areas in which services are unavailable or too far from the residence for the children to access.

Subsection (b)(2) is essential to prevent the unilateral placement of children in inappropriate or more restrictive educational settings which may provide an appropriate residential setting. This has been a significant and very costly problem for pupils with disabilities who are seriously emotionally disturbed and has resulted in some out of state placements.

Subsection (b)(3) is essential to affirm the authority of the IEP team and to prevent the public agency other than education from unilaterally making the decision regarding the child's special education placement.

Article 8. Procedural Safeguards

This Article is required by Sections 56501-56507 of the Education Code and Section 7586 of the Government Code and is essential to set forth the procedures of the procedural safeguards for agencies other than education that may be involved in hearings. The changes in this section from the emergency regulations are technical and non-substantive.

SECTION 60550 DUE PROCESS HEARINGS

The changes in this section reflect the deletion of the Office of Administrative Hearings from the hearing process. The due process hearings are now conducted by a contract agency.

Subsection (a) is essential to describe the situation in which a due process hearing is applicable pursuant to Education Code Section 56500 et seq.

Subsection (b) is essential to describe the steps in the mediation process and the right to waive mediation pursuant to Section 56503 of the Education Code.

Subsection (c) is essential to notify parents and all agencies that an impartial hearing officer will conduct the hearing pursuant to Section 56505 of the Education Code should mediation be waived or fail to resolve the dispute.

Subsection (d) is essential to inform staff of all agencies of their responsibilities for preparing documentation and providing testimony supporting their position in a due process hearing.

Subsections (e)(1-2) are essential to clarify the responsibilities of the hearing officer. Previous experience in the implementation of the emergency regulations for Chapter 26.5 of the Government Code has proven that the language of the Government Code, Section 7575 must be included in the regulations.

Final Modification:

Subsection (e) is being amended following the public hearing to clarify the responsibilities of the hearing officer.

Subsection (f) is essential to clarify that the hearing decision is the final administrative decision.

Subsection (g) specifies that the Department of Social Services' statutes and regulations relating to revocation and temporary suspension of a community care facility supersede all other department's regulations contained in this chapter. Specifically, CDSS has the authority to initiate, continue, and complete a revocation or temporary suspension action, pursuant to Health and Safety Code Sections 15050 and 15050.5, even if a stay put order is requested pursuant to 20 U.S.C. Section 1415(e). The adoption of this subsection is necessary to prevent an issuance of a stay put order in instances where a parent disagrees with a CDSS action to revoke or temporarily suspend or revoke a CCF license resulting in removal of their child from a particular facility and files a due process hearing, to enjoin the "change in educational placement" (stay put order) as prescribed in Section 56505(d) of the Education Code (pursuant to 20 U.S.C. Section 1415(e)). In such cases the stay put process interferes with CDSS responsibility to protect the health and safety of children in care. A temporary suspension order may only issue where the action is urgent and necessary to protect the health and safety of clients from physical or mental abuse, or other substantial threat to the client's safety. (See Habrun v. State Department of Social Services (1983) 145 Cal. App.3d 318.) The grounds for issuance of a Temporary Suspension Order usually focus on physical or sexual abuse of clients, the failure of a facility to maintain a fire clearance and criminal activity. A revocation is initiated on similar, yet not expedited, bases. This issue was litigated in Corbett v. Regional Center of the East Bay., Inc. (N.D.Ca. 1988) 699 F. Supp. 230. The District Court stated that the CDSS possessed the authority to continue with a licensing revocation against a group home although the court issued a stay put order concerning a client in care. The court stated that the CDSS had the authority to proceed with the revocation action based on legitimate health and safety concerns. (Corbett, at p. 232.) The inability of the CDSS to temporarily suspend a facility's license would infringe upon the integrity of the licensing program by allowing children to reside in facilities that represent an immediate threat to the child's health and safety. In addition, because only facilities that house SED children would be subject to application of a stay put order for both revocations and TSOs, SED children would be treated differently and subject the State to claims of violation of equal protection and violations under Americans with Disabilities Act and federal and sate Fair Employment and Housing (discrimination based on disability).

Subsection (h) specifies that the Department of Social Services, Community Care Licensing's community treatment facility regulations concerning discharge of a pupil, supersede all other department's regulations contained in this chapter. The adoption of this section is necessary to prevent an issuance of stay put order in instances where a parent disagrees with the IEP's assessment recommending a change in the educational placement and files a due process hearing (stay put order) as prescribed in Section 56505(d) of the Education Code. The IEP team is involved in determining when a child is clinically appropriate for discharge and that the level of care and services of a community treatment facility are no longer necessary. The stay put process violates the Constitutional and Due Process rights of the children who are placed in a secured facility. When children are placed in a secured facility they must be afforded due process protection as set forth in In re Roger S. and In re Michael and their progeny. These rights of children which protect them from unreasonable restraint and deprivation of personal liberty supersede the parental right to direct the education of their children. Therefore, the stay put procedure has no bearing on the discharge of a child in a secure facility who otherwise does not meet the continued stay criteria. Furthermore, the Department of Education does not have jurisdiction to make these determinations.

Subsection (i) is essential to clarify that the California Department of Education is financially responsible to contract for the mediator and hearing officer.

SECTION 60560 COMPLIANCE COMPLAINTS

This section is separated from the due process section because of its unique function and the recent revision in the California Code of Regulations, Section 4650 et seq, of Title 5.

This section is essential to clarify the provisions of procedural safeguards and to alleviate the confusion in the field about due process procedures and the complaint process. This section is essential to implement Section 7585 of Chapter 26.5 of the Government Code.

Subsection (a) references the California Code of Regulations in order to provide an essential explanation to all state and local agencies providing related services to pupils with disabilities the conditions under which a compliance complaint is filed and resolved.

Final Modification:

Following the public hearing and in response to testimony, subsection (a) is being amended for clarity and consistency.

Article 9. Interagency Dispute Resolution

SECTION 60600 APPLICATION OF PROCEDURES

This Section is essential to specify the procedures that are necessary when there is a disagreement between agencies. There have been major disagreements between the state agencies and their local counterparts as to the operation of Section 7575 and 7576 of the Government Code.

Subsection (a) is essential to clarify for the Education and Health and Welfare Agencies and their local counterparts that these procedures apply to the resolution of agency disputes concerning the provision of services on a pupil's IEP. They also apply when the decision of the hearing officer or mediator is disputed by the effected agencies.

Subsection (b) is essential to define "dispute" as it applies to interagency responsibilities and to delineate the materials necessary to be included in the request for interagency dispute resolution.

Subsection (c) is essential to inform the educational staff that if an education agency places services on a child's individualized education program that are the responsibility of another agency, the education agency is then responsible for providing those services.

SECTION 60610 RESOLUTION PROCEDURE

Subsection (a) is essential because the federal government does not allow interagency dispute resolutions to interfere with the delivery of the special education and related services which are on the pupil's individualized education program.

Subsection (a)(1) is essential to ensure that the pupil is provided with as much continuity of care as is possible during the pendency of the dispute resolution by requiring the agency that had been delivering the disputed service to continue or resume providing it to the pupil. This regulation also ensures that funding for the service will be provided.

Subsection (a)(2) is essential to assign responsibility for provision of services during dispute resolution to the LEA if no agency had been providing the service.

Subsection (a)(3) is essential to allow arrangements other than those specified in (a)(1) or (a)(2) to be made by mutual agreement between the involved agencies.

Subsection (b) is essential so that all participating agencies and the public are alerted that disputes must be resolved in a timely manner.

Subsection (c) is essential to clarify for all participating agency staff, the financial responsibility of each agency once the dispute has been settled. This language was requested by education, health, and social service agency staff in order to delineate agency financial responsibilities as a component of the dispute resolution.

Subsection (d) is essential to inform all involved parties of their responsibility to notify the other parties of the conclusion of the dispute resolution. This has been a compliance issue and is included by request of all agencies.

Subsection (e) is essential to set forth timelines for the completion of the dispute resolution process as required by the Individuals with Disabilities Education Act of 1990. This subsection was included as a result of experience gained in the use of the emergency regulations by agencies that were involved in the dispute resolution process and were not notified of the resolution in a timely manner.

c) Identification of Documents Upon Which Department Is Relying

AB 3632, Chapter 1747, Statutes of 1984

d) Testimony and Response

These regulations were considered at a public hearing on September 9, 1998 in Sacramento. The public hearing was preceded by a 45-day public comment period from July 24, through September 9, 1998. Oral and/or written testimony was received from the following:

1. Phoebe Graubard, Attorney at Law
   Phoebe Graubard Law Office
2. Paul McIver, L.C.S.W.
   County of Los Angeles, Department of Mental Health
   Children and Family Services Bureau
3. Ann Miller Ravel, County Counsel
   Rima H. Singh, Deputy County Counsel
   County of Santa Clara, Office of the County Counsel
4. Robert L. Nolan, M.D.
5. Lourene Happoldt, Director of Special Services
   Steve Valdez, Ph.D., Psychologist
   Fullerton School District
6. Bob Dasaro
   Challenge High School
7. Rhys Burchill, Executive Director
   Area Board XI, Developmental Disabilities Board
8. Yvonne Smith, M.P.A., Director
   Sally Johnson, P.H.N., C.C.S, Supervisor
   Imperial County Public Health Department
9. Robert L. Nolan, M.D., M.P.H., Medical Consultant
   Mary Borders, O.T.R., Chief Therapist
   Robin Thomas, P.H.N., M.P.A., C.C.S. Administrator
   Contra Costa County, Health Services Department
   Public Health Division, California Children Services
10. Loren Warboys, Managing Director
    Youth Law Center, Children's Legal Protection Center
11. Robert R. Haining, M.D.
    Director of Pediatric Rehabilitation
    Children's Hospital, Oakland
12. Michael A. Brogan, Chair, Interagency Committee
    Special Education Local Plan Area Administrators
13. Dale P. Mentink, Staff Attorney
    Protection & Advocacy, Inc. - Sacramento Legal Office
14. Joseph Feldman, Executive Director
    Community Alliance For Special Education

15. Randy A. Gibeaut, Attorney at Law
    Catherine Sammons, Ph.D.
    California Mental Health and Developmental Disabilities Training Center
16. Gary F. Cox, Ph.D., Coordinator of Educational Services
    San Diego Regional Center for the Developmentally Disabled
17. Patricia E. Cromer, Attorney at Law
    Law Offices of Patricia E. Cromer
18. Marilyn Holle, Senior Attorney
    Protection & Advocacy, Inc. - Los Angeles Legal Office
19. Benjamin R. Mandac, M.D., Medical Director
    Lucile Packard Children's Health Services at Stanford
    U.C.S.F. Stanford Health Care
20. Lois A. Weinberg, Education Specialist
    Mental Health Advocacy Services, Inc.
21. Sara M. Frampton, Ph.D.
    Licensed Educational Psychologist, Marriage/Family and Child Counselor
22. Robert L. Nolan, M.D. (oral testimony)
23. Robert Jorden (oral testimony)
24. Robert R. Haining, M.D. (oral testimony)
25. Robert L. Nolan, M.D. (oral testimony)
26. Michael Brogan (oral testimony)
27. Paul McIver (oral testimony)
28. Marilyn Backlund (oral testimony)
29. Maureen McCaustland, L.C.S.W., Program Coordinator
    Sacramento County Department of Health and Human Services
30. Catherine Camp, Executive Director
    California Mental Health Directors Association

NOTE: In the summary of the testimony, the testifiers are identified by the preceding numbers. In the cases where the testifiers commented on more than one issue, the comments are labeled by the testifier's number followed by a letter (ex. 13a, 13b, etc.)

Section 60000

1) Comment:

60000 - Testifier 14.[(a)] (Feldman) requests that the final regulations be delayed until the federal regulations under the Individuals with Disabilities Education Act (IDEA) are adopted.

Response:

The Health and Human Services Agency and the State Superintendent of Public Instruction are under a Writ of Mandamus to promulgate the regulations by September 1999. To date, the United States Department of Education has not distributed regulations under IDEA. In addition, there is no indication that when the federal rules are published whether they will necessitate changes in the Chapter 26.5 regulations. Therefore, the Departments believe that it is prudent to move ahead to finalize the Special Education Pupil Program Regulations, as proposed.

Section 60010

2) Comment:

60010 - Testifier 10.[(a)] (Warboys) states that the definition of "necessary to benefit from special education" in section (m) should not be narrowly limited to the goals and objectives specified in the individualized education program (IEP). Testifier Warboys states that often a child's needs are not specifically incorporated into a written IEP objective, particularly needs and services that enable a child to participate in the least restrictive environment. The proposed regulation should be expanded to include services that assist a child in progressing toward the goals and objectives in the IEP or that address an IEP-related need.

Response:

The Departments believe that section 60010(m) as written is consistent with special education law. For example, Education Code Section 56031 defines "special education", in part, as "specially designed instruction . . . to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services . . . that may be needed to assist these individuals to benefit from specially designed instruction." Following, Education Code Section 56345 requires as an element of the IEP "the specific educational instruction and related services required by the pupil." It is the responsibility of the IEP team to ensure that the IEP includes goals and objectives that address instruction and related services required by the pupil. The inclusion of such is the basis to measure the effectiveness of special education and related services.

3) Comment:

60010 - Testifier 14.[(b)] (Feldman) states that section (m) is attempting to define a term that is the definition of related services. As a result the regulation is "defining" a definition.

Response:

The Departments believe that section 60010(m) as written is necessary to assist those providing services under this Division understand the conditions that are required for the continuation of interagency services to pupils with disabilities. Government Code Section 7572(d) requires an assessment to determine if the pupil requires services to benefit from special education. Without a definition of the term "necessary to benefit from special education" there would be a lack of clarity and consistency of the test that must be applied relative to the provision of mental health, physical therapy and occupation therapy services under Chapter 26.5 of the Government Code.

4) Comment:

60010 - Testifier 15.[(a)] (Gibeaut) recommends that section (q) should emphasize that pupils with mental retardation or autism are specifically included within the definition of a "pupil with a disability." Testifier Gibeaut states that it is his understanding that children with

developmental disabilities have been denied mental health services under AB 3632 because of the nature of their disability. Testifier Gibeaut recommends that definition in section (q) be expanded to read "persons with developmental disabilities," as defined under specific provisions of the California Education Code, California Code of Regulations, Title 20 of the United States Code and Title 34 of the Code of Federal Regulations.

Response:

The Departments believe that the definition of "pupil" or "pupil with a disability" in section 60010(q) is in full alignment with the eligibility requirements of state and federal law. State and federal special education law do not include "developmental disability" as a specific condition that renders a child eligible for special education. The definition of "developmental disability" is unique to other service delivery systems at both the state and federal level. Some of the diagnostic impressions under the term "developmental disability" are specific disabling conditions that may find a pupil eligible for special education services. Mental retardation and autism are two of these diagnostic impressions. These disabling conditions, in themselves, do not necessarily render a pupil ineligible to receive services under these regulations. Mr. Gibeaut may be confused, however, with the requirement found in Section 60040(a)(4) that the pupil's functioning, including cognitive functioning is at a level sufficient to enable the pupil to benefit from mental health services.

5) Comment:

60010 - Testifier 20.[(a)] (Weinberg) recommends that section (a) [sic] should be amended to read "'Necessary to benefit from special education' means a service that assists the pupil with a disability in progressing toward the goals and objectives listed in the IEP or in addressing an identified IEP-related need in accordance with subsection (d) of Section 7572 and paragraph (2) of subsection (a) of Section 7575 of the Government Code." Testifier Weinberg states that the justification for this change is that a student's IEP may not have goals and objectives written for all the student's identified needs. For example, a student might require mental health services in order to remain in a less restrictive environment or simply to attend school. There may not be any specific goals or objectives related to these needs; they may simply be described under the present levels of performance.

Response:

The Departments believe that section 60010(m) as written is consistent with special education law. For example, Education Code Section 56031 defines "special education", in part, as specially designed instruction . . . to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services. . . . that may be needed to assist these individuals to benefit from specially designed instruction." Following, Education Code Section 56345 requires as an element of the IEP "the specific educational instruction and related services required by the pupil." It is the responsibility of the IEP team to ensure that the IEP includes goals and objectives that address instruction and related services required by the pupil. The inclusion of such is the basis to measure the effectiveness of special education and related services. It

would not be appropriate to include, on the IEP, goals and objectives that are not related to instruction or related educational services."

6) Comment:

60010(i) - Testifier 13.[(a)] (Mentink) commented in the following manner: "Section 60010. (i) This subdivision should also reference Educ. Code Sec. 56345.1 and 20 U.S.C. Sec. 1414(d)(1)(A)(vii). Rationale: Besides the elements specified in Section 56345 and section 300.341 through 300.349 (reference to the federal regulations could probably end at 300.346) state and federal laws require a statement of transition services in every IEP for children over 16 and for children over 14 in the case of federal law."

Response:

The Departments agree with the intent of Mr. Mentink's suggestion. Due to the fact that federal regulations have not been issued to clarify the 1997 amendments to the Individuals with Disabilities Education Act (IDEA), it would be prudent to limit reference to law, in the instance that law defines terms. For purposes of the term "individualized education program," IDEA does, in fact, define this term. Therefore, the Departments propose that section 60010(i) be amended to read "'Individualized education program,' hereinafter 'IEP,' means a written statement developed in accordance with Section 7575 of the Government Code, Sections 56341 and 56342 of the Education Code and Sections 300.340 through 300.350 of Title 34 of the Code of Federal Regulations, which contains the elements specified in Section 56345 of the Education Code and Section 300.347 of Title 34 of the Code of Federal Regulations."

7) Comment:

60010(j) - Testifier 13.[(b)] (Mentink) commented in the following manner: "(j) This subdivision should reference Title 20 U.S.C. Sec. 1414(d)(1)(B) instead of 34 C.F.R. Sec. 300.344. Rationale: Section 300.344 does not include the 1997 amendments to the federal statute requiring the participation, for example, of at least one regular education teacher on the IEP team."

Response:

The Departments agree with Mr. Mentink's suggestion. Therefore, the Departments propose that section 60010(j) be amended to read "'Individualized education program team,' hereinafter 'IEP team,' means a group which is constituted in accordance with Section 56341 of the Education Code and 20 USC Section 1414(d)(1)(B)."

8) Comment:

60010(m) - Testifier 13.[(c)] (Mentink) commented in the following manner: "(m) Instead of the language 'toward the goals and objectives listed in the IEP' the subdivision should read 'toward ~~the~~ any goals ~~and~~ or objectives listed in the IEP.'

"Rationale: This amendment will avoid the confusion likely if a student is required to show that he/she requires a related service to progress toward the goals and objectives [all of them, plural] listed in the IEP. A child may be able to make progress toward some of his goals or objectives without provision of a related service. This fact should not be interpreted to prohibit the provision of a related service if it is required to assist the child to progress toward one or more of the goals or objectives listed in the IEP."

Response:

The Departments believe that section 60010(m), as written, is consistent with special education law. For example, Education Code Section 56031 defines "special education", in part, as "specially designed instruction . . . to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services . . . that may be needed to assist these individuals to benefit from specially designed instruction." Following, Education Code Section 56345 requires, as an element of the IEP, "the specific educational instruction and related services required by the pupil." These sections of law encourage, rather than prohibit, related services if such services are necessary for the student to benefit from special education instruction. In addition, Education Code Section 56343 requires the IEP team to review the progress of the pupil and make any necessary revisions. The intent of this law is not to disrupt needed services to pupils with disabilities, but review and adjust, as necessary, services that will provide an educational benefit.

9) Comment:

60010(m) - Testifier 13.[(d)] (Mentink) commented in the following manner: "(m) An additional sentence must be added to subdivision (m) as follows.

"In addition, 'necessary to benefit from special education' shall also mean a service that assists the pupil with a disability in accessing and participating in the educational activities of his school placement from which the student will not benefit as a result of his/her disability.

"Rationale: Goals and objectives are not written for every aspect of a special education pupil's day. This fact cannot prevent the provision of related services to enable the child to participate in and benefit from those aspects of his/her placement. Transportation is the most obvious example. An IEP goal is not written that 'the pupil shall get to school each day' for each of the tens of thousands of special education pupils who receive transportation as a related service. Intermittent catheterization or tracheotomy suctioning are related health care services which are not directly related to achievement of a goal in spelling or math but they are vital to the child being at school where these other goals and objectives are addressed. These services are provided notwithstanding the fact that the child's educational goals do not include elimination of urine or breathing.

"Similarly, IEP goals are often not written for other activities that it is simply assumed the child will be able to do or be assisted in doing so that he can access and participate in the

special and/or regular education instruction he/she receives. A special education pupil's program is more than the time spent in specialized settings. Pursuant to federal law, special education is to take place in general education classrooms and utilizing regular education curriculum unless, even with supplementary aids and services, education cannot be achieved satisfactorily. (20 U.S.C. Sec. 1412(a)(5)(A).) The general education teachers of special education pupils who spend part or all of the day in regular education settings often require the consultative services of special educators. This consultation transforms regular education into special education. Mental health services may be required for a student to simply stay in attendance or stay on campus. Physical therapy may be required for a child to ambulate about the classroom and school. Occupational therapy may be required for a child to engage in motor activities necessary to the development of other skills beyond the basic motor skills.

"The 'necessary to benefit' standard cannot be limited to specified IEP goals or to a direct relationship to specified IEP goals. IEP meetings and IEP documents would become an unwieldy process if every understood aspect of a special education pupil's access to and participation in his/her school and school life had to be anchored to a specific IEP goal or objective. IEP teams are simply not going to do this. But where related services are required for a child to, for example, under the amended IDEA (see 20 USC Sec. 1414(d)), participate in the regular curriculum and regular nonacademic and extracurricular activities, the law will require these services notwithstanding the absence of a specific IEP goal or objective."

Response:

Mr. Mentink has gone to great lengths to provide examples of supports that students may need to succeed in education programs. However, the Departments believe that section 60010(m) as written is consistent with special education law. Education Code Section 56031 defines "special education", in part, as "specially designed instruction . . . to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services . . . that may be needed to assist these individuals to benefit from specially designed instruction." In addition, Education Code Section 56345 requires, as an element of the IEP, "the specific educational instruction and related services required by the pupil." It is the responsibility of the IEP team to ensure that the IEP includes goals and objectives that address instruction and related services required by the pupil. The inclusion of such is the basis to measure the effectiveness of special education and related services. While other supports may be necessary to enable students to participate in special education, these services, in themselves, are not necessary considered to be instruction or related services. The determination, of such, is the responsibility of the IEP team and must be part of the IEP, if deemed by the members.

10) Comment:

60010(q) - Testifier 13.[(e)] (Mentink) commented in the following manner: "(q) This subdivision should be amended to say 'from birth through ~~21~~22 years of age[.]'

"Rationale: The subdivision limits eligibility to children from birth through age 21 but also extends eligibility to those who meet the requirements of Education Code Sec. 56026, which

extends eligibility to individuals up to the age of 22 and in certain cases beyond their 22nd birthday. In that state law has extended eligibility to this age, these regulations cannot rely on the maximum federal age of 21 to limit eligibility for these related services. [20 U.S.C. Sec. 1402(8)(B); *Town of Burlington v. Department of Education,* 736 F.2d 773 (1st Cir., 1984); *David D. v. Dartmouth School Committee,* 775 F.2d 411 (1st Cir., 1985); *Geis v. Board of Education,* 774 F.2d 575 (3d Cir., 1985); *California School for the Blind v. Hong,* 736 F.2d 538 (9th Cir., 1984); Doe v. Angrig, 651 F.Supp. 424 (D.Mass., 1987).]"

Response:

Both state and federal special education law limit the outer age of eligibility through age 21. State law [Education Code Section 56026(b)(4)(A)] does allow special education services for students who become 22 years of age during the months of January to June, inclusive, while participating in a special education program. However, for purposes of definition, the language proposed in the regulations is consistent with state and federal special education law.

11) Comment:

60010(q) - Testifiers 2. [(a)] (McIver) and 27 (McIver) recommended the following changes:

"Sections 60010, 'Education Definitions' and 60020, 'Mental Health Definitions', are consistent in their use of the term 'pupil'. However, Section 60010(q) should be amended to read 'Pupil' or 'Pupil with a disability' means those children, birth through 17, and adults, 18 through 22 to be consistent with Education Code 56026(c) and to clearly delineate that children and some adults are fully eligible and entitled to participate in Special Education and related services."

Response:

The Departments concur with the commentor regarding the concept expressed, but not the specific language he proposed to address this issue. While Education Code 56026 establishes exceptional circumstances that enable a California pupil to complete their last semester of study after age 22, this is established in California Education Code and need not be duplicated in these proposed regulations. The Departments have determined that, by removing the word "children" from the proposed regulation, the language becomes more consistent with the stated ages of eligible special education pupils and will allow children as well as some adults to participate in Special Education and related services.

Final Modification:

q) "'Pupil' or 'Pupil with a disability' means those ~~children~~ students, birth through 21 years of age..."

12) Comment:

60010(s) - Testifier 13.[(f)] (Mentink) commented in the following manner: "(s) All references to section in Title 20 of the United States Code must be checked because they do not reflect the new location of certain provisions of IDEA following the 1997 amendments. The reference to Section 1401(a)(17) is now 1401(22). Moreover, the drafters of these regulations must also consider that many references to sections of Title 34 of the Code of Federal Regulations will become obsolete following finalization of the new IDEA regulations."

Response:

The Departments generally agree with Mr. Mentink's comments. This however, requires a two part response. First, the Departments propose to amend section (s) to read "'Related services' means those services that are necessary for a pupil with a disability to benefit from his or her special education program in accordance with 20 USC Section 1401(22)." Second, the United States Department of Education has not distributed regulations under the 1997 IDEA. Once these regulations have been distributed to the states, adjustments can be made in these proposed rules. Until that time, the Departments believe that it is prudent to move ahead to finalize the Special Education Pupil Program Regulations, as proposed.

13) Comment:

60010(u) - Testifier 13.[(g)] (Mentink) commented in the following manner: "(u) References to sections 56170 through 56172 are erroneous and should probably be replaced by reference to section 56200 through 56218."

Response:

The Departments agree with Mr. Mentink's comments. Therefore, the Departments propose to amend section (u) to read "'Special education local plan' means a plan developed in accordance with sections 56200 through 56218 of the Education Code which identifies each participating LEA's roles and responsibilities for the provision of special education and related services within the service area."

14) Comment:

60010(v) - Testifier 13.[(h)] (Mentink) commented in the following manner: "(v) See comment to subsection (u) above re section 56170."

Response:

The Departments agree with Mr. Mentink's comments. Therefore, the Departments propose to amend section (v) to read "'Special education local plan area,' hereinafter 'SELPA,' means the service area covered by a special education local plan, and is the governance structure created under any of the planning options of Section 56200 of the Education Code."

15) Comment:

60010(reference) - Testifier 13.[(i)] (Mentink) commented in the following manner: "Any changes to code section numbers must be reflected in the Reference section."

Response:

The Departments agree with Mr. Mentink's comment.

Section 60020

16) Comment:

60020(b) - Testifier 13.[(j)] (Mentink) commented in the following manner: "Section 60020. (b) This definition must be completely changed as follows:

> "'County of origin' for mental health services is the county in which the parent of a pupil with a disability resides. If the rights of the parent to make educational decisions on behalf of the child have been terminated or when, after due diligence, the parent cannot be located or refuses to participate in educational decision making on behalf of the child, and if the child has been made a ward or dependent of the court or a conservatee, the county of origin shall be the county in which this legal status currently exists.

"Rationale: Any reference to adoptee must be removed. It cannot be the intent of the drafters that an adopted child's county of origin is the county where that status was first established.

"There is no authority for distinguishing between natural and adopted children; it is, in fact, contrary to law. Any implication that the county of origin of wards, dependents or conservatees is anything other than the parents' county of residence, where the parents continue to make educational decisions on behalf of the child must be corrected. The second sentence seems to carve out wards, dependents, adoptees, and conservatees, notwithstanding that their parents may be living in a different county than where that status was first established, notwithstanding that status may have been established many years ago, and notwithstanding that the parents may retain complete control of educational decisions for the child. Assigning service responsibility to a remote and irrelevant county will only confuse and delay the provision of needed services.

"The purpose of the amendment above is to assure that the county of origin is not a county which does not currently have some degree of jurisdiction over and responsibility for the child."

Response:

The Departments partially concur and partially disagree with the comments. Section 60010(k) of these proposed regulations defines the Local Education Agency as the analog to

the mental health definition of "county of origin." The specifics of which education agency has responsibility for a child are established in Education Code Sections 48204(a), 56041, which establish concepts such as the "district of residence" and "educational responsibility" for pupils in different circumstances.

Government Code Chapter 26.5 Section 7570 is the statutory basis of this proposed regulation. It requires the following:

"Ensuring maximum utilization of all state and federal resources available to provide children and youth with disabilities...with a free appropriate public education...shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare.".

Because of this statutory requirement, county mental health departments must utilize adoption assistance and Medi-Cal when possible, and the county where the adoptee's status is established administers these programs. In addition, this regulation does not deny the right of an adoptee to participate in this program if they are eligible. Their parents are also not denied their parental right to represent their child's educational interests. Therefore, this regulation is consistent with Family Code § 8616.

This subsection only establishes which county has fiscal and programmatic responsibility to provide the necessary mental health services. The same timelines apply to services delivered to adoptees, regardless of the county of origin, and this proposed regulation in no way abridges these temporal requirements.

The Special Education Pupil's Program is a voluntary one, therefore inquiries regarding their adoption status are not a violation of an adoptee's right to privacy since the adoptee is not required to participate in the program, and, is not, therefore, required to reveal their adoptee status.

Finally, these proposed regulations do not allow denial of, or delay in, services to children who are receiving those services or assessments in a host county.

Final Modification:

"County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, an adoptee receiving adoption assistance, or a conservatee, the county of origin is the county where this status ~~was first established by the local court~~ currently exists. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.

17) Comment:

60020(b) - Testifier 29.[(a)] (McCaustland) made the following comment:

"'County of Origin' is spelled out with regards to mental health services. I believe that the county of origin should also be defined specifically with the educational definition. School districts frequently clash over district responsibility, especially when a child is hospitalized, turns 18 years of age, is a dependent or ward of the court. Specific clarification with the school districts would be most helpful."

Response:

Please see response to comment 16) of this section of the Statement of Reasons.

18) Comment:

60020(b) - Testifier 20.[(b)] (Weinberg) suggested the following changes:

"Proposed regulation:

"County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, an adoptee, or conservatee, the county of origin is the county where this status was first established by the local court. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.

Recommended Changes:

"County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, ~~an adoptee,~~ or conservatee the county of origin is the county where this status was first established by the local court. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.

Justification:

The State Department of Mental Health has determined that adoptee status is irrelevant and that all persons in California have a right to privacy under the state constitution, Article I §1. Furthermore, Family Code § 8616 states that "the child and the adoptive parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship."

Response:

Please see response to comment 16) of this section of the Statement of Reasons.

19) Comment:

60020(b) - Testifier 10.[(b)] (Warboys) suggested:

"We are very concerned about the shift of both the programmatic and fiscal responsibility for mental health services as well as the categories of children included in this proposed regulation. As you are certainly aware, the shifting of these responsibilities inevitably creates delays and logistical problems in the completion of assessments and the provision of appropriate services. (How will community mental health services in each of the 58 counties be able to work with LEAs and community mental health services in 57 other counties? Will counties of origin request that children travel to them for mental health assessments and services? Will host county LEAs be required to provide transportation to the county of origin? Furthermore, children who reside in the same county, or even within the same family, may receive different levels of service based solely on their "county of origin." Shifting only the fiscal responsibility or deleting the county of origin provision would greatly reduce the possibility of delays and logistical problems of completing timely assessments and providing appropriate services for children. At a minimum, the proposed regulation should be limited, as described below, and revised to clarify that mental health assessment or services shall not be delayed or denied because of a child's county of origin.

Additionally, there simply is no logic to the categories of children included in Section 60020(b). The requirement that the mental health needs of any child who is an adoptee must be served by the county where the adoption took place is not only illogical, but also discriminatory. Within the category of "adoptees" are many different types of adoptions and many of those adoptive parents are receiving no assistance of any type from the county where the adoption took place. If the intent of this section is to shift responsibility for mental health services to a county that is paying adoption assistance benefits or some other form of aid on behalf of a child with special need, then this proposed regulation should be more narrowly crafted to apply solely to those adoptive situations. Additionally, we believe that no LEA has the authority to even inquire regarding whether a child is an adoptee as a condition of commencing an assessment regarding special education needs or providing special education services.

We also question the logic of carving out "adoptees, conservatees, wards and dependents of the court", but not children who are in subsidized guardianships and are not court dependents. The fiscal concerns seemingly would be similar whether a child is an adopted child receiving adoption assistance or a non-court dependent child in a subsidized guardianship.

Our last concern regarding this provision is the definition of the "county of origin" as the county where the child's status as an adoptee, dependent, ward or conservatee was first established. In some cases the county in which the adoption, wardship or dependency was first established might not be the county that is responsible for paying for placement or other services arising from the adoption, dependency or wardship. If the intent is to shift the fiscal responsibility for mental health services to the county having the current fiscal responsibility for the child's Medi-Cal and/or out-of-home placement costs, then the regulation should be revised to reflect that intent.

Response:

Please see response to comment 16) of this section of the Statement of Reasons.

20) Comment:

60020(g) - Testifier 15.[(b)] (Gibeaut) suggested:

"Mental health assessment" should be defined to expressly include a formal diagnosis, which is the cornerstone of professional mental health assessment and treatment. A diagnosis from the psychiatric Diagnostic and Statistical Manual is essential for the expanded IEP team to be fully informed about the pupil's mental health needs. Problem behaviors are often symptoms of underlying mental disorders. Formal diagnosis has the following benefits in the school setting:

Correcting false attributions (e.g., that the child is "spoiled" or the behavior is the result of poor parenting):

Providing a basis for evaluating appropriateness of mental health services (e.g., matching treatment to specific conditions, based on current mental health research and knowledge); and

Offering a basis for support services to the parent, including referral to the appropriate self-support/advocacy organization.

We suggest that the definition be changed to read as follows:

"'Mental health assessment' is a service designed to provide formal, documented evaluation or analysis of the nature of the emotional or behavioral disorder, including formal diagnosis."

Response:

The Departments do not concur in the testifier's proposed changes. Section 60030(c)(3) and Section 60040 of these proposed regulations establish minimum requirements regarding what reports and information must be included in an appropriate referral package from the LEA to a community mental health service. If these requirements are not met, then the assessment would be invalid and inappropriate. The proposed regulations ensure that LEAs include enough documentation in their referrals to community mental health services to enable the provision of an appropriate assessment and to facilitate a pupil's access to a free and appropriate public education.

Mental health assessments pursuant to an IEP often become part of the cumulative file of the pupil assessed. While the Education Code does provide limited confidentiality, mental health files at county mental health agencies are subject to greater confidentiality requirements by Welfare and Institutions Code Section 5328. Mental Health diagnoses can result in social stigma if educational personnel, untrained in these issues, should unwittingly share this information with inappropriate parties. Most community mental health services do complete

a 5 axis DSM IV diagnosis as part of their assessment, but for the above reasons it is usually not included in the assessment that is presented at the IEP team meeting. The damage that can result to the pupil far outweighs the possible benefit. Also, the main purpose of the mental health assessment is for the community mental health service to recommend appropriate mental health services that enable the student to benefit from their education. This purpose can be accomplished without referencing the DSM IV diagnosis. Therefore, no change will be made in the regulations in response to this comment.

21) Comment:

60020(g) - Testifier 12.[(a)] (Brogan) proposed the following changes:

"The Commentor suggests that the following phrase be added to the subsection: "The content of this evaluation may vary depending on currently available reports."

Response:

The Departments do not concur. Minimum requirements are specified in Sections 60030(c)(3) and 60040 and do not have to be repeated here. Please see response to comment 20) of this section of the Statement of Reasons.

22) Comment:

60020(i) - Testifier 13.[(b)(2)] (Mentink) proposed the following changes:

"(i) The definition of Mental Health Services should include vocational and socialization services and crisis management.

"Rationale:

The new regulatory definition of Mental Health Services departs significantly from the previous definition in the emergency regulations. The previous definition referenced Title 9 C.C.R. Sec. 542 and 543. Vocational and socialization services were provided under Section 542 and crisis management services were provided under Section 543. Those services are no longer listed under the new proposed definition. These services were part of the AB 3632 mental health entitlement for 12 years under the previous emergency regulations without adverse fiscal impact and we request that they not be terminated."

Response:

The provision of vocational services is assigned to the State Department of Rehabilitation by Government Code Section 7577.

Crisis service provision is delegated to be "from other public programs or private providers, as appropriate" by these proposed regulations in Section 60040(e) because crisis services are a medical as opposed to educational service. They are, therefore, excluded under both the

Tatro and Clovis decisions. These precedents apply because "medical" specialists must deliver the services. A mental health crisis team involves specialized professionals. Because of the cost of these professional services, providing these services would be a financial burden that neither the schools nor the local mental health services are intended to address in this program.

The hospital costs of crisis service provision are explicitly excluded from this program in the Clovis decision for the same reasons.

Additionally, the IEP process is one that responds slowly due to the problems inherent in convening the team. It is, therefore, a poor avenue for the provision of crisis services. While the need for crises services can be a predictable requirement over time, the particular medical requirements of the service are better delivered through the usual local mechanisms established specifically for this purpose.

23) Comment:

60020(j) - The following changes were suggested by Testifier 15.[(c)] (Gibeaut):

"We question whether "recreational therapist" should be included within the definition of "qualified mental health professional", unless recreation therapists are licensed to provide mental health assessments. The other professionals included within the definition have the ability to conduct mental health assessments, including formal clinical diagnosis."

Response:

The Departments concur with the California Mental Health and Developmental Disabilities Training Center. Section 7572 (c) of the Government Code requires 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..." Therefore, changes will be made in the regulation to exclude recreation therapists.

This section is entitled "mental health definitions" and has the specific purpose of clarifying mental health terminology. The section is, therefore, limited in its scope and intentionally makes no comment on school personnel qualifications or lack thereof. To make such comments here would be inappropriate as it would exceed the scope of the section. Therefore, no change will be made to the regulations in response to the comment from the Fullerton School District.

Final Modification:

"Qualified mental health professional" includes the following licensed practitioners of the healing arts: a psychiatrist; psychologist; clinical social worker; marriage, family and child counselor; ~~recreation therapist;~~ registered nurse, mental health rehabilitation specialist; and others who have been waivered under Section 5751.2 of the Welfare and Institutions Code. Such individuals may provide mental health services, consistent with their scope of practice.

