COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

RECEIVED
August 26, 2016
Commission on
State Mandates

MARY C. WICKHAM
County Counsel

TELEPHONE
(213) 974-1857
FACSIMILE
(213) 617-7182
TDD
(213) 633-0901

August 26, 2016

VIA E-FILING (www.csm.ca.gov)

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Los Angeles County's Request for Reconsideration – Handicapped and Disabled Students, 13-4282-I-06

Dear Commission on State Mandates:

Pursuant to Government Code § 17559(a) and 2 CCR § 1187.15, the County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students, 13-4282-I-06 served on July 27, 2016 which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed.

Enclosed please find an explanation of the reasons for the request for reconsideration and documentations in support of the request. The adopted decision at issue is attached as Attachment A. The County requests the Commission to set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC.

If you have any questions, please do not hesitate to contact me at 213-974-1857 or via email at plee@counsel.lacounty.gov.

Very truly yours,

MARY C. WICKHAM
County Counsel

By
PETER LEE
Deputy County Counsel
Government Services Division

PL

Enclosure

MARY C. WICKHAM, County Counsel
SANGKEE PETER LEE, Deputy County Counsel
(SBN 290846) • *plee@counsel.lacounty.gov*
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
Telephone: (213) 974-1857 · Fax: (213) 617-7182

Attorneys for Claimant
County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

HANDICAPPED AND DISABLED STUDENTS, 13-4282-I-06; Fiscal Years: 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	CASE NO. 13-4282-I-06 **LOS ANGELES COUNTY'S REQUEST FOR RECONSIDERATION (GOVERNMENT CODE § 17559(a); 2 CCR § 1187.15)** (Decision adopted July 22, 2016) (Decision served July 27, 2016)

INTRODUCTION

The County of Los Angeles ("County") requests the Commission on State Mandates ("Commission") reconsider its adopted decision on Handicapped and Disabled Students, 13-4282-I-06 ("Adopted Decision" attached hereto as Attachment A) which denied the County's Incorrect Reduction Claim ("IRC") on the basis that the IRC was not timely filed. (Government Code §17559 (a); 2 CCR § 1187.15(b).) The Commission's *sua sponte* ruling is an error of law for the following two independent reasons:

(1) The statute of limitation is an affirmative defense that must be raised by the opposing party, the State Controller's Office ("State Controller"), and its failure to do so waives the defense.

(2) The Commission relies on an inapplicable United States Supreme Court case for the proposition that the Commission has an obligation to *sua sponte* raise the statute of

limitation defense. This is an error of law and also violates the County's right to due process and a right to fair and impartial hearing.

The County requests that the Commission set aside the ruling that the County's IRC was filed untimely and that the Commission decide on the merits of County's IRC. This Request for Reconsideration does not waive any of the County's positions, including but not limited to, issues raised in the IRC, the documents the County filed with the Commission, testimony at hearing before the Commission, and the Adopted Decision for purposes of judicial review.

ARGUMENT

I. The State Controller's failure to raise the statute of limitation defense is a waiver, and it was an error of law for the Commission to rule that County's IRC was untimely filed.

Statute of limitation is an affirmative defense that must be raised by the opposing party or else it is waived. In this case, the State Controller never raised the statute of limitation in its November 25, 2014 response to the County's IRC and, therefore, waived any argument that it applied. (Attachment A at p. 11, fn. 66; see State Controller's November 25, 2014 Response attached hereto as Attachment B) *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 396 (The statute of limitations operates in an action as an affirmative defense); *Gailing v. Rose, Klein & Marias*, (1996) 43 Cal.App.4th 1570, 1577 (The statute of limitations is not jurisdictional. It is an affirmative defense); *Getz v. Wallace* (1965) 236 Cal.App.2d 213 (In civil actions, the statute of limitations is a personal defense which is waived by failure to plead it.) In the Adopted Decision, Commission itself cites to *Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309 and quotes that case - "the statute of limitation is an affirmative defense." (Attachment A at p. 11, fn 66.)

The fact that the State Controller did not raise the statute of limitation defense is consistent with the State Controller's official letter, which was relied upon by the County, informing the County that an "IRC must be filed within three years following the date we notified the County of a claim reduction. The State Controller's Office notified the County of a claim reduction on August 6, 2010, for the HDS program audit..." (Attachment C.) In other incorrect reduction claims, the State Controller first raised the statute of limitation defense by claiming and explaining

why the IRC was filed untimely and then the Commission decided this issue. (See Handicapped and Disabled Students (County of San Mateo), 05-4282-I-03 Decision at p. 11 attached hereto as Attachment D); Collective Bargaining (Gavilan Joint Community College District), 05-4425-I-11 Decision at p. 5 attached hereto as Attachment E). In this case, the State Controller's failure to raise the statute of limitation constitutes a waiver.

The first time the statute of limitation issue was raised in this case was by the Commission's staff in the May 20, 2016 Draft Proposed Decision. (Attachment F.) On June 3, 2016, the State Controller responded by stating that it "supports the Commission's decision and recommendation. The Commission found that the claimant's IRC was untimely filed..." (Attachment G.) The State Controller's belated "support of the Commission's conclusion" does not constitute an affirmative defense that must be asserted by the opposing party and failure to invoke it is a waiver. (*Samuels v. Mix*, (1999) *22* Cal.4th 1, 10 (a defendant must prove the facts necessary to enjoy the benefits of a statute of limitations…if defendant had never pled the statute of limitations as a defense, that defense would have been forfeited); *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91 (a defendant who failed to plead the statute of limitations could not raise it in trial brief.) For this reason alone, the Commission should reverse its ruling and allow the County's IRC to be ruled on the merits.

II. Commission's *sua sponte* decision to assert the statute of limitation defense for the State Controller is an error of law.

The Commission incorrectly relies on a United State Supreme Court decision, *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132, for the proposition that the "Commission's limitations period is jurisdictional, and, as such, the Commission is obligated to review the limitations issue sua sponte." (Attachment A at p. 11, fn 66.)

The *John R. Sand* case involves the interpretation of a special federal court of claims' statute of limitation. (552 U.S. at 132-34.) It was decided under federal law and has no bearing on the Commission, which is a state-created quasi-judicial body. The Commission is subject to the California Constitution, laws, and regulations as interpreted by California state courts. And, as discussed above, California courts hold that the statute of limitations is an affirmative defense

which must be pleaded or it is waived. Indeed, in *John R. Sand*, the Supreme Court first observed the unique jurisdictional nature of the federal court of claims statute, observing the law typically treats a limitations defense as an affirmative defense that the defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver. (*Id.* at 133.)

The Commission does not cite to any applicable California legal authority to establish that the Commission's regulation on the statute of limitation for filing an incorrect reduction is an absolute or fundamental jurisdictional matter, establishing an exception from the general rule that the statute of limitation is an affirmative defense. The Commission's *sua sponte* decision to raise the statute of limitation defense for the State Controller without any legal basis is an error of law and also violates County's rights to due process rights and to fair and impartial hearing.

CONCLUSION

For the forgoing reasons, the County requests the Commission to set aside the ruling that the County's IRC was filed untimely and allow the Commission to decide on the merits of the County's IRC.

DATED: August 26, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By 

SANGKEE PETER LEE
Deputy County Counsel

Attorneys for County of Los Angeles (Department of Auditor-Controller; Department of Mental Health)

Attachment A

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

July 27, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

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**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

On July 22, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

Commission on State Mandates
980 9th Street, Suite 300 Sacramento, CA 95814 | www.csm.ca.gov | tel (916) 323-3562 | email: csminfo@csm.ca.gov

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040 (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])[1] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *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 July 22, 2016*) (*Served July 27, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. Edward Jewik and Hasmik Yaghobyan appeared on behalf of the County of Los Angeles. Jim Spano and Chris Ryan 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 Proposed Decision to deny this IRC by a vote of 6-0 as follows:

[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 specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Member	Vote
Ken Alex, Director of the Office of Planning and Research	Yes
Richard Chivaro, Representative of the State Controller	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[2] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts (which would then become subject to the program's reimbursement formula):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[3]

After a review of the record and the applicable law, the Commission found that the IRC was untimely filed.

Accordingly, the Commission denies this IRC.

I. Chronology

01/05/2005 Claimant dated the reimbursement claim for fiscal year 2003-2004.[4]

[2] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[3] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

[4] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

01/10/2006	Claimant dated the reimbursement claim for fiscal year 2004-2005.[5]
04/05/2007	Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[6]
08/12/2008	Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[7]
05/19/2010	Controller issued the Draft Audit Report dated May 19, 2010.[8]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[9]
06/16/2010	Claimant sent a letter to Controller dated June 16, 2010, with regard to the claims and audit procedure.[10]
06/30/2010	Controller issued the Final Audit Report dated June 30, 2010.[11]
08/02/2013	Claimant filed this IRC.[12]
11/25/2014	Controller filed late comments on the IRC.[13]
12/23/2014	Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.
03/26/2015	Claimant filed rebuttal comments.[14]
05/20/2016	Commission staff issued the Draft Proposed Decision.[15]

[5] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[6] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[7] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…." However, this assertion of fact is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

[8] Exhibit A, IRC, page 547.