24) Comment:

60020(j) - The following changes were suggested by Testifier 2.[(a)] (Happoldt/Valdez):

"Section 60025(j) [(sic, Section 60020(j)] should be amended to add, 'nothing in this definition should be construed as impugning the qualifications of a credentialed school psychologist, school social worker, school counselor or school nurse to provide services within the school setting and within the scope of their credentials."

Response:

Please see the second part of response to comment 23) of this section of the Statement of Reasons.

Section 60025

25) Comment:

60025 - Testifiers 2.[(2)(b)] (McIver) and 27. (McIver) commented in the following manner: "Section 60025, 'Social Services Definitions', is replete with references to 'children', and should be amended to the use of 'Pupil'. More significantly, however, are the exclusive terms 'certified family home', 'certified, license-pending home', 'community care facility', 'community treatment facility', 'foster family agency', 'foster family home', 'group home', 'licensed children's institution', and 'small family home'. All of these categories are exclusive to the residential care of children."

Response:

Because different terms are used by different governmental entities and may not have the same meaning to all parties, separate definition sections were created in the regulations. The Social Services Definitions Section is provided to define terms as used by the California Department of Social Services (CDSS) and the county social services departments to describe not only types of placements, but also for payment purposes. For children placed in out-of-home care pursuant to a court order, board and care costs under the foster care program may be paid until the age of 18. If a child is completing high school or a vocational program, the board and care costs may be paid under the foster care program until age 19. Foster care payments are established according to statute contained in Welfare and Institutions Code Sections 11460 through 11467.

The issues raised by the testifier are not as much issues that the regulations do not address, as they are problems with the statute. As the testifier points out, Chapter 26.5 of the Government Code permits the payment of board and care costs through age 22. Therefore, some of the pupils being served are actually adults. Section 18350 of the Welfare and Institutions Code sets forth the guidelines for the payment of board and care costs for children placed pursuant to Chapter 26.5. Throughout this Section references are made to "children" and not to "pupils". The Section also states that payments shall be made based on

rates established in accordance with Welfare and Institutions Code Sections 11460 through 11467. As these Sections establish board and care rates for foster care payments, they are also filled with references to "children". The definitions in the Social Services Definition Section make references to statute, and accurately reflect what is contained in statute regarding placements and payment. It would be possible to use the term"pupil/children", but that seems somewhat confusing and really doesn't address the larger problem.

Sections 60025 and 60100(g)

26) Comment:

60025 and 60100(g) - Testifiers 2.[(c)] (McIver) and 27. (McIver) commented in the following manner: "In order to meet the needs of all eligible SED pupils, whose IEP calls for out of home placement, there must be provisions for placement of young adults, ages 18 through 22. In some instances, when it is appropriate, a residential care agency may seek a waiver from Community Care Licensing to enable an adult to remain in a child/adolescent facility, but it is not always appropriate and waivers are frequently denied. Occasionally, the need for out of home placement is not identified until the pupil is 17 years old and most residential care agencies will not admit a 17½ year old to their program when they prefer younger clients that may be able to remain in placement long enough to fully benefit from the program. An adult, age 18, may not be admitted at any time to a child/adolescent facility.

"In order to rectify this problem, there must be provisions in the regulations to include adult residential care facilities, such as board and care homes, transitional living centers, or other 'group home-like' facilities that are licensed and designed to serve young adults. Failure to include such facilities in the continuum of services denies the 18 to 22 year old SED pupil his or her right to a 'free appropriate public education', in violation of Federal and State law, and invites the probability of litigation to address the issue. To avoid this unpleasant and costly process, I propose that the regulations be amended to include adult residential care facilities."

Response:

The Departments concur that a wavier is required to enable an adult to remain in a children's residential facility. Although you are not disputing this process, the Departments concur that the regulations fail to address a residential placement option for young adults. There is no licensing regulation to preclude the placement of a these young adult into an adult residential facility.

However, because funding for board and care costs for pupils placed pursuant to Chapter 26.5 is linked statutorily to foster care payments, placements for pupils in an adult residential facility are not eligible for reimbursement by county social services. These placements may be paid by other funds, but because they would not be reimbursable in the usual manner, it was decided to only include placements into facilities for children (foster family homes, group homes for children, etc.)in the definitions. This does not preclude county mental health agencies from placing these young adults into adult residential facilities in order to meet their

needs, but because of the statutory tie to foster care payments, placements into adult facilities are not reimbursable by county social services and must be funded by either education or mental health funding.

Section 60030

27) Comment:

60030 - Testifier 17.[(a)] (Cromer) states that section 60030(c)(3) fails to define "timely" delivery of a completed referral package to the community mental health services ("CMH"). Testifier Cromer states that by failing to define "timely," each special education local plan area (SELPA) can interpret "timely" themselves resulting in inconsistency in the number of days a district will take to submit an application to CMH. Continuing, testifier Cromer states that when a student receives services will depend upon what SELPA they live in. Testifier Cromer concludes by stating that merely identifying a number of days a district has to complete a packet and deliver it to CMH eliminates any question to the definition of "timely" and provides for students to receive services within the same time frames.

Response:

The Departments believe that the language as written for section 60030(c)(3) provides sufficient guidance for SELPAS and CMH to ensure that pupils receive services within lawful requirements. To insert a specific deadline fails to acknowledge that differing conditions and may, in fact, delay the referral process.

The development of local interagency agreements, may in fact, specify a time frame for the submission of information. The Departments note, with curiosity, that Ms. Cromer did not provide a quantitative recommendation for her suggestion.

28) Comment:

60030 - Testifier 21.[(a)] (Frampton) states that section (c)(3) fails to define the "timely" delivery of a completed referral package to the community mental health services. Testifier Frampton states that by failing to define "timely," there will be a great deal of misunderstanding and acrimony between the agencies. A specific time frame would facilitate communication rather than cause finger pointing. The expectation and responsibilities of each party need to be clarified.

Response:

The Departments believe that the language as written for section (c)(3) provides sufficient guidance for SELPAS and CMH to ensure that pupils receive services within lawful requirements. To insert a specific deadline fails to acknowledge that differing conditions and may, in fact, delay the referral process.

The development of local interagency agreements, may in fact, specify a time frame for the submission of information. The Departments note, with curiosity, that Ms. Frampton did not provide a quantitative recommendation for her suggestion.

29) Comment:

60030(a) - The following changes were suggested by testifier 14.[(d)] (Feldman):

"We object because there is no timeline for development of the interagency agreement. We suggest that a six-month timeline be adopted."

Response:

The Departments do not concur with this comment because the Departments have determined that a six-month timeline is too short a time to allow for negotiation between departments and legal review of the interagency agreements by county counsel.

Additionally, the appropriate interval for the establishment of interagency agreements varies greatly among the 58 counties in California, depending on the size of the county, the number of special education pupils, the agencies' budget sizes, and the complexity of the fiscal arrangements between agencies. For this reason, the Section 7586.6(b) of the Government Code, which this regulation implements, requires that "designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time." This phrase allows for the same local variation with regard to timelines that the proposed regulation allows, rather than establishing an arbitrary regulatory limit, which may impose a burden on local government.

Also, many county agencies have existing interagency agreements. Subsection 60030(b) of these proposed regulations provides for annual review and more frequent amendment of these agreements as appropriate. Therefore no change will be made to the regulations due to this comment.

30) Comment:

60030(b) - Testifier 12.[(b)(1)] (Brogan) requests a revision to Section (b) that local interagency agreements be reviewed "according to a schedule developed at the local level between the agencies" instead of by July 1 of each year.

Response:

The Departments agree with Mr. Brogan's amended language. This revision will provide flexibility to community mental health and local education agencies in reviewing interagency agreements on an "as necessary basis but no less frequently than every three years".

31) Comment:

60030(b) - Testifier 12.[(b)(2)] (Brogan) requests that the following language be added to Section (b): "The content of the agreement will remain in effect until the agencies mutually agree upon any revisions."

Response:

The Departments agree with Mr. Brogan's recommendation to add language to state that the interagency agreement will be in full force subsequent to any agreed-upon revisions.

32) Comment:

60030(c)(2) - Testifier 13.[(l)] (Mentink) commented in the following manner: "Section 60030. (c)(2) This subsection should be amended as follows:

> "Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute pursuant to Government Code Sec. 7585(f). For purposes of this subdivision only, the term 'appropriate' means any services identified in a pupil's IEP or services the pupil actually was receiving at the time of the interagency dispute.

"Rationale: The Government Code contains this protection for pupils during the process of interagency dispute resolution, but unless the interagency agreement specifies a mechanism to ensure continuing provision of services, this protection is unlikely to be implemented. Further definition of the term 'appropriate' in this subdivision is necessary so that the term 'appropriate' is not used offensively against the student to justify a refusal to continue services because, in the opinion of the providing agency, the services had become 'inappropriate'. IEP-identified services or services the agency was actually providing at the time an interagency dispute arises are presumed appropriate."

Response:

The Departments agree with Mr. Mentink's comments. Therefore, the Departments propose to amend Section 60030(c)(2) to read "Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code Section 7585(f). For purposes of this subsection only, the term 'appropriate' means any services identified in a pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute;".

33) Comment:

60030(c)(3) - Testifier 12.[(b)(3)] (Brogan) requests that the following language be substitued for existing language in Section (c)(3): "A timely referral process that complies with requirements of each agency and describes the content of the referral and ensures the maintenance of confidentiality."

Response:

The Departments believe that Mr. Brogan's recommended language is less clear than what is proposed. In addition Mr. Brogan's suggested amendment does not specifically link the referral package to the requirements for referral to community mental health services for related services under Chapter 26.5 of the Government Code.

34) Comment:

60030(c)(4) - Testifier 12.[(b)(4)] (Brogan) requests that the following language be substitued for existing language in Section (c)(4): "Describes how LEA's and Community Mental Health Agency will provide services to transfer students between counties and SELPAs who have been previously identified under AB2726."

Response:

The Departments believe that Mr. Brogan's recommended language is less clear than what is proposed.

35) Comment:

60030(c)(3), (c)(4), and (c)(7) - The following changes were proposed by Testifier 7.[(b)] (Burchill):

"Although references are made to paragraph (a) of Section 56321 and Section 56344 of the Education Code with reference to compliance with timelines, our experience has been that timelines are frequently ignored while information is being exchanged between mental health and education. A student with serious needs for mental health services can be placed in limbo for months – up to a year. We believe it is necessary to state time lines where they exist.

Recommendation: Delete use of 'timely' and 'adequate' language and replace with mandatory or reasonable time lines."

Response:

The Departments concur with this recommendation and have made the following amendments to subsections 60030(c)(3), (c)(4), and (c)(7) and Section 60045(a).

Final Modification:

(c) The local interagency agreement shall identify a contact person for each agency and include, but not be limited to, a delineation of the procedures for:

(3) ~~Timely delivery~~ Delivery of a completed referral package to the community mental health service pursuant to subsection (d) of Section 60040 as well as ~~and timely exchange of~~ any other relevant pupil information in accordance with procedures ensuring confidentiality within five (5) business days;

(4) ~~Timely notification by the~~ A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons;

(7) ~~Adequate~~ At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. ~~A time frame for giving notice shall be addressed~~;

Code Section 60040(a) was also amended as follows to address the commentor's concern:

(a) An LEA, IEP team, or parent may initiate a referral for assessment of a pupil's social and emotional status pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs or is suspected of being an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service when a pupil meets all of the criteria in paragraphs (1) through (5) below. Referral packages shall include all documentation required in subsection (b) and shall be provided ~~immediately~~ within five (5) working days of the LEA's receipt of parental consent for the referral of the pupil to the community mental health service.

36) Comment:

60030(c)(6) - Testifier 12.[(b)(5)] (Brogan) requests that the following language be substitued for existing language in Section (c)(6): "Not withstanding Government Code Section 7572 (d) and (e) and 7572.5, a description of the participation of other public agencies in IEP meetings in accordance with I.D.E.A."

Response:

The Departments believe that Mr. Brogan's recommended language has some merit, but it limits the requirements contained in relevant sections of Chapter 26.5 of the Government Code. As an alternative, we recommend that the language in Section 60030(c) be changed to "The participation of qualified mental health professionals at the IEP team meetings pursuant to subsections (d) and (e) of Section 7572 and Section 7772.5 of the Government Code".

37) Comment:

60030(c)(8) - Testifier 13.[(m)] (Mentink) commented in the following manner: "(c)(8) The phrase 'initiation, type, frequency or duration of these services should be amended as follows: 'the initiation, type, frequency or, location, and duration of these services in accordance with ~~Section 56341 of the Education Code and Section 300.504 of Title 34 Code of Federal Regulations~~Title 20 U.S.C. Sec. 1414(d)(1)(vi):

"Rationale: The IDEA has been amended at section 1414(d)(1)(vi) to require that frequency, location, and duration of services be specified. The use of 'or' in between frequency and duration is inappropriate as is omission of the location of services and the proper citation."

Response:

The Departments agree with Mr. Mentink's comments. Therefore, the Departments propose to amend Section 60030(c)(8) to read "The development, review or amendment of the portions of the IEP relating to mental health services, including the goals and objectives of mental health services in accordance with Title 20 USC Section 1414(d)(1)(A)(vi)."

38) Comment:

60030(c)(9) - Testifier 7.[(c)] (Burchill) proposed the following changes:

"It has not been our experience that school districts and mental health professionals have memorized the Code of Federal Regulations or is the Code likely to be handy during the IEP meeting. Parents are rarely familiar with federal regulations. This can result in long implementation delays in the delivery of related mental health services from the date of the IEP.

Recommendation: For the sake of clarity, either the federal code section language cited should be included or specific time lines should be provided.

Response:

The Departments do not concur with the commentor. As for the comment, which suggested citing the federal regulation language, this is not necessary, as the intent of the federal regulation is already included. The phrase "as soon as possible following the development of the IEP" Therefore, no change will be made to the regulation as proposed by the commentor.

39) Comment:

60030(c)(10) - Testifier 12.[(b)(6)] (Brogan) requests that the following language be substitued for existing language in Section (c)(10): "Description of the length and duration of mental health services and transportation beyond the tradtional school year including the extended year program."

Response:

The Departments agree with Mr. Brogan's amended language. This revision more accurately describes period of the year that education services are provided to students with disabilities.

40) Comment:

60030(c)(10) - The following changes were suggested by testifier 20.[(c)] (Weinberg):

"The local interagency agreement shall include, but not be limited to, a delineation of the procedures for:

(10) the continuation of mental health services and transportation during school vacation pursuant to IEP."

Recommended Changes:

(10) The continuation of mental health services and transportation during school vacations pursuant to the IEP.

Justification:

(c) (10) An "s" is needed at the end of vacation to make the sentence grammatically correct."

Response:

The Departments amended this regulation in response to testifier 12 [Comment 39)] and the word "vacation" no longer appears in this section.

41) Comment:

60030(c)(11) - The following changes were proposed by testifier 7.[(d)] (Burchill):

Our Copy of the 1998 'California Special Education Programs –A Composite of Laws, Education Code- Part 30', Section 60200, states this as being Article 4, 'financial provision of 24-hour Out-of-Home Placement.' This code section reference is incorrect. If Authority exists elsewhere for an entity, other than education, to be responsible for this related service; this should be stated clearly.

Recommendation:

Responsibility for transportation should be included in the local agreements with education identified as the party responsible for this related service.

Response:

The Departments do not concur with this comment.

Both Section 60030(c)(11) and the referenced Sections 60200 (d)(1), and 60200(d)(2) clearly identify education as the party responsible for transportation. The Composite of Laws for California's Special Education Programs did not include the new emergency regulations, which became effective on July 1, 1998, after the Composite had been printed and distributed. There will be no amendment to the regulations pursuant to this comment since the expressed concerns have been addressed.

42) Comment:

60030(c)(13) - The following changes were suggested by testifier 20.[(d)] (Weinberg):

"Proposed regulation:

(c) The local interagency agreement shall...include, but not be limited to, a delineation of the procedures for:

(13) The identification of a continuum of placement options.

Recommended Changes:

(13) the identification of a continuum of placement options, including the development of additional mental health resources, when needed. These options may include....

Justification:

(c) (13) In some cases it is not sufficient to simply identify already existing resources, since the resources that exist are not adequate to address the need. Therefore, it may be necessary to develop new resources."

Response:

The Departments do not concur with this comment.

The proposed regulations allow community mental health services the discretion to either contract for resources or develop them utilizing their own staff and infrastructure. To require community mental health services to develop resources without funding this effort would be unfair to local agencies, and would rob them of the local control that fosters the efficient and cost effective delivery of mental health services.

Additionally, the proposed regulations encourage community mental health services to develop programs with education staff input which satisfy local concerns. This encouragement is provided at the beginning of Section 60030(c) which indicates that the local

interagency agreement includes but is not limited to a delineation of procedures for, among upon other requirements, the provision of mental health services. No change will be made to the regulations pursuant to this comment.

43) Comment:

60030(c)(17) - Testifier 12.[(b)(7)] (Brogan) requests that the following language "Mutual staff development for"... be substitued for proposed language "The cross training of"... in Section (c)(17).

Response:

The Departments agree with Mr. Brogan's amended language. This revision clarifies that inservice training is to be provided to local education agency and community mental health staff.

44) Comment:

New 60030(c)(18) - The following changes were suggested by testifier 20.[(e)] (Weinberg):

Proposed Regulation:

(c) The local interagency agreement shall...include, but not be limited to, a delineation of the procedures for: (The provisions under (c) are (1) through (17). As currently proposed, there is no section (c) (18).)

Recommended Changes:

(c) (18) Systematically seeking out all individuals with exceptional needs, or those suspected of having exceptional needs, ages 3 through 21, who have emotional or behavioral characteristics that impede them from benefiting from educational services.

Response:

The Departments do not concur with this comment.

The client-find responsibilities in this program are the responsibility of the local education agencies (districts, SELPAs and county offices of education). Education Code 56300 establishes this by requiring these LEAs to:

"...actively and systematically seek out all individuals with exceptional needs."

Section 60030 of these proposed regulations pertains to the interagency agreement between education and mental health, and a reiteration of the local education agency's responsibility in this section is, therefore, not necessary. Consequently, no change will be made to the regulations pursuant to this comment.

45) Comment:

60040 - Testifier 12.[(c)] (Brogan) and 26. (Brogan) proposed the following changes:

"In the section that deals with County Mental Health, the entire section related to a referral and assessment process has been deleted. [By the Commentor]. In its place has been statements in the listing of what needs to be included in a local interagency agreement in terms of how that referral process should work in a timely and efficient manner and how eligibility issues should be addressed."

Response:

The Departments do not concur with these comments. The Departments disagree with Mr. Brogan's proposal to eliminate the section that specifies procedures for referring students with disabilities to community mental health. The Departments believe that this section is necessary to provide guidance by delineating the roles and responsibilities of local education agencies and community mental health in referring and accepting students with disabilities for evaluating the need for mental health services.

In addition, Government Code Section 7587 requires that:

"...each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act."

The above section is referring to the State Department of Mental Health as it is one of the department's named in Chapter 26.5 of the Government Code. The State Department of Mental Health has determined that Section 60040 of these proposed regulations is necessary to ensure appropriate referral from LEAs to community mental health services. Many of the requirements delineated in this section implement state and federal law. The commentor's proposed replacement of this section by a subsection in the interagency agreement section is not sufficient to accomplish this purpose because such agreements may not violate the law. Therefore, the commentor's suggested deletion of this section will not be made, and these proposed regulations will not be changed as a result of this comment.

Also, please see response to comment 46) of this section of the Statement of Reasons.

46) Comment:

60040 - Testifier 18.[(c)] (Holle) recommended the following changes:

When Medi-Cal and/or Healthy Families' funds are used to evaluate or provide services to special education children, the use of such funds triggers additional obligations to the involved children and their families:

Medi-Cal: Children covered by full-scope Medi-Cal are entitled under federal law to comprehensive mental health care under the Early and Periodic Screening, diagnosis, and

Treatment (EPSDT) program for Medicaid-eligible children under age 21. 42 U.S.C. § 1396d(a)(4)(B); 1396d(a)(4)(B), 1396d(r). Children are entitled to diagnostic and treatment services "to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening service, whether or not such services are covered under the State plan." 42 U.S.C. § 1396d(r)(5). [w]hether or not such services are covered" means any medical or remedial service the state could elect to include in its Medicaid plan for adults if it chose to do so. HCFA, State Medicaid Manual, § 5110 (Apr. 1990).

Response:

The Departments do not concur with these comments.

What Ms. Holle is calling a screen is actually a special education pupil's program eligibility assessment. If a child's parent desires a screen for Medi-Cal or EPSDT supplemental services, they must request this medical service from a community mental health service provider. These regulations pertain only to special education pupils program services provided pursuant to Chapter 26.5 of the Government Code. Because of this limitation, broadening the regulatory requirements to include those imposed by Medi-Cal requirements would be confusing and inappropriate.

Mental health services provided pursuant to Chapter 26.5 of the Government Code are required by Section 7570 of the Government Code to be specifically focused on assisting special education pupils in achieving benefit from their education. Section 7570 of the Government Code defines this educational focus by jointly assigning the Superintendent of Public Instruction and the Secretary of Health and Welfare the responsibility to provide:

"...related services as defined in Title 20, Section 1401(17) of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to children and youth with disabilities."

These services must be specified in the individualized education program and be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. Services that are medical as opposed to educational in nature are excluded by the definition of related services in Title 20, Section 1401(22) of the United States Code (where the renumbered definition for related services is now located). This section states in pertinent part:

"... medical services shall be for diagnostic and evaluation purposes only."

Medi-Cal eligible children's parents may request community mental health services for an assessment for supplemental mental health services if these are necessary, but these services are distinct from the educational requirements for a free and appropriate public education. Supplemental services provided due to any Medi-Cal and EPSDT services which do not provide educational benefit should not be listed on the pupil's Individualized Educational Program which is designed to assist them in attaining academic achievement.

Mental health services for purposes other than providing educational assistance must be accessed through the current community mental health provider that deliver Medi-Cal and EPSDT services because these services are separate from the requirement for a free and appropriate public education.

In addition to those arguments, the fact that Medi-Cal, Healthy Families, and EPSDT requirements are established in the other cited law and regulation means that to repeat them in these regulations would be duplicative. Since these programs are separate, no change will be made to these proposed regulations pursuant to this comment.

The inclusion of the Healthy Families Program into these regulations is beyond the scope of the statute. MRMIB which administers the Health Families Program is not an agency responsible for the provision of "related services" for pupils eligible for special education pupils. Also, please see response to comment 45) of this section of the Statement of Reasons.

47) Comment:

60040 - Testifier 18.[(d)] (Holle) recommended the following changes:

Federal Medicaid obligations are imposed on the state as a condition of receiving federal Medicaid monies. Schweiker v. Gray Panthers, 453 U.S. 34, 36-37, 101 S. Ct. 2633, 2636 (1981). The state in turn transfers those obligations to the county Mental health services (MHPs). County MHPs are the managed care entities responsible for delivering mental health services to Medi-Cal beneficiaries including to the Medi-Cal pupils referred to the counties for assessment and services. Welfare & Institutions Code § 5775-5780 and 14680-14685.

Response:

Please see response to comments 45) and 46) of this section of the Statement of Reasons.

48) Comment:

60040 - Testifier 18.[(e)] (Holle) recommended the following changes:

(1) When a Medi-Cal child is referred for an assessment, that referral is a "screen" which triggers an obligation to provide whatever mental health diagnostic and treatment service the child may need independent of the obligation to provide mental health related services under the IEP.8 That may mean an obligation to provide mental health services even if it is determined that such services are not needed to enable a pupil with a disability to benefit from special education in accord with proposed § 60050.

Response:

Please see response to comments 45) and 46) of this section of the Statement of Reasons.

49) Comment:

60040 - Testifier 18.[(g)] (Holle) recommended the following changes:

"The obligations under Medi-Cal to children include an informing obligation – namely, an obligation to advise Medi-Cal children and their families about the kinds of mental health services available to them through EPSDT. Congress, when enacting the Medicaid EPSDT provisions, directed that states take "aggressive action" to inform the families of recipients about EPSDT. 135 Cong. Rec. S13234 (Dec. 12, 1989). Federal regulations and the State Medicaid Manual require that families be informed of the specific services covered by EPSDT and where and how to obtain those services. 42 CFR Section 441.56(a) (1984); HCVA, State Medicaid Manual, Section 5121.C (Apr. 1990)."

Response:

Please see response to comments 45) and 46) of this section of the Statement of Reasons.

50) Comment:

60040 - Testifier 10.[(c)] (Warboys) states section (a) limits the persons who make a referral for assessment of a pupil's social or emotional status to a local education agency, individualized education program team, or parent. Testifier Warboys continues that Education Code Section 56029 defines "Referral for Assessment as any written request for assessment . . . by a parent, teacher or other service provider." Testifier Warboys states that the definition is too narrow and should comport with current statute.

Response:

There is a difference in the process of referral for assessment for special education services, as cited by Mr. Warboys in his reference to Education Code Section 56029 and a referral, once a student has been deemed eligible for special education services, to community mental health for an assessment of the student's social or emotional status. Therefore, the Departments believe that section 60040(a) as written is consistent with Government Code Section 7576(b). This section specifies referrals from local education agencies to community mental health for an assessment of a pupil's social or emotional status. This section of law specifies that only a local education agency, individualized education program team, or a parent may initiate a referral for assessment of a pupil's social or emotional status.

51) Comment:

60040 - Testifier 20.[(f)] (Weinberg) recommends that section (a) be amended to read "A LEA, IEP team, parent, or other individual may initiate a referral for assessment of a pupil's social and emotional status pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs or is suspected of being an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service

when a pupil meets all of the criteria in paragraphs (1) through (5) below. Referral packages shall include all documentation required in subsection (b) and shall be provided immediately (not to exceed 5 days from the parent's signed consent pursuant to [a][2]) to the community mental health service." Testifier Weinberg justifies her testimony by stating that the proposed regulation is narrower regarding who may initiate a referral for assessment of a pupil's social and emotional status than Education Code Section 56029, and California Code of Regulations Section 3021(a). Also, testifier Weinberg states that the term "immediate" used in the proposed regulation is not defined, therefore, by substituting five days for the term "immediate" is appropriate and does not add too much additional time to an already extended time line.

Response:

There is a difference in the process of referral for assessment for special education services, as cited by Ms. Weinberg in her reference to Education Code Section 56029 and a referral, once a student has been deemed eligible for special education services, to community mental health for an assessment of the student's social or emotional status. Therefore, we believe that section (a) as written is consistent with Government Code Section 7576 (b). This section specifies referrals from local education agencies to community mental health for an assessment of a pupil's social or emotional status. This section of law specifies that only a local education agency, individualized education program team, or a parent may initiate a referral for assessment of a pupil's social or emotional status.

The Departments agree, however, with Ms. Weinberg in regard to the replacement of the term "immediate" with a quantifiable day limit. Therefore, the Departments propose to amend Section 60040(a) to read "A LEA, IEP team, or parent may initiate a referral for assessment of a pupil's social and emotional status pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs or is suspected of being an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service when a pupil meets all of the criteria in paragraphs (1) through (5) below. Referral packages shall include all documentation required in subsection (b) and shall be provided within five (5) days to the community mental health service." The Departments do not agree with Ms. Weinberg's suggestion that the "referral trigger" is the date the parent signs a consent for referral. All of the requirements in Sections 60040(a)(1) through (a)(5) must be met before a pupil can be referred to community mental health for assessment purposes.

52) Comment:

60040(a): Testifier 14.[(e)] (Feldman) suggested the following changes:

"This section sets the pre-condition of a district social/emotional assessment before an IEP team may refer a pupil for a Mental Health Assessment. This conflicts with IDEA, which requires simultaneous assessment of the pupil in all areas of suspected need. It also

discriminates against a pupil who needs Mental Health services as compared to a pupil who needs any other related service since there are no pre-conditions for obtaining assessment for speech and language, occupational therapy, physical therapy, behavioral plans, etc.

We object to section 60040(a)(D), 60040(a)(4), section 60040(b)(3) and section 60040(d)(3) and (4) because you are asking the local LEA to provide documentation of determinations which are within the purview of a Mental Health assessment as defined in section 60020(g). Understand that we are not objecting to the criteria we are objecting to the expertise of the LEA assessor. Mental Health should be making these decisions.

Response:

The Departments do not concur with this comment.

A school psychologist is able to make the determinations required by Sections 60040(a)(3)(D), 60040(a)(4), 60040(b)(3) and 60040(d)(3).

There are also pre-conditions for obtaining occupational therapy, and physical therapy through this program, which are similar to the mental health requirements. In California, the local mental health department provides specialty mental health services, which is a separate entity from the local education agency. Similarly, medically necessary occupational and physical therapy are provided by an agency separate from the LEA, California Children's Services.

For a California pupil to access these specialized services a separate evaluation from the educational evaluation is required. The California Children's Services evaluation procedures for occupational and physical therapy are described in Sections 60300 through 60400 of these regulations and implement Government Code Section 7572(b) and (d). In contrast, students needing services provided by school employees and/or contractors may obtain these services after the completion of the initial assessment by education.

The statutory requirement for a separate mental health evaluation is in Government Code, Section 7572(c) and (d). These sections require that:

(d) "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..." and

(d) "A related service or designated instruction and service shall only be added to the child's individualized educational program by the individualized educational program team ...if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education."

Therefore, no change will be made to this proposed regulation as a result of this comment.

53) Comment:

60040(a)(3) - Testifier 29.[(b)] (McCaustland) made the following comment:

"The child may have behavioral characteristics that meet the criteria listed but these problems might not be mental health related. I.e. the child might have ADHD or neurological based problems such as aggressiveness, being unable to remain in class, being unable to socialize appropriately. These behaviors can be addressed using Section 504 or the Hughes Bill yet most school districts will refer to mental health and state that the child has met those behavioral characteristics as stated in this section. Again, this is not specific."

Response:

The Departments do not concur with this comment.

This subsection allows mental health services to exclude pupils from services when services are deemed to be inappropriate. This inappropriateness may be based on the fact that certain pupils such as those who suffer solely from social maladjustment are not amenable to mental health intervention. This excluded population is specified in the proposed regulations in Section 60040(a)(3)(D). This section of the proposed regulations also specifically excludes pupils suffering from a temporary disability.

A mental health service is also able to exclude a referral on the basis that less restrictive interventions such as those provided under Section 504 of the Rehabilitation Act or a functional analysis and Behavioral Intervention Plan as specified in the Hughs Act have not been provided. Section 60040(b)(4) and allows mental health this discretion. However, they do not specifically require such interventions because they are not always appropriate in a specific pupil's case. Such exceptions to the rule are allowed as specified by Section 60040 (d)(4) of these proposed regulations. Such determinations need to be made on a case by case basis, and for this reason, the proposed regulations do not define less restrictive interventions as "services under Section 504 of the Rehabilitation Act or a functional analysis and Behavioral Intervention Plan as specified in the Hughs Act." Furthermore, appropriate treatment for certain children with ADHD, neurologically based aggression, and/or social deficits may include mental health intervention through the special education pupils program.

Additionally, local continuums of care within the schools may be able to provide less restrictive interventions through mechanisms other than Section 504 of the Rehabilitation Act or a functional analysis and Behavioral Intervention Plan. Depending on local interagency agreements, these alternative interventions may be sufficient to satisfy the least restrictive intervention requirement that must occur prior to referral to the local mental health service.

In order to allow case by case and local discretion, no change will be made to the proposed regulation in response to this comment.

54) Comment:

60040(a)(3)(C) - Testifier 29.[(c)] (McCaustland) made the following comment:

"The characteristics are significant etc....This is not specific regarding rate of occurrence and intensity. This could be further defined as occurring at least weekly over three months or physical assault or property damage that posed a safety risk to others."

Response:

The particular mix of available educational and mental health service services that are available to treat a pupil may vary from region to region. By leaving it to the region's discretion to interpret significance at the local level, these proposed regulations facilitate appropriate referral to local mental health services. The interagency agreement requirements of Section 60030(a), and (c)(3) of these proposed regulations will facilitate discussion regarding what frequency of which particular behaviors constitute appropriate local criteria for mental health referral through the special education pupils program.

To narrowly define significance would also fail to indicate that significance is a product of both a particular behavior's frequency and intensity. Its sum, therefore, depends on the particular behavior, its intensity, and its frequency. In order to allow case by case and local discretion, no change will be made to the proposed regulation.

55) Comment:

60040(a)(3)(D) - Testifier 29.[(d)] (McCaustland) made the following comment:

"Social maladjustment is not specifically described and this leads to lots of confusion among school districts, attorneys, parents, et al. Specific conduct disordered behaviors should be mentioned either in the definitions or here so that others can understand what exactly are socially maladjusted behaviors. I personally have experienced trying to explain to a parent that molesting a sibling because of being molested is more than just a mental health issue and revolves around criminal behavior.

The difficulty I have experienced is the vagueness of the regulations and anything that can be done to shore those up would be greatly appreciated. Another for instance is when the pupil must demonstrate over a long period of time and there is no mention of what is considered a long period of time. This is used as a two-edged sword in either prolonging eligibility or shortening eligibility time frame.

Response:

The Departments partially concur with the commentor and partially disagree.

The phrase "the pupil must demonstrate over a long period of time" is not included in these proposed regulations, but is a part of Education Code, Section 3030(i) which defines

individuals with exceptional needs. Former emergency regulations required behaviors to be observed for over 6 months before a pupil could be referred to mental health, but this has been deleted. The term "temporary" is not defined and is left to local discretion due to local variations in school counseling and mental health resources and responsibilities.

The significance of social maladjustment must be determined individually, but the Departments agree that added clarity regarding the meaning of this term and the phrase "short-term counseling" would be helpful. The proposed regulation has been amended as follows to add this clarity:

Final Modification:

(D) Are associated with a condition that cannot be described solely as a social maladjustment as demonstrated by a pupil's involvement with the juvenile justice system or substance abuse and the absence of a treatable mental disorder.

(E) Are associated with a condition that cannot be described solely as ~~or~~ a temporary adjustment problem ~~and~~ that can ~~not~~ be resolved with ~~short-term~~ less than three months of counseling.

56) Comment:

60040(a)(4) - Testifier 13.[(n)] (Mentink) commented in the following manner: "Section 60040. (a)(4) This subdivision should be amended as follows:

> "As determined using educational assessments, the pupil's functioning, including cognitive functioning, is, or with reasonable accommodation would be, at a level sufficient to enable the pupil to benefit from mental health services.

"Rationale: This proposed regulation and the statute on which it is based discriminate in the provision of publicly funded services on the basis of the nature and degree of disability (in this case the level of intelligence) without any acknowledgment of a duty to provide reasonable accommodations. Section 504 of the Rehabilitation Act of 1973, the ADA, and section 11135 of the California Government Code are clearly violated by this failure. Psychotherapy and other mental health services are provided to persons with mental retardation by providers who specialize in these services for regional center clients. One of the services listed for persons with developmental disabilities by the statutes governing the regional center system is mental health services. (Welfare and Institutions Code § 4512(b).) The Legislature clearly recognizes that persons with cognitive impairments, including mental retardation, may need and can benefit from mental health services. Public services must be made physically accessible to persons with physical or sensory deficits. Publicly funded mental health services must be made accessible to people who have other functional impairments. These regulations are the last opportunity to cure the potential discriminatory effect of the statute."

Response:

The Departments believe that section 60040(a)(4), as written, is in complete alignment with the provisions of Government Code Section 7576(b)(4). This section of law requires the pupil with the disability to meet, among other criteria, that his or her level of cognitive functioning is sufficient to benefit from mental health services. The purpose of regulations is to clarify law. Regulations cannot create law or contradict existing law. The Department also believes that the regulation, as written, allows accommodations to be provided and does not restrict mental health services based solely on a diagnostic impression. The key determinate relative to Government Code Section 7576(b)(4) is a pupil's level of cognitive functioning. Neither the law nor the regulation automatically excludes people with developmental disabilities from being referred to community mental health for assessment purposes.

57) Comment:

60040(a)(4) - Testifier 29.[(e)] (McCaustland) made the following comment:

"The pupil's cognitive functioning is not specifically determined nor outlined in a referral IEP. An IQ, when known and available, is given but this does not relate to cognitive functioning. Thus, who and how is it determined that a pupil has a sufficient cognitive level to benefit from counseling?"

Response:

*Also, please see comment 59) below.

These proposed regulations implement Government Code Section 7576(b)(4). The purpose of assessing cognitive function is to focus limited specialty mental health resources on a population that has the ability to receive educational benefit from them. The proposed reasonable accommodations described by the commentor are actually community standard mental health practice, and therefore, need not be additionally specified.

Specific eligibility parameters for developmentally disabled pupils are not stated in terms of IQ or any other one factor because both cognitive functioning and the ability to benefit from therapy are based on the interaction of a number of factors. The terms IQ and "cognitive functioning" actually encompass many specific abilities. In order to assess if a pupil's cognitive functioning is sufficient to enable him or her to benefit from treatment, the referral documentation may be reviewed. The extent of the pupil's ability to benefit from mental health treatment can be partly assessed by evidence of some benefit being received from the less restrictive interventions that the LEA has attempted with them.

An additional factor that must also be weighed is whether a pupil with a developmental disability has a concomitant mental disability that is amenable to mental health intervention. The pupil must also possess enough social ability to form relationships as demonstrated by the school records contained in their referral for mental health assessment. The pupil's

ability to benefit from mental health services should, therefore, be determined on a case by case basis, not by utilizing any one arbitrary test.

58) Comment:

60040(a)(4) - The following changes were suggested by Testifier 20.[(g)] (Weinberg):

"Proposed Regulation:

(a) (4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

Recommended Changes:

(a) (4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services, assuming reasonable accommodations are provided, when necessary.

Justification:

So as to not discriminate against those with cognitive deficits, reasonable accommodations need to be provided if they will allow such persons to benefit from mental health services. Reasonable accommodations might include, for example, making examples more concrete, working with the client in the actual setting that produces problems or conflict, etc.

Response:

Please see response to comment 57) of this section of the Statement of Reasons.

59) Comment:

60040(a)(4) - The following changes were suggested by testifier 15[(d)] (Gibaut):

This provision could be read as conditioning AB 3632 services on whether the pupil's "functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services," yet it provides no criteria for determining whether the "condition" has been met. As it now reads, the provision is vague and could serve as a basis for discriminating against pupils who have more profound challenges (e.g., pupils with severe speech/language deficits, significant retardation). That persons with substantial deficits have nevertheless benefited from, for example, psychotherapy is not a recent discovery. Thus, this provision should either be substantially revised or eliminated altogether.

Response:

Please see response to comment 57) of this section of the Statement of Reasons.

60) Comment:

60040(a)(5) - Testifier 29.[(f)] (McCaustland) made the following comment:

"In my experience, the school districts do not adequately state that counseling, et. al. services have been provided and state that ad hoc counseling of 15-30 minutes once a month does not meet the child's needs. The school should outline that they have provided direct counseling for a minimum of three months, weekly or bi-weekly and this is insufficient or inappropriate in meeting the needs of the pupil. Likewise, who determines what is an adequate amount of counseling? The IEP team comprised of school personnel has a conflict in determining this factor alone."

Response:

The Departments do not concur with the commentor.

The parent is also a member of the IEP team, therefore, it is not only school personnel who decide that the school has attempted sufficient less restrictive intervention with a particular pupil prior to referring the pupil for assessment by the community mental health service.

Additionally, when a community mental health service begins to assess a pupil, if a record review indicates that the school has failed to provide appropriate less restrictive interventions, mental health has the discretion to require that such interventions be attempted by the school prior to offering any mental health services. Section 60040(a)(5),(c)(2) and (d)(4) of the proposed regulations provide justification for a community mental health service to return the referral unless there is compelling justification for this lack. Therefore, LEA personnel must not serve only LEA purposes, but must also consider the needs of the pupil, and whether the community mental health service will accept that these needs were addressed by the LEA with less restrictive interventions.

Such an assessment result serves both the requirements of these proposed regulations and those of the Individuals with Disabilities Education Act. The specifics of what these less restrictive interventions are, will vary from school district to school district, therefore, no specific requirement will be imposed in these proposed regulations regarding this issue.

The interagency agreement process required by Section 60030(c)(3) will facilitate discussion between LEAs and community mental health services regarding what less restrictive interventions LEAs should attempt prior to referring pupils for specialty mental health services. These discussions will provide a forum for the consideration of the local mental health policy perspective. These local discussions and standards are preferable to a standard statewide requirement because they can be tailored to fit local needs and resources. For these reasons, there will be no change made to the regulations due to this comment.

61) Comment:

60040(b) - The following changes were suggested by Testifier 20.[(h)] (Weinberg):

"Proposed Regulation:

(b) When referring a pupil to a community mental health service in accordance with subsection (a), the LEA or the IEP team shall provide the following documentation:...

Recommended Changes:

When referring a pupil who has been determined to be an individual with exceptional needs to a community mental health service in accordance with subsection (a), the LEA or the IEP team shall provide the following documentation:

Justification:

The regulation is somewhat confusing without the recommended clarifying phrase added.

Response:

The Departments do not concur with this comment.

Section 60010(q) specifies that the word pupil as used in these proposed regulations includes "individuals with exceptional needs as defined in Section 56026 of the Education Code." For this reason, the recommended change is unnecessary, and there will be no amendment of the proposed regulations because of this comment.

62) Comment:

60040(f) - Testifier 14.[(f)] (Feldman) suggested the following changes:

We suggest that you need to add the phrase "in accord with the timelines set forth in section 56321 of the California Education Codes."

Response:

The Departments do not concur with this comment.

Section 60040(f) of these proposed regulations refers to the community mental health services' acceptance of an appropriate referral. The timelines articulated in Section 56321 of the California Education Code refer to timelines associated with the assessment of a pupil. Therefore, these timelines don't apply to this regulation, and would be confusing if inserted here.

The commentor's proposed timeline reference to Section 56321 of the California Education Code is provided in the proposed regulations in Sections 60045(b) and 60045(d), which pertain to mental health assessment timelines. For this reason, there will be no amendment of the proposed regulations due to this comment.

63) Comment:

60040(g) - Testifier 13.[(o)] (Mentink) commented in the following manner: "(g) The following sentence should be added to the end of this subsection:

> "In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

"Rationale: As long as this section is so closely mirroring Government Code Sec. 7576, it should not omit the last sentence of Section 7576(g)."

Response:

The Departments agree with Mr. Mentink's comment. Therefore, the Departments propose to amend section (g) to read "If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral within one (1) working day to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. The procedures described in this section shall not delay or impede the referral and assessment process."

64) Comment:

60040(g) - Testifier 13.[(p)] (Mentink) commented in the following manner: "(g) We recognize Section 7576(g) states that the county of origin shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. Notwithstanding this ultimate responsibility, the final regulations must require that the host county facilitate the receipt of services by children whose county of origin is other than the host county. We strongly recommend the following additional sentences at the end of subsection (g) as already amended above.

> "If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral immediately to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process. Notwithstanding that the county of origin shall retain programmatic and fiscal responsibility, necessary services, including case management, shall, at the option of the county of origin, be provided by the community mental health service of the host county or by a provider from the host county's provider network. Necessary services shall be directly provided by the host county unless it is clearly

feasible for the community mental health service of the county of ordain to do so appropriately and without delay.

"Rationale: County of residence for purposes of educational service responsibility will change, pursuant to Education Code §§ 56155 and 56156.5, when the pupil is placed in an LCI in the host county by a court, regional center, or other noneducational public agency. As proposed, this regulation will require the local education agency to work with a different community mental health service, potentially, for each child in a given LCI. For the benefit of the education agencies and, more importantly, the pupils and the continuity of these pupils' special education and related services, the LEA should have to deal with as few community mental health services as possible. The Initial Statement of Reasons for these regulations (page 6) states: 'The function of the host county is to provide services for children whose 'county of origin' is elsewhere'. Unless the regulation more clearly states that host counties have this service responsibility, the proposed language will allow host counties to deny services to children living in these counties and refer parents and LEAs to often distant counties for the provision of services."

Response:

The Departments believe that section 60040(g) as proposed with the amendment suggested by Mr. Mentink in comment 63) above is consistent with Government Code Section 7576(g). As previously stated regulations cannot conflict with existing law. To accept the language proposed by Mr. Mentink would be contrary to the provisions of Government Code Section 7576(g) that requires the county of origin to have fiscal and programmatic responsibility for providing or arranging services. The emphasis placed on the word "arranging" suggests that services can be provided in the locale where the pupil resides in such instances that it would not be feasible for the county of origin to deliver these services.

65) Comment:

60040(g) - Testifier 10.[(d)] (Warboys) suggested the following changes:

"This proposed regulation should specify the time frame within which the Host County must forward the referral to the county of origin. It should also make clear that the county of origin must still complete its assessment within 15 days from the day that the host county received the original referral. In the absence of these requirements, a parent's right to a prompt assessment of the child's social and emotional needs could be improperly delayed due to failure of the two county mental health agencies to take appropriate action. Similarly, proposed regulation Section 60200 (c)(1) should be redrafted to make it clear that the transfer of responsibility from the host county to the county of origin does not alter the obligation to meet the timelines for referral, assessment and delivery of service.

Response:

Please see comments 66).

The State Department of Mental Health concurs with the comments that the proposed regulations should be amended to clarify that the procedures relating to transfer of referral and provision of treatment to and from host counties and counties of origin do not extend timelines.

The last comment by Mr. Mentink, however, interferes with the autonomy of the county of origin, and the State Department of Mental Health does not concur with it. The proposed regulation allows the county of origin to choose how to deliver appropriate and timely services. Individual situations vary so widely that it is necessary to allow counties this autonomy so they can appropriately respond to the demands that arise.

The proposed subsection has also been amended to clarify the meaning of the word "immediately," as follows:

Final Modification:

(g) If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral ~~immediately~~ within one (1) working day to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. The procedures described in this subsection shall not delay or impede the referral and assessment process.

66) Comment:

60040(g) - The following changes were suggested by testifier 20.[(i)] (Weinberg):

"Proposed Regulation:

If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral immediately to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services.

Recommended Changes:

If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral immediately to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

Justification:

It needs to be made absolutely clear that the procedures described in this section do not in any way extend time lines or delay services.

Response:

Please see response to comment 65) of this section of the Statement of Reasons.

Section 60045

67) Comment:

60045 - Testifier 12.[(d)] (Brogan) proposed the following changes:

"In the section that deals with County Mental Health, the entire section related to a referral and assessment process has been deleted. In its place has been statements in the listing of what needs to be included in a local interagency agreement in terms of how that referral process should work in a timely and efficient manner and how eligibility issues should be addressed

Response:

Please see comment 68) below.

The Departments do not concur with these comments.

With regard to Mr. Brogan's comment, the special education pupils program procedures are complex due to the statutory requirements of state and federal law. It is necessary to provide sufficient guidance to local agencies regarding these legal referral and assessment requirements. Because of the legal basis of the strict referral and assessment program procedures, local interagency agreements may not abridge or amend them. No change to the proposed regulations will be made in response to this comment for these reasons.

With regard to Ms. Holle's comment, this program is not funded as a Medi-Cal/Medicaid service. Medi-Cal eligibility is not necessary for pupils to be considered eligible for this program. Educational need is the eligibility criteria for the special education pupils program. In the context of Chapter 26.5 of the Government Code, treatment by community mental health services is only provided when educationally necessary, and is considered a special education related service. Mental health services provided in this program are defined in Section 60020 (i) and are limited to:

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

Hospitalization is specifically excluded as a service under this program by the Clovis decision. Medications, other biologicals and lab work, are specifically excluded by Section 60020 (f) from medication monitoring services. Subsection (e) also clarifies that:

"...a parent may seek services from other public programs or private providers, as appropriate."

Government Code Section 7576 articulates that the special education pupils program excludes crisis limitations and the appropriate avenue for parents to take when they need emergency services for their child.

Some medical services are specifically excluded by statute, and some by case law, EPSDT can not be automatically considered a part of this program's educational services. Many students eligible for services under Chapter 26.5 of the Government Code are not Medi-Cal eligible. Medi-Cal statute, regulation are articulated elsewhere to repeat it here would be duplicative and confusing. For all these reasons, no change will be made to the proposed regulation in response to these comments.

68) Comment:

60045 - Testifier 18.[(i)] (Holle) recommended the following changes:

"In contrast to other Medi-Cal/Medicaid services, the State through the county programs must not only cover needed EPSDT services but must actually arrange for needed corrective treatment."

Response:

Please see response to comment 67) of this section of the Statement of Reasons.

69) Comment:

60045 - Testifier 20.[(k)(2)] (Weinberg) recommends that section (e) be amended to read "The mental health assessment shall be completed within the required fifty (50) day time limit specified in Section 56344 of the Education Code. If the pupil is not available for assessment, the local mental health service shall, no later than twenty-five (25) days prior to the IEP meeting, document the reason that the pupil is not available and notify the LEA. If, for any other reason, the local community mental health service cannot complete the assessment within the required fifty (50) day time limit, the community mental health service shall notify the LEA no later than twenty-five (25) days prior to the IEP meeting and, upon notification, the LEA shall arrange for the completion of the mental health assessment within the time remaining in the original fifty (50) day time period." Testifier Weinberg justifies her testimony by stating that assessment time lines should not be extended, since current state law requires that they must be completed within the 50 day statutory time line and that allowing time line extensions subverts the intent of the Individuals with Disabilities Education Act.

Response:

The Departments appreciate and agree with the general view of Ms. Weinberg relative to the necessity of the completion of assessment and the development of an individualized education program within fifty (50) days. The Departments also believe that there should be no exceptions to this requirement, unless a parent specifically requests an extension. Therefore, the Departments propose to amend section 60045(e), to read "The mental health assessment shall be completed in sufficient time to ensure that an IEP meeting is held within fifty (50) days from the receipt of the written parental consent for the assessment. This time line may only be extended upon the written request of the parent."

70) Comment:

60045(a) - Testifier 14.[(g)] (Feldman) suggested the following changes:

"We are suggesting that section 60045 be amended to delete from sub-section

(a) the words 'such an assessment is necessary,' and add the words

'if the referral packet is complete.'

We are then suggesting that sub-section (1) be deleted in its entirety. The regulations require that an IEP team make a recommendation for a referral for mental health services. Yet, the new regulations give the mental health agency the discretion to refuse to provide the assessment. In essence, this gives the mental health agency the unilateral authority to refuse to implement an approved, valid IEP.

Finally, subsection (2) should be amended to delete the words 'and return the referral' and add the words 'which shall immediately supply the needed documentation.' The current proposed language of sub-section (2) penalized the child for the district's failure."

Response:

Please see comment 71) below.

The Departments do not concur with most of these comments, but do concur that 15 days is too long to determine and has amended these proposed regulations to decrease this time period to five days.

However, statutory justification to deem a referral inappropriate is provided in Government Code Section 7576(b)(3), which establishes characteristics that pupils must have for them to be eligible for referral to mental health for assessment. If these criteria are clearly not met, community mental health services are allowed to return the referral. This section requires documented evidence that a pupil has "emotional or behavioral characteristics" which "impede the pupil from benefiting educationally", are "intense and frequent" and which "cannot be described solely as a social maladjustment or temporary adjustment problem."

Government Code Section 7576(b)(4) allows a referral to be deemed inappropriate and returned if "...educational assessments" document that a pupil lacks sufficient cognitive function to "benefit from mental health services."

Government Code Section 7576(b)(5) requires LEAs to attempt less restrictive interventions or document why these have not been attempted. Mental health may, therefore, refuse to assess a pupil if the LEA has not attempted less restrictive interventions and sufficient justification for this lack has not been provided. Community mental health services can appropriately make these determinations prior to assessment if there is clear evidence to justify them contained in the referral packet.

As both of the commentors point out, an incomplete referral packet from the LEA also makes mental health assessment impossible, and therefore, justifies not assessing a pupil until this can be done appropriately. For this reason, no change will be made to the proposed regulations in response to these comments.

Final Modification:

(a) Within ~~(15)~~ five (5) days of receipt of a referral, pursuant to subsections (a), (c) or (g) of Section 60040, the community mental health service shall review the recommendation for a mental health assessment and determine if such an assessment is necessary.

71) Comment:

60045(a) - Testifier 13 [(e)(1)] (Mentink) proposed the following changes:

"Subsection (a) should be completely rewritten as follows:

'Within 15 days of receipt of a referral, pursuant to subsections (a), (c) or (g) of Section 60040, the community mental health service shall review the referral ~~recommendation~~ for a mental health assessment and determine if the referral includes the documentation required by Section 7576(c).' ~~such an assessment is necessary~~.

~~(1) If no mental health assessment is determined to be necessary, or the referral is inappropriate, the reasons shall be documented by the community mental health service. The community mental health service shall immediately notify the parent and the LEA.~~

~~(2)~~ If the referral is determined to be incomplete, the reasons shall be documented by the community mental health service. The community mental health service shall immediately notify the LEA and return the referral.

Rationale:

There is no statutory authority for the community mental health service to determine that, following a properly documented referral, an assessment is unnecessary. Government Code Section 7572 provides: "A child shall be assessed in all areas related to the suspected

disability..." As to the question of who must suspect; Section 7576(b) provides that it is the IEP team who suspects the child of needing mental health services. The referral must include the documentation required under Section 7576(c). But there is no legal authority for characterizing the referral for assessment as a "recommendation" for assessment [in the same sentence] which the community mental health service then purportedly has an opportunity to review and reject as unnecessary, as this proposed regulation attempts to do.

Response:

Please see response to comment 70) of this section of the Statement of Reasons.

72) Comment:

60045(a)(1) - Testifier 17.[(b)] (Cromer) suggested the following changes:

"The legislative intent in the passage of IDEA was to provide more voice for the parents. To allow CMH in effect, veto power to an IEPT determination that a mental health assessment is needed, flies in the face of Federal law and legislative intent and limits the parents rights under 20 U.S.C. 1415 (b)(1) which states in pertinent part:

"the procedures require by this section shall include – (1) an opportunity for the parents of a child with a disability to . . . participate in meetings with respect to the identification, evaluation . . . and the provision of a free & appropriate public education of such child . . ."

Additionally, may I direct your attention to the letter to the Speaker of the House of Representatives, June 30, 1995, page 4 which states in pertinent part:

"Family involvement is at the heart of the IDEA. Our proposal will more fully involve parents in the decisions about where and how their child is educated. For example, our proposal would require parents to be involved in the decision regarding their child's educational placement . . . We also want to reduce unnecessary lawsuit that create emotional and financial burdens for parents and school districts . . ."

Thus, a provision that allows CMH to unilaterally "veto" the determination of the IEPT's decision that the child requires a mental health assessment violates the parent's right to participate in meetings regarding evaluation of their child.

Moreover, fiscally, this provision will open the floodgates to a multitude due process filings. I remember hearing that the passage of IDEA 97 was an attorney's retirement package. Clearly, as proposed, 60045(a)(1) is an attorney's retirement package as I am certain that upon rejection of a CMH referral every advocate and attorney will immediately initiate due process. The parents will then obtain their own evaluation and it will require a due process to determine who is correct, a CMH employee who has never had contact with the student or an expert who has assessed them and all the members of the IEPT.

Even if the LEA is found to be the prevailing party, this will cost the state and LEA's substantial costs in due process and attorney fees. And the most important question, what happens to the student who is not being served during this time period? Certainly many students will decompensate; what will be the resulting liability of the LEA?"

Response:

The Departments do not concur with these comments.

Statutory justification to deem a referral unnecessary is provided in Government Code Section 7576(b)(3) which establishes characteristics that pupils must have for them to be eligible for referral to mental health for assessment. This section requires documented evidence that a pupil has "emotional or behavioral characteristics" which "impede the pupil from benefiting educationally", are intense and frequent and which "cannot be described solely as a social maladjustment or temporary adjustment problem."

Government Code Section 7576(b)(4) allows a referral to be deemed inappropriate and returned if "...educational assessments" document that a pupil lacks sufficient cognitive function to "benefit from mental health services."

Government Code Section 7576(b)(5) requires LEAs to attempt less restrictive interventions or document why these have not been attempted. Mental health may, therefore, refuse to assess a pupil if the LEA has not attempted less restrictive interventions and has not provided sufficient justification for not doing so. Community mental health services can appropriately make these determinations prior to assessment if there is clear evidence to justify them contained in the referral packet.

The proposed regulations provide guidance regarding the specifics of when an assessment is not necessary in Section 60040. Community mental health services provide specific expertise regarding what individuals are amenable to what locally available mental health treatment services and programs. Due process protections in this program, however, ensure that this determination is not made without parental recourse to dispute it and to have input. Therefore, no change will be made to the regulation in response to these comments.

73) Comment:

60045(a)(1) - Testifier 6.[a] (Dasaro) proposed the following changes:

"The regulatory statement, 'if no mental health assessment is determined to be necessary' is vague. When would a mental health assessment be determined to be unnecessary? It seems to me that if a school district spends five hours of staff time preparing the text of a referral, it would be rude to believe that the assessment is unnecessary. I would think it wise to specifically spell out examples when a referral and subsequent assessment are unnecessary."

Response:

Please see response to comment 72) of this section of the Statement of Reasons.

74) Comment:

60045(a)(2) - The following changes were suggested by testifier 20.[(j)] (Weinberg):

"Proposed Regulation:

(2) If the referral is determined to be incomplete, the reasons shall be documented by the community mental health service. The community mental health service shall immediately notify the LEA and return the referral.

Recommended Changes:

(2) If the referral is determined to be incomplete, the reasons shall be documented by the community mental health service. The community mental health service shall immediately (within 5 days) notify the LEA and return the referral.

Justification:

Fifteen days is too much time for a community mental health service to have to let an LEA know its referral package is incomplete. Five days should be sufficient time to do this. Otherwise, it simply adds too much time to the assessment timeline.

Response:

Rather than decreasing the time available to mental health to complete an assessment, this proposed amendment increases it. The proposed regulations require mental health to return the education referral immediately. This is sooner than the fifteen days later that the above justification states the proposed regulations allow, and fewer than the five days later that the above-recommended change would allow. Therefore the proposed regulations accomplish the commentor's purpose, as stated in the above rationale, more expediently than the suggested amendments. For this reason, there will be no change made to the proposed regulations in response to this comment. The Departments have determined, however, that the term "immediately" is not defined in these regulations and has replaced this term with the phrase, "within one working day," to clarify our original intent.

Final Modification:

(2) If the referral is determined to be incomplete, the reasons shall be documented by the community mental health service. The community mental health service shall ~~immediately~~ notify the LEA within one (1) working day and return the referral.

75) Comment:

60045(b) - The following changes were suggested by testifier 15.[(e)] (Gibeaut):

We are concerned with the efficient use of mental health resources and the avoidance or minimizing of duplication effort. We offer the following two scenarios which occur occasionally in the process of AB 3632 mental health assessment and service:

When a current mental health assessment and service plan, conducted by qualified mental Health professionals, already exists. The AB 3632-funded mental health service providers should not duplicate this process. For example, a pupil was receiving evaluation and treatment in a psychiatric unit at a university hospital at the time the IEP team made an AB 3632 referral. The pupil's local mental health agency approached this mental health assessment as if no data base already existed. The pupil traveled to the mental health agency's psychiatrist for three assessment sessions, despite the fact that the pupil saw his hospital psychiatrist daily (and had done so for a number of weeks). The parents were required to have 3 hours of psychosocial assessment interviewing, although the hospital social worker had already performed such an assessment and met weekly with the parents. The hospital team provided its formal documents, offered its medical chart for perusal, and invited the AB 3632 team members to visit the pupil at the hospital and observe his functioning in the classroom, peer recreation, and other hospital-based settings. Nevertheless, the AB 3632 team conducted a second, parallel and redundant, evaluation.

A pupil with autism and schizophrenia had been treated for many months by a board-certified child psychiatrist (a university professor with many years of experience). The pupil was referred for AB 3632 services, and the mother was told that she must relinquish the current treating psychiatrist and utilize the AB 3632-contracted one, or her son would lose all AB 3632 services. The mother did not want to disrupt the psychiatric care her child was already (receiving which was funded by the family's medical insurance.

In our view, AB 3632 services should be complementary to mental health services secured through the family's own resources. Said a different way, the purpose of AB 3632 resources is to supplement the family's resources, not supplant them. AB 3632 should not function as an "all-or-nothing" service "package". Rather, it should fill in the gaps and serve a coordinating, integrating function between school and mental health services. Accordingly, we suggest that subsections (b) and (f) be modified as follows:

That the following be added to end of subsection (b):

"the plan shall include a review and summary of the pupil's mental health assessments and interventions conducted in the past year, if the parent authorizes the disclosure of such information. The mental health assessor shall provide written justification for repeating any component of an existing assessment, explaining why that assessment component is believed to be invalid, unreliable, inappropriate, or otherwise inadequate."

Response:

Please see comments 76) through 79) below.

The Departments do not concur with Mr. Feldman's, Mr. Mentink's or Mr. Pasaro's comments that community mental health services must provide mental health assessment to every student referred by an IEP team. The justification for the Department's opinion may be found in the responses to Section 60045(a) and 60045(a)(1) above.

Additionally, mental health needs to notify the LEA of the receipt of all referral packages and this measure insures that the receipt of the referral and community mental health progress towards assessment is verified. This measure should not be deleted, as Mr. Feldman suggests, for this reason.

That community mental health services must adhere to the fifteen-day assessment plan deadline is stated in the Section 60045(b) of the current proposed regulations which does not distinguish between complete and incomplete referral packages and which requires community mental health services to:

"...provide the plan to the parent, within 15 days of receiving the referral from the LEA, pursuant to Section 56321 of the Education Code.

Additionally, Section 60045(d) of the current proposed regulations insures that, regardless of any LEA delays in providing the missing elements of a referral packet,

"The LEA shall schedule the IEP meeting to be held within fifty (50) days from the receipt of the written consent pursuant to Section 56344 of the Education Code."

The Departments do not concur with the comments by Mr. Pasaro, but has amended the proposed regulations to clarify that it is the assessment plan which must include certain elements and not the assessment itself. The reason the regulation does not refer to the assessment itself in this subsection is that the parent, at this point in the process, has the discretion to approve of deny the assessment plan. It is, therefore, premature to say that community mental health services will act on the assessment plan that they have offered to the parent for approval.

Also, a review of the records by community mental health services is not duplicative in the sense that Mr. Pasaro mentioned because the reviewers bring a new and expert perspective to the review that makes it distinct from that provided by the LEA. The special education program in California involves local mental health specifically to provide pupils with the benefits of this expertise.

The Departments also do not concur with the comment made by Mr. Gibeaut. Choosing to accept or repeat existing assessments must remain at the discretion of the community mental health service because, oftentimes, hospital and private psychiatric assessments do not have the educational focus that this program requires. If they do have this focus, as the first

example Mr. Gibeaut cited appear to, nothing in the current proposed regulations compels the community mental health service to reassess. Additionally, non-Department of Mental Health contracted mental health professionals may lack knowledge of the local resources available within the community mental health services treatment continuum. For this reason they may fail to recommend the least restrictive intervention as the law requires and their recommendation may, therefore, be inappropriate. Consequently, there will be no change made to the proposed regulations in response to this comment.

The Departments concur with Mr. Burchill's comment that a consent form should be included in the assessment plan that is provided to the parent and has amended the proposed regulations to clarify this and other measures as follows:

Final Modification:

(b) If a mental health assessment is determined to be necessary, the community mental health service shall notify the LEA, develop a mental health assessment plan, and provide the plan and a consent form to the parent, within fifteen (15) ~~15~~ days of receiving the referral from the LEA, pursuant to Section 56321 of the Education Code. The assessment plan shall include, but is not limited to, the review of the pupil's school records and assessment reports and observation of the pupil in the educational setting, when appropriate.

76) Comment:

60045(b) - Testifier 14.[(h)] (Feldman) suggested the following changes:

"This section should be amended to delete the initial phrase "if a mental health assessment is determined to be necessary." The reasoning for this deletion is stated immediately above. For the same reason the phrase "shall notify the LEA." should be deleted. There should also be a provision added to this section which makes it clear that the failure of the district to provide Mental Health with a complete packet does not excuse Mental Health from the 15-day timeline. The reason for this requested change is that in our suggested amendment to section 60045 9a) (2), the district is required to immediately provide the missing pieces of the packet. We also point out that the California Education Code provides for no extensions of timelines without parental consent. Thus, for all other assessments, timelines run from the referral date regardless of the difficulty in obtaining information. To set a different standard for Mental Health is discriminatory.

Response:

Please see response to comment 75) of this section of the Statement of Reasons.

77) Comment:

60045(b) - Testifier 6. [(b)] (Dasaro) proposed the following changes:

"The last sentence in the paragraph goes on to say 'the plan shall include, but is not limited to, the review of records, etc...' I believe that you mean assessment in place of plan? I would propose that Mental health review the records and observe the student in the educational setting; but an assessment should be completed by a mental health service provider, including a written report of their findings in addition to the review of education. To have a Mental Health service provider review existing documentation would merely be a duplication of services. Given the demands from section 60050 (a) (1-5) it seems a mental health service provider would have to assess the student. If not, how would they determine what to put in the IEP for mental health services and how would they measure progress.

Response:

Please see response to comment 75) of this section of the Statement of Reasons.

78) Comment:

60045(b) - Testifier 7.[(e)] (Burchill) proposed the following changes:

This section refers to the plan developed by MH and sent to the parent. In order to be consistent and respond to (c) & (d) of the next sections that refer to parental consent, it would be helpful to include that the consent forms should be provided with the plan given to parents.

Recommendation: Add "a parental consent form" to the list of information that MH will provide the family.

Response:

Please see response to comment 75) of this section of the Statement of Reasons.

79) Comment:

60045(b) - Testifier 13.[(e)] (Mentink) proposed the following changes.:

(b) To be consistent with the amendment immediately above, [to Section 60045(a)] this subsection should be amended as follows:

~~If a mental health assessment is determined to be necessary~~, (The community mental health service shall....

Response:

Please see response to comment 75) of this section of the Statement of Reasons.

80) Comment/Response:

60045(b)(4) - Testifier 2.[(b)] (McIver): please see Comment 102).

81) Comment:

60045(d) - Testifier 14.[(i)] (Feldman) suggested the following changes:

"Our objection to this section is related to our previously stated objection of section 60040 (a). The regulation that gives a mental health agency another 50 day timeline (65 days or more if you count the assessment plan timeline) to conduct their assessment and hold another IEP after the initial IEP again institutionalizes the "double timeline" concept for the provision of mental health services to needy student. For students needing residential treatment, another 15 days could be added to the timeline so that an expanded IEP team could be convened to discuss the need for residential treatment. Arguably, the timelines for most needy students to receive services would be more than doubled compared to other students and other special education services.

Response:

The Departments concur with the commentor that the term "immediately" is not defined in these regulations. However, the Departments have determined that the recommended change of "immediately" to "within three days" would delay the IEP team meeting for an unacceptable period of time. In order to clarify the intent of this regulation, the Departments have replaced immediately by the phrase "within one working day."

Final Modification:

(d) Upon receipt of the parent's written consent for a mental health assessment, the community mental health service shall ~~immediately~~ contact the LEA within one (1) working day to establish the date of the IEP meeting. The LEA shall schedule the IEP meeting to be held within fifty (50) days from the receipt of the written consent pursuant to Section 56344 of the Education Code.

82) Comment:

60045(d) - The following changes were suggested by testifier 20.[(k)] (Weinberg):

"Proposed Regulation:

(d) Upon receipt of the parent's written consent for a mental health assessment, the community mental health service shall immediately contact the LEA to establish the date of the IEP meeting.

Recommended Changes:

Upon receipt of the parent's written consent for a mental health assessment, the community mental health service shall immediately (within 3 days) contact the LEA to establish the date of the IEP meeting.

Justification:

The term 'immediate' is not defined. The definition provided here (i.e., within 3 days) is needed so that timelines do not become excessive and children harmed because of being without needed services.

Response:

Please see response to comment 81) of this section of the Statement of Reasons.

83) Comment:

60045(e) - Testifier 18.[(f)] (Holle) recommended the following changes:

"The obligations under Medi-Cal include an obligation to provide services with 'reasonable promptness.' 42 U.S.C. Section 1396(a)(8); Doe v. Chiles, 136 F.3d 709 (11th Cir. 1998); Sobky v. Smoley, 855 F.Supp. 1123 (E.D. Cal. 1994). This may mean that Medi-Cal beneficiaries may be entitled to receive services more promptly than the time periods allowed under special education rules, particularly where there is an exigent need.

Response:

Please see comments 84) and 85) below.

The Departments do not concur with these comments.

Special education time lines are established in consideration of the necessity for an IEP team meeting. They must, therefore be respected. Medi-Cal beneficiaries may indeed be entitled to receive services more promptly than the time periods allowed under special education rules as Ms. Holle points out, but they must receive these medical services in the manner clarified by Government Code, Section 7576 (f):

"from other public programs or private providers, as appropriate,"

A crisis is one example of an "exigent need" as mentioned by Ms. Holle. Such needs are explicitly excluded from services provided by this program as is further clarified by Government Code, Chapter 26.5, Section 7576 (f) which states:

"The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate."

All related services through this program are educational in nature as defined in Government Code, Chapter 26.5, Section 7570, and may only be added to an IEP by an IEP team pursuant to Government Code, Chapter 26.5, Section 7572 (d). For these reasons, no change will be made to the regulations due to this comment.

With regard to Mr. Mentink's comment, Government Code Section 7576(b) ensures that California pupils are provided an assessment which includes "social or emotional status" by the LEA within one 65 day timeline. Pursuant to Education Code 56324(a) psychological assessments are provided by a credentialed school psychologist. Mental health treatment interventions such as counseling and special day treatment classes are also routinely provided by LEAs. Community mental health services provide a specialized related service that is in addition to the mental health assessment and treatment already provided by the LEA.

The posthearing amendment is necessary to clarify that the extension of time lines is only acceptable if a parent agrees. Such extensions are sometimes necessary in order to arrive at a meeting time with is acceptable to the parent and allows them to attend the IEP team meeting. In this event, there is insufficient reason to compel the LEA to complete the assessment, as Mr. Warboy suggests in Comment 93).

84) Comment:

60045(e) - Testifier 10.[(e)] (Warboys) suggested the following changes:

"We object to the portion of Section 60045(c) [sic actual section is 60045(e)]that states that local mental health service must notify the LEA within 25 days if the mental health service is not going to complete their assessment within 50 days. Under the current law all assessments must be completed within the 50-day statutory timeline. The proposed regulation should not include a provision that states or implies that an agency lawfully may fail to meet this deadline. If the intent of this regulation is to shift responsibility for completing the mental health assessment within the original 50 day time period from mental health to the LEA, upon notification that local mental health service will fail to complete the assessment in a timely manner, then the regulation should specifically say this. If this is the case, the regulation should be amended by adding the sentence: Upon receipt of such a notification from the local mental health service, the LEA shall arrange for the completion of the mental health service, the LEA shall arrange for the completion of the mental health assessment within the time remaining in the original 50 day time period.

Response:

Please see response to comment 83) of this section of the Statement of Reasons.

85) Comment:

60045(e) - Testifier 13.[(r)] (Mentink) proposed the following changes.:

"(e) This subsection should be deleted."

Rationale:

Under AB 3632, California already treats special education pupils whose related service needs include mental health services differently than its children with other disabilities in terms of the maximum time allowed for assessment to determine needs. By assigning responsibility for mental health services to a noneducational agency and by giving the second agency an additional 65 days on top of the 65 days the education agency has to determine whether a child qualifies for special education. California tolerates a 130-day assessment period based solely on category of need. This is already a violation of federal law which requires that the meeting to develop the IEP be held within 30 days of determining the child's eligibility for special education. 34 C.F.R. Sec. 300.343(c). See Jose P. v. Ambach, 669 F.2d 865 (2d Cir., 1982): where state statute was silent on time for assessment, court imposed a 30-day duty to assess and 60-day duty to make placement; see also Mrs. W. v. Tirozzi, 832 F.2d 748 (2d Cir., 1987): where a child was newly referred for special education assessment, court found delay of 36 days to be too long and ordered reimbursement for private services.

Proposed subsection (e) further amplifies the unlawful delays in the provision of needed services. Parents can always waive rights. This procedure need not be codified by regulation. Doing so appears to create the option of notifying the parties of the imminent failure to complete assessments pursuant to time lines in lieu of meeting them."

Response:

Please see response to comment 83) of this section of the Statement of Reasons.

86) Comment:

60045(f) - Testifier 10.[(g)] (Warboys) suggested the following changes:

This section fails to make any reference to the process that will be followed if a parent chooses to obtain an independent assessment. The section should include provisions describing the procedure, including timelines, that the LEA and local mental health will follow in reviewing the independent assessment and, possibly, reconsidering the original mental health service recommendations.

Response:

Please see comments 87) through 89) below.

The Departments do not concur with Mr. Gibeaut.

While collaboration with other mental health providers is positive, the current proposed regulations do not impede this from occurring. Mr. Gibeaut's proposed amendment give control of the mental health treatment provider who may not realize the continuum of care possibilities within the community mental health service system of care. A non-county

employee is also not required to be sensitive to county fiscal concerns. Because they are not public employee's, private health care provider's are free to ignore the intent of the legislature as expressed by Government Code 7576 which states in pertinent part:

"It is the intent of the Legislature that the local education agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health treatment needs in a manner that is cost-effective for both public agencies subject to the requirements...that the placement be appropriate and in the least restrictive environment."

The two public agencies must be allowed to provide treatment coordination as the IEP directs, and a private provider is not required to be on this team as are the parent, the LEA and the community mental health service.

Nothing in the proposed regulations precludes a parent from receiving privately funded psychiatric services in combination with other, IEP directed services. Therefore, there will be no amendment made to the proposed regulations in response to Mr. Gibeaut's comment.

The Departments concur with the grammatical correction by Mr. Mentink, and partially concur with the suggestion that parents need to be ensured of time to review a community mental health services assessment and treatment recommendation. The Departments disagree with the amount of time Mr. Feldman and Mr. Mentink propose, however, and has amended the regulations as follows to address these concerns.

Final Modification:

(f) The community mental health service assessor shall review and discuss ~~their~~ the mental health service recommendation with the parent and appropriate members of the IEP team. The assessor shall also make a copy of the mental health service assessment report available to the parent at least two days prior to the IEP meeting.

87) Comment:

60045(f) - Testifier 13.[(e)(4)] (Mentink) proposed the following changes.:

This subsection should be amended as follows:

"(f) The community mental health service assessor shall review and discuss ~~their~~ [assessor is singular] his/her mental health service recommendation with the parent and appropriate members of the IEP team prior to the IEP team meeting. The assessor shall also make a copy of his/her mental health service assessment report available to the parent at least two business days prior to the IEP meeting pursuant to Title 34 C.F.R. Sec. 300.562(a).

Rationale:

Parents are entitled to these assessment reports prior to the IEP meeting and mental health assessment reports should be treated in the same way as other assessment reports. The specificity of two business days assures that the language is not interpreted to mean, as often happens, two minutes prior to the IEP meeting. These important reports must be read and considered in advance of the meeting in order for parents to participate intelligently in this important decision-making process. It is a waste of public resources to have parents not prepared to consent to a plan and request that the team reconvene for that purpose after they have had an opportunity to thoroughly read and consider the reports.

Response:

Please see response to comment 86) of this section of the Statement of Reasons.

88) Comment:

60045(f) - Testifier 14.[(j)] (Feldman) suggested the following changes:

"This section should be amended to provide the following phrase "and shall provide the parents with a copy of the assessment at least five days before the IEP" this is consistent with the new IDEA requirement that the parents receive copies of reports upon completion."

Response:

Please see response to comment 86) of this section of the Statement of Reasons.

89) Comment:

60045(f) - The following changes were suggested by testifier 15.[(e)] (Gibeaut):

"We suggest that subsection..(f) be modified as follows:

'The community mental health service assessor shall review and discuss their mental health service recommendation with the parent and relevant non-department of Mental Health-contracted qualified mental health professionals, with the parent's consent.'

The regulations should mandate cooperation and collaboration between AB 3632-contracted mental health professionals and other mental health professionals already serving the child.

Response:

Please see response to comment 86) of this section of the Statement of Reasons.

90) Comment:

60045(f)(1) - The following changes were suggested by testifier 20.[(m)] (Weinberg):

Proposed Regulation:

(f) (1) If the parent disagrees with the assessor's mental health service recommendation, the community mental health service shall provide the parent with written notification that they may require the assessor to attend the IEP team meeting to discuss the recommendation. The assessor shall attend the meeting if requested to do so by the parent.