[9] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[10] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[11] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[12] Exhibit A, IRC, pages 1, 3.

[13] Exhibit B, Controller's Late Comments on the IRC, page 1.

[14] Exhibit C, Claimant's Rebuttal Comments, page 1.

[15] Exhibit D, Draft Proposed Decision, pages 1, 34.

06/06/2016 Controller filed comments on the Draft Proposed Decision.[16]

06/10/2016 Claimant filed comments on the Draft Proposed Decision.[17]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[18] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[19] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and 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.[20]

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[21] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[22] And, in 1985, the Legislature further amended chapter 26.5.[23]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[24]

---

[16] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[17] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[18] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) [current version].

[19] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) [current version].

[20] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[21] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[22] Statutes 1984, chapter 1747.

[23] Statutes 1985, chapter 1274.

[24] "With the passage of AB 3632 (fn.), 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 [local education agencies] to acquire qualified staff to handle 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

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines, approving *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[25] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[26] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[27]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[28] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.[29]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for

---

providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[25] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[26] Former Welfare and Institutions Code sections 5600 et seq.

[27] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[28] Statutes 2004, chapter 493 (SB 1895).

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

providing mental health services under IDEA back to school districts, effective July 1, 2011.[30] On September 28, 2012, the Commission adopted an amendment to the Parameters and Guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[31]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[32] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[33]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[34]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct

[30] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[31] Exhibit A, IRC, page 547.

[32] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[33] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[34] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[35]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[36]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[37] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[38]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[39]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[40]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[41]
- "We are not aware of any . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[42]

---

[35] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[36] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[37] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[38] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[39] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[40] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[41] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[42] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[43]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[44]

On June 30, 2010, the Controller issued the Final Audit Report.[45] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[46]

On August 2, 2013, the claimant filed this IRC with the Commission.[47]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[48]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of

[43] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[44] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[45] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[46] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[47] Exhibit A, IRC, pages 1, 3.

[48] Exhibit A, IRC, pages 10-11.

Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[49]

3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[50]

4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[51]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[52]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated August 6, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.[53]

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[54]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

---

[49] Exhibit A, IRC, pages 11-12.

[50] Exhibit A, IRC, pages 12-15, 17-18.

[51] Exhibit A, IRC, pages 15-17.

[52] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with refiling of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

[53] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

[54] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[55]
2. The documentation provided by the claimant did not verify the claimed costs.[56]
3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[57]
4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[58]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[59]

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 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, of the California Constitution.[60] 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

---

[55] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal Comments, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[56] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[57] Exhibit B, Controller's Late Comments on the IRC, page 29.

[58] Exhibit B, Controller's Late Comments on the IRC, page 28.

[59] Exhibit E, Controller's Comments on the Draft Proposed Decision.

[60] *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."[61]

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.[62] Under this standard, the courts have found:

> 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.]' "[63]

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.[64] In addition, sections 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.[65]

A. The IRC Was Untimely Filed.

The threshold issue is whether this IRC was timely filed.[66]

---

[61] *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.

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

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

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

[65] 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.

[66] In its comments on the IRC (Exhibit B), the Controller did not raise the issue of whether the IRC was timely filed. However, the Commission's limitations period is jurisdictional, and, as such, the Commission is obligated to review the limitations issue sua sponte. (See *John R. Sand & Gravel Co. v. United States* (2008) 552 U.S. 130, 132 [128 S. Ct. 750, 752].)

"The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> 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.[67]

Thus, the applicable limitations period is "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."[68]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated June 30, 2010.[69] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[70] Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days later.[71]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[72]

---

established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[67] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "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." Code of California Regulations, title 2, section 1185.1(c).

[68] Former Code of California Regulations, title 2, section 1185(b).

[69] Exhibit A, IRC, page 547 (Final Audit Report).

[70] See California Code of Regulations, title 2, section 1183.18(a)(1); Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."); and Code of Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[71] Exhibit A, IRC, page 1.

[72] Exhibit A, IRC, pages 21-27.

In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[73] The claimant further argues that the Commission should find that the IRC was timely filed based on statements made by the Controller's Office that an IRC could be filed three years from the August 6, 2010, notices.[74]

The claimant's argument fails because: (1) the three documents dated August 6, 2010, were not notices of claim adjustment; (2) the limitations period commences to run upon the earliest event in time which would have allowed the claimant to file a claim; and (3) the Controller's misstatement of law (specifically, the Controller's erroneous statement that the limitations period for filing an IRC began to run as of the three documents dated August 6, 2010) does not result in an equitable estoppel that makes the IRC timely.

1. The Three Documents Dated August 6, 2010, Are Not Notices of Adjustment.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment."

Government Code section 17558.5(c) reads in relevant 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."

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[75]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final

[73] Exhibit A, IRC, page 6.

[74] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[75] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment.").

Audit Report.[76] The claimant asserts that, if the documents dated August 6, 2010, do not constitute notices of claim adjustment, then the Controller never provided notice.[77] The Final Audit Report provides abundant notice.

None of the three documents provides the claimant with notice of any new finding. The Final Audit Report informed the claimant of the dollar amounts which would not be reimbursed and the dollar amounts which the Controller contended that the claimant owed the State.[78] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not remitted.[79] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously unannounced adjustments.[80]

For these reasons, the three documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[81] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

---

[76] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[77] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[78] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

[79] Exhibit A, IRC, page 547.

[80] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Government Code section 17558.5(c) ("Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."). Whatever term may accurately be used to characterize the three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

[81] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> 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.[82]

Under a legal doctrine with the somewhat confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[83]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][84]

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that date, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that date, the claimant had been (from its perspective) harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock. The limitations period starts to run from the earliest point in time when the

---

[82] Former Code of California Regulations, title 2, section 1185(b) (Regulation 1185), which was renumbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "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." Code of California Regulations, title 2, section 1185.1(c).

[83] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[84] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of adjustment in the record.[85] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[86] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[87]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[88] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was sent after the Controller's Final Audit Report.[89] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[90] In the instant IRC, by contrast, the

---

[85] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[86] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[87] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

[88] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[89] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[90] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information

Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[91]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[92]

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[93] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

3. The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated August 6, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In

---

pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[91] Exhibit A, IRC, page 542.

[92] All that being said, an administrative agency's adjudications need not be consistent. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[93] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[94]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[95] — but does not necessarily possess[96] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[97]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[98] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[99]

---

[94] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486 from Jim Spano to Robin C. Kay, dated May 7, 2013.

[95] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[96] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

[97] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[98] Evidence Code section 623.

[99] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[100] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[101] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[102]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[103] In the federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[104]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), Regulation 1185's three-year limitations period had been in effect and had been published since at least May 2007.[105] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the three documents dated August 6, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[106] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the

---

[100] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[101] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[102] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[103] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[104] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

[105] California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

[106] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

absence of a confidential relationship, is not a basis for an estoppel."[107] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[108]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated June 30, 2010, the Controller summarized the audit findings and then stated, "If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[109] In other words, as of June or July 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[110]

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[111] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[112] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[113] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request . . . ."[114] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence

---

[107] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[108] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[109] Exhibit A, IRC, page 542.

[110] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[111] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[112] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[113] Exhibit A, IRC, page 485.

[114] Exhibit A, IRC, page 485.

until a June 2012 delivery of documents,[115] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed.

Therefore, the Commission denies this IRC.

[115] Exhibit A, IRC, page 485.

RE: **Decision**

Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

On July 22, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Dated: July 27, 2016

Heather Halsey, Executive Director

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 July 27, 2016, I served the:

Decision
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, 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 July 27, 2016 at Sacramento, California.