Recommended Changes:

(f) (1) If the parent disagrees with the assessor's mental health service recommendation, the community mental health service shall provide the parent with written notification that they may require the assessor to attend the IEP team meeting to discuss the recommendation. The assessor shall attend the meeting if requested to do so by the parent. The parent has the right to obtain, at public expense, an independent educational assessment in accordance with Education Code Section 56329(b).

Justification:

This section fails to make any reference to the process that will be followed if a parent seeks an independent educational evaluation.

Response:

It would be misleading to parents to only quote part of Education Code Section 56329 (b) in the regulations as this commentor recommends. The second paragraph of Education Code Section 56329 (b) states that:

..."the public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right for an independent educational assessment, but not at public expense."

Parents may only be entitled to an assessment at public expense, therefore, if the assessment of the public agency is deemed inappropriate in a fair hearing. Without this determination, the parents must pay for the independent assessment themselves. It is important not to promise parents a free service in the regulations when the law may require them to pay for it. There will be no change made to the regulations in response to this comment for this reason.

91) Comment:

60045(f)(2) - Testifier 21.[(b)] (Frampton) suggested the following changes:

"Additionally, I believe that there are provisions in Assessment to Determine the Need for Mental Health Services, (60045), which suggest that CMH can operate independent of educational input. My understanding is that the purpose of this legislation is to help facilitate parent participation in the IEP process. However, it appears that, conversely, this legislation assures CMH of a unilateral role n determining a child's placement or termination of placement. This flies in the face of my understanding of IDEA. I do not believe that CMH can operate independent of the IEP team. This provision also threatens the viability of the stay put provision.

Response:

Please see comment 92) below.

In California, local mental health departments are involved in the special education pupils program in order to provide expertise regarding diagnosis and treatment. Mental health can best determine what local mental health resources are available and what children are likely to benefit from the interventions. Compelling the LEA staff to accept the initial opinion of the assessor is meant to facilitate treatment in the event of a disagreement between the public staff. It ensures that treatment will begin, rather than be delayed by a stalemate, and it honors the expertise of the mental health assessors. It does not preclude the IEP team from working together in future IEP team meetings to assess whether the intervention is enabling the pupil to benefit from their education. Therefore, there will be no change to the regulation as a result of this comment.

92) Comment:

60045(f)(2) - Testifier 10.[(f)] (Warboys) suggested the following changes:

"We recognize that this proposed regulation simply repeats Government Code Section 7572(d)(1), but we are writing to voice our objection over the failure of this proposed regulation to make any attempt to reconcile the conflict between this provision of California law and federal law and regulations. In our view, the requirement that the LEA's IEP members must adopt the recommendation of the mental health assessor regardless of their own views and other conflicting information, including possible independent assessments provided by the parent, is a blatant violation of the role of the IEP team, as defined in federal law. Some effort should have been made to mitigate the impact of this provision."

Response:

Please see response to comment 91) of this section of the Statement of Reasons.

93) Comment:

60045(g)(5), (b)(4), and (c)(2) - Testifier 2.[(b)] (McIver) and testifier 5.[(b)] (Happoldt/Valdez) suggested the following changes:

"Amend subsections of Section 60045 (g) (5) (b) (4) and (c) (2) [sic], actual Section is 60040 and actual subsections are (a)(5) (b)(4) and (c)(2)] by deleting the phrase 'determined to be inappropriate' and replacing it with 'not adequate.'"

Response:

The Departments do not concur with the commentor.

Chapter 26.5 of the Government Code entitles a special education pupil access to a "free and appropriate public education." When an intervention is "not adequate" to remediate a learning disability, that inadequacy prevents a pupil from having access to pubic education. Thus, that intervention fails the program eligibility test of appropriateness. It is important to emphasize this by utilizing the language that expresses the program standard. Ultimately, a pupil's education is either appropriate or inappropriate, and "not adequate" does not express the importance of this educational determination as clearly as the proposed regulation. Upon this determination, eligibility for more restrictive community mental health services is based. Therefore, no change will be made in the regulations pursuant to this comment.

94) Comment:

60045(g) - Testifier 7.[(f)] (Burchill) proposed the following changes:

"It is unclear whether the assessor will be required to attend the IEP meeting ONLY when the parent disagrees with the assessment. Is there any legal authority that prevents the mental health assessor from not being required to attend the IEP meeting any time that a parent or LEA requests they be present? The reason that this is important is that parents may not understand the assessment or the implications the assessment may have on their child's IEP and educational placement until the time of the IEP. Without specified authority to NOT require attendance of the MH assessor at the IEP meeting, it would seem that either a parent or school district could require mental health be present.

Recommendation:

Delete this section and replace with, "The parent shall be provided with written notification that they may require the assessor to attend the IEP meeting. The school district may also require the assessor attend the IEP meeting.

Response:

Please see comments 95) and 96) below.

The Departments concur with some of the comments pertaining to this section, but not with all of them.

For example, the parent may compel the assessor to attend the IEP team meeting, but the LEA may not. Government Code Section 7572 (d) (1) provides that:

"when the proposed recommendation of the person has been discussed with the parent (added emphasis) and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation."

The LEA is required to invite the assessor to attend the meeting by Government Code Section 7572 (e), but the authority for not requiring the mental health assessor's presence at the IEP team meeting is found under the same section which states in pertinent part:

"...If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local education agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code."

This statute, therefore, gives the mental health assessor the authority not to attend the IEP team meeting by providing for this eventuality. This provision in law is necessary because 26.5 assessors are a scarce resource in many counties. Compelling assessors to attend every IEP team meeting in statute or regulation could, therefore, result in students experiencing unacceptable delays in receiving assessments because of the commentor's proposed requirement.

Oftentimes education members of the IEP such as school psychologists or other special education staff are able to explain the mental health assessment and treatment recommendations to the parent. If this explanation is not clear, or it becomes apparent to the parent upon understanding the assessment that they disagree with it, the parent has the option to postpone the IEP team meeting and ask that it be reconvened with mental health participation which it is their right to require.

Additionally, nothing prevents local mental health staff from participating in the IEP team meeting if they desire to do so, and they often do. To compel them to always do so, however, is not required in statute, and may sacrifice other special education pupils' right to a timely mental health assessment. Therefore, no change will be made in the regulations pursuant to this comment.

In response to Mr. Burchill's second comment (item 7g), while subsection (g) does not include a timeline, subsection (d) does, and it controls throughout Section 60045 of the proposed regulations. The statute that is cited in subsection (g) explains the content of the report. Subsection (d), as amended, of these proposed regulations establishes the timeline for the completion of the mental health assessment. It both cites the applicable Education Code and includes a statement of the timeline in this citation as follows:

"Upon receipt of the parent's written consent for a mental health assessment, the community mental health service shall ~~immediately~~ contact the LEA within one (1) working day to establish the date of the IEP meeting. The LEA shall schedule the IEP meeting to be held within fifty (50) days from the receipt of the written consent pursuant to Section 56344 of the Education Code."

For this reason, there will be no change made to Section 60045(g) of the proposed regulations in response to these comments.

95) Comment:

60045(g) - Testifier 7.[(g)] (Burchill) also proposed the following changes:

"The Section referred to does not include a time line when the assessment must be completed. In our experience, these assessments can be delayed for months with IEPs held without important mental health assessment information or representation from mental health.

Recommendation:

Include required time line language (not reference to code section) for completion of mental health assessment in this section."

Response:

Please see response to comment 94) of this section of the Statement of Reasons.

96) Comment:

60045(g) - Testifier 13.[(e)(5)] (Mentink) proposed the following changes.:

"This subsection should be rewritten as follows:

"(g) The community mental health service shall provide to the IEP team, including the parent, a written assessment report in accordance with Education Code Section 56327 at least two business days prior to the IEP team meeting.

Rationale:

The misperception that the IEP team consists of everyone representing the various agencies involved with the child and other than the parent continues to persist and should be clarified here. The "two business days" amendment makes this subsection consistent with subsection (f)."

Response:

Please see response to comment 94) of this section of the Statement of Reasons.

97) Comment:

60045(h) - The following changes were suggested by testifier 20.[(l)](Weinberg):

Proposed Regulation:

(h) For pupils with disabilities receiving services under this Chapter, the community mental health service of the county of origin shall be responsible for preparing statutorily required IEP reassessments.

Recommended Changes:

(h) For pupils with disabilities receiving services under this Chapter, the community mental health service of the county of origin shall be responsible for preparing statutorily required IEP reassessments. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

Justification:

It needs to be made absolutely clear that the procedures described in this section do not in any way extend time lines or delay services.

Response:

The Departments partially concur with the commentor that it must be made clear that delays in referral and assessment are not acceptable, but has amended the regulations as follows to address her concerns.

Final Modification:

(h) For pupils with disabilities receiving services under this Chapter, the community mental health service of the county of origin shall be responsible for preparing statutorily required IEP reassessments in compliance with the requirements of this Section.

98) Comment:

60045(i) - Testifier 18.[(j)] (Holle) recommended the following changes:

"We recommend that proposed Section 60045 be amended to add the following subsection:

(i) The community mental health service may have obligations to pupils who are covered by full-scope Medi-Cal or Healthy Families beyond those set forth in this Article including obligations triggered by the referral and assessment provided for in this Article. This Article does not limit the Medi-Cal and Healthy Family rights, including right to services, informing, case management, and notice, of pupils covered by Medi-Cal or Healthy Families."

Response:

The Departments do not concur with this comment.

The referral and assessment procedures delivered pursuant to Chapter 26.5 of the Government Code are expressly for educational purposes. There is nothing in these proposed regulations which denies available Medi-Cal or Healthy Family benefits to eligible children. For this reason, there will be no addition made to the proposed regulation.

Section 60050

99) Comment:

60050(a) - Testifier 14.[(k)] (Feldman) suggested the following changes:

"We are suggesting that all section 60050(a) after the comma on line 3 be deleted and that in its place the following phrase should be added "an IEP shall be developed in accordance with the requirements of section 614 (d)." education code. The language as written in the proposed regulations does not encompass all of the Federal IEP requirements and thus, is out of compliance with the federal mandate."

Response:

The Departments do not concur with this comment.

Pursuant to Education Code 56324(a), a credentialed school psychologist provides psychological assessments. Mental health treatment interventions, such as counseling and special day treatment classes are also routinely provided by LEAs. Government Code Section 7576(b) ensures that California pupils are provided an assessment which includes "social or emotional status" by the LEA, and this assessment complies with Education Code Section 614.

Community mental health services provide a specialized related service that is in addition to the mental health assessment and treatment already provided by the LEA. For this reason, Section 60050(a) of the proposed regulations pertains only to California requirements for the mental health portion of the IEP.

Additionally Section 60050(a)(4) of the proposed regulations has been amended to comply with the requirements of the federal Individuals with Disabilities Education Act.

Therefore, no change needs to be made to this proposed regulation.

100) Comment:

60050(a)(4) - Testifier 13.[(f)] (Mentink) proposed the following changes.:

"This subsection should be amended as follows.

"The initiation, location, duration and frequency of the mental health services.

"Rationale: This amendment is necessary so as not to conflict with the recently amended IDEA (20 USC Sec. 1414(d)(1)(vi))."

Response:

The Departments disagree with the commentor and therefore no changes are proposed to this section.

101) Comment:

60050(b) - Testifier 13.[(v)] (Mentink) proposed the following changes.:

"(b) This subsection must be entirely deleted and completely rewritten as follows:

"If a community mental health service wishes to terminate or change an IEP specified mental health service, such community mental health service shall give written prior notice which meets all the requirements of Title 20 U.S.C. Sec. 1415(b) and (c) to the parents of the affected child. The child's IEP-specified mental health service shall continue until the parent has given written consent to the termination or change or until such time as any dispute regarding the proposed termination or change is resolved pursuant to Education Code Section 56501 et seq.

"Rationale:

There can be no 'termination' of IEP-specified services which is then followed by an IEP meeting to discuss and document this change. Mental health cannot simply terminate IEP specified services unilaterally and neither can the education agency. Mental health is bound by the same provisions when it provides a special education related service."

Response:

Please see comments 102) through 105) below.

The Departments do not concur with the comment made by Ms. Holle. While the responsibility to notify Medi-Cal beneficiaries is well established in the statute, regulations and case law pertaining to Medi-Cal, these proposed regulations pertain specifically to services delivered pursuant to Chapter 26.5 of the Government Code. For this reason, it would be unnecessarily duplicative for these regulations to reiterate the responsibilities of community mental health providers. In addition to this, many special education pupils receiving mental health services through this program are not Medi-Cal eligible. These pupils are not entitled to Medi-Cal benefits. The Departments do not concur that these proposed regulations should be made unnecessarily complex by repeating other regulations.

The Departments concur with the concern that services could be terminated without prior notification of the parents or the educational entities involved. The necessity for this regulation, however, is to prevent pupils who have dropped out of treatment from remaining the responsibility of county mental health department's when these department's, through no fault of their own, are unable to assist the pupil because the pupil will not attend appointments. In this eventuality, it becomes necessary for the IEP team to convene to offer other services that the pupil and/or his or her family may be willing to participate in to address the pupil's unmet mental health treatment needs. For this reason, the State Department of Mental Health has amended the proposed regulations to allow for prior notification as follows.

Final Modification:

"(b) ~~Upon~~ When completion or termination of IEP specified mental health services is mutually agreed upon by the parent and the community mental health service, or when the pupil is no longer participating in treatment, the community mental health service shall notify the parent and the LEA which shall schedule an IEP team meeting to discuss and document this proposed change if it is acceptable to the IEP team."

102) Comment:

60050(b) - Testifier 7.[(h)] (Burchill) proposed the following changes:

"In order to meet this requirement for the IEP, during the IEP meeting, it is necessary for a representative from mental health, who can represent the needs of the child, be present during the IEP meeting. It is not uncommon for the entire mental health portion of a child's IEP to not be discussed in detail or developed during the IEP meeting because mental health does not attend the IEP meeting. Mental Health's sending follow up information to be tacked onto the IEP after the meeting has concluded IEP is not acceptable.

Recommendation:

Under (a) add: mandatory IEP meeting attendance of a representative from mental health who is familiar with the student."

Response:

Please see response to comment 101) of this section of the Statement of Reasons.

103) Comment:

60050(b) - Testifier 17.[(c)] (Cromer) suggested the following changes:

"Pursuant to 34 CFR 300.504-505 there is a requirement the family to be noticed of any proposed change in placement. Thus, to adopt this provision, providing for CMH to unilaterally terminate a child's mental health services and then notifying the Individual Education Plan Team ('IEPT') violates both 34 CFR 300.504-505 as well as 20 U.S.C. 1415(b)(1)...

In addition to the notification of 'procedures available,' the Federal regulations require that this notice must also include:

(2) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) a description of any other factors which are relevant to the agency's proposal or refusal. 34 C.F.R. 300.505(A)

The language "upon completion or termination of IEPT specific mental health services..."[Emphasis added] allows CMH to terminate CMH services without any input from the educational arena or, the parents, violating IDEA. One cannot loose (sic) sight of the fact the mental health services are being provided as an educational need."

Response:

Please see response to comment 101) of this section of the Statement of Reasons.

104) Comment:

60050(b) - Testifier 14.[(l)](Feldman) suggested the following changes:

"Should be deleted in its entirety. It is contrary to state and federal law. IEP services cannot be terminated without an IEP meeting at which parental consent is obtained or a due process hearing results in a hearing officer making a decision to terminate services."

Response:

Please see response to comment 101) of this section of the Statement of Reasons.

105) Comment:

60050(b) - Testifier 18.[(h)] (Holle) recommended the following changes:

Community mental health services have "the obligation under Medi-Cal to provide notices of action when services or eligibility for services are denied or when services are terminated."

Response:

Please see response to comment 101) of this section of the Statement of Reasons.

Section 60055

106) Comment:

60055(a) - The following changes were proposed by testifier 12. [(e)(1)] (Brogan):

(a) Whenever a pupil who has been receiving mental health services, pursuant to an IEP, transfers into a school district from a school district in another county, the responsible LEA administrator or IEP team shall refer the pupil to the local community mental health service ~~to determine appropriate mental health services~~ agency.

Response:

The Departments do not concur with this comment.

Government Code Section 7570 makes the Superintendent of Public Instruction and the Secretary of Health and Human Services Agency responsible for:

"Ensuring maximum utilization of all state and federal resources available to provide children and youth with disabilities...with a free and appropriate education."

It is essential that transfers of pupils with active IEP driven mental health services occur

efficiently so that eligible pupils do not experience a delay in mental health services at a time when the stress of moving makes such services even more vital. The local school administrator may be unaware of the move of a single pupil to another district. The IEP team, specifically the parent and the mental health treatment provider are more likely to have personal interest in assuring the efficient transfer of a pupil into a new district. Mental health services from the different counties are more familiar with each other than a school administrator is likely to be. The proposed regulation facilitates a transfer, in compliance with Government Code Section 7570, by allowing the IEP team to perform the function of referral rather than depending only on the LEA administrator to perform this function. For this reason, there will be no amendment of the proposed regulations due to this comment.

107) Comment:

60055(a) - Testifier 14.[(m)] (Feldman) suggested the following changes:

"Should be amended to delete the phrase "IEP" team". There is no authority in special education law that allows the IEP team to perform this function."

Response:

Please see response to comment 106) of this section of the Statement of Reasons.

108) Comment:

60055(b) - Testifier 14.[(n)] (Feldman) suggested the following changes:

"Should be amended to add the phrase 'any new assessments' after the word services. Delete all of the words after the word "and" on line three and add the phrase "to develop a mental health IEP pursuant to Section 60050(a) of these regulations and Section 56325 of the California Education Code."

Response:

Please see comment 109) below.

The Departments do not concur with these comments.

This subsection of the proposed regulations is necessary in order to prevent a pupil's condition from deteriorating in the allowable thirty-day wait for a new IEP to determine local services that can meet his or her educational needs. The amendments suggested by Mr. Feldman add nothing except a requirement to review any new assessments, which has no basis in statute, to justify a new mental health IEP. By requiring this, Mr. Feldman removes the option of allowing the new community mental health service to simply implement the current IEP, which is the most efficient, and probably most appropriate, course of action. Therefore, no change will be made to the proposed regulations in response to this comment.

109) Comment:

60055(b) - Testifier 12.[(e)(2)] (Brogan) recommends that this entire subsection be deleted:

Response:

Please see response to comment 108) of this section of the Statement of Reasons.

Section 60100

110) Comment:

60100 - Testifier 1.[(1)] (Graubard) requests clarification regarding changes in law regarding the appointment of relating to the appointment of surrogate parents for children who are dependents or wards of the court.

Response:

The Departments believe that Ms. Graubard's comment is a question regarding information provided on page 4 of the Initial Statement of Reasons for Section 60010(p). Ms. Graubard appears to have mistyped the section number for Section 60010 of the proposed regulations as Section 60100. Secondly, Ms. Graubard's comment does not specifically pertain to the proposed regulations. The answer to Ms. Graubard's questions can be found in Government Code section 7579.5 and its legislative history.

111) Comment:

60100 - Testifier 3.[(c)] (Ravel) recommends that the regulations require local education agency (LEA) or State financial responsibility where a pupil is placed unilaterally by parents in a for-profit out-of-state group home and the pupil's parents qualified for retroactive reimbursement pursuant to the Carter decision. Testifier Ravel continues that in such cases, the community mental health service cannot certify payment for the placement pursuant to Welfare and Institutions Code section 18351 or sections 11460 through 11466 because no rate has been established by the State Department of Social Services and the group home is not a non-profit facility. Testifier Ravel states that the community mental health program has no responsibility for the residential component of such a placement, but there is no entity identified by the State to whom the payment request should be directed.

Response:

The Departments believe that these regulations, as written, meet the test of law. Government Code, Section 7581 states that "the residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of a child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent" (emphasis added).

112) Comment:

60100 - Testifier 14.[(o)] (Feldman) recommends that the title of this section should be amended to insert the word " . . . IEP TEAM," since the section deals with IEP team responsibilities.

Response:

The Departments support adding "LEA IDENTIFICATION" as the entity that determines SED status necessary for residential placement eligibility. In addition, "...WITH A DISABILITY" is deleted and word order is changed to clarify the regulation title subject and to correct grammar.

113) Comment:

60100 - Testifier 14.[(p)] (Feldman) recommends that section (b) should amended accordingly: (1) add the word "member" after the word "team" in line one; (2) delete the phrase "is considering a"; (3) change the word "recommendation" to "recommends"; and (4) delete the word "for". Testifier Feldman states that the purpose of these changes is to bring the regulations into compliance with Government Code Section 7572.5(a).

Response:

The Departments agree with Mr. Feldman's comment and is amending the regulations.

114) Comment:

60100 - Testifier 14.[(q)] (Feldman) recommends that section (b)(1) should amended to: (1) delete all of the words on line one prior to the word "and"; and (2) after the word code on line 2, add the words "shall be convened within thirty days." Testifier Feldman states that the purpose of these changes is to bring the regulations into compliance with the time lines for calling IEP meetings in accordance with the requirements of the California Education Code.

Response:

While the Departments do not fully understand Mr. Feldman's point of reference, the Departments do agree with the general intent of his comment. Therefore, the Departments propose that section 60100(b)(1) should be amended to read "An expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service."

115) Comment:

60100 - Testifier 14.[(t)] (Feldman) recommends that section (d) should amended to add the sentence "the parent shall be invited to participate in all meeting (sic) where placement is to

be discussed". Testifier Feldman states that such language is a requirement of the new Individuals with Disabilities Education Act.

Response:

The Departments believe that the language as written for section 60100(d) meets the requirements of state and federal education law. Section 60100(d) discusses a possible recommendation made by the expanded IEP team. Section 60100(b) establishes the requirement that an IEP team must convene to consider recommendations for possible residential placement. By definition, the IEP team must include a parent in accordance with section 60010(j).

116) Comment:

60100 - Testifier 12.[(f)(1)] (Brogan) requests that the title of this Section "PLACEMENT OF A PUPIL WITH A DISABILITY WHO HAS BEEN IDENTIFIED AS SERIOUSLY EMOTIONALLY DISTURBED" be revised to "PLACEMENT OF A PUPIL WITH A DISABILITY WHO HAS BEEN IDENTIFIED AS EMOTIONALLY DISTURBED BY THE LEA".

Response:

The Departments agree with Mr. Brogan's comment. The title has been changed to clarify that it is the local education agency that has responsibility for determining the disabling condition of the special education student. In the past, community mental health felt that diagnostic impressions were under their purview.

117) Comment:

60100(b) - Testifier 12.[(f)(2)](Brogan) requests that the word "educational" be inserted in Section (b) for purposes of determining eligibility.

Response:

The Departments agree with Mr. Brogan's amended language. This revision will clarify that it is the educational eligibility that is the determinant for special education services including referral for mental health services under the provisions of Chapter 26.5 of the Government Code.

118) Comment:

60100(b)(2) - Testifier 14.[(r)] (Feldman) suggested the following changes:

(This Section) "Should be deleted since the thirty day timeline cited above gives the Mental Health Representative time to schedule attendance at the IEP meeting."

Response:

Illness and situations such as car accidents, floods, earthquakes, etc. can cause the mental health representative to miss a meeting even if he or she has planned to attend. These situations sometimes occur in spite of the best planning. Regulations are, therefore, necessary to provide IEP teams with an appropriate way to proceed in these situations. Therefore, there will be no change made to the regulations in response to this comment.

119) Comment:

60100(b)(3) - Testifier 14.[(s)] (Feldman) suggested the following changes:

"Should be amended to delete the entire first phrase down to the comma on line 2. This language should be replaced with the phrase "if an AB 3632 Mental Health Assessment has not previously been done". The reason for this suggested change is that the Education Code provides for a thirty-day timeline for an IEP meeting when the parent has not requested or consented to an additional assessment. Your proposed language would allow the LEA or Mental Health to delay a placement decision beyond the thirty-day timeline."

Response:

Please see comment 120) below.

The Departments do not concur with the comments that the LEA and the community mental health service can only reassess a pupil if an assessment has not previously been done or if it is not recent and relevant. Education Code Section 56321allows for the reassessment of a pupil when

"...conditions warrant, or if a pupil's parent or teacher requests."

For this reason, the proposed changes will not be adopted.

120) Comment:

60100(b)(3) - The following changes were suggested by testifier 20.[(n)] (Weinberg):

"Proposed Regulation:

(b)(3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Recommended Changes:

(b)(3) If the pupil's assessments are not recent or relevant the community mental health service or the LEA may determine that additional mental health assessments are needed, and

the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Justification:

It must be clear that the only rationale for initiating additional assessment of the pupil is if the assessments are not recent or relevant and, therefore, there is not adequate information for making a determination about the pupil's need for residential placement."

Response:

Please see response to comment 119) of this section of the Statement of Reasons.

121) Comment:

60100(c) - Testifier 7.[(i)] (Burchill) proposed the following changes:

"It is unclear who is responsible to provide and pay for the above behavioral services. We are under the impression that education is responsible, however, we have observed that some educators believe that mental health or regional center is responsible. The student is close to crisis at this point and should not have to wait for critical intervention services while agencies point fingers at one another.

Recommendation:

Under (c), state the entity financially responsible to provide or pay for categories of behavioral intervention services necessary to prevent residential placement of the student."

Response:

The Departments do not concur with these comments.

Mr. Burchill's comment attempts to simplify fiscal responsibility more than is possible given the complexity and interaction of various children's programs today. A child may need a behavioral aide for reasons related to developmental disability, mental health, or education. By requiring education to always provide this service, the commentor's proposal could hamper local agencies from "ensuring maximum utilization of all state and federal resources available" as is required by Government Code Section 7570. For this reason, Mr. Burchill's proposal has not been adopted.

Mental health services, other than those identified in an IEP, for purposes other than providing educational assistance must be accessed through the community mental health services because statutory provision for these services are separate from the requirement for a free and appropriate public education.

Response:

Illness and situations such as car accidents, floods, earthquakes, etc. can cause the mental health representative to miss a meeting even if he or she has planned to attend. These situations sometimes occur in spite of the best planning. Regulations are, therefore, necessary to provide IEP teams with an appropriate way to proceed in these situations. Therefore, there will be no change made to the regulations in response to this comment.

119) Comment:

60100(b)(3) - Testifier 14.[(s)] (Feldman) suggested the following changes:

"Should be amended to delete the entire first phrase down to the comma on line 2. This language should be replaced with the phrase "if an AB 3632 Mental Health Assessment has not previously been done". The reason for this suggested change is that the Education Code provides for a thirty-day timeline for an IEP meeting when the parent has not requested or consented to an additional assessment. Your proposed language would allow the LEA or Mental Health to delay a placement decision beyond the thirty-day timeline."

Response:

Please see comment 120) below.

The Departments do not concur with the comments that the LEA and the community mental health service can only reassess a pupil if an assessment has not previously been done or if it is not recent and relevant. Education Code Section 56321allows for the reassessment of a pupil when

"...conditions warrant, or if a pupil's parent or teacher requests."

For this reason, the proposed changes will not be adopted.

120) Comment:

60100(b)(3) - The following changes were suggested by testifier 20.[(n)] (Weinberg):

"Proposed Regulation:

(b)(3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Recommended Changes:

(b)(3) If the pupil's assessments are not recent or relevant the community mental health service or the LEA may determine that additional mental health assessments are needed, and

the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Justification:

It must be clear that the only rationale for initiating additional assessment of the pupil is if the assessments are not recent or relevant and, therefore, there is not adequate information for making a determination about the pupil's need for residential placement."

Response:

Please see response to comment 119) of this section of the Statement of Reasons.

121) Comment:

60100(c) - Testifier 7.[(i)] (Burchill) proposed the following changes:

"It is unclear who is responsible to provide and pay for the above behavioral services. We are under the impression that education is responsible, however, we have observed that some educators believe that mental health or regional center is responsible. The student is close to crisis at this point and should not have to wait for critical intervention services while agencies point fingers at one another.

Recommendation:

Under (c), state the entity financially responsible to provide or pay for categories of behavioral intervention services necessary to prevent residential placement of the student."

Response:

The Departments do not concur with these comments.

Mr. Burchill's comment attempts to simplify fiscal responsibility more than is possible given the complexity and interaction of various children's programs today. A child may need a behavioral aide for reasons related to developmental disability, mental health, or education. By requiring education to always provide this service, the commentor's proposal could hamper local agencies from "ensuring maximum utilization of all state and federal resources available" as is required by Government Code Section 7570. For this reason, Mr. Burchill's proposal has not been adopted.

Mental health services, other than those identified in an IEP, for purposes other than providing educational assistance must be accessed through the community mental health services because statutory provision for these services are separate from the requirement for a free and appropriate public education.

Response:

Illness and situations such as car accidents, floods, earthquakes, etc. can cause the mental health representative to miss a meeting even if he or she has planned to attend. These situations sometimes occur in spite of the best planning. Regulations are, therefore, necessary to provide IEP teams with an appropriate way to proceed in these situations. Therefore, there will be no change made to the regulations in response to this comment.

119) Comment:

60100(b)(3) - Testifier 14.[(s)] (Feldman) suggested the following changes:

"Should be amended to delete the entire first phrase down to the comma on line 2. This language should be replaced with the phrase "if an AB 3632 Mental Health Assessment has not previously been done". The reason for this suggested change is that the Education Code provides for a thirty-day timeline for an IEP meeting when the parent has not requested or consented to an additional assessment. Your proposed language would allow the LEA or Mental Health to delay a placement decision beyond the thirty-day timeline."

Response:

Please see comment 120) below.

The Departments do not concur with the comments that the LEA and the community mental health service can only reassess a pupil if an assessment has not previously been done or if it is not recent and relevant. Education Code Section 56321allows for the reassessment of a pupil when

"...conditions warrant, or if a pupil's parent or teacher requests."

For this reason, the proposed changes will not be adopted.

120) Comment:

60100(b)(3) - The following changes were suggested by testifier 20.[(n)] (Weinberg):

"Proposed Regulation:

(b)(3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Recommended Changes:

(b)(3) If the pupil's assessments are not recent or relevant the community mental health service or the LEA may determine that additional mental health assessments are needed, and

the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.

Justification:

It must be clear that the only rationale for initiating additional assessment of the pupil is if the assessments are not recent or relevant and, therefore, there is not adequate information for making a determination about the pupil's need for residential placement."

Response:

Please see response to comment 119) of this section of the Statement of Reasons.

121) Comment:

60100(c) - Testifier 7.[(i)] (Burchill) proposed the following changes:

"It is unclear who is responsible to provide and pay for the above behavioral services. We are under the impression that education is responsible, however, we have observed that some educators believe that mental health or regional center is responsible. The student is close to crisis at this point and should not have to wait for critical intervention services while agencies point fingers at one another.

Recommendation:

Under (c), state the entity financially responsible to provide or pay for categories of behavioral intervention services necessary to prevent residential placement of the student."

Response:

The Departments do not concur with these comments.

Mr. Burchill's comment attempts to simplify fiscal responsibility more than is possible given the complexity and interaction of various children's programs today. A child may need a behavioral aide for reasons related to developmental disability, mental health, or education. By requiring education to always provide this service, the commentor's proposal could hamper local agencies from "ensuring maximum utilization of all state and federal resources available" as is required by Government Code Section 7570. For this reason, Mr. Burchill's proposal has not been adopted.

Mental health services, other than those identified in an IEP, for purposes other than providing educational assistance must be accessed through the community mental health services because statutory provision for these services are separate from the requirement for a free and appropriate public education.

The inclusion of the Healthy Families Program into these regulations is beyond the scope of the statute. MRMIB which administers the Healthy Families Program is not an agency responsible for the provision of "related services" for pupils eligible for special education.

In addition to those arguments, the fact that Medi-Cal, Healthy Families, and EPSDT requirements are established in the other cited law and regulation means that to repeat them in these regulations would be duplicative. Since these programs are separate, no change will be made to these proposed regulations pursuant to this comment.

125) Comment:

60100(h) - Testifier 17.[(d)] (Cromer) suggested the following changes:

Adoption of this provision establishes a requirement of "no" in-state facility accepting a particular student before a student can be placed in an out of state facility. A mere perusal of the in state NPS book shows 181 pages of facilities, most pages with 2 facilities on a page and some of which are day programs, that all searches would potentially include. That list does not include the group homes that could be looked to as potential placements for the student. A provision that "no" in-state facility accept a child may mean as many as 300 referrals. That converts to a lot of time in preparing packets and sending out packets al of which cost money. How long will it take for 300 facilities to decline a student. Clearly, a student whose IEPT has determine (sic) the need for residential placement will certainly decompensate in the length of time it will take for a CMH agency to receive a denial from all California facilities and then begin looking for an out of state placement.

Many of these students are already suicidal. I shutter (sic) to consider the cost to the SEA and LEA if just one of them is successful at their suicide attempts while waiting for "no" California facility to accept them. Consider the potential for resulting lawsuits while we wait for "no" in state facility to accept the child.

The Supreme Court addressed the substantive requirements of a FAPE under the IDEA and concluded that a FAPE requires provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." 468 U.S. at 203. The Court stated that this instruction must be "specially designed to meet the unique needs of the handicapped child," that both the instruction and services must comport with the child's IEP (458 U.S. at 188-89), and that the individualized program be "reasonably calculated to enable the child to receive educational benefits" (458 U.S. at 207). There are many students for which there is no facility in California that can meet their unique educational needs. That will leave the LEA vulnerable in a due process (sic).

Additionally, this provision fails to address the "I" in an IEP and take the individual needs of each student into consideration. It forces parents and the SED student to wait and (Sic) unstated period of time while this over burdensome process is followed to provide them much needed services.

Response:

Please see comment 126) below.

The Departments do not concur with these comments.

Both of these comments overstate the difficulties of an in-state residential program search. Ms. Cromer states that this subsection requires that out-of-state placement is only allowed if "no in state facility will accept the student." Similarly, Ms. Frampton states that she believes this subsection states that "CMH must evaluate and investigate the plausibility of placement in every single in state facility before out of state facilities can accept referrals."

The actual subsection language is more specific, and the search for an appropriate facility under the proposed regulations would be narrower than the comments indicate. Section 60100(h) of the proposed regulations reads in pertinent part:

(h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs...

If a pupil who is seriously emotionally disturbed has problems severe enough to warrant consideration for out-of-state placement, the group homes that can meet the pupil's needs in California are actually quite limited in number. In-state level 13 and 14 beds total approximately 1,300. At any given time there are only a few beds available statewide at these rate classification levels. This is significant because these are the rate classification levels that must have a mental health treatment program in order to qualify for this level of payment.

Government Code Section 7572.55(a) is similarly less demanding than the commentor's believe in its requirements for an in state search before out-of-state placement's may be considered. It states in pertinent part:

"Residential placements for a child with a disability who is seriously emotionally disturbed may be made out-of-state only after in-state alternatives have been considered and are found not to meet the child's needs..."

Oftentimes community mental health services offer from one to three in-state alternatives when out-of-state placement is being considered due to the severity of the pupil's needs, and the restricted pool of rate classification level 13 and 14 group homes in California. If the community mental health service can offer evidence of a diligent search and any in-state alternative, they have satisfied both the statute and the current proposed regulations. Therefore, there will be no amendment to the proposed regulations due to these comments.

126) Comment:

60100(h) -Testifier 21.[(c)] (Frampton) suggested the following changes:

"In regards to Placement of a Pupil With a Disability Who is Seriously Emotionally Disturbed, (60100), it appears that CMH must evaluate and investigate the plausibility of placement in every single in state facility before out of state facilities can accept referrals. The amount of time and manpower that it would take for the investigation of all in state facilities for even one child would be prohibitive. What happens to the child during the time that this might take? And what would be the risk to the child if the child was a danger to himself or others, or in a very emotionally precarious situation? It appears that this provision is unrealistic. It also appears that it would cause parents to have to seek legal help in order to facilitate placement if their child was at risk."

Response:

Please see response to comment 125) of this section of the Statement of Reasons.

127) Comment:

60100(h) - Testifier 3.[(a)] (Ravel) comments "Section 60100, subdivision (h) pertaining to out-of-state placements requires that out-of-state placements shall only be made in residential programs that meet the requirements of WIC sections 11460(c)(2) through (c)(3)... To my knowledge the State has never set any rates for out-of-state facilities as required by WIC Section 11460(c)(2). You should note that the reference to WIC subdivision creates an ambiguity because subdivision (c)(3) refers to AFDC-FC. Obviously, State reimbursement for sepcial education purposes is not an AFDC-FC program. Therefore, the regulations should clearly state that the requirement for the group home to be non-profit applies to special education residential placements, is that is the State's intent."

Response:

Board and care rates for children placed pursuant to Chapter 26.5 of the Government Code are linked in statute to the statutes governing foster care board and care rates. The foster care program and the special education pupils program are quite different in several respects. This creates some difficulties which must be corrected through statutory changes, and cannot be corrected through regulations. Rates are currently set for foster care payments to out-of-state facilities through the process described in WIC Sections 11460 (c)(2) through (c)(3). The rates cannot exceed the current level 14 rate and the program must be non-profit, and because of the requirements contained in Section WIC 18350, placements for special education pupils must also meet these requirements. The Departments believe these requirements are clearly stated by reference to statute, but we will handbook WIC Sections 11460 (c)(2) through (c)(3) for clarity.

128) Comment:

60100(h) - Testifier 3.[(b)] (Ravel) comments "that the application of subdivision (c)(3) should be clarified by regulation with regard to out-of-state group homes which are organized as for profit entities, but have beds which are leased by a non-profit shell corporation. The regulation should state that the group home must be non-profit, and that the leasing of beds by a non-profit corporation or entity may not qualify for payment."

Response:

The statute in WIC Section 11460 states that state reimbursement shall only be paid to a group home organized and operated on a non-profit basis. The Departments would prefer to have its legal staff review the documentation of group homes who claim to be non-profit and have some type of leasing arrangement prior to determining whether or not an entity should be considered non-profit. Staff would also need to determine whether regulations are the appropriate forum in which to place more specific information regarding non-profit entities.

129) Comment:

60100(i)(1) -Testifier 14.[(u)] (Feldman) suggested the following changes:

Should be amended to add the phrase "and location". This is a requirement of the new IDEA.

Response:

Please see comment 130) below.

In response to this comment, an amendment is made to this section to reflect IDEA by citing the federal law. This amendment was made available to the public pursuant to Section 113468(c) of the Government Code.

Final Modification:

(1) The mental health services are specified in the IEP in accordance with Title 20, USC 1414(d)(1)(A)(vi).