Jill Magee

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: 7/5/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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

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

Robin Kay, *County of Los Angeles*
Claimant Representative
Department of Mental Health, 550 S. Vermont Avenue, 12th Floor, Los Angeles, CA 90020
Phone: (213) 738-4108
rkay@dmh.lacounty.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

Paul Lukacs, Senior Commission Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562

paul.lukacs@csm.ca.gov

John Naimo, Acting Auditor-Controller, *County of Los Angeles*
Auditor-Controller, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
jnaimo@auditor.lacounty.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

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

Attachment B

RECEIVED
November 25, 2014
Commission on
State Mandates

LATE FILING

JOHN CHIANG
California State Controller

November 24, 2014

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, 13-4282-I-06
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274
Fiscal Years 2003-2004, 2004-05, and 2005-2006
Los Angeles County, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-entitled 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/sk

14705

RESPONSE BY THE STATE CONTROLLER'S OFFICE TO THE INCORRECT REDUCTION CLAIM (IRC) BY LOS ANGELES COUNTY

Handicapped and Disabled Students Program

Table of Contents

Description **Page**

SCO's Response to County's Comments

Declaration (Affidavit of Bureau Chief) ..... Tab 1

State Controller's Office Analysis and Response ..... Tab 2

Los Angeles County's reimbursement claim for FY 2003-04 ..... Tab 3

Los Angeles County's reimbursement claim for FY 2004-05 ..... Tab 4

Los Angeles County's reimbursement claim for FY 2005-06 ..... Tab 5

Commission on State Mandates' Statement of Decision,
Handicapped and Disabled Students Program (CSM-4282) ..... Tab 6

Commission on State Mandates' Amended Parameters and Guidelines,
Handicapped and Disabled Students Program (CSM-4282) ..... Tab 7

Commission on State Mandates' Reconsideration of Prior Statement of Decision,
Handicapped and Disabled Students Program (04-RL-4282-10) ..... Tab 8

Commission on State Mandates' Amended Parameters and Guidelines,
Handicapped and Disabled Students Program (CSM-4282) ..... Tab 9

Commission on State Mandates' Parameters and Guidelines,
Handicapped and Disabled Students Program (04-RL-4282-10) ..... Tab 10

Commission on State Mandates' Corrected Parameters and Guidelines,
Handicapped and Disabled Students Program (04-RL-4282-10) ..... Tab 11

Commission on State Mandates' Amended Parameters and Guidelines,
Handicapped and Disabled Students Program (04-RL-4282-10) ..... Tab 12

Los Angeles County's program codes to track mandate-related services ..... Tab 13

SCO Audit Start Letter dated August 12, 2008 ..... Tab 14

Email authorization to move excess revenues dated April 13, 2010 ..... Tab 15

Los Angeles County's Management Representation Letter dated June 16, 2010 ..... Tab 16

Email correspondence with county staff on October 6, 2008 ..... Tab 17

Memo from Paul McIver, District Chief, Youth and Family Program Administration, dated May 11, 2009 ..... Tab 18

Email correspondence with county staff on April 22, 2009 ..... Tab 19

Note: References to Exhibits related to county's IRC filed August 2, 2013 as follows:

- Exhibit A – PDF page 23
- Exhibit B – PDF page 489
- Exhibit C – PDF page 542
- Exhibit D – PDF page 565

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: Handicapped and Disabled Students Program Chapter 1747, Statutes of 1984 Chapter 1274, Statutes of 1985 LOS ANGELES COUNTY, Claimant	No.: CSM 13-4282-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 the Los Angeles 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) A review of the claims for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 was completed on June 30, 2010.

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: November 17, 2014

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 LOS ANGELES COUNTY
For Fiscal Year (FY) 2003-04, FY 2004-05, FY 2005-06

Handicapped and Disabled Students Program
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that Los Angeles County filed on August 2, 2013. The SCO audited the county's claims for costs of the legislatively mandated Handicapped and Disabled Students (HDS) Program for the period of July 1, 2003, through June 30, 2006. The SCO issued its final report on June 30, 2010 (**Exhibit C**).

The county submitted reimbursement claims totaling $26,924,935—$4,293,621 for fiscal year (FY) 2003-04 (**Tab 3**), $10,143,346 ($10,144,346 less $1,000 late claim penalty) for FY 2004-05 (**Tab 4**), $12,487,968 for FY 2005-06 (**Tab 5**). Subsequently, the SCO audited the claims and determined that $8,542,409 is allowable and $18,382,526 is unallowable. The costs are unallowable because the county claimed ineligible, unsupported, and duplicate services; overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and overstated offsetting revenues by using inaccurate Medi-Cal units, applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-06, including unsupported revenues, and applying revenue to ineligible direct and indirect costs.

The following table summarizes the audit results:

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2003, through June 30, 2004			
Assessment/case management costs	$ 5,929,138	$ 5,787,859	$ (141,279)
Administrative costs	805,396	353,303	(452,093)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(1,270,666)	(1,514,027)	(243,361)
State categorical funds (EPSDT)	—	(1,139,639)	(1,139,639)
State categorical funds (IDEA)	(3,546,463)	(3,546,463)	—
Other	—	(400,621)	(400,621)
State general/realignment funds	—	—	—
40% board and care	—	—	—
Net assessment/case management costs	1,917,405	(459,588)	(2,376,993)
Treatment costs	22,783,049	16,106,240	(6,676,809)
Administrative costs	1,865,725	697,215	(1,168,510)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(6,494,214)	(4,380,033)	2,114,181
State categorical funds (EPSDT)	—	(3,296,940)	(3,296,940)
State categorical funds (IDEA)	—	(9,621,191)	(9,621,191)
Other	(15,778,344)	—	15,778,344
Net treatment costs	2,376,216	(494,709)	(2,870,925)
Subtotal	4,293,621	(954,297)	(5,247,918)
Adjustment to eliminate negative balance	—	954,297	954,297
Less late claim penalty	—	—	—
Total program costs	$ 4,293,621	—	$ (4,293,621)
Less amount paid by the State [1]		—	
Allowable costs claimed in excess of (less than) amount paid		$ —	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2004, through June 30, 2005			
Assessment/case management costs	$ 19,680,965	$ 17,224,873	$ (2,456,092)
Administrative costs	553,202	105,740	(477,462)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(192,927)	(459,581)	(266,654)
State categorical funds (EPSDT)	—	(393,026)	(393,026)
State categorical funds (IDEA)	(1,099,786)	(1,099,786)	—
Other	(14,230,658)	(523,883)	13,706,775
State general/realignment funds	—	(5,929,000)	(5,929,000)
40% board and care	—	(5,951,419)	(5,951,419)
Net assessment/case management costs	4,710,796	2,973,918	(1,736,878)
Treatment costs	28,544,988	19,964,556	(8,580,432)
Administrative costs	2,746,638	1,176,638	(1,570,000)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(6,569,210)	(4,466,386)	2,102,824
State categorical funds (EPSDT)	—	(3,819,581)	(3,819,581)
State categorical funds (IDEA)	—	(12,732,788)	(12,732,788)
Other	(19,288,866)	—	19,288,866
Net treatment costs	5,433,550	122,439	(5,311,111)
Subtotal	10,144,346	3,096,357	(7,047,989)
Adjustment to eliminate negative balance	—	—	—
Less late claim penalty	(1,000)	(1,000)	—
Total program costs	$ 10,143,346	3,095,357	$ (7,047,989)
Less amount paid by the State [1]		(8,061,754)	
Allowable costs claimed in excess of (less than) amount paid		$ (4,966,397)	
July 1, 2005, through June 30, 2006			
Assessment/case management costs	$ 21,153,500	$ 17,453,855	$ (3,699,645)
Administrative costs	685,226	79,844	(605,382)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(423,898)	(546,639)	(122,741)
State categorical funds (EPSDT)	—	(469,235)	(469,235)
State categorical funds (IDEA)	—	(1,449,671)	(1,449,671)
Other	(17,512,485)	(568,041)	16,944,444
State general/realignment funds	—	(5,929,000)	(5,929,000)
40% board and care	—	(6,041,974)	(6,041,974)
Net assessment/case management costs	3,902,343	2,529,139	(1,373,204)
Treatment costs	24,382,255	18,513,247	(5,869,008)
Administrative costs	2,138,697	1,007,135	(1,131,562)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(4,702,850)	(4,017,603)	685,247
State categorical funds (EPSDT)	—	(3,448,710)	(3,448,710)
State categorical funds (IDEA)	—	(9,136,156)	(9,135,156)
Other	(13,232,477)	—	13,232,477
Net treatment costs	8,585,216	2,917,913	(5,667,712)
Subtotal	12,487,968	5,447,052	(7,040,916)
Adjustment to eliminate negative balance	—	—	—
Less late claim penalty	—	—	—
Total program costs	$ 12,487,968	5,447,052	$ (7,040,916)
Less amount paid by the State [1]		(12,487,968)	
Allowable costs claimed in excess of (less than) amount paid		$ (7,040,916)	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
Summary: July 1, 2003, through June 30, 2006			
Assessment/case management costs	$ 46,763,603	$ 40,466,587	$ (6,297,016)
Administrative costs	2,043,824	538,887	(1,504,937)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(1,887,491)	(2,520,247)	(632,756)
State categorical funds (EPSDT)	—	(2,001,900)	(2,001,900)
State categorical funds (IDEA)	(4,646,249)	(6,095,920)	(1,449,671)
Other	(31,743,143)	(1,492,545)	30,250,598
State general/realignment funds	—	(11,858,000)	(11,858,000)
40% board and care	—	(11,993,393)	(11,993,393)
Net assessment/case management costs	10,530,544	5,043,469	(5,487,075)
Treatment costs	75,710,292	54,584,043	(21,126,249)
Administrative costs	6,751,060	2,880,988	(3,870,072)
Offsetting revenues:			
Short-Doyle/Medi-Cal funds	(17,766,274)	(12,864,022)	4,902,252
State categorical funds (EPSDT)	—	(10,565,231)	(10,565,231)
State categorical funds (IDEA)	—	(31,490,135)	(31,490,135)
Other	(48,299,687)	—	48,299,687
Net treatment costs	16,395,391	2,545,643	(13,849,748)
Subtotal	26,925,935	7,589,112	(19,336,823)
Adjustment to eliminate negative balance	—	954,297	954,297
Less late claim penalty	(1,000)	(1,000)	—
Total program costs	$ 26,924,935	8,542,409	$(18,382,526)
Less amount paid by the State [1]		(20,549,722)	
Allowable costs claimed in excess of (less than) amount paid		$(12,007,313)	

[1] Payment information as of July 25, 2014.

The county contends that the SCO incorrectly reduced the county's claims by erroneously conducting the audit as if the county used the actual increased cost method instead of the cost report method, in that it is not required to identify actual costs. The county also asserts that the data set used by the SCO to determine allowable costs was incorrect and did not accurately capture the actual costs of services rendered. In addition, the county is contesting only the mental health related service costs, excluding audit adjustments for residential placements. The county contests $18,180,918 for the audit period—$5,247,918 for FY 2003-04, $6,396,075 for FY 2004-05 and $6,536,836 for FY 2004-05.

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

Parameters and Guidelines

On April 26, 1990, the Commission on State Mandates (Commission) determined that Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1984 imposed a state mandate reimbursable under Government Code section 17561 (**Tab 6**). The Commission adopted the program's parameters and guidelines on August 22, 1991, amended it on August 29, 1996 (**Tab 7**), and corrected it on January 26, 2006 (**Tab 9**). These parameters and guidelines apply to fiscal years including June 30, 2004.

Chapter 493, Statutes of 2004, directed the Commission to reconsider the 1990 statement of decision and the parameters and guidelines for this program. On May 26, 2005, the Commission adopted the statement of decision for the reconsidered state mandate program (**Tab 8**). The Commission adopted the reconsidered program's parameters and guidelines on October 26, 2006 (**Tab 10**), corrected it on July 21, 2006 (**Tab 11**), and amended it on October 26, 2006 (**Tab 12**). On July 21, 2006, the Commission corrected the parameters and guidelines to include the Cost Report Method as a means for identifying costs for the mandate. These parameters and guidelines apply to fiscal years beginning July 1, 2004.

Beginning in FY 2006-07, the program becomes part of the consolidated parameters and guidelines that is made up of the HDS, HDS II, and Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services (SEDP) Programs.

Following are excerpts from the HDS Program's parameters and guidelines that are applicable to the county-filed claim for FY 2003-04 **(Tab 9)**.

Section I, Summary of Mandate, provides a summary of the mandate. It states:

I. **SUMMARY OF MANDATE**

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. 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. Furthermore, any related county participation on the expanded "Individualized Education Program" (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 Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

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 Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. 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.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

Section IV, Period of Reimbursement, identified the period of reimbursement for activities. It states:

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RI-4282-10).

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

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

Section V, Reimbursable Costs, identifies the reimbursable activities. It states:

V. REIMBURSABLE COSTS

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 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, section 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. (Government Code section 7572, subd. (d)(1)).

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

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 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. (Government Code section 7572.5).

g. Required participation in due process procedures, 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 (Government 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.

Section V, Claim Preparation, identifies the two methods of submitting claims for reimbursement. It states:

VI. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

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

   b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.

4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

   1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

      a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

      OR if an indirect cost rate greater than ten (10) percent is being claimed,

      b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

Section VII, Supporting Data, describes supporting documentation. It states:

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

Section VIII, Offsetting Savings and Other Reimbursements, identifies applicable offset requirements. It states:

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.

B. The following reimbursements for this mandate shall be deducted from the claim:

1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and

2. 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.

Following are excerpts from the HDS Program's parameters and guidelines that are applicable to the county-filed claims for FY 2004-05 and FY 2005-06 **(Tab 12)**.

Section I, Summary of Mandate, provides a summary of the mandate. It states:

I. SUMMARY OF MANDATE

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission on State Mandates (Commission) to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). On May 26, 2005, the Commission adopted a Statement of Decision on *Handicapped and Disabled Students* (04-RL-4282-10) pursuant to Senate Bill 1895.

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.

The Commission determined that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution for the activities expressly required by statute and regulation. The Commission also concluded that there is revenue and/or proceeds that must be identified as an offset and deducted from the costs claimed.

Two other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *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).

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program.

Section III, Period of Reimbursement, identified the period of reimbursement for activities. It states:

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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.

Section IV, Reimbursable Activities, identifies the reimbursable activities and specifies required supporting documentation. It states:

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. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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. 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.

B. 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)

1. 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.

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

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

4. 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.

5. Assess the pupil within the time required by Education Code section 56344.

6. 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.

7. 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.

8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.

9. 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.

10. Review independent assessments of a pupil obtained by the parent.

11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.

12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

C. 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)

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.

D. 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)

1. 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:

a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.

b. Complete the local mental health program payment authorization in order to initiate out of home care payments.

c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.

d. Coordinate the completion of the residential placement as soon as possible.

e. 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.

f. Facilitate the enrollment of the pupil in the residential facility.

g. 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.

h. 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.

E. Issue payments to providers of out-of-home 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. 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 noneducational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

   Beginning July 19, 2005, 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.

2. 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.

F. 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.

Reimbursement to parents for attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is not reimbursable.

Section V, Claim Preparation and Submission, identifies the two methods of submitting claims for reimbursement. It states:

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV 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 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.

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 (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.

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.

Section VII, Offsetting Revenues and Other Reimbursements, identifies applicable offset requirements. It states:

VII. 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. 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) and the $69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).

3. Funds received and applied to this program from the appropriation by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated $120 million for costs claimed for fiscal years 2004-05 and 2005-06 for the *Handicapped and Disabled Students* program (CSM 4282) and for *Seriously Emotionally Disturbed (SED)*

Pupils: Out-of-State Mental Health Services (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)

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.

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

Except as expressly provided in section IV(E)(1) 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 (SB 1895).)

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 revised claiming instructions for Chapter 1747, Statutes 1984, and Chapter 1274, Statutes 1985 in September 2003 (**Exhibit B**). The county used this version to file its reimbursement claims (**Tabs 3, 4 and 5**).

II. COUNTY OVERSTATED COSTS BY CLAIMING UNSUPPORTED ASSESSMENT AND TREATMENT COSTS, MISCALCULATING INDIRECT COSTS AND OFFSETTING REIMBURSEMENTS

Issue

The county's IRC challenges a portion of Findings 1, 2, and 3 in the SCO's final audit report issued June 30, 2010, related to assessment and treatment costs, and the related indirect costs and offsetting revenues, totaling $18,180,829.

The SCO concluded that the county claimed unsupported and duplicate costs, and miscalculated the associated indirect costs and offsetting revenues.

The county would like the SCO to reconsider audit adjustments in light of information identified by the county subsequent to the issuance of the final audit report.

SCO Analysis

The county claimed $18,382,526 in unallowable costs resulting from the claiming of unsupported and duplicate costs, and miscalculating its related indirect costs and offsetting revenues.

As noted in the SCO's final audit report, the county initially did not provide support for its claims when the audit was initiated in a testable format that we could verify. At that time, the county did not provide detailed information regarding the services provided, including the client receiving service, type of service, date of service, duration of service, etc. County staff asserted that the identifiers set up in its system were unreliable, and suggested that the county query its own database to identify detail of services provided.

The county's methodology was to identify all related services of clients that received an assessment at one of the three county-run facilities dedicated to assessing AB 3632 client eligibility. The county ran three different database queries; each query failed to support costs claimed and contained errors. The errors included clients that were not in the program, clients that were not eligible for the program, duplicate transactions, and partial/incomplete transactions. The county did not provide the SCO with the parameters it used for the three initial queries.

We worked with the county to develop its query parameters for a fourth query report. We suggested clarifying the parameters of the query to identify eligible clients, such as by establishing an age limit so that the query would not identify clients over 22 years old as part of the program. The county ran the fourth query and presented the results as support for its claims. The detailed unit-of-services report provided did not support claimed costs.

The program's parameters and guidelines, Section VII, Supporting Data, applicable to FY 2003-04 specify that only actual costs may be claimed. Further, all costs claimed must be traceable to source documents that show validity of such costs (**Tab 9**). It states:

> **VII. SUPPORTING DATA**
>
> For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

The parameters and guidelines, Section IV, Reimbursable Activities, applicable to FY 2004-05 and FY 2005-06 specify that only actual costs may be claimed. Further, actual costs must be traceable and supported by source documents that show the validity of such costs (**Tab 12**). It states:

> **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 or 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 county contends that the SCO erroneously conducted the audit as if the county had submitted its claims using the Actual Increased Cost Method instead of the Cost Report Method. The county believes that the Cost Report Method is not based on actual costs and the SCO had no authority to conduct the audit. The county also asserts that the claim information and support it provided in the

course of the audit is erroneous or incomplete. The county believes that the SCO should reconsider its audit adjustments based on the new information.