130) Comment:

60100(i)(1) - Testifier 13.[(w)] (Mentink) proposed the following changes.:

"(1) The subsection should be rewritten as follows:

The initiation, location, duration and frequency of mental health services are specified in the IEP."

Response:

Please see response to comment 129) of this section of the Statement of Reasons.

Section 60110

131) Comment:

60110 - Testifier 7.[(k)] (Burchill) requests that section (c) should clearly define and discuss the roles and financial expectations of the local education agency, mental health and the student's family before the student is placed in a residential placement.

Response:

The Departments believe that section 60110(c)(3) discusses financial responsibility for residential placement. This section of the regulations only addresses residential placement.

132) Comment:

60110(a) - The following changes were proposed by testifier 12.[(g)(2)] (Brogan):

"Add the term 'mental health' before case manager and case management in this section."

Response:

The Departments do not concur with this comment.

Section 7570 of the Government Code establishes that health and welfare agencies, including the state and county departments of mental health, provide related services and designated instruction and services as defined in State and Federal Education Code. As such, the case management service that they provide is an educational one. Therefore, it would be misleading to call such case management, mental health case management. For this reason, no change will be made to the regulations in response to this comment.

133) Comment:

60110(b)(1) - Testifier 7.[(j)] (Burchill) proposed the following changes:

"Medication is frequently part of the mental health treatment plan or related to a student's health condition. We have found that there can be confusion about who is responsible to ensure that medications are available and taken, as prescribed, when a student is placed in a residential NPS.

Recommendation:

Add... 'mental health treatment, medication and education of a pupil'"...

Response:

The Departments concur with the commentor that clarification regarding the mental health case manager's responsibility to arrange for any prescribed medication is important, but has amended the proposed regulation in a different manner as follows:

Final Modification:

(1) The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of a pupil with a disability who is seriously emotionally disturbed.

134) Comment:

60110 Title and (b)(3) - The following changes were proposed by testifier 12.[(g)(1) and (g)(4)] (Brogan):

"Add the phrase 'as identified by the LEA' after the phrase 'seriously emotionally disturbed' in this section."

Response:

The Departments do not concur with this comment.

Section 60100(a) of the proposed regulations clarifies that the LEA determines this status. It accomplishes this by referencing California Code of Regulations, Section 3030(i), which pertains to a special education qualifying category determined by the LEA. It would be redundant to repeat this phrase here. For this reason, there will be no change made to the regulations due to this comment.

135) Comment:

60110(b)(2) - The following changes were proposed by testifier 12.[(g)(3)] (Brogan):

"(2) The LEA shall be responsible for providing or arranging for the only special education ~~and non-mental health related services~~ needed by the pupil as identified by the IEP.

Response:

The Departments do not concur with this comment.

Pupils in residential placement are among the most vulnerable. Often, they have physical disabilities that require the LEA to contract with local providers to treat because these disabilities do not have a California Children's Services eligible medical condition. They may also have a wide range of other related, but no less essential, services that need to be provided for. This proposed regulation is necessary to establish a provider and payor of last

resort for these related services. The commentor's proposed amendment could leave the most vulnerable of the special education pupils without the related services that they need in order to benefit from their education.

Therefore no amendment to the proposed regulations will be made in response to this comment.

136) Comment:

60110(b)(3) - The following changes were proposed by testifier 12.[(g)(4)] (Brogan):

"(3) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed as identified by the LEA in a community treatment facility, the case manager shall ensure that placement is in accordance with admission ~~and, continuing stay, and discharge~~ criteria of the community treatment facility."

Response:

The Departments do not concur with this comment.

The language that is deleted by the commentor is essential because the special education pupils program allows eligible pupils to receive services through age 21. There are special provisions in the community treatment facility regulations for pupils who have reached majority and are being treated in a community treatment facility due to the secure nature of this treatment. It is important that the case manager insure that a special education pupil is advised of his or her rights at the age of 18. At this age, a case manager is required by the Individuals with Disabilities Education Act to advise the pupil that parental rights will be transferred to him or her if he or she desires. In a community treatment facility, this may mean that the pupil chooses to no longer be deprived of liberty by remaining in the placement. This provision will not be deleted from the proposed regulations for this reason.

137) Comment:

60110(c) - Testifier 7.[(l)] (Burchill) proposed the following changes:

"The responsibilities of everyone need to be clearly defined to ensure the student is provided what they need consistent with their IEP and well being. This section provides the case manager an opportunity to identify each agency's and the family's roles and financial responsibilities. In our experience, parents have received bills from the NPS for mental-health-related prescriptions and other items. Financial expectations should be clear at the outset.

Recommendation:

Under this section, clearly define and discuss the roles and financial expectations of the LEA, mental health and the student's family before the student is placed."

Response:

Please see comment 143) below.

The Departments do not concur with these comments.

Most financial responsibilities are delineated in Section 60200 of these proposed regulations which is more appropriate than doing so here because Section 60200 is entitled "financial responsibilities." The program restriction against paying for medication is clarified by Section 60020(f) which states in pertinent part:

"Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work..."

For these reasons there will be no change made to the regulations in response to these comments.

138) Comment:

60110(c)(2) - Testifier 14[(v)] (Feldman) suggested the following changes:

Should be amended to add the phrase "and the full participation of the parents" after the word "designee" on line one. This is a requirement of the new IDEA.

Response:

The Departments do not concur with this comment. The current proposed Section 60110(c)(2) requires that a residential placement be,

"...acceptable to the parent and addresses the pupil's educational and mental health needs...subject to the requirements of state and federal special education law."

Therefore, the proposed regulations must satisfy the IDEA's requirement for the full participation of the parent and an amendment to them is unnecessary.

139) Comment:

60110(c)(8) and (c)(9) - Testifier 7.[(m)] (Burchill) proposed the following changes:

It is not clear whether the case manager from mental health assigned to conduct quarterly visits to the residential facility will be reporting back to the LEA ONLY mental health-related IEP issues or IEP issues that may be unrelated to mental health. If the mental health case manager is required to evaluate components of the pupil's IEP, other than mental health, it would be important for them to collaborate with the LEA before and after each visit.

Recommendation:

Clarify expectations of mental health case manager.

Response:

The Departments do not concur with this comment.

It is clear from the proposed regulations thus far, that the responsibility of the community mental health service is only for mental health issues and that their expertise is in that area and not issues related solely to educational problems. Nowhere is these proposed regulations is it stated that the mental health case manager is required to evaluate other components of the pupil's IEP. Therefore, no change will be made to this regulation.

140) Comment:

60110(c)(10) - The following changes were proposed by testifier 12.[(g)(5)] (Brogan):

"(10) To ~~schedule~~ attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as long as the pupil remains in residential placement."

Response:

The Departments concur with this comment but has amended the proposed regulation in a different manner as follows:

Final Modification:

(10) To schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as long as the pupil remains in residential placement.

141) Comment:

60110(c)(11) - Testifier 13.[(x)] (Mentink) proposed the following changes:

"The reference to Welfare and Institutions Code § 4094.5(e)(1) will confuse persons not familiar with special education as to what the applicable criteria are for eligibility as Seriously Emotionally Disturbed. The special education definition is fairly clear (see 5 CCR Sec. 3030(i) and 34 C.F.R. Sec. 300.7(b)(9)). However, this subsection refers to W&I Code Sec. 4094.5(e)(1) which requires that a child be certified as SED as defined in W&I Code Sec. 5699.2. Section 5699.2 requires that the child be described in W&I Code Sec. 5600.3 as seriously emotionally disturbed. Section 5600.3 requires that for a child to be SED, he/she

must have a mental disorder as identified in the most recent edition of the DSM. This is not a requirement of special education law or the special education law definition of SED."

Response:

Please see comment 142) below.

The Departments do not concur with this comment.

This Section of the proposed regulations is only applicable to children being considered for placement in a community treatment facility. A community treatment facility is a secure residential facility that provides mental health treatment services to children in a sub-acute setting. Because the community treatment facility is secure, it has decisive admission criteria, which includes certification that a child is seriously emotionally disturbed. The reason for the reference to Section 4094.5(e)(1) of the Health and Safety Code is to clarify that the IPC must authorize placement of any child to a community treatment facility. Therefore, the purpose of this section is to specify that the case manager is responsible for presenting a child's case to the Interagency Placement Committee to explain the necessity of the placement to the committee. For these reasons, there will be no change to the proposed regulations in response to these comments.

142) Comment:

60110(c)(11) - The following changes were proposed by testifier 14.[(w)] (Feldman):

"We are very concerned with the language of section (c)(11). We are not familiar with Section 4094.5 of the Welfare & Institutions Code. However, IDEA places responsibility and discretion with regard to placement on the LEA. AB 3632 expands the IEP team to include Mental Health but does not in any way remove the responsibility and discretion from the LEA. Thus, we do not agree that a "County Interagency Placement Committee" has any authority with regard to the issue of placement."

Response:

Please see response to comment 141) of this section of the Statement of Reasons.

143) Comment:

60110(c)(12) - Testifier 18.[(m)] (Holle) recommended the following changes:

EPSDT case management under Medi-Cal includes the obligation to assist Medi-Cal recipients "in gaining access to needed medical, social, educational, and other services." 42 U.S.C. § 1396n(g)(2). Obligations under Healthy Families have not yet been defined. We therefore recommend adding the following under proposed § 60110(c):

(12) For pupils covered by full-scope Medi-Cal, to assist the pupil in gaining access to needed medical, social, educational, and other services.

Response:

The Departments do not concur with this comment.

Medi-Cal eligible children's parents may request community mental health services for an assessment for supplemental mental health services if these are necessary, but these services are distinct from the educational requirement for a free and appropriate public education. Supplemental services provided due to any Medi-Cal and EPSDT services which do not provide educational benefit should not be listed on the pupil's Individualized Educational Program which is designed to assist them in attaining academic achievement.

Mental health services for pupils who are Medi-Cal eligible, for purposes other than providing educational assistance must be accessed through the current community mental health providers that deliver Medi-Cal and EPSDT services because these services are separate from the requirement for a free and appropriate public education.

Medi-Cal and EPSDT requirements are established in the other cited law and regulations, to repeat them in these regulations would be duplicative. To avoid this duplication and the confusion of separate requirements, these proposed regulations will not be changed pursuant to this comment.

The inclusion of the Healthy Families Program into these regulations is beyond the scope of the statute. MRMIB which administers the Healthy Families Program is not an agency responsible for the provision of "related services" for pupils eligible for special education.

Section 60200

144) Comment:

60200 - Testifier 3.[(d)] (Ravel) recommended the following changes:

"The regulations should address the issue of and clarify that community mental health agencies are not responsible for the payment of the drug and alcohol treatment component of residential placements. This is a continued source of litigation in due process proceedings. Addressing the issues set forth above would greatly minimize the time spent by public agencies on disputes and litigation concerning out-of-state placements."

Response:

The Departments do not concur with the commentor.

The Department of Drug and Alcohol Programs has statute and regulation that outlines their departmental responsibilites to provide specifice services. It would be unnecessary and duplicative to restate these responsibilities in these proposed regulations. Therefore, no change will be made to the proposed regulations in response to this comment.

145) Comment:

60200(c) - Testifier 12.[(h)(1)] (Brogan) proposed the following changes:

"(c) The community mental health service of the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with local interagency agreements and Sections ~~60045,~~ 60050, and 60100. Mental health services shall be provided either directly by the community mental health service or by contractors. All services shall be delivered in accordance with Section 523 of Title 9 of the California Code of Regulations."

Response:

The Departments do not concur with this commentor's recommendation that a revised Section 60030, pertaining to interagency agreements can sufficiently replace Section 60045 of these proposed regulations. Assessment requirements are complex in this program because many of them stem from federal law. Without Section 60045, the proposed regulations would not provide sufficient guidance to local agencies regarding appropriate mental health assessment procedures.

The basis of procedures in federal law also means that assessment requirements may not be amended by local agreements between agencies. Therefore, there will be no change made to the proposed regulations in response to this comment.

146) Comment:

60200(c)(1) - Testifier 10.[(h)] (Warboys) suggested the following changes:

"This proposed regulation should make it clear that identification of a funding source may not prevent or delay the delivery of needed mental health or other related services. The section should include reference to the statutory language, "in no case shall inclusion of necessary related services in a pupil's IEP be contingent upon identifying the funding source." In addition, this language or similar language should be included in other sections describing the obligation to identify and provide needed mental health services, such as Sections 60030(c)(13), 60040, 60100(e) and 60110(c)."

Response:

Please see comment 148) below.

The Departments do not concur with these proposed changes.

Government Code Section 7572(d) has already established that, "...in no case shall inclusion of necessary related services in a pupil's IEP be contingent upon identifying the funding source." Repeating this requirement in Sections 60030(c)(13), 60040, 60100(e), 60110(c) and 60200(c)(1) of these proposed regulations as Mr. Warboys recommends would, therefore, be unnecessarily duplicative.

Mr. Brogan's suggested change would defeat the purpose of this proposed regulation. This purpose is to address the practice of some community mental health services of categorically excluding out-of-county children from programs with limited space. If this suggestion were adopted, counties could simply keep available space in these programs filled with local children and, thereby, continue to exclude out-of-county children categorically by stating "there is no available space in this program." The necessity for, and intent of, this proposed regulation is to compel host counties to consider out-of-county children for these limited resources on a case by case basis.

Time lines for the mental health assessment portion of this program are established in Section 60045 of these proposed regulations and control throughout. There is no reason to have to restate them here as Ms. Weinberg suggests.

Therefore, no change will be made to the proposed regulations in response to these comments.

147) Comment:

60200(c)(1) - Testifier 12.[(h)(2)] (Brogan) proposed the following changes:

(1) The host county shall be responsible for making its provider network available and shall provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. Counties of origin shall negotiate with host counties to obtain access to ~~limited~~ available resources, such as intensive day treatment and day rehabilitation.

Response:

Please see response to comment 146) of this section of the Statement of Reasons.

148) Comment:

60200(c)(1) - The following changes were suggested by testifier 20.[(o)] (Weinberg):

"Proposed Regulation:

(1) The host county shall be responsible for making its provider network available and shall provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. Counties of origin shall negotiate with host counties to obtain access to limited resources, such as intensive day treatment and day rehabilitation.

Recommended Changes:

(1) The host county shall be responsible for making its provider network available and shall provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. Counties of origin shall negotiate with host counties to obtain access to limited resources, such as intensive day treatment and day rehabilitation. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

Justification:

It needs to be made absolutely clear that the procedures described in this section do not in any way extend the time lines or delay services."

Response:

Please see response to comment 146) of this section of the Statement of Reasons.

149) Comment:

60200(d)(2) - Testifier 6.[(c)] (Dasaro) proposed the following changes:

"Ed. Code 56221 (b)(5) discusses the issue of transportation being coordinated with regular home to school transportation. To require the local LEA to pay for the transportation of a pupil to and from the residential placement is a blatant generalization of this particular code regulation. Mental health should continue to coordinate and pay for transportation to and from the residential placement. At times specialized transportation is required (we had a student who needed two escorts to transfer her from Colorado to Sacramento in a police plane. The cost was extremely high and the precautions a bit dramatic). It would seem that if mental health paid for the transportation they would also be more accountable to their regulatory agencies. Transportation cost should be for the parent's visits only – not the student – not mental health workers.

Response:

The Departments do not concur with this comment.

Residential placement pursuant to Chapter 26.5 of the Government Code is for educational purposes and, many residential placements contain an on-site nonpublic school. Therefore, it is not a generalization of statute to require the LEAs to provide transportation from this on-site school to home for visits and vacations pursuant to Education Code Section 56221. This code does not provide for transporting or paying for parents to travel, but such arrangements can be specified, as needed, on an individualized education plan.

This comment also presumes that community mental health services have been paying for pupil transportation to and from residential placement in the past. This has not been the case.

Community mental health services have been responsible for arranging this transportation pursuant to the case management responsibilities delineated in Section 60110(c)(7), but LEAs have been financially responsible for this service, except in exceptional circumstances documented on individual IEPs, for the last 13 years.

Community mental health services have paid, and will continue to pay, for the transportation of mental health staff when this is necessary to perform statutorily required case management duties such as those described in Section 60110(c)(8). However, since pupil transportation is established as the responsibility of the LEA in Education Code Section 56221, no change will be made in the regulations pursuant to this comment.

150) Comment:

60200(d)(3) - Testifier 12.[(h)(3)] (Brogan) proposed the following changes:

"(3) ~~The~~ Special education instruction, ~~non-mental health related services,~~ and including designated instruction and services agreed upon in the nonpublic, nonsectarian school services contract or a public program arranged with another SELPA or LEA.

Response:

The Departments do not concur with the commentor's proposed change.

Establishing financial responsibility for related services is necessary to insure that an eligible student receives them. Specifically, California Children's Services provide medically necessary occupational therapy and physical therapy to children with an eligible physically handicapping condition. Such a pupil may, however, satisfy educational criteria for special education related services. In this case, it must be clear that the LEA is responsible to provide the related services necessary for this pupil to benefit from his or her education. For this reason there will be no change made to these proposed regulations in response to this comment.

151) Comment:

60200(f) - Testifier 12.[(h)(4)] (Brogan) proposed the following changes:

"(f) Upon receipt of the authorization from the community mental health service, pursuant to subsection (e), including documentation that the pupil is eligible for residential placement as a educationally identified seriously emotionally disturbed pupil, the county welfare department shall issue payments in accordance with Section 18351 of the Welfare and Institutions Code to providers of residential placement."

Response:

The Departments do not concur with the commentor regarding the necessity of this additional language. Section 60100(a) of these proposed regulations establishes that residential

placement is only available to "...a pupil with a disability who is seriously emotionally disturbed pursuant to paragraph (i) of Section 3030 of Title 5 of the California Code of Regulations."

Section 3030(i) establishes special education eligibility criteria for the subset "seriously emotionally disturbed" of the special education eligible "individuals with exceptional needs." This controlling reference, therefore, clarifies that the LEA must determine this status. Therefore, there will be no change made to the proposed regulations in response to this comment.

Section 60300

152) Comment:

Testifier 4. (Nolan) and testifier 9. [(a)] (Nolan) state an objection to this section in that this regulation mandates additional costs on the CCS program. The testifiers also state that the regulations are not in compliance with provision of Article III B, Section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. And in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriate for the mandated costs, nor the citation of the item of appropriation in the Budget bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15, 1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

153) Comment:

60300(f) - Testifier 13.[(y)] (Mentink) commented in the following manner: "Section 60300.(f) This subsection should be clarified. The Department of Education does not make referrals of pupils to CCS. If the subsection refers to the act of referring a child, it should say: 'local or responsible education agency' in place of 'Department of Education.' If,

however, the reference is to a referral form developed by the Department of Education, it makes some sense. However, the drafters should make sure that there is such a form and that it is being used by all local education agencies."

Response:

The Departments agree that clarification is necessary and will amend the regulation. The amended reuglation text reads "Documented physical deficit" refers to a pupil's motor dysfunction recorded on the referral for special education and related services by the Local Education Agency and documented in the pupil's CCS medical record.

154) Comment:

60300(h) - Testifier 11.[(a)] (Haining) and testifier 24. (Haining) stated that the medical therapy conference is not just a meeting but a physician visit with other health professionals in attendance to discuss with the child and their family the amount and duration of therapy, and whereby the physician makes the ultimate decision.

Response:

The Departments disagree with this comment. The physician plays an integral role in the medical therapy conference, but is part of a team making decisions for an individual child. The role of the physician is further clarified in Section 60323 of this regulation package.

155) Comment:

60300(i) - Testifier 11.[(b)] (Haining) and testifier 24 (Haining) stated that the medical conference team cannot be mandated in school regulation.

Response:

The Departments disagree with this comment. These are joint regulations to establish how DOE, DHS, Department of Mental Health (DMH) and Department of Social Services (DSS) will coordinate and cooperate in providing services to children with special health care needs and who are also eligible for special education services to make certain that the children receive all appropriate and needed services. Government Code section 7587 requires the Department of Health Services to promulgate regulations that are consistent with federal and state laws governing the education of children. It is the intent of the Departments to promulgate regulations specific to the medical therapy program (MTP) which will be in Title 22, California Code of Regulations (CCR). However, the intent of this definition is not to limit the scope of participants in the medical therapy conference (MTC) or to prevent counties from establishing their own models for the extended team, but to identify core members of the MTC team. It is these core members of the MTC team who must provide information to the Individualized Education Program (IEP) team, so the IEP team can decide which services the LEA must provide to meet the child's special education needs.

156) Comment:

60300(j) - Testifier 13.[(z)] (Mentink) commented in the following manner: "(j) This subsection should be amended to expand the list of CCS eligible conditions which could generate the need for occupational or physical therapy.

"Rationale: Other than Section 7575(b)(1) dealing with physician referrals to CCS, we cannot identify legal authority for the use in subsection (j) of the term 'neuromuscular, musculoskeletal, or muscular diseases' to limit the range of conditions which are CCS eligible.

"Government Code 7575 states:

> "'Notwithstanding any other provision of law....[CCS] shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified in Article 5 (commencing with Section 123800) of....the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.'

"Article 5 also includes section 123830 which defines 'handicapped child' for CCS medical eligibility purposes as: 'a physically defective or handicapped person under the age of 21 years who is in need of services. The director shall establish those conditions coming within the definition of 'handicapped child'....' The director did this at Title 22 CCR Sec. 41800. The list of 20 or more conditions in section 41800 appears broader than the term 'neuromuscular, musculoskeletal, or muscular diseases' and broader than the list of conditions in proposed subsection (j)(1)-(3). Some of the conditions listed in Section 41800 may not be conditions for which occupational or physical therapy are ever prescribed. However, all such conditions on this list for which occupational and/or physical therapy are required are eligible conditions if the therapy is required to assist a pupil to 'benefit from special education' [see 20 U.S.C. Sec. 1401(22)], or, with regard to occupational therapy, to improve, develop, or restore functions impaired or lost through illness, injury or deprivation or improve the ability to perform tasks for independent [see Title 34 C.F.R. Sec. 300.16(b)(5)1.

"This subsection should include all the language in current proposed regulation but should be amended as follows:

> "(j) 'Medical therapy program eligible condition' are those diagnoses that make a pupil eligible for medical therapy services and include all those conditions listed in Section 41800 of Title 22 of the California Code of Regulations and the following diagnosed neuromuscular, musculoskeletal....."

Response:

The Departments disagree with this comment. The conditions identified in this section have been established by the CCS program under statutory authority of the Health and Safety Code

(HSC) Section 123830 and 123860. HSC section 123875 states that children shall be deemed medically eligible for therapy services based upon the need for medically necessary PT or OT services as stated in section 123830. The Departments have determined that only the neuromuscular, musculoskeletal and muscle diseases identified in these regulations are eligible for therapy in the MTP. The Departments have not been given the authority to expand the eligibility for therapy services beyond what is currently CCS program policy. Section 7575 of the Government Code also states that the Department of Health Services (CCS) retains the authority to determine medical necessity for PT and OT services.

157) Comment:

60300(j) - Testifiers 11.[(c)] (Haining) and 24. (Haining) stated that this definition should be deleted because it is not the responsibility of the schools. The commentor recommended that this section indicate that the California Children's Services (CCS) program will establish eligibility criteria and inform the schools when changes are made.

Response:

The Departments disagree with this comment. The conditions that are eligible for therapy services provided in the public school setting must be included in the interagency regulations so that other agencies that provide services to children in the public schools will have some indication of which children should be referred to the CCS program for eligibility determination and an assessment of their need for medically necessary physical therapy and occupational therapy.

158) Comment:

60300(k) - Testifier 11.[(d)] (Haining) and Testifier 24. (Haining) stated that this definition does not allow for the use of the medically accepted category of "PRN" (as needed), negates the role of the physician in prescribing interventions, and would deny children services that are not school specific.

Response:

The Departments disagree with this comment. The designation "PRN" is a description of the frequency of services and is not an intervention. Its use can be applied to any of the interventions identified in these regulations. These regulations do not limit the physician in determining frequency of these interventions.

159) Comment:

60300(l) - Testifier12.[(i)(1)] (Brogan) proposed amendments to section 60300(l) without a stated rationale.

Response:

The Departments disagree with the proposed amendments. The HSC section 123950 requires that CCS provide services in the public school setting and the Government Code section 7575(d) states that the LEA shall provide the necessary space and equipment so the services can be provided in the most effective and efficient manner. The MTU is necessary as a location where medically necessary therapy services are provided. Medically directed services require that there be specialized equipment and dedicated environment in order to provide effective treatment to children. These services are equivalent to those provided in hospital out-patient clinics. Though some of the services can be provided as consultation in the classroom, the majority of the services are the provision of direct therapy and cannot be appropriately provided in the classroom setting. Therefore, the proposed amendment would require a change in current statutes and is beyond the scope of these regulations.

160) Comment:

60300(m) - Testifier 12.[(i)(2)] (Brogan) proposed to delete section 60300(m) without a stated rationale.

Response:

The Departments disagree with this comment. The definition of an MTU satellite is necessary to differentiate between the services that can be provided at an MTU and the limited scope of services that can be provided at the satellite. Since the satellite is an integral part of service delivery to children in their school environment and a supplement to the MTU, it must be retained in these regulations.

161) Comment:

60300(n) - Testifier 11.[(e)] (Haining) and Testifier 24. (Haining) stated that this definition could be interpreted as providing for maintenance therapy which has not been an MTU mandate.

Response:

The Departments disagree with the interpretation that these regulations will require CCS to provide "maintenance therapy". In a manner, CCS does provide on-going therapy through consultation (instruction) provided to parents, LEA staff and other involved parties. This is done through home, community or classroom programs that are performed by care givers in those settings and not by the therapists. Implementing these programs does not require the skilled expertise of a physical therapist or occupational therapist and therefore does not significantly increase the cost of services in comparison to the benefit to the child's outcome. The therapist designs the program, instructs the care giver and checks the competency in implementing the program. These types of programs are standard for any outpatient therapy service and provide community support for the child. Consultation is defined as one of the medical therapy services provided by CCS and should not be confused with treatment services that are also defined in the regulations.

however, the reference is to a referral form developed by the Department of Education, it makes some sense. However, the drafters should make sure that there is such a form and that it is being used by all local education agencies."

Response:

The Departments agree that clarification is necessary and will amend the regulation. The amended reuglation text reads "Documented physical deficit" refers to a pupil's motor dysfunction recorded on the referral for special education and related services by the Local Education Agency and documented in the pupil's CCS medical record.

154) Comment:

60300(h) - Testifier 11.[(a)] (Haining) and testifier 24. (Haining) stated that the medical therapy conference is not just a meeting but a physician visit with other health professionals in attendance to discuss with the child and their family the amount and duration of therapy, and whereby the physician makes the ultimate decision."

Response:

The Departments disagree with this comment. The physician plays an integral role in the medical therapy conference, but is part of a team making decisions for an individual child. The role of the physician is further clarified in Section 60323 of this regulation package.

155) Comment:

60300(i) - Testifier 11.[(b)] (Haining) and testifier 24 (Haining) stated that the medical conference team cannot be mandated in school regulation.

Response:

The Departments disagree with this comment. These are joint regulations to establish how DOE, DHS, Department of Mental Health (DMH) and Department of Social Services (DSS) will coordinate and cooperate in providing services to children with special health care needs and who are also eligible for special education services to make certain that the children receive all appropriate and needed services. Government Code section 7587 requires the Department of Health Services to promulgate regulations that are consistent with federal and state laws governing the education of children. It is the intent of the Departments to promulgate regulations specific to the medical therapy program (MTP) which will be in Title 22, California Code of Regulations (CCR). However, the intent of this definition is not to limit the scope of participants in the medical therapy conference (MTC) or to prevent counties from establishing their own models for the extended team, but to identify core members of the MTC team. It is these core members of the MTC team who must provide information to the Individualized Education Program (IEP) team, so the IEP team can decide which services the LEA must provide to meet the child's special education needs.

156) Comment:

60300(j) - Testifier 13.[(z)] (Mentink) commented in the following manner: "(j) This subsection should be amended to expand the list of CCS eligible conditions which could generate the need for occupational or physical therapy.

"Rationale: Other than Section 7575(b)(1) dealing with physician referrals to CCS, we cannot identify legal authority for the use in subsection (j) of the term 'neuromuscular, musculoskeletal, or muscular diseases' to limit the range of conditions which are CCS eligible.

"Government Code 7575 states:

> "'Notwithstanding any other provision of law....[CCS] shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified in Article 5 (commencing with Section 123800) of....the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.'

"Article 5 also includes section 123830 which defines 'handicapped child' for CCS medical eligibility purposes as: 'a physically defective or handicapped person under the age of 21 years who is in need of services. The director shall establish those conditions coming within the definition of 'handicapped child'....' The director did this at Title 22 CCR Sec. 41800. The list of 20 or more conditions in section 41800 appears broader than the term 'neuromuscular, musculoskeletal, or muscular diseases' and broader than the list of conditions in proposed subsection (j)(1)-(3). Some of the conditions listed in Section 41800 may not be conditions for which occupational or physical therapy are ever prescribed. However, all such conditions on this list for which occupational and/or physical therapy are required are eligible conditions if the therapy is required to assist a pupil to 'benefit from special education' [see 20 U.S.C. Sec. 1401(22)], or, with regard to occupational therapy, to improve, develop, or restore functions impaired or lost through illness, injury or deprivation or improve the ability to perform tasks for independent [see Title 34 C.F.R. Sec. 300.16(b)(5)1.

"This subsection should include all the language in current proposed regulation but should be amended as follows:

> "(j) 'Medical therapy program eligible condition' are those diagnoses that make a pupil eligible for medical therapy services and include all those conditions listed in Section 41800 of Title 22 of the California Code of Regulations and the following diagnosed neuromuscular, musculoskeletal....."

Response:

The Departments disagree with this comment. The conditions identified in this section have been established by the CCS program under statutory authority of the Health and Safety Code

(HSC) Section 123830 and 123860. HSC section 123875 states that children shall be deemed medically eligible for therapy services based upon the need for medically necessary PT or OT services as stated in section 123830. The Departments have determined that only the neuromuscular, musculoskeletal and muscle diseases identified in these regulations are eligible for therapy in the MTP. The Departments have not been given the authority to expand the eligibility for therapy services beyond what is currently CCS program policy. Section 7575 of the Government Code also states that the Department of Health Services (CCS) retains the authority to determine medical necessity for PT and OT services.

157) Comment:

60300(j) - Testifiers 11.[(c)] (Haining) and 24. (Haining) stated that this definition should be deleted because it is not the responsibility of the schools. The commentor recommended that this section indicate that the California Children's Services (CCS) program will establish eligibility criteria and inform the schools when changes are made.

Response:

The Departments disagree with this comment. The conditions that are eligible for therapy services provided in the public school setting must be included in the interagency regulations so that other agencies that provide services to children in the public schools will have some indication of which children should be referred to the CCS program for eligibility determination and an assessment of their need for medically necessary physical therapy and occupational therapy.

158) Comment:

60300(k) - Testifier 11.[(d)] (Haining) and Testifier 24. (Haining) stated that this definition does not allow for the use of the medically accepted category of "PRN" (as needed), negates the role of the physician in prescribing interventions, and would deny children services that are not school specific.

Response:

The Departments disagree with this comment. The designation "PRN" is a description of the frequency of services and is not an intervention. Its use can be applied to any of the interventions identified in these regulations. These regulations do not limit the physician in determining frequency of these interventions.

159) Comment:

60300(l) - Testifier12.[(i)(1)] (Brogan) proposed amendments to section 60300(l) without a stated rationale.

Response:

The Departments disagree with the proposed amendments. The HSC section 123950 requires that CCS provide services in the public school setting and the Government Code section 7575(d) states that the LEA shall provide the necessary space and equipment so the services can be provided in the most effective and efficient manner. The MTU is necessary as a location where medically necessary therapy services are provided. Medically directed services require that there be specialized equipment and dedicated environment in order to provide effective treatment to children. These services are equivalent to those provided in hospital out-patient clinics. Though some of the services can be provided as consultation in the classroom, the majority of the services are the provision of direct therapy and cannot be appropriately provided in the classroom setting. Therefore, the proposed amendment would require a change in current statutes and is beyond the scope of these regulations.

160) Comment:

60300(m) - Testifier 12.[(i)(2)] (Brogan) proposed to delete section 60300(m) without a stated rationale.

Response:

The Departments disagree with this comment. The definition of an MTU satellite is necessary to differentiate between the services that can be provided at an MTU and the limited scope of services that can be provided at the satellite. Since the satellite is an integral part of service delivery to children in their school environment and a supplement to the MTU, it must be retained in these regulations.

161) Comment:

60300(n) - Testifier 11.[(e)] (Haining) and Testifier 24. (Haining) stated that this definition could be interpreted as providing for maintenance therapy which has not been an MTU mandate.

Response:

The Departments disagree with the interpretation that these regulations will require CCS to provide "maintenance therapy". In a manner, CCS does provide on-going therapy through consultation (instruction) provided to parents, LEA staff and other involved parties. This is done through home, community or classroom programs that are performed by care givers in those settings and not by the therapists. Implementing these programs does not require the skilled expertise of a physical therapist or occupational therapist and therefore does not significantly increase the cost of services in comparison to the benefit to the child's outcome. The therapist designs the program, instructs the care giver and checks the competency in implementing the program. These types of programs are standard for any outpatient therapy service and provide community support for the child. Consultation is defined as one of the medical therapy services provided by CCS and should not be confused with treatment services that are also defined in the regulations.

162) Comment:

60300(o) and (p) - Testifier 12.[(i)(3)] (Brogan) recommended the deletion of this section without a stated rationale.

Response:

The Departments disagree with this comment. This definition is necessary to clarify Government Code section 7575(d) which states that the LEA will provide the necessary space and equipment for CCS to provide therapy services, and integral to explaining the role of the MTU in Section 60300(l) of these regulations.

163) Comment:

60300(q) - Testifier 12.[(i)(4)] (Brogan) recommended the addition of section 60300(q) to define educationally necessary occupational and physical therapy.

Response:

The Departments disagree with this comment. The definition of "educationally necessary OT/PT" would not clarify this section.

Section 60310

164) Comment:

Testifier 4. (Nolan) and testifier 9.[(a)] (Nolan) state an objection to this section in that this regulation mandates additional costs on the CCS program. The testifiers also state that the regulations are not in compliance with provision of Article III B, Section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. And in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriate for the mandated costs, nor the citation of the item of appropriation in the Budget bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15,

1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

165) Comment:

60310(c)(1) - Testifier 12. [(j)(1)] (Brogan) recommended that section 60310(c)(1) be included to state that the Interagency Agreement include the differentiation between medically and educationally necessary occupational therapy and physical therapy.

Response:

The Departments disagree with this comment. The process for determining if a service is medically necessary already exists in these regulations. Placing such a section in a local Interagency Agreement would result in as many processes for determining the differences in therapy types as there would be Interagency Agreements. One of the purposes of these regulations is to ensure consistency in services to children throughout California.

166) Comment:

60310(c)(2) - Testifier 13. [(aa)] (Mentink) commented in the following manner: "Section 60310. (c)(2) This subsection should be amended as follows:

> "Referring pupils, birth to twenty-one years of age, who may have or are suspected of having a neuromuscular, musculoskeletal, or other physical impairment or qualifying condition who may require....

"Rationale: This amendment would make this subsection consistent with the recommendation for amendment of section 60300(j)."

Response:

The Departments disagree with this comment. The conditions identified in this section have been established by the CCS program under statutory authority of the Health and Safety Code (HSC) Sections 123830 and 123860. HSC section 123875 states that children shall be deemed medically eligible for therapy services based upon the need for medically necessary PT or OT services as stated in section 123830. The Departments have determined that only the neuromuscular, musculoskeletal and muscle diseases identified in these regulations are eligible for therapy in the MTP. The Departments have not been given the authority to expand the eligibility for therapy services beyond what is currently CCS program policy. Section 7575 of the Government Code also states that the Department of Health Services (CCS) retains the authority to determine medical necessity for PT and OT services.

167) Comment:

60310(c)(2) - Testifier 12.[(j)(2)] (Brogan) recommended that section 60310(c)(2) be deleted without a stated rationale.

Response:

The Departments disagree with this comment. This section is necessary so that a Local Interagency Agreement includes a process by which the LEA will refer children potentially eligible for the MTP.

168) Comment:

60310(c)(3) - Testifier 12.[(j)(3)] (Brogan) recommended amendments to section 60310(c)(3) without a stated rationale.

Response:

The Departments disagree with this comment and believe that the recommended amendment is vague and does not define "timely process". Consent to treat a pupil is a legal requirement that is identified throughout statutes governing education, government and health services. Exchange of information between agencies is required in Government Code section 7572(e) and is necessary for communication and coordination between agencies. The process is described in greater detail throughout this regulation package.

169) Comment:

60310(c)(4) and (5) - Testifier 12.[(j)(4)] (Brogan) recommended an amendment to sections 60310(c)(4) and (c)(5) without a stated rationale.

Response:

The Departments disagree with these comments. The proposed use of "reasonable" lacks the clarity necessary for regulatory purposes or to specifically meet timelines necessary for the LEA to hold an IEP meeting and include CCS in the process as a related service provider. The Departments determined that the task described in this subsection of the regulations was "reasonable".

170) Comment:

60310(c)(5) - Testifier 13.[(bb)] (Mentink) commented in the following manner: "(c)(5) This subsection should be amended as follows:

"Giving 10 days notice to the LEA and the parent of ~~an impending~~ a proposed change in the CCS medical therapy program services which may ~~necessitate~~ result in a change in the IEP;

"Rationale: The term 'impending' implies that the change is inevitable, i.e., CCS has made a decision. In special education law, changes to the IEP are only proposed changes until they are noticed, described, explained, discussed at an IEP, subject to appeal, and are ineffectual until there is agreement of the parties or a hearing officer's decision changing the IEP. (See 20 U.S.C. Sec. 1415(b)(c) and (j).)"

Response:

The Departments disagree with this comment. The term "impending" is used because it is likely that the physician will determine that a change in CCS therapy services is medically necessary or that the decision has already been made. Government Code section 7575(a) and HSC section 123875 provided the CCS program the authority to determine medical necessity. The impending change is referring to the CCS therapy plan and not the IEP. The IEP team must determine if they feel the change is significant enough to call an IEP team meeting to modify the plan according to Education Code section 56343(a). If the IEP team subsequently determines that the services which CCS is no longer providing are necessary for the child to benefit from his/her special education program, then the LEA is responsible for providing the service. This is the method that the Government and the Education Codes have utilized to insure compliance with federal special education statutes.