The SCO contacted the county by phone on July 28, 2008, to initiate the audit, and confirmed the entrance conference date with a start letter dated August 12, 2008 (**Tab 13**). The SCO issued the final report on June 30, 2010 (**Exhibit C**). In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (**Tab 14**). The county provided information regarding its reconsideration request in June and August 2012 (**Exhibit A-13**).

Government Code section 17558.5 requires that an audit by the SCO shall be completed not later than two years after the date that the audit is commenced. Government Code section 17568 specifies that in no case shall a reimbursement claim be paid that is submitted more than one year after the filing deadline specified in Section 17560. Government Code section 17561, subdivision (d)(3), specifies that initial claims are not subject to payment if submitted more than one year after the filing deadline in the Controller's claiming instructions.

Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Government Code section 8314, subdivision (a), provides that it is unlawful for any elected state officer to use public resources for purposes that are not authorized by law. The California Constitution article 16, section 6, specifies that the Legislature shall have no power to make a gift of public funds.

The SCO completed the audit and issued the final audit report within the two-year statutory period. In June 2012 and August 2012, the county requested that the SCO consider costs based on information that was not provided in the course of the audit. The deadline to file an amended claim for FY 2003-04 was August 2007 and for FY 2004-05 and FY 2005-06 was May 2008.

Consequently, the county is requesting that the SCO consider costs not previously provided after the statutory period to file an amended claim, which is approximately five years after the filing deadline for the FY 2003-04 claim, and four years after the filing deadline for the FY 2004-05 and FY 2005-06 claim. The county's request for the SCO to consider such costs is also two years after the statutory period for the SCO to issue the final audit report.

The SCO is prohibited from making a gift of public funds. Therefore, the SCO has no authority to consider costs based on information that was not provided during the course of the audit, the statutory period to file an amended claim, or the statutory period for the SCO to issue the final report.

County's Response

The County contends that the SCO incorrectly reduced the County's claim because the SCO erroneously conducted the audit as if the County had submitted its claim under the Actual Increased Cost Method instead of the Cost Report Method, which was the actual methodology used by the County.

Therefore, this IRC seeks to have $18,180,829 disallowed by the SCO reinstated:

- Fiscal Year 2003-04: $5,247,918
- Fiscal Year 2004-05: $6,396,075
- Fiscal Year 2005-06: $6,536,836

SCO's Comment

Our objective was to determine whether the costs of the county-filed claims are reimbursable under the program's parameters and guidelines adopted by the Commission. This includes tracing costs of county-filed claims to source documentation to ascertain the validity and accuracy of the costs.

The county's IRC submission contains an incomplete filing and other issues we will address in our response to the county's arguments.

The county's filing does not include the reimbursement claims filed with the SCO. The exhibit includes the claims prepared by the county's mental health department that were submitted to its auditor-controller (**Exhibit D**). We have included the actual claim forms filed with the SCO as part of our response (**Tabs 3, 4 and 5**). These forms were signed by the county's auditor-controller and submitted to the SCO for reimbursement of state-mandated program costs.

In reference to the county's FY 2003-04 claim, the county is seeking reinstatement of costs in excess of amounts claimed. The county seeks reinstatement of the original claimed amount plus the amount of excess Individuals with Disabilities Education Act (IDEA) funds. In the course of the audit, the county was concerned about our determination of an excess of IDEA revenue in the HDS Program audit report. We discussed the issue with county representatives and they agreed to move the revenue to the SEDP Program (**Tab 15**). The movement of excess IDEA revenue from the HDS program to the SEDP program eliminated the excess of reported revenue in the HDS audit report. However, we believe the county is only entitled to the amount it claimed in accordance with Government Code section 17568 (**Tab 3**).

In reference to the county's FY 2004-05 and FY 2005-06 claims, the county asserts that the SCO erroneously added the initial and amended claims, causing the errors noted in the audit findings. The county filed its initial claims and subsequently amended them to include residential placement costs. The county combined the costs of its initial and amended claims, and filed them with the SCO (**Tabs 4 and 5**).

Concerning the challenged costs, the county did not identify its proposed adjustments to a specific category. The county seeks reinstatement of a total amount without identifying the portion related to direct and indirect costs, and offsetting reimbursements. Further, the support for the proposed adjustments does not reconcile to the amount contested. In its IRC, the county is contesting $18,180,829 and the proposed adjustments in the supporting exhibits total to $18,456,446 (**Exhibits A-10 through A-12**). The proposed adjustments also appear incomplete because they do not include any related indirect costs and offsetting reimbursements (**Exhibits A-10 through A-12**). There are other inconsistencies as well; the county's proposed adjustments are greater than the SCO audit adjustments in FY 2003-04 and FY 2004-05, and less than the SCO audit adjustments for FY 2005-06. For FY 2005-06, the county's total proposed adjustment ($5,229,547) is less than the contested amount ($7,040,916), yet the county is seeking full reinstatement of the contested amount. Overall, the county's intention for providing the information in the exhibits and the relation to the contested amounts is not clear.

A comparison of the SCO audit adjustments, the county's IRC contested amounts, and the county's IRC proposed adjustments from the exhibits are shown in the following table:

	Fiscal Year			
	2003-04	2004-05	2005-06	Total
SCO's audit adjustments[1]	$ 4,293,621	$ 7,047,989	$ 7,040,916	$ 18,382,526
County's IRC contested amounts	$ 5,247,918	$ 6,396,075	$ 6,536,836	$ 18,180,829
County's proposed adjustments[2]				
Omitted providers[2]	$ 3,003,675	$ 4,669,518	$ 898,049	$ 8,571,242
Variance (4th query and Form 1909/1912)[2]	2,143,885	1,875,541	3,319,935	7,339,361
Mode 60 costs[2]	852,627	681,653	1,011,563	2,545,843
Indirect costs[3]	-	-	-	-
Offsetting reimbursements[3]	-	-	-	-
Total proposed adjustments	$ 6,000,187	$ 7,226,712	$ 5,229,547	$ 18,456,446

[1]SCO audit report dated June 30, 2010 (**Exhibit C**).

[2]Data from the county's IRC (**Exhibits A-10 through A-12**).

[3]No indirect costs or offsetting reimbursements are identified in the county's IRC (**Exhibits A-10 through A-12**).

A summary of the county's arguments are presented in bold below and our response follows:

1. **The SCO's disallowance is incorrect because the county used the Cost Report Method. The SCO had no legal authority to audit the county's claims because they were not based on the Actual Increased Cost Method. Even if the SCO had authority to review the records, it was required to conduct the audit based on the use of the Cost Report Method and audit to the supporting documentation utilized for that method.**

   We disagree. Both the Cost Report Method and the Actual Increased Cost Method are acceptable methods to claim actual costs. In the Actual Increased Cost Method, claimants are to identify the actual expenses incurred as a result of the mandate. For example, the salaries and benefits of county staff that provided the services. While in the Cost Report Method, claimants utilize the unit rates for mandated services based on cost allocations in the cost report submitted to the California Department of Mental Health (CDMH). For this method, claimants identify the mandate-related units of service, and then, multiply the units by the applicable unit rates to determine the claimed costs. The units of service and unit rates are also used to compute certain offsetting reimbursements, (i.e., Medi-Cal and EPSDT).

   However, the cost reports submitted to the CDMH include all units of service provided, in which, the reported units combine services provided to children, youth and adults. For the mandate, the county must identify the mandate-related units of service for the services provided to pupils in special education receiving mental health services in accordance with an Individualized Education Plan (IEP).

   In its system, the county has identifiers set up to track and capture mandate-related units of service; these include unique service function codes and plan identification codes (**Tab 16**). County staff informed the SCO that identifiers in its system were unreliable due to inconsistencies in use (**Tabs 17 and 18**). For example, client services of the state-mandated program were coded as services of other programs and client services of other programs were identified as the state-mandate program. In its review of the third query, county staff suggests that the inconsistent coding of services in its system is likely due to confusion and inadequate training (**Tab 18**).

As in the prior audit, the county proposed using a database query to identify the mandated-related units of service; the query would identify clients that went through the assessment process and identify all of their related units of service (**Tab 17**). The county went through three sets of query parameters and results, each version did not support claimed costs and identified a number of concerns. The first and second queries did not support claimed costs and contained partial transactions (**Tab 17**); partial transactions are unfinalized transactions that are in various stages of completion, the county information technology staff termed these transactions as invalid or incomplete. The results of the third query did not include information regarding Medi-Cal clients and all of fiscal years were commingled together in one file (**Tab 19**). The county performed a limited, non-statistical review of the third query results. The third query included services for clients that were ineligible and who were part of other programs; county staff believed that the identifiers were used inconsistently (**Tab 18**). For the three prior queries, the county did not provide the query parameters for our review. Therefore, the SCO cannot comment on the design of the queries; we can only address the results. We continued to work with the county to identify its costs and related revenues. The county presented the fourth query results as the support for its claims. We reviewed the query parameters and corresponding results and determined them to be reasonable; we then computed costs and the associated offsetting revenues.

As noted above, the audit was initiated with a telephone contact on July 28, 2008, and the final audit report was issued on June 30, 2010. In June 2012 and August 2012, four years after audit initiation date and over two years after the final audit report was issued, the county asserts that the information it provided in support of its claims did not identify all eligible costs and that it presented incomplete or erroneous information to the SCO. In essence, the county argues that the results of the fourth query did not capture all eligible costs.

The regulations for the reimbursement of state-mandated costs do not provide for the consideration of claims outside of the statutory period. Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Therefore, the SCO has no authority to consider claims made outside of the statutory period and is prohibited from making a gift of public funds.

If the SCO is directed by the Commission to consider the new costs and associated revenues, additional testing and review would need to be performed. The new costs were not included in the support provided by the county in the course of the audit, and therefore, were not considered in the scope of audit work performed. The county has not provided in its IRC the query parameters or underlying basis for the identification of the new costs. In its proposed new costs, the county has not provided any corresponding information concerning the associated indirect costs and offsetting revenues. Further analysis and testing would need to be performed to validate the new costs, and identify the corresponding indirect costs and associated offsetting reimbursements. The new costs also raise other concerns, in that the county is asserting that services related to other programs should be considered. It also is not clear to what extent the county has validated the information provided—that is, the steps it performed to ensure that costs result from services provided to children and youth that are in special education receiving mental health services pursuant to an IEP. As noted above, we do not believe it is appropriate to revisit new costs.

2. The auditors should have based the review on the correct supporting documentation.

As previously stated, the county did not provide support for its claims when the audit was initiated in a format that could be verified. As such, the county could not identify detail of the individual services that make up the total units of services reported on its claims and on MH 1909/1912 forms submitted to the CDMH. In addition, the county's MH 1909/1912 forms do not reconcile to claims filed by the county because the forms present different information. For

example, the CDMH form captures estimated revenue information and includes all related funding used to support costs. The state-mandated cost claims are used claim reimbursement of actual costs incurred and report related offsetting revenues. The mandated cost claims also include costs that are not reported on the cost report forms submitted to CDMH. For example, residential placement board-and-care costs incurred by the county's social services department for the mandate and associated revenues are not included in the mental health cost reports submitted to CDMH. Nevertheless, the SCO worked with the county to identify its costs and related revenues. The county identified the fourth query results as the support for its claims. The SCO computed costs and the associated offsetting revenues based on the county's support provided in the course of the audit. The county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (**Tab 14**).

3. **The SCO's audit findings do not represent the actual amount of mandated costs incurred in providing services. Based on the reconsideration proposal, the county requests reinstatement of direct and indirect costs, and offsetting reimbursements. In its discussion the county references omitted services, disallowed rehabilitation and mode 60 services, and the miscalculation of offsetting reimbursements**

   As previously stated, the county did not provide support for its claims when the audit was initiated in a format that could be verified. The SCO worked with the county to identify its costs and related revenues. The county identified the fourth query results as the support for its claims. The SCO computed costs and the associated offsetting revenues based on the county's support provided in the course of the audit. The support provided by the county did not identify any units of service as Healthy Families, an enhancement of Medi-Cal. Further, the county did not identify a portion of the Medi-Cal units as Medi-Cal only, meaning some clients were full-scope Medi-Cal and should not have had EPSDT revenues applied. The county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (**Tab 14**). The SCO's offsetting revenues calculations are based on the information provided by the county in support of its claims.

   In reference to its discussion regarding rehabilitation and mode 60 services, the county has not presented any evidence in support of its arguments. The county also has not addressed issues noted in the SCO's audit report concerning these services. In its IRC the county asserts that some of the rehabilitation services may actually be other eligible services; no evidence is presented as to which services are miscoded. For mode 60 services, the county does not address the SCO's observations in the audit report and presents no evidence in support of its arguments. In our audit report we identified a number of issues concerning mode 60 services including the eligibility of pre- and post-IEP services within the parameters and guidelines, the claiming duplicate services, and the lack of supporting documentation to identify clients served and the time for each contact.

   Again, the regulations for the reimbursement of state-mandated costs do not provide for the consideration of claims outside of the statutory period. Both the Government Code and the California Constitution prohibit the gift of public funds to any individual, corporation, or another government agency. Therefore, the SCO has no authority to consider claims made outside of the statutory period and is prohibited from making a gift of public funds. As noted previously, we do not believe it is appropriate to revisit the new costs.

III. CONCLUSION

The SCO audited Los Angeles County's claims for costs of the legislatively mandated HDS Program (Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) for the period of July 1, 2003, through June 30, 2006. The county claimed $24,924,935 for the mandated program. Our audit disclosed that $8,542,409 is allowable and $18,382,526 is unallowable. The costs are unallowable because the county claimed ineligible, unsupported, and duplicate services; overstated indirect costs by applying indirect costs toward ineligible direct costs; and overstated offsetting revenues by using inaccurate Medi-Cal units, applying incorrect funding percentages for EPSDT for FY 2005-06, including unsupported revenues, and applying revenue to ineligible direct and indirect costs.

The county is challenging the SCO's adjustment totaling $18,180,829, because it believes that the SCO erroneously conducted the audit as if the county had submitted its claim under the Actual Increased Cost Method instead of the Cost Report Method, which was the actual methodology used by the county. The county also believes that the SCO relied on incorrect information and assumptions for its adjustments impacting claimed direct and indirect costs, and offsetting reimbursements.

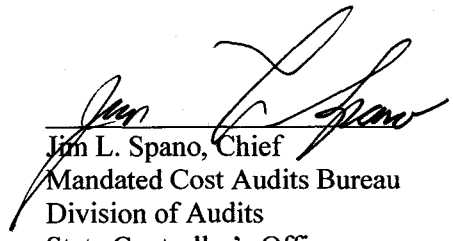
The SCO completed the audit within the two-year statutory requirement, based on supporting documentation the county provided in the course of the audit. The county is not eligible to receive reimbursement for the reconsidered amounts. The underlying regulations prevent the SCO from considering costs claimed outside of the statutory period. To do so would violate the Government Code and California Constitutional provisions prohibiting the gift of public funds.

In conclusion, the Commission should find that: (1) the SCO correctly reduced the county's FY 2003-04 claim by $4,293,621; (2) the SCO correctly reduced the county's FY 2004-05 claim by $7,047,989; and (3) the SCO correctly reduced the county's FY 2005-06 claim by $7,040,916.

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 November 17, 2014, at Sacramento, California, by:



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

Tab 3

State Controller's Office | Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
SERVICES TO HANDICAPPED STUDENTS

(19) Program Number 00111
(20) Date Filed
(21) LRS Input JAN 18 2005 JAN 13

LABEL HERE

(01) Claimant Identification Number 9919

(02) Claimant Name
Auditor-Controller

County of Location
County of Los Angeles

Street Address or P.O. Box
500 West Temple Street, Room 603

Suite

City
Los Angeles

State **CA** Zip Code **90012**

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) 2004/2005	(12) 2003/2004
Total Claimed Amount	(07) 4,558,467	(13) 4,293,621
Less: **10% Late Penalty, not to exceed $1,000**		(14)
Less: **Prior Claim Payment Received**		(15)
Net Claimed Amount		(16) 4,293,621
Due from State	(08) 4,558,467	(17) 4,293,621
Due to State		(18)

Reimbursement Claim Data

(22) HDS-1, (03)(a)	0
(23) HDS-1, (03)(b)	0
(24) HDS-1, (03)(c)	0
(25) HDS-1, (04)(1)(d)	0
(26) HDS-1, (04)(2)(d)	0
(27) HDS-1, (04)(3)(d)	0
(28) HDS-1, (04)(4)(d)	0
(29) HDS-1, (04)(5)(d)	0
(30) HDS-1, (06)	0
(31) HDS-3, (05)	1,270,666
(32) HDS-3,(06)	0
(33) HDS-3,(07)	3,546,463
(34) HDS-3, (09)	24,648,774
(35) HDS-3, (10)	0
(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 — Date

John Naimo FOR — 1/12/05

J. Tyler McCauley — Type or Print Name

Auditor-Controller — Title

(38) Name of Contact Person for Claim
Leonard Kaye

Telephone Number (213) 974-8564 Ext. N/A

E-Mail Address lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 09/03)

Note: 1) Please note that costs for LAC-DMH Medication Monitoring ($3,074,878), LAC-DMH Crisis Intervention ($3,960,974), LAC-DCFS In-State Placement ($9,115,367), and Tri-City Medication Monitoring ($4,428) have not been included in FY 2003/04 Reimbursement Claim at this time pending action before the Commission on State Mandates that would make these costs eligible for claiming under SB 90 Chapter 1747.

2) The Estimated Claim for FY 2004-05 does not include an amount for Tri-City.