171) Comment:

60310(c)(5) - Testifier 11.[(f)] (Haining) and Testifier 24. (Haining) stated that this section would require a change to the IEP when therapy is changed.

Response:

The Departments disagree with this comment. Section 56343(a) of the Education Code states that the IEP team may meet when the pupil receives any subsequent formal assessment such as a CCS evaluation for therapy services. If CCS changes the therapy plan, the IEP team must determine if this is significant enough to call an IEP. According to Government Code section 7575(a)(2) and these regulations, any therapy service that is included on the IEP that is not deemed medically necessary by CCS is the responsibility of the LEA. That is why the IEP team must decide if a change to the IEP is warranted and to decide if those services may still be necessary for a child to benefit from his/her special education program. In order to do this, the IEP team needs to be notified when these changes may occur.

172) Comment:

60310(c)(6) - Testifier 12.[(j)(5)] (Brogan) recommended that section 60310(c)(6) include a reference to the Government Code and the Individuals with Disabilities Education Act (IDEA) without a stated rationale.

Response:

The Departments disagree with Mr. Brogan's recommendation and believe that section 60310(c)(6) of the regulations only applies to interagency agreements between education agencies and CCS and is not relevant to mental health or any other agency that is party to this regulation package.

173) Comment:

60310(c)(7) - Testifier 12.[(j)(6)] (Brogan) recommends that section 60310(c)(7) address mental health services and related state and federal law and regulations.

Response:

The Departments disagree with this comment. This section of the regulations only applies to interagency agreements between education agencies and CCS and is not relevant to mental health or any other agency that is party to this regulation package.

174) Comment:

60310(c)(13) - Testifier 12.[(j)(7)] (Brogan) recommends that section 60310(c)(13) include the review of the local interagency agreement by local agencies on an "as needed" basis by those local agencies.

Response:

The Departments disagree with this comment. This regulation adds specificity to insure the interagency agreement is reviewed annually. The Department of Health Services (DHS) and the California Department of Education (CDE) jointly developed this subsection of the regulations to insure that local agencies would communicate annually to discuss whether any changes may be needed in the interagency agreement, and to update if needed. The suggested language that LEAs will develop timelines for review independently does not ensure a reasonable time line, and leaves the process open-ended. DHS and CDE determined that annually would be a reasonable period of time period between reviews.

175) Comment:

60310(d)(1) - Testifier 12.[(j)(8)] (Brogan) recommended that "[A] description of the joint responsibility" be added to this section.

Response:

The Departments disagree with this comment. The Government Code section 7575(d) states that the LEA shall provide necessary space and equipment for provision of medically necessary PT and OT services provided by CCS. It does not include language that states it is a joint responsibility. This change would require a change in the statute and is beyond the scope of these regulations.

176) Comment:

60310(d)(2) and (3) - Testifier 12.[(j)(9)] (Brogan) recommends that sections 60310(d)(2) and (d)(3) be deleted without a stated rationale.

Response:

The Departments disagree with this comment. The Departments are not obligated to consider amending these sections in the absence of a stated rationale from Mr. Brogan. These sections have been determined to be necessary components of the local interagency agreement.

Section 60320

177) Comment:

Testifier 4. (Nolan) and testifier 9. [(a)] (Nolan) state an objection to this section in that this regulation mandates additional costs on the CCS program. The testifiers also state that the regulations are not in compliance with provision of Article III B, Section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. And in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriate for the mandated costs, nor the citation of the item of appropriation in the Budget bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15, 1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

178) Comment:

60320 - Testifier 12.[(k)] (Brogan) recommends that Section 60320, in its entirety, be removed from the proposed regulations.

Response:

The Departments disagree with Mr. Brogan's proposal to eliminate the section that specifies procedures for referring students with disabilities to California Children's Services (CCS). The Departments believe that this section is necessary to provide guidance by delineating the roles and responsibilities of local education agencies and CCS in referring and accepting students with disabilities for evaluating the need for occupational and/or physical therapy.

179) Comment:

60320 - Testifier 13.[(cc)] (Mentink) commented in the following manner: "Section 60320. Introduction: This section creates multiple steps in the referral, eligibility determination, and assessment processes which intolerably delay assessment by CCS for OT or PT services. The determination of medical eligibility prior to assessment cannot act as another time consuming stage in addition to the existing steps of 15 days for presentation of an assessment plan and 50 days for conduct of the assessments. Moreover, the finding that insufficient medical documentation has been submitted can be used simply to buy more time to complete an assessment that is otherwise required to be completed in a specified number of days. For these reasons, this section should be amended as follows.

"(a) This subsection must be amended as follows:

> "Pupils referred to the LEA for assessment of fine or gross motor or physical skills shall, within 15 days, be considered for assessment either by the LEA or by CCS depending on the information contained in the referral and the pupil's documented physical deficit pursuant to Section 7572 of the Government Code.

Rationale: The determination of whether the child's needs rise to the level of potentially requiring CCS assessment and intervention, and, therefore, whether the child will be referred by the LEA to CCS must be made within the time an assessment plan is due the parent pursuant to Government Code Section 7572(a) and Education Code Sections 56320(f) and 56321(a). The parent has the right to know, by looking at the assessment plan required by these statutes, who is going to be assessing what, and he/she has a right to know this within 15 days of the referral to the LEA for assessment."

Response:

The Departments disagree with this comment. The CCS program cannot provide services to a child until he/she meets medical eligibility criteria as per CCR, Title 22, Section 42140. Determination of medical eligibility for the MTP must occur before a therapy assessment can begin in the MTU. Medical eligibility cannot be determined without a physician's medical report documenting the presence of a MTP-eligible medical condition. The suggested time line is too limiting on this process. The referral and assessment process is delineated elsewhere in this section. Those processes include the CCS program's need to communicate with the parent and LEA to inform them of the medical eligibility process.

180) Comment:

60320(c)(3) - Testifier 13.[(dd)] (Mentink) commented in the following manner: "(c)(3) This subsection must be amended as follows:

"Parental permission for exchange of information between agencies and parental permission for assessment by CCS;

"Rationale: Without assuring that this written permission is already in the hands of CCS at the time of referral for assessment, the actual assessment may be further delayed by having to obtain such consent after the determination of an eligible condition but before assessment can begin."

Response:

The Departments disagree with the proposed amendment to the regulation. Assessments at the MTP of the need for medically necessary occupational therapy or physical therapy cannot be performed until the pupil has been found medically eligible for the program.

181) Comment:

60320(d) - Testifier 13.[(ee)] (Mentink) commented in the following manner: "(d) This subsection must be substantially amended as follows:

"Upon receipt of a referral, CCS shall provide the parent with the proposed therapy assessment plan within 15 days of the date of the referral of the child by the LEA to CCS. The parent shall review the assessment plan and, if appropriate, provide written consent to the assessment. Upon receipt of the parent's written consent to assessment, medical eligibility shall be the first issue determined as part of the assessment of a child for special education related services. If CCS determines that a referred child does not have a medically eligible condition, the assessment of the child shall cease and written notice of the child's medical ineligibility, which notice contains all the information required under Title 20 United States Code Section 1415(b) and (c), shall be sent to the LEA and to the parent immediately. If medical eligibility cannot be determined by medical records submitted, CCS shall:

"Rationale: This subsection creates a third assessment stage when two (parent to LEA and LEA to CCS) are already too many in California. CCS receives a referral and first determines whether the child has an eligible condition and, if so, then develops an assessment plan and obtains consent and conducts the assessment. There is no time line for the CCS determination of whether the child has an eligible condition. There must be one referral and one assessment by CCS which determines first whether there is an eligible condition and, if so, then continues on immediately to determine the child's therapy needs. Time lines must be specified for this process."

Response:

The Departments disagree with this comment. The assessment process begins with medical eligibility determination, because in accordance with HSC section 123875, medical necessity for therapy services cannot be determined without first determining if the child's stated diagnosis is eligible for the services. A process has been delineated in this regulation package that meets the federal statutory requirements. CCS notifies the LEA and parent when the eligibility process will necessitate an LEA request for an extension of the 50 day time line as permitted in federal law if they wish for CCS to participate as a related service in the IEP process.

182) Comment:

60320(d)(1) - Testifier 13.[(ff)] (Mentink) commented in the following manner: "(d)(1) This subsection should be amended as follows:

"Notify the LEA and the parent within 15 days of the receipt of the referral;

"Rationale: Often, a parent has more of his/her child's medical records than does a school district. The referral and assessment process to a noneducation agency by an education agency after having received a referral from the parent to assess in all areas of suspected disability (Ed. Code Sec. 56320(f)) already drags out the process of identification of all of a child's needs to an intolerable length. This subsection unnecessarily further lengthens this process by having CCS notify only the LEA of the insufficient medical records. Now the LEA must contact the parent which can take another day or two or three. If the notification of insufficient medical records went directly to the parent and LEA at the same time, the parent could begin to address the problem immediately rather than waiting for a school district official to get around to contacting him or her."

Response:

The Departments concur with the suggested change in the regulations as it is already part of the CCS program policies and procedures. The regulations should be amended to read: "Notify the parent and LEA within 15 days of the receipt of the referral."

183) Comment:

60320(d)(2) - Testifier 13.[(gg)] (Mentink) commented in the following manner: "(d)(2) This subsection must be amended as follows:

"Seek additional medical information from the parent and the LEA; and

"Rationale: Although it may be obvious, as written, this subsection does not specify where CCS is supposed to be going to secure the additional medical information."

Response:

The Departments disagree with this comment. The recommended change is too limiting for the needs of CCS to establish a medical diagnosis eligible for the program as required in HSC Section 123875. CCS needs to be able to request medical documentation from an examining physician, as well as from the LEA or parent.

184) Comment:

60320(e) - Testifier 13.[(hh)] (Mentink) commented in the following manner: "(e) This subsection must be amended as follows:

> "If CCS determines that the pupil is ineligible because the pupil's medical condition is not a medical therapy program eligible condition, CCS shall notify the parent and the LEA within five days of the determination....

"Rationale: The LEA has no incentive to pass this information along quickly to the parent because the parent may then begin the process of pursuing the LEA for the therapy he/she had sought from CCS. Nor should notification of the parent have to go through channels which delay the parent in initiating due process against CCS challenging the CCS determination."

Response:

The Departments concur with the suggested change to the regulations since this procedure is already being followed by the CCS program. The regulations should read "If CCS determines that the pupil is ineligible because the pupil's medical condition is not a medical therapy program eligible condition, CCS shall notify the parent and the LEA within five days of the determination of eligibility status for the medical therapy program.".

185) Comment:

60320(f) - Testifier 13.[(ii)] (Mentink) commented in the following manner: "(f) This subsection must be amended as follows:

> "If CCS determines the pupil has a medical therapy program eligible condition, CCS shall ~~propose a therapy assessment to the parents and obtain written consent for the~~ proceed with the remainder of the assessment of the need for medically-necessary occupational therapy or physical therapy. This assessment for therapy shall be ~~implemented~~ completed not more than 15 days following the determination of whether the pupil has a medical therapy program eligible condition and in no case more than 50 days from receipt of parental consent for the assessment.

"Rationale: Consistent with the amendments recommended above, the referral by the LEA to CCS will include parental consent, will generate an assessment plan from CCS, and will result in one assessment which first determines eligibility and then, if the child is eligible,

proceeds to determine service needs. The process will have specified time lines. The term 'implemented' could be interpreted to mean 'begun' or 'initiated' which would leave the time line for completion of the assessment indefinite."

Response:

The Departments disagree with this proposed amendment to the regulations because of the need for obtaining consent for treatment from the parent(s) and therapy prescription from the physician which are outside of the control of the Medical Therapy Program staff.

186) Comment:

60320(f) - Testifiers 11.[(g)] (Haining) and 24. (Haining) stated that the time frame required for implementation of the assessment plan is unreasonably short.

Response:

The Departments disagree with this comment. The Departments believe that 15 days is a reasonable time frame to start the process of contacting the family, obtaining consent from the parent(s) and scheduling the necessary appointments.

187) Comment:

60320(h) - Testifier 14.[(x)] (Feldman) stated that this section does not provide for the parent to receive a copy of the CCS assessment report.

Response:

The Departments disagree with this comment. This section clearly states that the parent shall receive a copy of the assessment report.

188) Comment:

60320(i) - Testifier 13.[(jj)] (Mentink) and testifier 14.[(??)] (Feldman) stated that this section should reference the requirements of IDEA.

Response:

The Departments disagree with these comments. The CCS due process system in Title 22 Chapter 13 beginning with Section 42700 meets all current requirements under 20 USC Sections 1415(b) and (c). However, as a result of the review of the regulation text the Departments decided to amend this subsection to include the requirement that the completed assessment report for therapy be provided to the LEA and the parent in order to state what is already current CCS policy and procedure. The language was amended to provide an understanding of the process. The amended regulation text will read "When CCS determines a pupil does not need medically-necessary physical therapy or occupational therapy, the LEA

and the parent shall be provided with the completed assessment report for therapy and a statement which delineates the basis for the determination.

Section 60323

189) Comment:

Testifier 4. (Nolan) and testifier 9.[(a)] (Nolan) state an objection to this section in that this regulation mandates additional costs on the CCS program. The testifiers also state that the regulations are not in compliance with provision of Article III B, Section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. And in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriate for the mandated costs, nor the citation of the item of appropriation in the Budget bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15, 1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

190) Comment:

60323(a) - Testifier 7.[(n)] (Burchill) stated that inclusion of "functional status" in the determination of medical necessity reflects a bias against students who are mentally retarded and is discriminatory. The commentor requested that the term be deleted or defined in exact terms.

Response:

The Departments disagree with this comment. The term "functional status" is a term that is commonly used and understood by providers of rehabilitative services. It refers to a specific child's ability to perform certain motor tasks and is a baseline by which goals and objectives for services can be developed, measured and monitored.

191) Comment:

60323(b) - Testifier 7.[(o)] (Burchill), in the context of the requirement that the Medical Therapy Conference team reviews the therapy plan to ensure the inclusion of measurable goals and objectives to be performed by PTs and OTs during treatment services as well as activities to be performed by parents or LEA staff to maintain or prevent loss of function, questioned the exclusion of CCS occupational and physical therapists, as providers of a related service, from providing services to maintain or prevent loss of function. The commentor recommended that the list of those responsible to carry out a student's functional goals and objectives and perform those activities necessary to maintain or prevent loss of function be revised to include the occupational and/or physical therapist.

Response:

The Departments agree with the need to change this regulation. A change would ensure that the Departments' intent to also have CCS Occupational Therapists and Physical Therapists perform these services is more clearly stated. The regulation should be amended to read: "The Medical Therapy conference shall review the therapy plan to ensure the inclusion of measurable functional goals and objectives for services to be performed by occupational therapists and physical therapists, as well as activities that support the goals and objectives to be performed by parents or LEA staff to maintain or prevent loss of function..

192) Comment:

60323(d) - Testifier 7.[(p)] (Burchill) requests the exclusion of the term, "functional status" by reference to comments provided in relation to section 60323(a).

Response:

The Departments disagree with this comment. The term "functional status" is a term that is commonly used and understood by providers of rehabilitative services. It refers to a specific child's ability to perform certain motor tasks and is a baseline by which goals and objectives for services can be developed, measured and monitored.

Section 60325

193) Comment:

60325(Title) - Testifier 12.[(l)(1)] (Brogan) requested that the title be changed to read "Medical Therapy Services and Individualized Education" from "Individualized Education Program for Therapy Services".

Response:

The Departments disagree with the proposed change to the regulations. The change in the title does not accurately reflect the language in this section. This section describes how CCS will provide information to the IEP team for consideration for inclusion in the IEP.

194) Comment:

60325 - Testifier 4.[(a)] (Nolan) states an objection to this section in that this regulation mandates additional costs on the California Children Services program. Testifier 4.[(a)] also states that the regulations are not in compliance with the provisions of Article III B, section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. and in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriation for the mandated costs, nor the citation of the item of appropriation in the Budget Bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15, 1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

195) Comment:

60325 - Testifier 9.[(a)] (Nolan, Borders and Thomas) states that there is a serious shortage of qualified physical and occupational therapists to provide MTU services as county employees. The testifiers state that their county lacks both the personnel and financial resources to implement the additional prescribed requirements and it may be impossible to fully implement them (e.g., additional therapy services, staff attendance at IEP meetings, prescribed deadlines and other procedural requirements). The testifiers state that their county has adopted methods of participating in the IEP process without burdensome regulations. The testifiers continue to state that there are less burdensome methods for achieving increased interagency cooperation, but that they were not consulted in the draft of the regulations and written questions submitted more than two months ago at the CCS training sessions have not been answered. They state that these regulations do not adequately address operational difficulties that counties such as theirs can expect to experience in their implementation. The testifiers object to the provision which could make CCS responsible for Medical Therapy services by virtue of their inclusion in a child's IEP and include language requiring CCS services to "pupils". Such provisions seem to be in conflict with the California Health and

Safety Code and portions of federal law that make education agencies responsible for special education and related services, not health agencies such as CCS. CCS benefits and services should not be subject to the IEP hearing process because that conflicts with well established CCS program regulations. Since these regulations as drafted are in part unnecessary, burdensome, and in conflict with existing federal and state laws and regulations on the same subject matter, alternative methods of achieving improved interagency communication without such liabilities should be developed and submitted for public review.

Response:

The Departments disagree with these comments and believe that the regulation, as proposed, are in full compliance with state and federal law. Section 7572(e) of the Government Code requires participation of California Children's Services (CCS) in the development of the individualized education program (IEP) when discussing the need for medically necessary occupational or physical therapy. The law does not take into consideration the availability of resources as a determinate regarding the degree to which an agency participates in the provision of special education and related services to children with disabilities. With respect to comments submitted by Dr. Nolan, Ms. Borders and Ms. Thomas, that they "object to the provisions which could make CCS responsible for Medical Therapy services by virtue of their inclusion in a child's IEP and include language requiring CCS services to 'pupils,' this is the law as found in Chapter 26.5 of the Government Code. In addition, pursuant to Education Code Section 56500, CCS is considered a "public education agency." This section defines a "public education agency" in part as "a district, special education local plan area, or county office, depending on the category of local plan elected by the governing board of a school district . . . or any other public agency providing special education or related services" (emphasis added). Therefore, the Departments believe this section is necessary to specify the responsibilities of CCS in participating in the development of an IEP regarding the necessity and provision of medically necessary occupational or physical therapy services.

196) Comment:

60325(a)(2) - Testifiers 11.[(h)] (Haining) and 24. (Haining) stated that the wording of the subsection allowed for maintenance therapy and suggested that, for most children, prevention of loss of function is not possible. The commentor requested that the wording be confined to, "The proposed functional goal to achieve a measurable change in function."

Response:

The Departments disagree with this comment. As per comments on Section 60300(n) & 60310(c)(5), instruction services by therapists to nonprofessionals so they may perform activities in the home and classroom that do not require the skilled expertise of a PT or an OT are essential in the overall rehabilitation of the child. It is especially imperative that this information is relayed to the IEP team for inclusion in the IEP to assure this function is performed in the classroom.

The Departments disagree with this comment and believe that this regulation, as proposed, is necessary for the MTP to provide medically necessary occupational and physical therapy

to children with disabilities. It is the responsibility of the individualized education program (IEP) team, consistent with State and federal special education law, to determine the necessity for such related services to assist a child with a disability to benefit from special education. It is not within the purview of these regulations to be so restrictive as to limit decisions made by the IEP team.

197) Comment:

60325(a)(4) - Testifier 13.[(kk)] (Mentink) commented in the following manner: "Section 60325. (a)(4) The subsection should be amended as follows:

"The proposed initiation, location, frequency, and duration of the services, and

"Rationale: The IDEA has been amended at section 1414(d)(1)(vi) to require that frequency, location, and duration of services be specified."

Response:

The Departments disagree with this comment. The MTP program services according to Health and Safety Code, Section 123950 are to be provided in the school. However, as a result of review of the regulation text, the Departments decided to amend this subsection to reiterate the responsibilities and requirements of the MTP. The amended regulation text reads "The proposed initiation, frequency, and duration of the services to be provided by the medical therapy program; and."

198) Comment:

60325(a)(4) - Testifier 14.[(l)] (Feldman) stated that the section does not conform to IDEA.

Response:

Please see response to Comment 197).

199) Comment:

60325(b) - Testifier 12.[(l)(2)] (Brogan) proposes amending section 60325(b) to exclude the specific reference to participation by CCS in the IEP team and presented amendment language that would provide for a description of the participation of "other public agencies" in IEP meetings in accordance with IDEA.

Response:

The Departments disagree with this proposed change to the regulations. Section 60325(b) only applies to the relationship between CCS and LEAs and is not applicable to mental health or any other agency that is part of this regulation package.

200) Comment:

60325(c) - Testifier 13.[(ll)] (Mentink) commented in the following manner: "(c) The subsection must be amended by adding two sentences at the end of it as follows:

> "The written notice described in this subdivision shall contain all the information required under Title 20 United States Code Section 1415(b) and (c). No change in any CCS service provided as a special education related service pursuant to an IEP shall become effective without parental consent or the order of a hearing officer following a special education due process proceeding initiated by CCS, and wherein CCS shall bear the burden of proof regarding the appropriateness of any change in services.

"Rationale: No other special education service can be unilaterally changed in a child's IEP without the notice specified by federal law. No other special education service can be changed in an IEP without parental consent or the order of a hearing officer following a due process hearing. The rules are no different for CCS when it is operating under an IEP pursuant to these Government Code provisions. See Government Code Sec. 7586."

Response:

The Departments disagree with this comment. CCS has the authority to determine medical necessity and may change the therapy plan when it is deemed medically necessary by the CCS program. The decision lies with the IEP team to decide to either call an IEP and propose a change or decide that the LEA will provide the services CCS was formerly providing.

201) Comment:

60325(c) - Testifier 7.[(q)] (Burchill) stated that the requirement that CCS notify the IEP team and parent in writing within five days of a decision to increase, decrease, or discontinue services for pupils receiving therapy services is inconsistent with the notice provisions specified in section 60310.

Response:

The Departments disagree with the proposed change to the regulation. Education Code Section 56343 states that an IEP team may meet when a pupil receives any subsequent formal assessment (such as a CCS reevaluation for therapy services). This is an IEP team decision. There is no inconsistency between Section 60310 and Section 60325. The reference to the 10-day time line in 60310 is to notify the LEA when there may be a change in the therapy plan because a child is scheduled at a MTC or has a physician appointment and a change to the therapy plan is to be proposed to the physician. The 5-day time line referred to in Section 60325 is a requirement for CCS to notify the LEA and parent when the therapy plan has actually been changed and the IEP team needs to consider an IEP team meeting if the related services provided by CCS have been included in the IEP.

202) Comment:

60325(d) - Testifier 13.[(mm)] (Mentink) commented in the following manner: "(d) This subsection should be amended as follows:

"The IEP team shall be convened by the LEA pursuant to discuss the proposed termination, reduction, increase, or change in the nature of CCS-provided services resulting from operation of subsection (c) of this section~~or when there is an annual or triennial review or a review requested by the parent or other authorized persons~~.

"Rationale: There must be an IEP team meeting to discuss what is proposed by CCS following the written notice specified by federal law. The proposed change is simply an item for discussion and potential consent of the parent. Absent this consent or absent CCS initiating due process against a nonconsenting parent and carrying its burden of proof of demonstrating the change in circumstances justifying a change in services, services as specified in the IEP must continue uninterrupted as required by law. The last clauses of subsection (d) are not needed. There is sufficient authority in other statutes and regulations for the requirement that there must be an IEP team meeting annually and at the triennial review and when requested by the parent."

Response:

The Departments disagree with this comment. CCS has the authority to determine medical necessity and may change the therapy plan when it is deemed medically necessary by the CCS program. The decision lies with the IEP team to decide to either call an IEP and propose a change or decide that the LEA will provide the services CCS was formerly providing.

203) Comment:

60325(e) - Testifier 13.[(nn)] (Mentink) commented in the following manner: "(e) This subsection should be amended by adding two sentences at the end as follows:

"During the pendency of the IEP team meeting and assessments described in this subsection, CCS shall continue to provide all services specified in the IEP or incorporated by reference into the IEP, except those which the parent has given his or her consent to change or which have been terminated or modified by order of a special education hearing officer. Nothing in this subsection shall prevent an LEA from agreeing, or a hearing officer from ordering an LEA to provide the services specified in the IEP or incorporated by reference therein in lieu of CCS and pending the IEP meeting and assessments described in this subsection.

"Rationale: It is a good practice for the LEA to conduct assessments to determine whether the child continues to need some or all of these services for solely educational reasons should CCS ultimately prevail in a due process hearing on the medical necessity standard. These assessments by the LEA should begin as soon as possible following CCS's proposed changes to the IEP so as to ensure no interruption of educationally necessary services should it be

determined by a hearing officer that a child's medical condition or medical need for services has changed. The presumption that the services previously provided by CCS are educationally necessary (if they were not they would never have been in an IEP) is likely unaffected by CCS's determination that the child no longer has a CCS eligible condition or that the services are no longer medically necessary. In any case, the services must continue to be provided by CCS absent parental consent or a hearing officer's decision. And, unless, the hearing officer also determines there is no educational need for the service, the presumption that the service continues to be educationally necessary prevails and the LEA must begin to provide them."

Response:

The Departments disagree with this comment. The CCS program is responsible as per CCR, Title 22, Section 41518 to determine medical necessity for services which it provides. The IEP team does not determine which services the CCS program provides.

204) Comment:

60325(e) - Testifiers 11.[(i)] (Haining) and 24 (Haining) stated that this section would allow for duplication of services and that there is no difference between medically indicated therapy and "educational" therapy.

Response:

The Departments disagree with this comment. The LEA has the responsibility to determine the overall plan of services for a child to assist him/her "to benefit from the special education program". The related services provided by the CCS program are only one component of the services that may be needed by a child. This section describes the LEA's responsibility in this area, not focusing on any specific service.

The Departments believe that this regulation, as proposed, is necessary for the individualized education program (IEP) team to determine the need for medically necessary occupational and physical therapy services in order for the pupil to benefit from special education. Government Code Section 7572 (e) states, in part, whenever a related service . . . is to be included in the child's individualized educational program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program."

205) Comment:

New 60325(g) - Testifier 13.[(oo)] (Mentink) commented in the following manner: "(g) A new subsection (g) should be added as follows:

"(g) When the IEP team members representing the LEA determine that OT or PT services are not necessary for the pupil to benefit from special education, if the parent disagrees with that determination, the LEA shall provide the parent a written notice of the decision to deny these services which contains all the information specified by Title 20 United States Code Sec. 1415(b) and (c).

"Rationale: This added subsection clarifies the procedures for and responsibility of the LEA to give the notice required by federal law where it denies continued provision of these services."

Response:

The Departments disagree with this comment. There are already requirements for the IEP team to notify parents contained in Section 56321 and 56329 of the Education Code.

Section 60330

206) Comment:

60330 - Testifier 12.[(m)] (Brogan) proposes the elimination of the entire section without a stated rationale.

Response:

The Departments disagree with this comment. The Departments believe that we are not obligated to consider amending these sections in the absence of a stated rationale from Mr. Brogan. However, this section is necessary to ensure there is identification of responsibility for the provision of space and equipment for a Medical Therapy Unit in a public school.

Section 60400

207) Comment:

60400 - Testifier 13.[(pp)] (Mentink) commented in the following manner: "Section 60400. Introduction: The title of this regulation does not make sense. It is limited to home health aides, but for reasons described below should be amended to: 'Home Health Aides And Other Health Care Personnel'

"(a) This subsection does not make sense and should be amended as follows:

"The Department of Health Services shall be responsible for providing the services of a home health aide or other health care personnel when the LEA considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

"Rationale: It is clear from subsection (a)(2) that some of these children may 'require' the personal assistance of a nurse or other specially trained adult. Subsection (b) even specifies 'daily skilled nursing care.' The Department surely would not provide a 'home health aide' to a child who required the services of a nurse. The title of this regulation as well as the text must be amended to clarify that it will not be home health aides only who will be assigned to these cases, especially when the child's care requires a nurse."

Response:

The Departments disagree with the comment. The addition of "other health care personnel" is unnecessary because subsection 60400(c) permits DHS to determine the appropriate health care personnel to provide services to an individual child while the child is in school.

208) Comment:

60400 - Testifier 12.[(n)] (Brogan) proposes rewriting subsection 60400(a) to require appointment of a liaison by each county agency of DHS and by the County Superintendent of Schools or SELPA Director.

Response:

The Departments disagree with the testifier. The language proposed offers no connection to anything else in this section and does not clarify the purpose of this section.

209) Comment:

60400 - Testifier 7.[(r)] (Burchill) requested the revision of this section that describes the Medi-Cal program's responsibilities to provide Home Health Aide services in the school.

Response:

The Departments disagree with this comment. Home Health Aide is defined in CCR, Title 22, Section 7624; there is no distinction between children eligible for full scope Medi-Cal and those eligible for EPSDT benefits; the IEP team should determine the services the child needs to benefit from special education. Eligibility for services by other agencies (e.g., Medi-Cal or CCS) is not done at that time.

Section 60505

210) Comment:

60505(a) - Testifier 12.[(o)] (Brogan) proposes to delete section 60505(a) that states that the Department of Social Services shall provide the Superintendent of Public Instruction a current rates list of group homes and foster family agencies. The proposed draft to replace section 60505(a) states that each county department of Social Services shall appoint a liaison in order to facilitate the provision of services as described in subdivisions (a), (b), (d) and (e) of

Section 7573 of the Government Code, and also in subdivisions (a), (b), and (d) of Section 7575 of the Government Code.

Response:

The Departments disagree with this comment. Government Code Section 7573 does not contain any subdivisions. Government Code Section 7575 states that "the Superintendent of Public Instruction shall insure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary to benefit educationally from his or her instructional program." Government Code Section 7575 discusses the provision of medically necessary occupational therapy and physical therapy by reason of medical diagnosis and when contained in the child's individualized education program. It is unclear why Mr. Brogan would want to strike the current section 60505(a) and replace it with the proposed language. Section 60505(a) is intended to provide the Superintendent of Public Instruction with information regarding programs for possible placement in out-of-home care. One section of the Government Code cited by Mr. Brogan deals with local education agencies providing the education and related services the child needs, and the other citation are concerned with the provision of medical services. The relationship of these citations to the contents of section 60505(a) is not apparent. Therefore, while the Departments thank Mr. Brogan for the suggested language, we would prefer to leave section 60505(a) as written

211) Comment:

60505(e) - Testifier 13.[(rr)] (Mentink) commented in the following manner: "(e)(2) This subsection should be deleted and the text of subsection (e)(1) incorporated into the body of subsection (e).

"Rationale: This subsection clearly sends a message to facility operators not to accept any difficult children who may tax the existing program structure, funding, or staff of the SELPA. Again, children taking up residence in a SELPA with their parents are entitled to a program which is individually designed to meet their unique needs whether it fits the SELPA's current instructional personnel service units, facilities, funding, and staff or not. Children placed in residential facilities are entitled to no less individualized IEPs."

Response:

The Departments disagree with this comment and believe that section 60505(e)(2) as proposed is necessary and in alignment with Government Code Section 7580.

212) Comment:

60505(e)(1) - Testifier 13.[(qq)] (Mentink) commented in the following manner: "Section 60505. (e)(1) This subsection should be amended as follows:

"The types and locations of the existing public and state certified nonpublic nonsectarian special education programs available within the SELPA, and a statement that if a child presents with needs which are not appropriately addressed in any of the SELPA's existing public or nonpublic programs, an existing program would have to be modified or a new program developed and the SELPA Director should be notified as soon as possible of the needs of any such child;"

"Rationale: This subsection implies to facility licensees that what the SELPA has is the sum total of the entitlement to appropriate and least restrictive educational programming for children placed in facilities in the SELPA. Clearly, the SELPA would have the duty to modify an existing program or a (sic) develop a new one for a child with unique needs that were not appropriately addressed by any existing program if the child moved into the SELPA with his parents. Children who enter the SELPAs in ways other than in the company of their parents are entitled to no less in the way of individualized educational programming."

Response:

While the Departments appreciate the concern expressed by Mr. Mentink, the Departments believe what Mr. Mentink proposes is an extension of the requirements found in Chapter 26.5 of the Government Code. It does not appear that there is any authority to write rules to satisfy Mr. Mentink's concerns.

Section 60550

213) Comment:

60550 - Testifier 4. (Nolan) states an objection to this section in that this regulation mandates additional costs on the California Children Services program. Testifier Nolan also states that the regulations are not in compliance with the provisions of Article III B, section 6 of the California Constitution, and California Government Code, Chapter 4, Article 1, sections 17550 et seq. And in particular Government Code section 17561, insofar as the regulations are not accompanied by the cited appropriation for the mandated costs, nor the citation of the item of appropriation in the Budget Bill or in any other bill that is intended to serve as the source from which the Controller may pay the claims of such local CCS county agencies.

Response:

The Departments disagree with the comments and believe that the regulations, as proposed, are in full compliance with law and the Administrative Procedure Act (APA). Funding for the services to be provided through the regulations included in R-52-91 was included in the 1998 Budget Act (Chapter 324, Statutes of 1998). The funding is in Items 4260-101-0001, 4260-101-0890, and 4260-111-0001. These items do not specifically identify the dollars particular to this regulation package. The detail can be found in the May 1998 Medi-Cal Estimate and the May 1998 CCS Estimate which is part of the May 1998 Family Health Estimate. These estimates are public documents submitted to the Legislature on May 15, 1998 and are the basis for the Governor's Budget. These funds will appear in the base appropriations for the CCS program in future years. The estimated costs to the county CCS programs (approximately $805,000 statewide/year) will be made through the normal CCS funding process. According to the Department of Finance, these costs are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code (which sets forth the mandate claiming process).

214) Comment:

60550 - Testifier 9.[(d)] (Nolan, Borders and Thomas) states that CCS benefits and services should not be subject to the IEP hearing process because that conflicts with well established CCS program regulations. Since these regulations, as drafted, are in part unnecessary, burdensome, and in conflict with existing federal and state laws and regulations on the same subject matter, alternative methods of achieving improved interagency communication without such liabilities should be developed and submitted for public review.

Response:

The Departments disagree with this comment and believe that the regulation, as proposed, is in full compliance with state and federal law. Section 7586 of the Government Code states that "all state departments, and their designated local agencies shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code."

215) Comment:

60550(d) - Testifier 13.[(ss)] (Mentink) commented in the following manner: "Section 60550. (d) This subsection should be amended as follows:

"Each agency which is identified by the State Superintendent of Public Instruction or designee or parent as a potentially responsible party and which has been....

"Rationale: It is not the Superintendent or her designee (the Special Education Hearing Office) who names the parties to a hearing. It is the parent, when the parent is initiating due process, who specifies who the hearing is against."

Response:

The Departments disagree with this comment. While the Departments appreciate the concern expressed by Mr. Mentink, section 60550(d) outlines the responsibility of the State Superintendent of Public Instruction for the exercise of due process at the state level. Obviously, all action taken by the State Superintendent of Public Instruction will include all parties relevant to resolution of disagreements between a parent and a public agency.

216) Comment:

60550(e) - Testifier 13.[(tt)] (Mentink) commented in the following manner: "(e) This subsection is very unclear and should be amended to specify what is meant by 'shall rule according to Government Code Section 7575(a)'."

Response:

The Departments agree that section 60550(e) is unclear and propose that this section be amended to read "The hearing officer shall be knowledgeable in the laws governing administrative hearings. In addition the hearing officer shall be knowledgeable about the provisions of Chapter 26.5 of the Government Code and applicable laws relevant to special education, community mental health and California Children's Services."

217) Comment:

60550(e) - Testifier 8.[(entire letter)] (Johnson) requested that the regulation be amended to require the hearing officer to be knowledgeable of the CCS program in order to render a decision that is in the best interest of the child.

Response:

The Departments generally agree with Ms. Johnson's comment. Therefore, in order to ensure that hearing officers are knowledgeable in all pertinent administrative, legal and program areas covered by Chapter 26.5 of the Government code, we propose that section (e) be amended to read "The hearing officer shall be knowledgeable in the laws governing administrative hearings. In addition the hearing officer shall be knowledgeable about the provisions of Chapter 26.5 of the Government Code and applicable laws relevant to special education, community mental health and California Children's Services. For hearings related to ...."

Section 60560

218) Comment:

60560 - Testifier 13.[(uu)] (Mentink) commented in the following manner: "Section 60560. (a) This subsection should be amended as follows:

"Allegations of failure by an LEA, Community Mental Health Service, or CCS to comply with these regulations, or with the terms of an IEP, including service or therapy plans attached to or incorporation by reference into the IEP, or with any other provisions of state or federal law, shall be resolved pursuant to Chapter 5.1, commencing...."

"Rationale: It should be made clear that all agencies governed by Government Code Sections 7570 through 7588 are subject to this complaint process. In addition, these regulations are not the entire universe in terms of the special education laws (as well as IEPs) that the various state and local agencies must comply with. If only violations of these regulations are within the jurisdiction of this compliance complaint process, it would be unclear what process should be followed for all other complaints involving noncompliance not covered by these regulations".

Response:

The Departments agree with the intent of Mr. Mentink's comment. Therefore, the Departments propose to amend section 60560(a) to read "Allegations of failure by an LEA, Community Mental Health Service, or CCS to comply with these regulations, shall be resolved pursuant to Chapter 5.1, commencing with Section 4600, of Division 1 of Title 5 of the California Code of Regulations." This proposed amendment is limited to the requirements of Chapter 26.5 of the Government Code and the proposed regulations. The Departments do not believe, however, that we have the authority to include language that may be construed to mandate agencies to comply with elements of the individualized education program (IEP) that may transcend Chapter 26.5 services. In this instance, other sections of law and regulation provide for compliance complaints.