Program 111	MANDATED COSTS SERVICES TO HANDICAPPED STUDENTS CLAIM SUMMARY	FORM HDS - 3

(01) Claimant:	(02) Type of Claim		Fiscal Year:
	Reimbursement	X	
Los Angeles County/Consolidated	Estimated		2003/2004

(03)	Reimbursable Components		
	Assessment of Individuals With Exceptional Needs		
(a)	Assessment: Interviews, Review of Records, Observations, Testing, etc.	1	5,929,138
(b)	Residential Placement: IEP Reviews, Case Management, and Expanded IEP		0
(c)	Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.		0
(d)	Due Process Proceedings		0
(e)	Administrative Costs *[From HDS-6 line (07)]*	2	805,396
	Mental Health Treatment		
(f)	Treatment Services: Short-Doyle Program	3	22,783,049
(g)	Administrative Costs *[From HDS-6 line (07)]*	4	1,865,725
(04)	Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]	5	6,734,534
(05)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only)	6	1,270,666
(06)	Less: Amount Received from State Categorical Funding		0
(07)	Less: Amount Received from Other (Identify) - Federal IDEA Funds ***(Attachment 7h)***	7	3,546,463
(08)	Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]	8	1,917,405
(09)	Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]	9	24,648,774
(10)	Less: Non-Categorical State General/Realignment Funds		0
(11)	Less: Amount Received from State Categorical Funding		0
(12)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only)	10	6,494,214
(13)	Less: Amount Received from Other (Identify)	11	
	- Federal Financial Participation share of Admin Cost ***(Attachment 7a)***		732,858
	- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost ***(Attachment 7b)***		4,783,284
	- Federal SAMHSA Grant and share of Admin Cost ***(Attachment 7d)***		15,678
	- Other State and Local Funds and share of Admin Cost ***(Attachment 7e)***		124,804
	- Third Party Revenues and share of Admin Cost ***(Attachment 7f)***		45,489
	- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 ***(Attachment 7g)***		455,040
	- Federal IDEA Funds ***(Attachment 7h)***		9,621,191
(14)	Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]		2,376,216
(15)	Total Claimed Amount [Sum of line (08) and line (14)]		4,293,621

Revised 09/03

See footnotes 1–11 on following page.

Tab 4

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

SERVICES TO HANDICAPPED STUDENTS

For State Controller Use Only

(19) Program Number 00111

(20) Date Filed MAY 01 2

(21) LRS Input

LABEL HERE

(01) Claimant Identification Number
9919

(02) Claimant Name
Auditor-Controller

County of Location
County of Los Angeles

Street Address or P.O. Box
500 West Temple Street, Room 603

City: Los Angeles | State: CA | Zip Code: 90012

Type of Claim	Estimated Claim		Reimbursement Claim		Reimbursement Claim Data	
	(03) Estimated		(09) Reimbursement [A]	X	(22) FORM-1, (04)(A)(g)	
	(04) Combined		(10) Combined		(23) FORM-1, (04)(B)(g)	2,076,865
	(05) Amended		(11) Amended	X	(24) FORM-1, (04)(C)(g)	
					(25) FORM-1, (04)(D)(g)	
					(26) FORM-1, (04)(E)(g)	15,527,235
					(27) FORM-1, (04)(F)(g)	
					(28) FORM-1, (06)	2
					(29) FORM-1, (07)	276,601
Fiscal Year of Cost	(06)		(12) **2004/2005**		(30) FORM-1, (09)	
Total Claimed Amount	(07)		(13) $10,144,346		(31) FORM-1, (10)	14,230,658
Less: **10% Late Penalty, but not to exceed $1,000**			(14)		(32)	
Less: **Estimated Claim Payment Received**			(15) $6,494,303		(33)	
Net Claimed Amount		$0	(16) $3,650,043		(34))	
Due from State	(08)	$0	(17) $3,650,043		(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 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 indentified, 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: John Naimo FOR

Date: 4/27/07

J. Tyler McCauley
Type or Print Name

Auditor-Controller
Title

(38) Name of Contact Person for Claim
Leonard Kaye

Telephone Number (213) 974-8564 Ext.

E-mail Address lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 9/03)

[A] See Schedule 1(a) for derivation of sum in Box (13). See Schedule 1(b) for sums in Boxes (22-31)

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 603
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8321 FAX: (213) 617-8106

J. TYLER McCAULEY
AUDITOR-CONTROLLER

April 27, 2007

Ms. Ginny Brummels
Local Reimbursement Section
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 94250-5872

Dear Ms. Brummels:

Los Angeles County Claim – Fiscal Year 2004-05
Handicapped and Disabled Students Program Number 111
Claim Instruction Number 2006—32, Issued January 2, 2007

We herein submit the attached [subject] reimbursement claim in the amount of $10,144,346 for payment. Under guidance provided by your office to Leonard Kaye, of my staff, on April 24, 2007, we have combined all Program Number 111 claims for 2004-05 into one claim as detailed on the attached schedule.

Leonard Kaye is available at (213) 974-8564 to answer any questions you or your staff may have in this matter. Thank you.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

John Naimo FOR

Connie Yee, Chief
Accounting Division

CY:LK
Enclosures

SCHEDULE 1(a)
County of Los Angeles Consolidated Claim
Handicapped and Disabled Students Program # 111
Claim Instruction No. 2006-32, Issued January 2, 2007
Fiscal Year 2004-05

Consolidated Program #	Consolidated Program Name	Fiscal Year	/---------- Los Angeles Co. Depts. ---------/ MH	DCFS	Totals
111 (a)	Handicapped & Disabled (old)	2004-05	$6,494,303	$0	6,494,303
111(b)	Handicapped & Disabled (New)	2004-05	262,702 [c]	3,387,341	3,650,043
	Total [Program 111 for 2004-05]		6,757,005	3,387,341	10,144,346

Footnotes

(a) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued September, 2000. These instructions excluded in-State Room and Board. See Tab "Original 2004-05" claim for supporting detail for $6,494,303 claimed on 1/11/06.

(b) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued January 2, 2007. These instructions included in-State Room and Board.

(c) As filed on 4/27/07, this is for new allowable and reimbursable "initial assessment of pupil" activities under Program 111(new) instructions issued 1/2/07.

SCHEDULE 1(a)

State Controller's Office

SCHEDULE 1(b)

Mandated Cost Manual

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
CLAIM SUMMARY

FORM 1

(01) Claimant:	(02) Type of Claim		Fiscal Year
County of Los Angeles / Consolidated	Reimbursement	X	**2004/2005**
	Estimated		

(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. Renew Interagency Agreement							
B. Initial Assessment of Pupil	2,076,865						2,076,865
C. Participation in IEP Team							
D. Lead Case Manager							
E. Out-of-Home Residential Care	15,527,235						15,527,235
F. Due Process Hearings							
(05) Total Direct Costs	17,604,100						17,604,100

Indirect Costs		
(06) Indirect Cost Rate	***See attached FY 2004/2005 Indirect Cost Rate Schedule (Attachment I)***	1.5712%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x (line (05)(a) + line (05)(b))]	276,601
(08) Total Direct and Indirect Costs	[Line (05)(g) + line (07)]	17,880,701

Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimburse	***See DCFS, " In-State Expense, Summary" 2005-06***	14,230,658
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))] ***See Attachment 1***	3,650,043

Revised 01/07

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
ACTIVITY COST DETAIL

FORM 2

(01)	Claimant **County of Los Angeles / Consolidated**	(02)	Fiscal Year **2004/2005**

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

☐	Review Interagency Agreement	☒	Initial Assessment of Pupil
☐	Participation in IEP Team	☐	Lead Case Manager
☐	Out-of-Home Residential Care	☐	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
The claimed units of service are based on the AB3632/SEP Plan identified in the LAC-DMH Integrated System (IS). The cost report process determines the cost per unit of service in a generic sense, not on an individual clinician basis. This data is detailed on Attachment 4. Direct service cost details have been completed on Attachment 5 and is based on the cost report method.					2,076,865			
(05) Total ☒ Subtotal ☐ Page: 1 of 1					2,076,865			

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
ACTIVITY COST DETAIL

FORM 2

(01)	Claimant **County of Los Angeles / Consolidated**	(02)	Fiscal Year **2004/2005**

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

☐	Review Interagency Agreement	☐	Initial Assessment of Pupil
☐	Participation in IEP Team	☐	Lead Case Manager
☒	Out-of-Home Residential Care	☐	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
Payment for Board & Care Expenses to in-state contractors by DCFS. ***See Attachment 1 for detail***						15,527,235		
(05) Total ☒ Subtotal ☐ Page: 1 of 1						15,527,235		

State Controller's Office | Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
SERVICES TO HANDICAPPED STUDENTS

(19) Program Number 00111
(20) Date Filed JAN 17 2006
(21) LRS Input / /

LABEL HERE

(01) Claimant Identification Number 999

(02) Claimant Name
Department of Mental Health

County of Location
County of Los Angeles

Street Address or P.O. Box | Suite
550 South Vermont Ave., 11th Floor

City | State | Zip Code
Los Angeles | **CA** | **90020**

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) 2005/2006	(12) 2004/2005
Total Claimed Amount	(07) $7,143,733 ✓	(13) $6,494,303 ✓
Less: **10% Late Penalty, not to exceed $1,000**		(14)
Less: **Prior Claim Payment Received**		(15) $3,326,365
Net Claimed Amount		(16) $3,167,938
Due from State	(08) $7,143,733	(17) $3,167,938
Due to State		(18)