219) Comment:

60560 - Testifier 9.[(a)] (Nolan, Borders and Thomas) states that there is a serious shortage of qualified physical and occupational therapists to provide MTU services as county employees. The testifiers state that their county lacks both the personnel and financial resources to implement the additional prescribed requirements and it may be impossible to fully implement them (e.g., additional therapy services, staff attendance at IEP meetings, prescribed deadlines and other procedural requirements). The testifiers state that their county has adopted methods of participating in the IEP process without burdensome regulations. The testifiers continue to state that there are less burdensome methods for achieving increased interagency cooperation, but that they were not consulted in the draft of the regulations and written questions submitted more than two months ago at the CCS training sessions have not been answered. They state that these regulations do not adequately address operational difficulties that counties such as theirs can expect to experience in their implementation. The testifiers object to the provision which could make CCS responsible for Medical Therapy services by virtue of their inclusion in a child's IEP and include language requiring CCS services to "pupils." Such provisions seem to be in conflict with the California Health and Safety Code and portions of federal law that make education agencies responsible for special education and related services, not health agencies such as CCS. CCS benefits and services should not be subject to the IEP hearing process because that conflicts with well established

CCS program regulations. Since these regulations as drafted are in part unnecessary, burdensome, and in conflict with existing federal and state laws and regulations on the same subject matter, alternative methods of achieving improved interagency communication without such liabilities should be developed and submitted for public review.

Response:

The Departments disagree with comments made regarding compliance complaints. It could not be easily ascertained from written comments from Dr. Nolan or the written testimony of Dr. Nolan, Ms. Borders and Ms. Thomas of their concern regarding compliance complaints. In any regard, the Departments believe that the regulations, as proposed, are in full compliance with state and federal law.

220) Comment:

60560 - Testifier 14.[(z)] (Feldman) states that the following language "allegations of failure to comply with these regulations," in section (a) raised the question of whether or not the California Department of Education (CDE) has the authority to investigate complaints related to all federal and state special education requirements. Testifier Feldman suggests to include regulatory language that gives the CDE clear authority to investigate complaints and enforce corrective actions if warranted against the community mental health and California Children's Services for violations of either federal or state law. Testifier Feldman concludes by stating that federal statutes require any state agency providing special education services under Part B to comply with all federal IDEA mandates.

Response:

The Departments disagree with the comment and believe that the language proposed for section 60560(a) is in alignment with the Individuals with Disabilities Education Act. Section 60560(a) purposely limits complaint procedures to the requirements set forth in these regulations to provide interagency services to pupils with disabilities. There is no authority to regulate services other than those required by Chapter 26.5 of the Government Code. Therefore, complaint procedures must be limited to the scope of these regulations.

Section 60600

221) Comment:

60600 - Testifier 9.[(a)] (Nolan, Borders and Thomas) states that there is a serious shortage of qualified physical and occupational therapists to provide MTU services as county employees. The testifiers state that their county lacks both the personnel and financial resources to implement the additional prescribed requirements and it may be impossible to fully implement them (e.g., additional therapy services, staff attendance at IEP meetings, prescribed deadlines and other procedural requirements). The testifiers state that their county has adopted methods of participating in the IEP process without burdensome regulations. The testifiers continue to state that there are less burdensome methods for achieving increased

interagency cooperation, but that they were not consulted in the draft of the regulations and written questions submitted more than two months ago at the CCS training sessions have not been answered. They state that these regulations do not adequately address operational difficulties that counties such as theirs can expect to experience in their implementation. The testifiers object to the provision which could make CCS responsible for Medical Therapy services by virtue of their inclusion in a child's IEP and include language requiring CCS services to "pupils." Such provisions seem to be in conflict with the California Health and Safety Code and portions of federal law that make education agencies responsible for special education and related services, not health agencies such as CCS. CCS benefits and services should not be subject to the IEP hearing process because that conflicts with well established CCS program regulations. Since these regulations as drafted are in part unnecessary, burdensome, and in conflict with existing federal and state laws and regulations on the same subject matter, alternative methods of achieving improved interagency communication without such liabilities should be developed and submitted for public review.

Response:

The Departments disagree with comments made regarding compliance complaints. It could not be easily ascertained from written comments from Dr. Nolan or the written testimony of Dr. Nolan, Ms. Borders and Ms. Thomas of their concern regarding compliance complaints. In any regard, the Departments believe that the regulations, as proposed, are in full compliance with state and federal law.

222) Comment:

60600(b) - Testifier 13.[(vv)] (Mentink) commented in the following manner: "Section 60600. (b) This subsection must be amended as follows:

> "....when the service is contained in the IEP, mediation agreement, or due process hearing decision. The IEP of a pupil...., a copy of the ~~decision rendered by~~ mediation agreement negotiated through the mediator or decision of the hearing officer, shall....

"Rationale: These amendments simply make the language describing these documents consistent with what actually occurs. Mediators do not write or even make decisions. Mediators simply facilitate the process of the parties negotiating a settlement agreement."

Response:

The Departments agree with Mr. Mentink's comment. Therefore, the Departments propose to amend section 60600(b) to read "A dispute over the provision of services means a dispute over which agency is to delivery or to pay for the services when the service is contained in the IEP, mediation agreement, or due process hearing decision. The IEP of a pupil with a disability, and, when appropriate, a copy of the mediation agreement negotiated through the mediator or decision of the hearing officer shall accompany the request for a state interagency dispute resolution."

Section 60610

223) Comment:

60610 - Testifiers 11. [(j)] (Haining) and 24. (Haining) state that CCS has been able to maintain a cost effective program by assessing the needs and providing the therapy services through their own MTUs. However, the regulations would force CCS to pay for therapy services outside of these usual means if there is a waiting list. In one SELPA the educators have in the past initiated therapy services without having the child participate in a CCS MTU clinic on the prescription of a non-paneled physician as they perceived a need for the child to begin therapy was urgent. It is unusual for therapy services to be of such urgency as an outpatient that they need to have uninterrupted services. With this new interpretation CCS could be liable for providing therapy at as much as two to three times the amount it pays in the MTU. Testifier Haining concludes by stating that there is no funding mechanism to pay for this added burden.

Response:

The Departments agree with the commentor that it may be possible that the CCS Medical Therapy Program could reimburse for additional therapy services as the result of a fair hearing decision. The additional funding necessary to reimburse for these services is now included in the CCS budget.

The Departments believe that the regulation, as proposed, is in full compliance with state and federal law. The individualized education program (IEP) determines the need for occupational and physical therapy in order for a pupil to benefit from special education. State and federal law does not allow the denial of services by placing children on waiting lists. Costs and/or the availability of resources are not to be a barrier for purposes of providing special education and related services. In the instance that CCS does not have the necessary resources to meet the needs of a pupil eligible for the MTP, it is incumbent upon the program to take necessary actions to ensure that pupils with disabilities receive services to which they are entitled in a timely manner.

General Comments

224) Comment:

Sections 60040, 60045, 60055(a) - Testifier 12.[(??)] (Brogan) comments that..."Attached is a comprehensive revision to the Proposed Interagency Regulations which continues this effort. The changes reflected in this document are based on the following principles: The SELPA Admisistrators support all students having access to high quality services from a variety of public agencies, all services must be integrated into the student's program, since 1986 when the original law was passed, many communities have, or will be designing, multi-agency wrap-around services for youth and families to meet this goal...."

Response:

With the elimination of Sections 60040 and 60045, there is elimination of some guidance and uniformity in these areas. Also, these sections do not appear to be redundant with information provided in other sections. The proposed changes by the testifier to Section 60055(a) have some merit in that the change from mental health services to mental health agency would make sense from a wrap around perspective. If the referral to the mental health agency is to a wrap agency, it would be inappropriate for the IEP Team to decide on the service array prior to the convening of the child and family team process. However, not all mental health agencies are wrap agencies, the agency may not provide the services the pupil/child needs, and thus the LEA may be out of compliance by not ensuring that the child/pupil got the services he or she needs. Therefore, the proposed change may not be in some children's best interest and is better left as it currently reads. Also, many of the proposed changes eliminate timelines. The timelines would lend some needed standards and uniformity across LEAs.

225) Comment:

Fiscal Impact/Local Mandate Statement - Testifier 27.[(a)] (McIver) commented at the public hearing in the following manner: "Now, I would also be remiss if I didn't take the occasion to mention, too, that in the proposed regulations and statement of reasons circulated with the proposed regulations, it cites that the departments have determined that the proposed regulations impose a mandate on the local mental health service agencies to serve eligible special ed pupils. And the fiscal impact statement also cites that some additional costs will result for community mental health services based on the shift in fiscal responsibility for out-of-state placed pupil's case management and mental health cost from local education to local mental health.

"Now, while there is a shift in cost, there is not a shift in money. And it cites that the cost increase estimated at $2.4 million, which is no doubt an underestimate of the cost, may be accessed through the mandates claiming process. And to date, this claiming process has not been timely or successful. We were led to believe that this would be an undisputed case because there is agreements from the departments that there is no dispute about the mandate claim. However, there's been a reversal of that at the state; and our test claim for reimbursement has been stalled. And I would suggest that unless this issue is resolved either through the mandates claiming process or through clarification in the regulations, that these regulations should not be approved."

Response:

The Departments do not agree with this comment.

The Departments met the provisions of Government Code Sections 11346.5(a)(5), (a)(6), 11346.9(a)(2), and 17561, in the following manner:

a) Made a determination that the regulations impose a mandate on local agencies.

b) Made a determination that the mandate is reimbursable.

c) The Departments prepared an estimate of the cost.

d) The Budget Act citation for reimbursement of these expenses is 4440-295-001, (7) 98.01.174.784-Services to Handicapped Students (Chap. 1747, Stats. of 1984).

(e) There is 1998-99 Budget Act funding to cover reimbursement expenses.

1998-99 Budget Act	$37,695,000
Chapter 780/98	22,608,000
Chapter 306/97 (carryover)	3,443,391
Chapter 748/96 (carryover)	77,472
TOTAL	$63,823,863

It is beyond the scope of this rulemaking to specifically address issues regarding the testifier's dispute with the mandates claiming process.

No change will be made to the regulations in response to this general comment.

226) Comment:

Supports Contra Costa Testimony - Testifier 28.[(a)] (Backlund) testified at the public hearing in the following manner: "Hi, I came today from Stanislaus County; and I want to express support and -- for the concerns expressed by the Contra Costa County submission and that's what I mainly --"

Response:

Please see response to Contra Costa County's comments throughout this section of the Statement of Reasons.

227) Comment:

Testifier 9. [(entire letter)] (Nolan, Borders and Thomas) provide general comments that the process outlined in the regulations is burdensome without offering any rationale or suggestion for changes. They also state that they currently have methods of communication and coordination. They do not identify the specific sections of the regulations that they say are in conflict with the Health & Safety Code. The commentors also broadly suggest that CCS benefits and services would be subject to the special education hearing process without identifying a specific cite in the regulations that would require this.

Response:

1. The Departments find that no alternative would be more effective in carrying out the purposes for which these regulations are proposed or would be as effective or less burdensome.

   The testifier does not specifically address how or which regulations are burdensome, nor does the testifier provide alternative processes for the Departments to consider.

2. While the testifier states their organization currently has methods of communication and coordination in place the testifier does not provide which or how regulations conflict with their current processes nor does the testifier present their organizations' processes to be considered as alternatives therefore the Departments are unable to respond more specifically to the testifiers comment.

3. The testifier et al list regulation sections for which an inclusive statement of conflict to unspecified section of the Health and Safety Code and specific federal laws. The Departments are unable to discern from the testifier's comments what is the conflict for the specific regulations and are unable to respond specifically.

4. In response to the testifiers et al suggestion that CCS benefits and services would be subject to the special education (fair) hearing process, Sections 60550 and 60560 set forth the process which would apply to those CCS services included in the IEP.

228) Comment:

Testifier 19.[(a)] (Mandac) has concerns about the regulations, as a whole, incorporating a medical program like CCS into education.

Response:

The Departments disagree and believe that the regulations do not "merge" the programs, but lay out a process for interagency cooperation and communication that will allow compliance with federal mandates for the provision of physical therapy and occupational therapy in the public school setting.

229) Comment:

Testifier 22. (Nolan) states that the proposed regulation package has sections that are in conflict with, inconsistent with or duplicative of a) Title 22, subdivision 7, sections 41510-42720, b) California Health and Safety Code starting with sections 123800, c) 20 United States Code starting with sections 1400, d) California Government Code sections 11349-11349.6, e) United States Constitution Article VI, and f) the present State Interagency Agreement between the Department of Health Services, CCS and the Department of Education.

Response:

The Departments disagree. The testifier does not state which part of the regulations are in conflict with the provided citations, therefore the Departments cannot reply in a specific manner to the comments. The Departments developed this regulation package to implement requirements of the Government Code Chapter 26.5 commencing with Section 7570. This section of the Government Code was passed in response to the Federal laws in part c) of the comment, and all of the other citations he mentioned in his comment were taken into consideration by the Departments during the regulation development process with the exception of the referral to the United States Constitution which has no bearing in this matter. The interagency agreement mentioned in the comment is subject to change with any changes to the statues or regulations.

230) Comment:

Testifier 22. (Nolan) states that the Departments have not provided any alternatives to the proposed regulations.

Response:

The commentor does not present any alternatives that the Departments can address specifically. However, since the regulations are necessary in order to implement Chapter 26.5 of the Government Code starting with section 7570, the Departments do not see any alternative to the regulatory process. These regulations are the most efficient in method and content in order to carry out the requirements of the statutes.

231) Comment:

Testifier 22. (Nolan) states that the necessity of the proposed regulations has not been demonstrated.

Response:

The necessity of the regulations has been stated in the Initial Statement of Reasons and subsequent to the public hearing process, the Final Statement of Reasons including the final modifications will be part of the rulemaking file and available for public review in Sacramento at the Department of Health Services, 714 P Street, Room 1000 or the Department of Social Services, 744 P Street, Room 750.

232) Comment:

Testifier 25. (Nolan) made many general comments identical to his written testimony [Testifier 4. (Nolan)].

Response:

The Departments disagree with the commentor's statement that the regulations will shift the responsibility for some PT and OT services from DOE to DHS. CCS will continue to provide therapy services to MTP eligible children that are deemed medically necessary by the CCS program as stated in HSC Section 123875.

The Departments disagree with the commentor's statement that alternative methods of achieving the goals of the regulations were not covered. The regulation promulgation process was an interagency endeavor from the beginning and a number of alternatives were discussed and the regulations are the result of many hours of analysis of the subject matter and interagency negotiation. They are the most feasible approach that brings the involved departments into compliance with federal requirements and allows the departments to remain within programmatic guidelines. The public hearing is the appropriate venue for the public to review the results of this process.

The Departments disagree with the commentors statement that the hearing officer appointed by the DOE may make medical eligibility determinations for children enrolled in public schools. Government Code Section 7575(a)(1-2) reserves the authority to make medical necessity determinations for the CCS MTP and HSC Section 123875 also gives this authority to CCS. The statutes also direct the hearing officers to be knowledgeable of special education law which includes the interagency responsibilities in Section 7575.

The Departments agree with the commentor's statement that CCS will be responsible for providing non-medically necessary services that the hearing officer directs them to provide, and this could be a financial burden to the CCS program. For this reason additional funds were budgeted for CCS.

The Departments disagree with the commentor's statement that the jurisdiction of the CCS program has been shifted to the IEP. Services not deemed medically necessary by the CCS program and included in the child's IEP will be the responsibility of the LEA as per Section 7575 of the Government Code.

The Departments cannot comment on the statement that there is conflict between the regulations and sections of the Government Code. No specific conflict has been noted by the oral commentor.

The Departments disagree with the commentor's statement that there is a shift of responsibility for related therapy services. The CCS MTP will provide medically necessary PT and OT services when determined by the physician as it always has. Services not deemed medically necessary by the CCS program and included in the child's IEP will be the responsibility of the LEA as per Section 7575 of the Government Code.

The Departments disagree with the commentor's statement that the regulations would expand the CCS program's medical eligibility criteria and that the regulations are inappropriately placed. The CCS program determines which diagnoses are eligible for medically necessary

therapy services, and these diagnoses are what appears in the regulations. While Title 22 would be and continues to be an appropriate placement for items relating solely to the CCS program or DHS, these regulations are an interagency endeavor required by Government Code Section 7587.

The Departments disagree with the commentor's interpretation that there is no provision in law that allows the other agencies involved in the interagency promulgation process to develop regulations that govern CCS. The Government Code requires each department to develop regulations to implement the requirements of Government Code Sections 7570-7587 as did the implementation language of AB 2726. The requirement was that regulations be developed and approved by all departments involved in the provision of services to children who are eligible for special education services in the public schools. Therefore, rather than set up an adversarial, non-effective process and develop regulations independently of each other, the Departments agreed to work cooperatively as an interagency group to develop regulations that would govern how the agencies would interact with each other at the state and local level on issues related to children in the public schools.

Once again, the Departments disagree with the commentor's statement that there is no authority for the agencies involved to promulgate regulations, nor the necessity for the regulations in their present form. The regulations are a requirement of Government Code Section 7587. The procedures set forth in the regulations are clear and provide consistency for procedures between agencies at both the state and local levels. The commentor has not shown evidence that the procedures are complicated or burdensome and has not proposed any alternatives to the methods described in the regulations that would meet federal statutory requirements.

The Departments thank the commentor for his praise of the program's reputation for making appropriate medical necessity decisions as provided for in statute in HSC Section 123875.

The Departments disagree with the commentor's statement that there will be a problem with referring to children as "pupils" since in the definition in this regulations package they are identified as children 0-21, which is within the CCS mandate for treatment of children in the CCS program. The CCS program will not be providing additional therapy services as identified by the commentor, and continues to provide only medically necessary therapy services as required in Government Code Section 7575(a)(1-2). The commentor has not provided evidence or support that the regulations place CCS in a subordinate position to DOE. The regulations are for all Departments to comply with, not just CCS. The commentor has not provided support for his allegations that CCS will be providing educational services in direct conflict with fiscal provisions of Title V.

The Departments disagree with the commentor's statement that there is conflict between the HSC and these regulations and has provided no evidence to support his statement.

The Departments disagree with the commentor's statement that the Departments have not issued a statement of reasons as to why the regulations are presented in their current state. A statement of reasons accompanied this regulations packet and was available at the public hearing.

The commentor's statement regarding training sessions held for implementation of the emergency regulations have no bearing on the regulatory writing or adoption process.

233) Comment:

Testifier 16.[(entire letter)] (Cox) commented as follows:

"California introduced into law the AB 3632 program effective July 1, 1986, with final regulation adopted July 1, 1997(sic), under AB 2726. The purpose of AB 2726 is to provide mental health services for only those children who are certified under the Individuals with Disabilities Education Act (IDEA) for special education. Mental health assessment and possible, subsequent service is generated by the Individualized Education Program (I.E.P.) Team as a related service on I.E.P.

The importance of mental health services for consumers of the San Diego Regional Center with developmental disabilities cannot be emphasized enough. Among people with developmental disabilities including mental retardation, 40%-70% have diagnosable mental disorders and need psychiatric care (APA, 1990).

A review of the literature suggests that up 83% of women and 32% of men with developmental disabilities suffer sexual abuse at some point in their lives (Wisconsin Council on Developmental Disabilities, 1991). It is likely that individuals who have developmental disabilities are at greater than average risk for experiencing repeated traumatization (Herman J.L., 1992). Therefore, the positive changes in language for individuals with developmental disabilities between the emergency regulations and AB 2726, particularly as they relate to referral to community mental health services are encouraging. For example, some of the revisions in criteria for referrals are as follows:

The pupil has emotional or behavioral characteristics (change from "behavioral" only) that: are "significant" (change from "severe").

"Impede the pupil from benefiting" from educational services (change from "adversely affect pupils educational performance").

Are associated with a condition that "cannot be described solely as a social maladjustment" (change from "defined solely as a behavior disorder").

These are positive changes that will assist in the assessment of the pupil's "level of functioning" and hopefully lead to a clearer interpretation of the criterion for referral to mental health departments that states: "The pupil's level of functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services".

Historically, this criterion has led to almost automatic denial of services for consumers of Regional Center with IQ scores of 70 or below. Service providers have increasingly recognized that individuals with mental retardation (MR) can have a wide range of psychiatric disorders, but still assume that MR precludes participation in counseling and psychotherapy. Such beliefs are unfounded, as demonstrated by numerous studies that reflect the effectiveness of individual and group therapy (Fletcher, 1993; Nezu, & Gill-Weiss, 1992,; Tomasulo, 1992).

Although, erroneous assumptions and biases have limited the availability of counseling and psychotherapy for people with MR, another issue must be addressed and that is the availability and experience of service providers. The County of San Diego, Department of Mental Health Services is still experiencing a hiring freeze and yet the referrals for mental health services continue to mount; often the Department is unable to meet the 50 day time line set down by AB 2726. Not only are they lacking adequate staff, but they have no therapists experienced in working with individuals with MR or any developmental disability. There is a strong possibility that an increase in trained staff would see an increase in the number of special education students accepted for mental health, which would be a real asset to the SDRC.

Response:

The Departments have determined that these comments recommend no specific revision in the proposed regulations.

It is beyond the scope of regulations to address local funding and labor deficits.

It is the intention of these proposed regulations to focus on dually diagnosed developmentally disabled pupils who can benefit from services. This "ability to benefit " is the product of many discrete abilities. In sum, it includes many individual capacities that no single specific test can accurately measure. Specific IQ eligibility limits would prevent this individual assessment regarding the appropriateness of mental health intervention, and, consequently, could produce the inappropriate denial of services that the commentor references. A comprehensive assessment by community mental health services is the best tool to measure a developmentally disabled pupil's ability to benefit from mental health treatment. Therefore, there will be no change made to the proposed regulations due to this comment.

234) Comment:

Testifier 18.[(a)] (Holle) recommended the following changes:

"The schools ("LEA's") as well as AB 3632 partner County Mental Health are entitled to federal Medicaid reimbursement[2] for services delivered to children who are eligible for full scope Medi-Cal.[3] CCS is the case manager for Medi-Cal recipients with respect to services needed because of the CCS eligible condition including therapy services delivered through Medical Therapy Units or MTUs.[4] Children who are covered by Healthy Families plans are entitled to receive services from county mental health departments based on diagnoses of

seriously emotionally disturbed or having a serious mental disorder pursuant to Welfare & Institutions Code § 5600.3 when services are needed beyond what is available under the plan.[5] County mental health departments are entitled to federal reimbursement for delivering such services.[6] We assume that when a child covered by a Healthy Families plan is determined to need a mental health service as provided in proposed 2 CCR § 60050, the county will seek federal reimbursement for those services. In addition, children covered by Healthy Families plans who have CCS eligible conditions are eligible to receive services for those eligible conditions through CCS.[7]

---

[2] 42 U.S.C. § 1396b(c): Medicaid Act does not restrict or limit payments for otherwise covered services when those services are provided pursuant to a child's IEP or, for infants and toddlers, an individualized family service plan. See the California Department of Health Services emergency regulation package R-693E which promulgated regulations authorizing Local Educational Agencies or LEAs to request reimbursement for the federal match for Medi-Cal coverable services delivered by LEA practitioners. In California federal Medicaid covers about 50% of covered Medi-Cal Services. See 22 Cal. Code Reg. (CCR) §51190.3 and 51491 (LEA) practitioners eligible for reimbursement), 51360 and 51535.5 (reimbursable LEA services).

[3] Children who receive full-scope Medi-Cal include children who receive Medi-Cal categorically linked to the receipt of SSI, children who qualify for Medi-Cal under one of the Federal Poverty Level Programs; etc. Excluded are children who qualify for emergency Medi-Cal only.

[4] 22 CCR § 51013.

[5] Insurance Code § 12693.61; 10 CCR § § 2699.6700(a)(12), 2699.6700(d).

[6] Insurance Code § 12693.61(b).

[7] Insurance Code § 12693.62; 10 CCR § 2699.6700(c).

Response:

There is no need to address additional rights with respect to other state programs also having statutes and regulations providing for beneficiary rights. It would be duplicative to reiterate those provisions.

Mental health services provided pursuant to Chapter 26.5 of the Government Code are required by Section 7570 of the Government Code to be specifically focused on assisting special education pupils in achieving benefit from their education. Section 7570 of the Government Code defines this educational focus by jointly assigning the Superintendent of Public Instruction and the Secretary of Health and Welfare the responsibility to provide:

"...related services as defined in Title 20, Section 1401(17) of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to children and youth with disabilities."

These services must be specified in the individualized education program and be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. Services that are medical as opposed to educational in nature are excluded by the definition of related services -) of Title 20, Section 1401(22) of the United States Code (where the renumbered definition for related services is now located). This section states in pertinent part:

"... medical services shall be for diagnostic and evaluation purposes only."

Medi-Cal eligible children's parents may request community mental health services for an assessment for supplemental mental health services if these are necessary, but these services are distinct from the educational requirements for a free and appropriate public education. Supplemental services provided due to any Medi-Cal and EPSDT requirements which do not provide educational benefit should not be listed on the pupil's Individualized Educational Program which is designed to assist them in attaining academic achievement.

This program is not considered a Medi-Cal/Medicaid service. Medi-Cal eligibility is not necessary for pupils to be considered eligible for this program. Educational need is. In the context of Chapter 26.5 of the Government Code, community mental health services are considered an educationally necessary related service. Mental health services provided in this program are defined in Section 60020 (i) and are limited to:

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

Mental health services for purposes other than providing educational assistance must be accessed through the current community mental health providers that deliver Medi-Cal and EPSDT services because the services are separate from the concept of a free and appropriate public education. These requirements are established in the other cited law and regulations and would be duplicative here. No change will be made to these proposed regulations.

The inclusion of the Healthy Families Program into these regulations is beyond the scope of the statute. MRMIB which administers the Healthy Families Program, is not an agency responsible for the provision of "related services" for pupils eligible for special education.

235) Comment:

Testifier 18.[(b)] (Holle) also recommended the following changes:

"The AB 3632 regulations fail to address the additional rights pupils may have when the related services at issue are funded by Medi-Cal, Healthy Families, or by CCS. While CCS programs routinely provide CCS notices of action in connection with denials or terminations, that is not the case with county mental health programs even when the services are funded

through Medi-Cal thereby entitling the Medi-Cal beneficiary to rights and notices under that program in addition to any notices that may be provided through the child's status as a special education pupil."

Response:

The Departments do not concur with the commentor that these proposed regulations must provide for "rights and notices under that program in addition to any notices that may be provided through the child's status as a special education pupil." The inclusion of the Healthy Families Program into these regulations is beyond the scope of the statute. MRMIB, which administers the Healthy Families Program, is not an agency responsible for the provision of "related services" for pupils eligible for special education. In addition, the Medi-Cal beneficiaries rights are provided for in other statutes and regulations; therefore, it would be duplicative if restated here. No change made to the proposed regulations in response to this comment.

The Departments partially concur with the commentor that families should be notified prior to the termination of services. The amendments made to proposed Section 60050(b) in response to other comments have provided for such notice in the final modification.

236) Comment:

Testifier 23.[(entire testimony)] (Jorden) recommended the following changes:

"These regulations are the same old thing that we've been dealing with over the last few years, and what SEACO (Special Education Administrators from County Offices) would like to see happen is we would like for counties to develop their programs together that—to be freer of any of the—of many of the restrictions that are placed by Mental Health.

Our relationship with Mental Health in most counties is not a positive relationship, and we believe it's due to the regulations and rules that require Mental Health to take certain actions; and we believe that each county can develop their own regulations, and it would be best for students, and be best for parents—and our concern is for the students, and the parents, rather than the public agencies."

Response:

The Departments do not concur with this comment. Government Code Section 7587 requires that:

"...Each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act."

The State Department of Mental Health is one of the department's named in Chapter 26.5 of the Government Code, to which the above section is referring, and has determined that explicit regulations regarding the mental health referral requirements are necessary.

For these reasons, there will be no change made to the regulations as a result of this comment.

237) Comment:

Testifier 26.[(entire oral testimony)] (Brogan) proposed the following changes:

". . . We have written a statement of rationale . . . Attached to this memeo is a comprehensive revision to those proposed interagency regulations which continues that effort and support . . ."

Response:

Responses to this commentor's specific proposed revisions are made in the text of this document in the sections where the revisions were made in this commentor's written submission, which was labeled "Item 12." No changes to the proposed regulations were made in response to these verbal comments.

238) Comment:

Testifier 21.[(d)] (Frampton), suggested the following changes:

"The above concerns regarding this legislation are based on my understanding that the IEP process needs to be focused on educational needs and also must focus on an individualized program, that is, one that is unique to each individual child.

Response:

The current regulations allow for a focus on individualized education programs. Also, there is no specific change in the regulations recommended by this commentor. For these reasons, there will be no change to the regulations in response to this comment.

239) Comment:

Testifier 30.[(a)] (Camp) suggested the following change:

"We would like to reiterate a conclusion in the regulatory package, which is that 'some additional costs will result for community mental health services based on the shift in fiscal responsibility for out-of-state placed pupil's case management and mental health costs from local education to mental health.' (Fiscal Impact Statement, page 7). We believe that this statement is accurate. We are concerned that the state agencies involved have entered a challenge to this finding with the State Mandate claiming agency. This challenge will delay

even more that usual the reimbursement process associated with the mandates claiming process.

The estimate of 2.4 million is, in addition, inadequate to meet the new costs of this new mandate. Our most recent information is that the number of children in this placement has increased to approximately 140, and that the costs may be more than 4 million for the case management and mental health costs newly shifted to local mental health.

We believe strongly that this finding continue to be included in the regulatory package, and that the costs should be updated to reflect current expenditure patterns."

Response:

The State Department of Mental Health's fiscal analysis of the out-of-state mental health program costs is an estimate only, and the Departments do not agree with the commentor's estimate. The Departments defer to the State Mandates Commission with regard to whether these increased costs are due to a state mandate. There will be no change made to the State Department of Mental Health's fiscal analysis in response to this comment.

e) Local Mandate Statement

The Departments (California Departments of Education; Mental Health; Health Services (California Children Services and Medi-Cal Programs); and Social Services) have determined that the regulations impose a mandate on local mental health service agencies to serve eligible special education pupils. These may require state reimbursement under Section 1756 of the Government Code. These regulations also impose a mandate on school districts to serve special education pupils in the least restrictive manner possible and to refer pupils who appear to need mental health services to the community mental health service. Additional expenditures for medical therapy services which are not reimbursable by the State will be financed from the county share of CCS.

f) Statement of Potential Cost Impact on Private Persons or Businesses and of Alternatives Considered

The Departments have determined that there is no fiscal impact on private persons or businesses. However, the regulations may increase California's ability to compete with providers from other states since the proposed regulations will cause mental health agencies to more actively seek in-state providers of residential services.

The Departments have determined that no alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected persons that the proposed action.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The renotice period was from April 21, 1999 through May 6, 1999. Testimony was received from the following testifiers:

- Paul L. McIver, County of Los Angeles, Department of Mental Health (McIver)
- Jeanne C. Davis, Special Education Local Plan Area Administrators (Davis)
- Ann Miller Ravel and Rima Singh, County of Santa Clara, Office of the County Counsel (Ravel)

General Comments

1. Comment:

Testifier Ravel states that the April 21, 1999, proposed changes and letter were received on April 26, 1999. The testifier contends that this does not provide adequate time for response. (Ravel)

Response:

The Departments met the statutory mandate, as provided in Section 11346.8(c) of the Government Code. Proposed changes to the regulations were made available to the public from April 21, 1999 to May 6, 1999.

2. Comment:

Ms. Davis suggested that the "term 'work day' be replaced by 'business day' throughout the document." (Davis)

Response:

The terms "work day" and "business day" mean the same; using the terms interchangeably does not change the intent of the language. The Departments recommend no change to the proposed regulations.

Section 60010(i)

3. Comment:

Ms. Davis requested that the struck language in Section 60010(i) relating to "qualified individuals" be reinstated. (Davis)

Response:

There was no reference to "qualified individuals" in Section 60010(i). We are unable to determine which section the commentor wanted to reinstate.

Section 60030(b)

4. Comment:

Ms. Davis requested the following change to Section 60030(b): "Substitute four years for the three-year schedule of reviews." (Davis)

Response:

The Departments do not concur with this comment. The Departments believe that local interagency agreement(s) need to be reviewed according to a schedule developed by the local agencies and that at a minimum, the review schedule should not exceed three years to ensure that local agreements are revised when necessary to comply with the law. The commentor mentions that the local plan revision cycle mandated by Education Code Section 56200 is four years; therefore, to maintain consistency, the commentor has suggested a four-year review cycle for interagency agreements. However, we find no four-year local plan revision referenced in Education Code Section 56200. The Departments recommend no change to Section 60030(b).

Section 60030(c)(7)

5. Comment:

Ms. Davis requested a change to Section 60030(c)(7) to restore the term "adequate" to allow flexibility in scheduling meetings. (Davis)

Response:

The Departments do not concur. The Departments believe the existing language is clear and concise. The term "adequate" is unclear and could cause confusion and/or inconsistent application of this provision.

Section 60030(c)(10)

6. Comment:

Ms. Davis suggests that the language of the Individuals with Disabilities Education Act of 1997 (IDEA) be used in Section 60030(c)(10) to align this requirement with those of the IDEA. (Davis)

Response:

The Departments do not feel that it is necessary to restate the requirements of the IDEA in this section. Section 60030(c)(8) clearly states that the requirements of Title 20, U.S. Code Section 1414(d)(1)(A)(vi) must be included in the IEP relating to mental health services. Title 20, U.S. Code Section 1414(d)(1)(A)(vi) is the section of the IDEA which specifies that the IEP should include a description of the frequency, length, duration, and location of services to be provided.

Section 60040(a)(3)(E)

7. Comment:

Ms. Davis requested that "school" be deleted from the statement in Section 60040(a)(3)(E) which reads " . . . less than three months of school counseling." (Davis)

Response:

The Departments do not concur with this request. When necessary, schools should be able provide necessary school counseling and document that revealing emotional or behavioral characteristics can not be resolved with school intervention. The reference to "school counseling" is appropriate because local educational agencies would not likely have information on counseling services provided to a pupil other than those provided at the school.

Section 60100(b)

8. Comment:

"Under Article 3. Section 60100(b) the proposed language is unclear. (1) reads 'an expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service.' Then (2) reads, 'if an authorized representative is not present, the IEP team meeting shall be adjourned and be reconvened with fifteen (15) calendar days as an expanded IEP team with an authorized representative...'

"Does this mean the expanded IEP team reconvenes in 30 days? In 15 days? Both? Having had considerable experience in the past 12 years in this area, I can assure you that the most common circumstance in which the consideration of residential placement occurs is when there is no previous history of assessment or provision of services by Mental Health, and assessment is necessary and appropriate. In such cases, Mental Health proceeds with Section 60040 and 60045.

"Language similar to (b)(2) was included in the previous Emergency Regulations from 1986 to 1996, and rarely, if ever, were IEP meetings reconvened within 15 days. Almost without exception, the referral and assessment procedures in 60040 and 60045 were utilized. Section

(b)(1) ensures that the Expanded IEP Team reconvenes with a reasonable and appropriate amount of time.

"To simplify and clarify this section, I propose the deletion of (b)(2)." (McIver)

Response:

The Departments do not concur with this comment. It is important that all authorized representatives participate in the IEP discussion and development. The additional fifteen days does not necessarily extend the timeline and is a valuable use of time if it means that all authorized representatives have an opportunity to participate in the IEP.

Section 60110(b)(1)

9. Comment:

Testifier Ravel proposes a change to Subsection (b)(1). The testifier states that the regulation text creates an ambiguity regarding services provided under this Subsection in conjunction with Section 60200. Section 60200 provides that community mental health agency are required to pay for services cited in 60110(b). Psychotropic medications are not part of the current case management responsibilities. Therefore, a change is required that indicates that psychotropic medication monitoring is provided. (Ravel)

Response:

In response to this comment from a post-hearing amendment, a change was made to (b)(1) by adding the word "monitoring" after psychotropic medication to clarify the meaning.

Section 60100(b)(2)

10. Comment:

Ms. Davis suggested that Section 60100(b)(2) be omitted because the section is inconsistent with Section 60100(b)(1) and the thirty-day period required in Section 60100(b)(1) should be sufficient. (Davis)

Response:

The Departments do not concur with this comment. It is important that all authorized representatives participate in the IEP discussion and development. The additional fifteen days does not necessarily extend the timeline and is a valuable use of time if it means that all authorized representatives have an opportunity to participate in the IEP.

Section 60100(c)

11. Comment:

Ms. Davis requests that examples of less restrictive alternatives be induded in Section 60100(c). (Davis)

Response:

The Departments do not concur. The expanded IEP team members are experts who will consider all of the types of services available. It is not necessary to list some types of services which are available. In addition, because the commentors list of alternative services available is exemplary and not inclusive, the partial list may cause confusion. The test of Section 60100(c) is clearer without the examples.

Section 60200

12. Comment:

Ms. Davis suggests that Subdivision (g) be added to Section 60200 to specify the method for reimbursing local educational agencies when the community mental health agency will not pay for the service. (Davis)

Response:

The Departments do not concur. Government Code Section 7585(f) and Section 60200(c) explain the responsibilities for mental health services. It is not necessary to repeat the information in a new subdivision.

BILL ANALYSIS

Date of Hearing: June 17, 2008

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall, Jr., Chair
SB 292 (Wiggins) - As Amended: June 11, 2008

SENATE VOTE : Not relevant

SUBJECT : Seriously emotionally disturbed children: out-of-home placement

SUMMARY : Authorizes payments for 24-hour care of a child classified as seriously emotionally disturbed and placed out-of-home in an out-of-state, for-profit residential facility pursuant to special education provisions. Specifically, this bill :

1)Authorizes payments to out-of-state, for-profit residential facilities that meet applicable licensing requirements in the state in which they are located for 24-hour, out-of-home care of a seriously emotionally disturbed child placed there pursuant to an Individualized Education Program (IEP) IF:

a) The county or Local Education Agency (LEA) has placed the child in the for-profit facility pursuant to a due process hearing decision, mediation or settlement agreement; or

b) After a thorough search, no other comparable private nonprofit or public residential facility has been identified that is willing to accept placement and capable of meeting the child's needs. Requires the agency or agencies responsible for the child's placement to document search efforts and the reason no other placement can be identified.

2)Specifies that the provisions described above are not intended to change existing procedures, protections or requirements regarding the placement of children in out-of-state facilities.

3)Requires the Department of Mental Health (DMH) to annually provide information to Senate and Assembly budget committees on:

a) The number of in-state and out-of-state placements of children with serious emotional disturbances in nonprofit and for-profit residential facilities;

b) The average lengths of stay of those children in each type of facility; and

c) The number of those children who were dependents, wards or voluntarily placed in foster care at the time of their placement pursuant to an IEP.

4)Deems allowable mental health treatment and out-of-home care expenses for 24-hour care of a child classified as seriously emotionally disturbed and placed out-of-state in a for-profit residential facility as reimbursable to counties for time up to January 1, 2009. Specifies that the state Controller may still dispute whether claims for costs exceed what is allowable.

EXISTING LAW:

Regarding special education and mental health services

1)Entitles every child to a free, appropriate public education (FAPE) in the least restrictive environment (LRE) that can meet his or her needs. Requires school districts to provide, as necessary, related services and a continuum of alternative placements and to conduct Individualized Education Program (IEP) meetings for individuals with exceptional needs.

2)Authorizes out-of-home residential placements, pursuant to an IEP, when necessary for a child classified as seriously emotionally disturbed (SED) to benefit from educational services. Requires designation of the county mental health department as the lead case manager and requires regular

review of such placements.

3)Requires that payments for 24-hour out-of-home care pursuant to an IEP for a child classified as SED be made to privately operated residential facilities licensed in accordance with the Community Care Facilities Act and based on rates established by Aid to Families with Dependent Children-Foster Care (AFDC-FC) provisions. Funds that care and costs of local administration in a separate appropriation in the Department of Social Services' budget.

Regarding out-of-state placements pursuant to an IEP

4)Requires that out-of-state placements pursuant to an IEP be made only in a privately operated school certified by the Department of Education (CDE), and that a plan be developed for using a less restrictive, in-state alternative (unless in child's best interest to stay out-of-state).

5)Requires LEAs to document efforts to locate a nonpublic school (NPS) in California before contracting with an out-of-state NPS. Requires out-of-state NPSs to be certified or licensed to provide special education in their own state and that IEP teams report to the Superintendent within 15 days of placement in any out-of-state NPS and LEAs indicate the anticipated date for the child to return to the state.

6)Requires local mental health departments to report information to the Department of Mental Health (DMH) regarding each out-of-state residential placement of an SED child pursuant to an IEP, including provisions for case management, supervision and family visitation.

7)For a dependent child, requires the court to state on the record that in-state placements could not meet the child's needs before approving an out-of-state placement pursuant to an IEP.

Regarding Aid to Families with Dependent Children-Foster Care

8)Authorizes state AFDC-FC payments to group homes organized and operated as nonprofits. Specifies limited circumstances when counties, after exhausting options, can match federal funds and place children also eligible for regional center services in for-profit facilities.

FISCAL EFFECT : Unknown

COMMENTS :

AB 3632 and history of prohibition on state funding of for-profit facilities:

AB 3632 (W. Brown), Chapter 1747, Statutes of 1984, established a program to reimburse group homes that provide care for children classified as seriously emotionally disturbed (SED) who

are placed out-of-home pursuant to an Individualized Education Program (IEP). As a result, since 1985 California law (Welfare & Institutions Code section 18350) has tied the requirements for these placements to state foster care licensing and rate provisions. The funds for placements of children classified as SED are not actually foster care (AFDC-FC) funds. They are instead in a separate appropriation in the budget of the Department of Social Services (DSS).

California does not allow AFDC-FC funding of group home placements in for-profit facilities. As a result of the connection between foster care and SED placement requirements, this prohibition has also applied to placements of children classified as SED. California first defined the private group homes eligible to receive AFDC-FC funding as exclusively nonprofits in 1992, to parallel a federal funding requirement from the 1980 Adoption Assistance and Child Welfare Act, P.L. 96-272. Although the federal government eliminated this requirement for federal funding in 1996, California did not make

parallel changes to its law then or since.

In 2006, AB 1462 (Adams), Chapter 65, Statutes of 2007, carved out a narrow exception to allow California counties to match federal funding of for-profit placements for a small number of foster youth who are also eligible for disability-related services and have extraordinary needs such that there are no other placement options. Among other requirements, AB 1462 limited these placements to 12 months each and no more than 5 children per county at a time.

Purpose of this bill: The author notes, as above, that California law was never changed to reflect the changes in federal law that allowed federal funding of for-profit group home placements. The author also states that "some out-of-state providers are owned by for-profit entities, usually hospital/behavioral health corporations, but are operated via a subsidiary contract with a not-for-profit agency. Currently, county contracts for services to [SED] clients are with the non-profit entities exclusively. Some counties have been placing children in these facilities for some time believing that, so long as the contracted agency was non-profit, this was in compliance with the letter and the intent of federal and state law. However, in 2005, an unpublished administrative law judge decision in a Special Education due process hearing found that these facilities do not meet the definition of non-profit,

because they are a subsidiary of a for-profit company... This decision prompted the State Controller's Office to dispute counties' eligibility for mandate reimbursement for these out-of-state placements..."

The author and supporters also say that out-of-state, for-profit facilities are sometimes the only available placements to meet a child's needs in compliance with federal education law. For example, in a hearing decision the author provided, an administrative law judge found that a child's needs for mental health and communication-related services meant that a Florida-based, for-profit facility was the only one that could provide the child with a Free Appropriate Public Education (FAPE).

Supporters state that this bill would provide more placement possibilities for youth who are SED and "cut the time spent in looking for facilities." One county says that without this bill it would "lose millions of dollars in state reimbursement" for treatment, board and care as "sometimes the most appropriate, least restrictive setting for a particular student is only available out-of-state."
June 10th amendments to this bill clarified and more narrowly tailored its provisions.

Estimates of relevant placement numbers: December, 2007 data from CDE reflects 45 California-certified non-public schools outside of California that served 862 students. Of these 45 schools, 13 were affiliated with a licensed children's residential institution and classified by CDE as for-profit. A total of 243 California children were attending out-of-state non-public schools with affiliated licensed children's residential institutions that CDE classified as for-profit. Additional data from the Departments of Mental Health or Social Services might confirm or clarify how many children classified as SED are residentially placed pursuant to IEPs.

The use of for-profit facilities: Some historical news articles state that the federal government's original exclusion of for-profit companies from receiving foster care funds was in part because Congress feared repetition of nursing home scandals in the 1970s, when public funding triggered growth of a badly monitored institutional care industry. California's current policy of limiting payments to nonprofit group homes continues to ensure that the goal of serving children's interests is not

mixed with the goal of private profit. Opponents state that nonprofits are also generally subject to more oversight, including that of a financially disinterested board.

The restrictiveness, licensing and oversight of out-of-state facilities: All children have the right to receive FAPE in the least restrictive environment that can meet their needs. Protection and Advocacy observes that "while all residential educational placements are highly restrictive, out-of-state placements are the most restrictive because children in facilities far from home are isolated from regular interactions with family, friends, and other children without disabilities."

CDE monitors some education-related services at out-of-state nonpublic schools that serve California students. Existing regulations implementing case management-related statutes require quarterly onsite contacts between local mental health case managers and students residentially placed by IEP. However, neither CDE nor DSS conduct certification, monitoring or complaint investigation of the residential component of placements at issue. Some county mental health agencies report taking on additional oversight responsibility not required by statute.

By contrast, California law implementing the Interstate Compact on the Placement of Children requires that contracts with out-of-state group homes for placement of foster children include provisions for DSS to investigate any threat to health and safety for facilities to report incidents to DSS. DSS or its designee performs inspections to certify that facilities meet all licensure requirements of group homes within California or have been granted a waiver of a specific standard. California law also requires a county social worker or a social worker in the other state to visit a foster child in an out-of-state group home at least once a month. This more stringent oversight of foster care placements might be attributable at least in part to the state's heightened responsibility for dependent children in its custody (unlike most children placed pursuant to an IEP whose parents retain parental rights). Still, the lack of equivalent standards applicable to facilities with children placed pursuant to IEPs may be problematic.

Opponents raise concerns about the safety and quality of out-of-state placements, "especially when such facilities charge

significantly less than facilities that operate on a nonprofit basis." The U.S. Government Accountability Office (GAO) recently released reports entitled "Residential Programs: Selected Cases of Death, Abuse and Deceptive Marketing" (April, 2008) and "Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges" (May, 2008) that discuss residential facilities which house children placed by a range of government agencies or privately. One report highlights the lack of uniform standards (e.g. some state agencies' do not monitor psychotropic medication or inconsistently address use of seclusion or restraint). It also cautions that programs shut down in one state for maltreatment or a negligent death could open anew in other states.

Stakeholders' suggestions for amendments: Protection and Advocacy opposes this bill unless amended to, among other changes, also allow for the use of in-state, for-profit facilities that would be less restrictive than their out-of-state counterparts. The Alliance of Child and Family Services recommends more detailed data collection and efforts to identify and remove barriers that prevent the availability of more placement resources within California.

Technical amendments agreed to by the author :

1)Strike "Except as provided in WIC 18350.5" from WIC 18350(b)-and place the same phrase instead at the beginning of WIC 18350(c);

2)In recognition that there are multiple sources of data on the placements of children classified as SED which can vary, insert "and State Department of Education" after "Mental Health" in Section 18350.5(d) on page 4, line 13; and

3)Strike "made pursuant to" in Section 18350.5(d) on page 4, line 13 and insert instead "that may be affected by," after "placements and before "this section".

DOUBLE REFERRAL . This bill has been double-referred. Should this bill pass out of this committee, it will be referred to the Assembly Education Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

Association of Regional Center Agencies (ARCA)
Behavioral Health and Recovery Services, Stanislaus Co.
California Mental Health Directors Association (CMHDA)
California Psychological Association
California State Association of Counties (CSAC)
County Welfare Directors Association of California (CWDA)
Glenn County Health Services
Contra Costa Health Services
Department of Mental Health, Riverside County
County of San Diego
Orange County Board of Supervisors
Yolo County Board of Supervisors
Santa Clara County Board of Supervisors

Opposition

National Center for Youth Law
Protection and Advocacy, Inc. (unless amended)

Analysis Prepared by : Jennifer Troia / HUM. S. / (916) 319-2089

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 292
AUTHOR : Wiggins
TOPIC : Seriously emotionally disturbed children: out-of-home placement.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2008
Nov. 30 From Assembly without further action.
Aug. 31 Assembly Rule 96 suspended. (Ayes 46. Noes 29. Page 7115.) Withdrawn from committee. Ordered placed on third reading.
Aug. 7 Set, second hearing. Held in committee and under submission.
July 16 Set, first hearing. Referred to APPR. suspense file.
July 2 Read second time. Amended. Re-referred to Com. on APPR.
July 1 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 11. Noes 0.)
June 18 From committee: Do pass, but first be re-referred to Com. on ED. (Ayes 7. Noes 0.) Re-referred to Com. on ED.
June 11 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on HUM. S. (Corrected June 16.)
Apr. 2 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on HUM. S.
Mar. 13 To Com. on HUM. S.
Jan. 30 In Assembly. Read first time. Held at Desk.
Jan. 30 Read third time. Passed. (Ayes 38. Noes 0. Page 2890.) To Assembly.
Jan. 9 Read second time. To third reading.
Jan. 8 From committee: Do pass. (Ayes 4. Noes 0. Page 2781.)
Jan. 7 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on APPR. Withdrawn from committee. Re-referred to Com. on RLS. Re-referred to Com. on V.A.
2007
Dec. 13 Set for hearing January 8 in V.A. pending receipt.
May 31 Set, first hearing. Held in committee and under submission.
May 25 Set for hearing May 31.
May 21 Placed on APPR. suspense file.
May 9 Set for hearing May 21.
Apr. 30 Read second time. Amended. Re-referred to Com. on APPR.
Apr. 26 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 5. Noes 3. Page 714.)
Apr. 19 Re-referred to Com. on N.R. & W. Set for hearing April 24.
Apr. 16 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on RLS.
Feb. 22 To Com. on RLS.
Feb. 16 From print. May be acted upon on or after March 18.
Feb. 15 Introduced. Read first time. To Com. on RLS. for assignment. To print.

BILL ANALYSIS

Date of Hearing: May 20, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Kevin De Leon, Chair

AB 421 (Beall) - As Amended: May 4, 2009

Policy Committee: Human ServicesVote:6 - 0
Education 9 - 0

Urgency: Yes State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY

This bill authorizes payments for 24-hour care of a child classified as seriously emotionally disturbed (SED) and placed out-of-home in an out-of-state, for-profit residential facility. Specifically, this bill:

1)Authorizes payments for SED children in for-profit, out-of-state facilities if the county or local education agency (LEA) has placed the child pursuant to a due process hearing decision, mediation or settlement agreement; or if after a thorough search, no other comparable private non-profit or public residential facilities has been identified that is willing to accept the placement or is capable of meeting the child's needs.

2)Requires the Department of Mental Health (DMH) to provide information to the Legislature each year on the number of in-state and out-of-state placements of SED children, the average lengths of stay for those children, and the number of children who were dependents, wards or voluntarily placed in foster care at the time of their placement.

3)Deems that allowable mental health treatment and out-of-home care expenses for residential care of an SED child in an out-of-state, for-profit facility are retroactively reimbursable to the counties until January 1, 2011.

4)Removes the current rate cap for children placed in out-of-state, for-profit facilities.

FISCAL EFFECT

1)The State Controller's Office recently disallowed $1.8 million in mandate claims from San Diego County based on the fact that the claims were for payments to out-of-state, for-profit residential placements for seriously emotionally disturbed children. This legislation allows for retroactive payments, thus the state would be required to pay that claim.

2)It is likely that other counties will also have disallowed claims. If so, the cost for allowing retroactive payments for these placements could exceed $10 million.

3)Under current law, the state will reimburse counties for monthly grant payments up to the maximum group home rate in foster care. This legislation removes that rate cap. Therefore, if the rate increases by five percent for the approximately 250 children placed in out of state facilities it would cost in excess of $850,000 GF per year.

4)Costs to DMH in excess of $75,000 GF for the workload associated with collecting data and providing the Legislature with the required annual report.

COMMENTS

1)Rationale . The author notes that California law was never changed to reflect the changes in federal law that allowed federal funding of for-profit group home placements. The author also states that "some out-of-state providers are owned by 'for-profit' entities, usually hospital/behavioral health corporations. Some 'non-profit' residential providers are operated by the parent company through a subsidiary contract. In a good faith effort to comply with the state law, counties

contract for services for some SED students with the 'non-profit' entities." According to the author, "Counties placed students in these facilities believing that, so long as the contracted company was 'not-for-profit' this was in compliance with the letter and the intent of federal and state law. Counties have historically been reimbursed by the state for the costs of these placements, and therefore had no reason to believe they did not comply with state law."

However, the author notes, in 2005, an unpublished administrative law judge decision in a special education due

process hearing found that these facilities do not meet the definition of non-profit, because they are a subsidiary of a for-profit company. "This decision prompted the State Controller's Office to dispute counties' eligibility for mandate reimbursement for these out-of-state placements."

The purpose of this bill is to expand state law to incorporate allowances that are made in federal law for for-profit group home placements for SED children. The author and supporters contend that out-of-state, for-profit facilities are sometimes the only available placements to meet a child's needs in compliance with federal education law.

2)Background . The federal government's original exclusion of for-profit companies from receiving foster care funds was in part because Congress feared repetition of nursing home scandals in the 1970s, when public funding triggered growth of a badly monitored institutional care industry. California's current policy of limiting payments to nonprofit group homes continues to ensure that the goal of serving children's interests is not mixed with the goal of private profit. Nonprofits are also generally subject to more oversight, including that of a financially disinterested board. For these reasons, over the years, California has continuously rejected opening up placements in for-profit group home facilities for both foster children and SED children, except for one narrow exception.

In 2006, AB 1462 (Adams; Chapter 65, Statutes of 2007), carved out a narrow exception to allow California counties to match federal funding of for-profit placements for a small number of foster youth who are also eligible for disability-related services and have extraordinary needs such that there are no other placement options. Among other requirements, AB 1462 limited these placements to 12 months each and no more than 5 children per county at a time. Counties are not allowed to use state General Fund for to pay for the placement of these children in for-profit facilities.

3)Seriously Emotionally Disturbed Children . Children who have been diagnosed with serious emotional disturbances generally require special education and mental health treatment services to meet their educational needs. Children who are identified as seriously emotionally disturbed (SED) generally require

out-of-home placement in order to benefit from an educational program that meets their specific needs. These children are generally placed by county mental health agencies. The board and care costs for the children placed in non-profit facilities are paid through the Department of Social Services (DSS) budget. DSS estimates that the average monthly caseload in 2008-09 will be 1,903 children. The average monthly grant cost for those children is approximately $5,600.

DSS, in their budget document, contends that the cost for children placed in for-profit facilities is entirely borne by the California Department of Education (CDE). Data collected by the Legislative Analyst's Office on this issue for this committee suggests that there are likely close to 250 children placed in out-of-state for-profit facilities (163 from Los Angeles County alone.)

4)Special Education a State-Mandated Program . Chapter 1747, Statutes of 1984 (AB 3632, W. Brown), and related statutes

established the Special Education Pupils Program, commonly known as the AB 3632 program, and shifted the responsibility for providing special education related mental health services from local educational agencies (LEAs) to counties. County mental health agencies are required to coordinate and/or provide mental health services (either directly or through contracts) for a child's educational benefit after an initial assessment and referral from an LEA. In addition, the AB 3632 program is a reimbursable state-mandated program. This means that costs to local government in excess of federal and state funds provided for this program generally must be reimbursed by the state through the mandate claims process.

The Commission on State Mandates adopts "parameters and guidelines" for each mandate that set forth rules determining what specific costs will be reimbursed by the state. The State Controller's Office (SCO) regularly conducts audits to ensure that claims paid by the state to reimburse local government agencies are consistent with the commission's parameters and guidelines for that mandate.

5)Unpaid County AB 3632 Mandate Claims . The latest data available shows that there is close to $500 million in unpaid AB 3632 mandate claims. Of that amount, almost $80 million is for out-of-state mental health services. This legislation addresses a small subsection of this population and the

disallowed claims discussed in this bill are a small fraction, less than one percent, of the total money owed to counties for AB 3632 services.

6)Related Legislation . SB 292 (Wiggins) in 2008, a substantially similar bill, authorized payments for 24-hour care of a child classified as seriously emotionally disturbed (SED) and placed out-of-home in an out-of-state, for-profit residential facility. That bill was initially held on this committee's suspense file. The bill was then withdrawn from this committee and placed on the Assembly third reading file, where it was never taken up.

Also in 2008, AB 1805 (Committee on Budget), a budget trailer bill, contained identical language to SB 292. That bill was vetoed by the governor. In his veto message he wrote, " I cannot sign [AB 1805] in its current form because it will allow the open-ended reimbursement of claims, including claims submitted and denied prior to 2006-07. Given our state's ongoing fiscal challenges, I cannot support any bill that exposes the state General Fund to such a liability."

Analysis Prepared by : Julie Salley-Gray / APPR. / (916) 319-2081

BILL NUMBER: AB 1805
VETOED DATE: 09/30/2008

To the Members of the California State Assembly:

I am returning Assembly Bill 1805 without my signature.

I strongly support providing care to children with serious emotional disturbances, including the provision of care in whichever facility can best address their needs. While I support the intent and policy behind this bill, I cannot sign it in its current form because it will allow the open-ended reimbursement of claims, including claims submitted and denied prior to 2006-07. Given our state's ongoing fiscal challenges, I cannot support any bill that exposes the state General Fund to such a liability.

I would support legislation that clarifies and narrows state reimbursement for these important services to a specified time period and would ask the Legislature to work with my Administration in January to address this important issue.

For this reason, I am unable to support this bill.

Sincerely,

Arnold Schwarzenegger

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 421
AUTHOR : Beall
TOPIC : Seriously emotionally disturbed children: out-of-home placement.

TYPE OF BILL :
Inactive
Urgency
Non-Appropriations
2/3 Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2010
Feb. 2 From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.
Jan. 31 Died pursuant to Art. IV, Sec. 10(c) of the Constitution.
2009
May 28 In committee: Set, second hearing. Held under submission.
May 20 In committee: Set, first hearing. Referred to APPR. suspense file.
May 5 Re-referred to Com. on APPR.
May 4 Read second time and amended.
Apr. 30 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 22).
Apr. 15 From committee: Do pass, and re-refer to Com. on ED. Re-referred. (Ayes 6. Noes 0.) (April 14).
Apr. 13 From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended. Re-referred to Com. on HUM. S.
Mar. 16 Referred to Coms. on HUM. S. and ED.
Feb. 24 From printer. May be heard in committee March 26.
Feb. 23 Read first time. To print.

JS - 6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

RIVERSIDE COUNTY DEPARTMENT OF MENTAL HEALTH,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

CONSOLIDATED CASES:

MONICA VALENTINE,

Plaintiff,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT et al,

Defendants.

RIVERSIDE UNIFIED SCHOOL DISTRICT,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

CASE NO. EDCV 08-0503-SGL (RCx)

ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE'S DECISION

At its core, the case before the Court presents a simple question: Is a school district excused from its duty under the federal Individuals with Disabilities Education Act ("IDEA") to provide a free, appropriate public education ("FAPE") where certain state administrative code provisions prohibit the reimbursement of expenses associated with placement at an out-of-state for-profit facility but where that facility is the only one identified as an appropriate placement? As set forth below, the Court rejects arguments that the ALJ exceeded the scope of her authority, that California law prohibits the recommended placement, and that a limited waiver made by the student does not preclude the remedy imposed and, in the end, the Court concludes that such a funding structure does not excuse the school district from its duty.

I. INTRODUCTION

This case arises from a dispute regarding the provision of educational services to a disabled individual, defendant Anthony Sullivan ("Sullivan"). Plaintiffs Riverside County Department of Mental Health ("DMH") and Riverside Unified School District ("RUSD") seek the reversal of the January 15, 2008, decision of Administrative Law Judge Judith L. Pasewark ("ALJ"), Office of Administrative Hearings, Special Education Division, State of California ("OAH"), in *Anthony Sullivan v. Riverside Unified School District and Riverside County Department of Mental Health*, and ask the Court to find that Sullivan was not entitled to an order directing placement at the National Deaf Academy ("NDA") under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq*., or California special education law, California Education Code section 56000 *et seq*. *See* Administrative Record ("A.R.") 780-89.

Sullivan filed his First Amended Request for Due Process Hearing on September 25, 2007. A.R. 780. At the pre-hearing conference on December 7, 2007, the parties agreed to have the matter decided by the ALJ without oral argument based stipulation facts, stipulated evidence, and written closing arguments. *Id.* Ultimately, in the decision that is the subject of the current appeal, the ALJ decided that defendant had been denied a free, appropriate public education ("FAPE"), and ordered immediate placement

of defendant at an out-of-state residential facility. In a separate decision (which is also the subject of the present appeal), the ALJ denied a motion for reconsideration based on an issue of waiver.

Upon review of the ALJ's decision, the ALJ's Order Denying Motion for Reconsideration, the pleadings, and the administrative record, the Court **AFFIRMS** the ALJ's decisions.

II. FACTUAL BACKGROUND

At the time of the administrative hearing, Sullivan was seventeen years old and resided with his mother, Monica Valentine ("Valentine"), within the RSUD in Riverside County, California.[1] His family was considered low-income. Sullivan is deaf, has impaired vision, and an orthopedic condition affecting the hip known as legg-perthes. His only effective mode of communication is American Sign Language ("ASL"). He has also been assessed as having borderline cognitive ability and a long history of social and behavioral difficulties. As a result, Sullivan was eligible for special education and related services and mental health services under the category of emotional disturbance ("ED"), with a secondary disability of deafness.

Sullivan requires an education environment in which he has an opportunity to interact with peers and adults who are fluent in ASL. Between January, 2005, and September, 2006, he was a resident of the Monrovia Unified School District ("MUSD") and attended the California School for the Deaf, Riverside ("CSDR"). CSDR did not specialize in therapeutic behavior interventions. Sullivan was removed from CSDR for suicide prevention because he physically harmed himself and was placed in home-hospital instruction. Between June, 2005, and October, 2005, Sullivan was placed on several 72-hour psychiatric holds.

[1] As part of the Request for Due Process Hearing, the Parties filed a joint Stipulated Statement of Undisputed Facts and Evidence to the ALJ. A.R. 731 - 738. The facts presented here are contained in the Parties' joint stipulation, which was relied upon by the ALJ. *See* A.R. 781 - 784.

On September 14, 2006, MUSD and the Los Angeles County Department of Mental Health ("LACDMH") held a meeting and recommended residential placement for Sullivan. It was recommended that Sullivan be placed at National Deaf Academy ("NDA") because of his need for a higher level of care to address his continuing aggressive and self-injurious behaviors and to interact with deaf peers and adults without the use of an interpreter. On August 5, 2006, Sullivan was accepted by NDA, but was instead placed at Willow Creek/North Valley Non-public School. The placement failed in March, 2007; MUSD and LACDMH indicated they were unable to find a residential placement for Sullivan that could meet his mental health and communication needs. As explained more fully below, NDA was not considered an option for MUSD and LACDMH because of NDA's for-profit status.

In Apri,l 2007, defendants moved into Riverside County and RUSD. On April 20, 2007, RUSD convened an Individual Education Plan ("IEP") meeting. The IEP team changed Sullivan's primary disability classification from ED to deafness with social-emotional overlay to enroll him in CSDR for a 60-day assessment period, which was the only appropriate placement. CSDR terminated Sullivan's placement for poor behavior within the 60-day assessment period.

On May 23, 2007, RUSD convened another IEP meeting to discuss Sullivan's termination from CSDR. It was recommended that Sullivan be placed at Oak Grove Institute/Jack Weaver School ("Oak Grove") and have support from a deaf interpreter. On August 3, 2007, RUSD convened another IEP meeting to develop an annual IEP. The IEP team proposed placement at Oak Grove with a signing interpreter, deaf and hard-of-hearing consultation, and support services provided by RUSD and DMH. Sullivan, his mother, and his attorney agreed to the proposed IEP, but disagreed that the offer constituted a FAPE due to Oak Grove's lack of staff, teachers, and peers who used ASL.

On October 9, 2007, RUSD convened another IEP and it was determined that Sullivan's primary special education eligibility category should be changed back to ED

with deafness as a secondary condition. It was recommended by the IEP team that Sullivan be placed in a residential treatment program and, until a proper residential placement was found, he would remain at Oak Grove. DMH made inquiries to find a proper non-profit residential placement for Sullivan, including schools in California, Florida, Wyoming, Ohio, and Illinois, but was unsuccessful.

Sullivan, his mother, and his attorney all identified NDA as an appropriate placement for Sullivan. NDA is a residential treatment center for the treatment of deaf and hard-of-hearing children with the staff and facilities to accommodate Sullivan's emotional and physical disability needs. NDA also accepts students with borderline cognitive abilities. Also, nearly all of the service providers, including teachers, therapists and psychiatrists are fluent in ASL. The Charter School at NDA is a California certified non-public school and is operated on a for-profit basis. All parties agree that NDA is an appropriate placement and would provide Sullivan with a FAPE.

Notwithstanding this agreement, the RSUD and DMH took the position that they could not place Sullivan at NDA because it is operated by a for-profit entity. Sullivan filed for a due process hearing to resolve the issue.

III. THE ALJ'S DECISION

As noted previously, the matter was submitted to the ALJ by stipulation. The parties stipulated to a single issue, which was articulated as:

> Must RUSD and RCDMH place Anthony at the National Deaf Academy or other appropriate therapeutic residential placement that can meet both his mental health and communication needs, regardless of whether the facility is run on a for-profit basis, in the absence of existing alternatives?

A.R. 724. In articulating this issue, the parties noted their agreement on a number of key points: (1) Sullivan's current placement at Oak Grove did not constitute a FAPE; (2) Sullivan required therapeutic residential placement; (3) despite a nationwide search,

no appropriate non-for-profit residential placement could be found; and (4) placement at NDA, would constitute a FAPE.

On January 15, 2008, the ALJ issued her decision in favor of Sullivan. A.R. 788. She found that Sullivan had been denied a FAPE since May 23, 2007, when he was removed from CSDR, that his need for therapeutic residential placement with ASL service continued, and that he was "entitled to compensatory education consisting of immediate placement at the National Deaf Academy." A.R. 788.

On January 28, 2008, RUSD submitted a Motion for Reconsideration of Decision and Order. A.R. 791-97. The motion challenged the propriety of the remedy ordered by the ALJ – immediate placement at NDA, in light of the fact that such a remedy was not sought by the parties' stipulation, and in light of the fact that Sullivan had agreed to waive all claims for a compensatory education for the period April, 2007, through October 9, 2007. The existence of a waiver was not disputed by Sullivan. The ALJ, on February 20, 2008, denied the Motion for Reconsideration. A.R. 818-20.

In response, Plaintiffs filed the instant action.

IV. THE IDEA

THE IDEA guarantees all disabled children a FAPE "that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). A FAPE is defined as special education and related services that: (1) are available to the student at public expense, under public supervision and direction, and without charge; (2) meet the state education standards; (3) include an appropriate education in the state involved; and (4) conform with the student's IEP. 20 U.S.C. § 1401(9).

"Special education" is defined as instruction specially designed to meet a disabled student's unique needs, at no cost to parents, whether it occurs in the classroom, at home, or in other settings. 20 U.S.C. § 1401(29); Cal. Educ. Code § 56031. "Related services" include developmental, corrective, and supportive services, such as speech-language services, needed to assist a disabled child in benefitting from

education, and to help identify disabling conditions. 20 U.S.C. § 1401(26); Cal. Educ. Code § 56363.

The primary tool for achieving the goal of providing a FAPE to a disabled student is the IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811, 818 (9th Cir. 2007). An IEP is a written statement containing the details of the individualized education program for a specific child, which is crafted by a team that includes the child's parents and teacher, a representative of the local education agency, and, whenever appropriate, the child. 20 U.S.C. § 1401(14), § 1414(d)(1)(B). An IEP must contain: (1) Information regarding the child's present levels of performance; (2) a statement of measurable annual goals; (3) a statement of the special educational and related services to be provided to the child; (4) an explanation of the extent to which the child will not participate with non-disabled children in the regular class; and (5) objective criteria for measuring the child's progress. 20 U.S.C. § 1414(d)(1)(A).

The IDEA contains numerous procedural safeguards to ensure that the parents or guardians of a disabled student be kept informed and involved in decisions regarding the child's education. 20 U.S.C. § 1415. As part of this procedural scheme, the local educational agency must give parents an opportunity to present complaints regarding the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(6). Upon the presentation of such a complaint, the parent or guardian is entitled to an impartial due process administrative hearing conducted by the state or local educational agency. 20 U.S.C. § 1415(f).

V. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

The IDEA provides that a party aggrieved by the findings and decisions made in a state administrative due process hearing has the right to bring an original civil action in federal district court. 20 U.S.C. § 1415(i)(2). The party bringing the administrative challenge bears the burden of proof in the administrative proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Similarly, the party challenging the administrative decision bears the burden of proof in the district court. *Hood v. Encinitas*

Union Sch. Dist., 486 F.3d 1099, 1103 (9th Cir. 2007).

The standard for district court review of an administrative decision under the IDEA is set forth in 20 U.S.C. § 1415(i)(2), which provides as follows:

> In any action brought under this paragraph the court -- (i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

20 U.S.C. § 1415(i)(2)(C). Thus, judicial review of IDEA cases is quite different from review of most other agency actions, in which the record is limited and review is highly deferential. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993). Courts give "due weight" to administrative proceedings, *Board of Educ. of the Hendrick Hudson Central Sch. Dist. Westchester County v. Rowley*, 458 U.S. 176, 206 (1982), but how much weight is "due" is a question left to the court's discretion, *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987). In exercising this discretion, the Court considers the thoroughness of the hearing officer's findings and award more deference where the hearing officer's findings are "thorough and careful." *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995).

A hearing officer's findings are treated as "thorough and careful when the officer participates in the questioning of witnesses and writes a decision contain[ing] a complete factual background as well as a discrete analysis supporting the ultimate conclusions." *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th Cir. 2007) (internal quotation marks and citations omitted).[2]

---

[2] Plaintiffs contend that the Court, when reviewing purely legal questions such as those at issue here, must subject the ALJ's decision to *de novo* review. Plaintiffs' contention is not without support. *See Paul K. ex rel. Joshua K. v. Hawaii*, 567 F.Supp.2d 1231, 1234 (D. Hawai'i 2008) (setting forth standard of review in IDEA case by stating, *inter alia*, "[s]tatutory interpretation is reviewed de novo," and collecting

VI. CHALLENGES TO THE ALJ DECISIONS

Plaintiffs oppose the decisions of the ALJ on three grounds: (1) First, they argue that the remedy the ALJ ordered was beyond the scope of the order to which the parties stipulated, and thus, should not have been decided by the ALJ; (2) next, California law is an absolute bar to a placement at NDA; and (3) finally, that Sullivan waived his rights to a compensatory education for the time period April, 2007, through October 9, 2007.

In the end, the Court rejects each of these challenges.

A. The Remedy Ordered by the ALJ was Proper

Plaintiffs assert that the ALJ overstepped her authority by awarding compensatory education to Sullivan. Essentially, plaintiffs contend that the ALJ was limited by the stipulation before her to the issue of the duty of plaintiffs regarding placement of Sullivan in light of certain California Administrative Code provisions.

The ALJ rejected plaintiffs' argument in her February 20, 2008, Order Denying Motion for Reconsideration. The ALJ found that "[n]one of the documents filed in this matter indicate that Student's Request for Due Process Hearing had been restructured as a request of Declaratory Relief only." A.R. 820. The Court agrees with the ALJ's assessment.

When the ALJ ordered that Sullivan be placed at NDA, she ordered the natural remedy that flowed from her determination that Sullivan was denied a FAPE and that the California Administrative Code provisions relied upon by plaintiffs did not excuse them from providing one. All the parties agreed that Sullivan was not receiving a FAPE, and they agreed that NDA was the only facility, despite a nationwide search that could provide him with a FAPE. Upon the presentation of the issue to the ALJ, the parties should have understood that any affirmative response by the ALJ would result in an order setting forth an appropriate remedy.

The suggestion that the ALJ was limited to sending the issue back to the parties

---

cases). Nevertheless, because the Court's own analysis would lead it to the same conclusion as that reached by the ALJ, the Court need not resolve this issue.

for another IEP process is absurd in light of the agreement as to the only appropriate placement. Sullivan would be forced to litigate an issue that he was entitled to a particular placement when an ALJ had already effectively determined the issue. Such an outcome is horribly inefficient; it would be a waste of administrative and judicial resources, and would result in a wholly avoidable delay in the only appropriate placement identified for Sullivan.

Accordingly, this Court finds that the issue of a compensatory education was presented to the ALJ and she did not overstep her authority by granting Sullivan a remedy after finding that he had been denied a FAPE.

B. California Law Does Not Prohibit Placement at NDA and Does Not Excuse Compliance with the IDEA

The heart of the present appeal is represented by plaintiffs' argument regarding funding for Sullivan's placement at NDA. As alluded to earlier, the difficulty in placing Sullivan at that facility is in its for-profit status.

The Court begins with Cal. Adm. Code tit. 2, § 60100(h), relating to "Interagency Responsibility for Providing Services to Pupils with Disabilities" in the area of "Residential Placement" such as that considered for Sullivan:

> (h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.

Id. This provision has many requirements, but no party contends that the student is not "seriously emotionally disturbed," that there is an "instate-facility [that] can meet [his] needs," that the requirements of subsection (d) (relating to documentation for residential placement) have not been met, or that the requirements of subsection (e) (relating to a mental health service case manager assessment) have not been met. Rather, plaintiffs focus on the requirement that out-of-state placements meet the requirements of Cal. Welfare & Inst. Code § 11460(c)(2)-(3) have not been met.

In relevant part, § 11460(c)(2)-(3) provides that "(3) State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis."[3]

Reading these statutes together, the Court, like the ALJ, can discern no outright prohibition under California law on Sullivan's placement at NDA. To be sure, § 60100(h) speaks in terms of conditions precedent to out-of-state placements when it provides as follows: "Out-of-state placements ***shall be made only*** in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3)," but the subsection upon which plaintiffs focus, subsection (c)(3) does not set forth a requirement so much as a limitation upon reimbursement for the costs of such placement.[4] This is especially so when viewed in light of § 60000, which provides that the intent of the chapter of the Administrative Code in which § 60100 appears "is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA." That section provides guidance on interpretation of the Code provisions that follow it:

---

[3] The parties cite to subsection (c)(2) and (c)(3), but the "for-profit" non-placement provision is found only in subsection (c)(3).

[4] This incorporation of the requirements makes much more sense as to subsection (c)(2), which sets forth certain conditions relating to the operations of the facility. Plaintiffs do not argue that these requirements have not been met; their argument is that they are prohibited from placing Sullivan at NDA because of its for-profit status.

> Thus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities for providing services to pupils with disabilities.

Id.

Plaintiffs reliance on *Yucaipa-Calimesa Joint Unified School District and San Bernardino County Department of Behavioral Health,* OAH Case No. N2005070683 (2005), does not compel a contrary result. The ALJ properly distinguished that case on the grounds that other acceptable placements were identified for the student. No such alternative placements have been identified for Sullivan, and therefore the cited case is unpersuasive.

What was apparent to the ALJ, and what is apparent to this Court, is that whatever funding limitations plaintiffs may face, the duty under the IDEA to provide to Sullivan a FAPE is clear and cannot be diminished. Equally clear from the record before the ALJ, and before this Court, is that Sullivan can receive a FAPE through placement at NDA, and that no other alternative placement has been identified.

C. Sullivan's Waiver Was Limited and Does not Affect the ALJ-Ordered Remedy

The waiver was limited to the time period of April, 2007, through October 9, 2007. Rights for the time period thereafter are expressly reserved. DMH Compl., Exh. D. ("Parent does not waive any claims of any kind from October 9, 2007 forward.").

The compensatory education ordered by the ALJ only applied to the period from the date of her decision, January 15, 2008, through the 2008- 2009 school year, several months after the Defendants' waiver expired. A.R. 788. The ALJ's order of compensatory education was a prospective equitable remedy that did not require RUSD and DMH to provide any compensation for the time period before January 15, 2008.

VI. CONCLUSION

Accordingly, and for the foregoing reasons, the Court **AFFIRMS** the ALJ's January 15, 2008, decision requiring RUSD and DMH provide Sullivan with a compensatory education consisting of immediate placement at the National Deaf Academy. The Court also **AFFIRMS** ALJ's February 20, 2008 Order Denying Motion for Reconsideration.

Counsel for defendants shall lodge a proposed judgment that complies with Fed. R. Civ. P. 54(a) within five days of the entry of this Order. A motion for attorney fees may be filed in accordance with the schedule previously set by the Court.

IT IS SO ORDERED.

DATE: July 20, 2009

STEPHEN G. LARSON
UNITED STATES DISTRICT JUDGE