Reimbursement Claim Data

(22)	HDS-1, (03)(a)	
(23)	HDS-1, (03)(b)	
(24)	HDS-1, (03)(c)	
(25)	HDS-1, (04)(1)(d)	
(26)	HDS-1, (04)(2)(d)	
(27)	HDS-1, (04)(3)(d)	
(28)	HDS-1, (04)(4)(d)	
(29)	HDS-1, (04)(5)(d)	
(30)	HDS-1, (06)	
(31)	HDS-3, (05)	192,927
(32)	HDS-3, (06)	
(33)	HDS-3, (07)	1,099,786
(34)	HDS-3, (09)	31,291,626
(35)	HDS-3, (10)	
(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 | Date

John Naimo FOR | 1/11/06

J. Tyler McCauley | Auditor-Controller
Type or Print Name | Title

(38) Name of Contact Person for Claim | Telephone Number (213) 738-4665 Ext.
Leonard Kaye | E-mail Address

Form FAM-27 (Revised 09/03)

COUNTY OF LOS ANGELES

FISCAL YEAR (FY) 2004-05 SB 90 CHAPTER 1747/84 -
SERVICES TO HANDICAPPED STUDENTS REIMBURSEMENT CLAIM

TABLE OF CONTENTS

ATTACHMENT 2	HDS-3 Claim Summary
ATTACHMENT 3	HDS-4 Component/Activity Cost Detail
	HDS-5 Component/Activity Cost Detail
	(Omitted - no claimable costs for Due Process Proceedings)
	HDS-6 Component/Activity Cost Detail
ATTACHMENT 4	Supplemental Cost Report Data For Special Education Program
	(FY 2004-05 Cost Report Form MH1912)
ATTACHMENT 5	FY 2004-05 Final Allocation Worksheet
ATTACHMENT 6	Supporting Worksheet For Cost Report Form MH1912
ATTACHMENT 7	Offsetting Revenue Worksheets
ATTACHMENT 8	FY 2004-05 Indirect Cost Proposal (ICP)
ATTACHMENT 9	FY 2004-05 Year End Indirect Cost Rates by Program
ATTACHMENT 10	FY 2004-05 MH 1966 Cost Report Forms

MANDATED COSTS
SERVICES TO HANDICAPPED STUDENTS
CLAIM SUMMARY

FORM HDS - 3

(01) Claimant:	(02) Type of Claim		Fiscal Year:
	Reimbursement	X	
Los Angeles County	Estimated		**2004/2005**

(03)	Reimbursable Components	
	Assessment of Individuals with Exceptional Needs	
(a)	Assessment: Interviews, Review of Records, Observations, Testing, etc.	2,076,865
(b)	Residential Placement: IEP Reviews, Case Management, and Expanded IEP	0
(c)	Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.	0
(d)	Due Process Proceedings	0
(e)	Administrative Costs *[From HDS-6 line (07)]*	276,601
	Mental Health Treatment	
(f)	Treatment Services: Short-Doyle Program	28,544,988
(g)	Administrative Costs *[From HDS-6 line (07)]*	2,746,638
(04)	Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]	2,353,466
(05)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) *(Attachment 7a)*	192,927
(06)	Less: Amount Received from State Categorical Funding	0
(07)	Less: Amount Received from Other (Identify) - Federal IDEA Funds *(Attachment 7f)*	1,099,786
(08)	Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]	1,060,753
(09)	Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]	31,291,626
(10)	Less: Non-Categorical State General/Realignment Funds	0
(11)	Less: Amount Received from State Categorical Funding	0
(12)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) *(Attachment 7a)*	6,569,210
(13)	Less: Amount Received from Other (Identify)	
	- Federal Financial Participation share of Admin. Cost *(Attachment 7a)*	746,101
	- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost *(Attachment 7b)*	5,209,972
	- Third Party Revenues and share of Admin. Cost *(Attachment 7d)*	6,350
	- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 *(Attachment 7e)*	593,655
	- Federal Individuals with Disabilities Education Act (IDEA) Funds *(Attachment 7f)*	12,732,788
(14)	Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]	5,433,550
(15)	Total Claimed Amount [Sum of line (08) and line (14)]	6,494,303

Tab 5

CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

SERVICES TO HANDICAPPED STUDENTS

For State Controller Use Only
(19) Program Number 00144
(20) Date Filed MAY 01 2007
(21) LRS Input

LABEL HERE

(01) Claimant Identification Number
9919

(02) Claimant Name
Auditor-Controller

County of Location
County of Los Angeles

Street Address or P.O. Box
500 West Temple Street, Room 603

City: Los Angeles | State: CA | Zip Code: 90012

Type of Claim	Estimated Claim		Reimbursement Claim	
	(03) Estimated	☐	(09) Reimbursement [A]	X
	(04) Combined	☐	(10) Combined	☐
	(05) Amended	☐	(11) Amended	X
Fiscal Year of Cost	(06)		(12) **2005/2006**	
Total Claimed Amount	(07)		(13) $12,487,968	
Less: **10% Late Penalty, but not to exceed $1,000**			(14)	
Less: **Estimated Claim Payment Received**			(15) $9,010,351	
Net Claimed Amount		$0	(16) $3,477,617	
Due from State	(08)	$0	(17) $3,477,617	
Due to State			(18)	

Reimbursement Claim Data

(22) ~~FORM~~-1, (04)(A)(g)	
(23) FORM-1, (04)(B)(g)	2,824,466
(24) FORM-1, (04)(C)(g)	
(25) FORM-1, (04)(D)(g)	
(26) FORM-1, (04)(E)(g)	15,504,568
(27) FORM-1, (04)(F)(g)	
(28) FORM-1, (06)	2
(29) FORM-1, (07)	342,613
(30) FORM-1, (09)	
(31) FORM-1, (10)	15,033,605
(32)	
(33)	
(34))	
(35))	
(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 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 indentified, 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: John Naimo FOR

Date: 4/27/07

J. Tyler McCauley
Type or Print Name

Auditor-Controller
Title

(38) Name of Contact Person for Claim
Leonard Kaye

Telephone Number (213) 974-8564 Ext.

E-mail Address lkaye@auditor.co.la.ca.us

Form FAM-27 (Revised 9/03)

[A] See Schedule 1(a) for derivation of sum in Box (13). See schedule 1(b) for sums in Boses (22-31)

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 603
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8321 FAX: (213) 617-8106

J. TYLER McCAULEY
AUDITOR-CONTROLLER

April 27, 2007

Ms. Ginny Brummels
Local Reimbursement Section
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 94250-5872

Dear Ms. Brummels:

Los Angeles County Claim – Fiscal Year 2005-06
Handicapped and Disabled Students Program Number 111
Claim Instruction Number 2006—32, Issued January 2, 2007

We herein submit the subject reimbursement claim in the amount of $12,487,968 for payment. Under guidance provided by your office to Leonard Kaye, of my staff, on April 24, 2007, we have combined all Program Number 111 claims for 2005-06 into one claim as detailed on the attached schedule.

Leonard Kaye is available at (213) 974-8564 to answer any questions you or your staff may have in this matter. Thank you.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

John Naimo FOR

Connie Yee, Chief
Accounting Division

CY:LK
Enclosures

"To Enrich Lives Through Effective and Caring Service"

SCHEDULE 1(a)
County of Los Angeles Consolidated Claim
Handicapped and Disabled Students Program # 111
Claim Instruction No. 2006-32, Issued January 2, 2007
Fiscal Year 2005-06

Consolidated Program #	Consolidated Program Name	Fiscal Year	/---------- Los Angeles Co. Depts. --------/ MH	DCFS	Totals
111 **(a)**	Handicapped & Disabled (old)	2005-06	$8,849,926 **(c)**	$0	8,849,926
111**(b)**	Handicapped & Disabled (New)	2005-06	264,301 **(d)**	3,373,741	3,638,042
	Total [Program 111 for 2005-06]		9,114,227	3,373,741	12,487,968

Footnotes

(a) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued September, 2000. These instructions excluded in-State Room and Board. See Tab "Amended 2005-06" for detailed amended claim information supporting $8,849,926 claimed.

(b) Claimed in accordance with Program 111 [Services to Handicapped and Disabled Students] as revised/issued January 2, 2007. These instructions included in-State Room and Board.

(c) Reflects a reduction, filed as an amendment on 4/27/07, to correct the LAC-DMH Mode 60 Code [unit cost] from $120.93 to $106.76 which resulted in a reduction of $160,425 from the original amount claimed of $9,010,351 on January 12, 2007 to the $8,849,926 claimed on 4/27/07.

(d) As filed on 4/27/07, this is for new and allowable reimbursable "initial assessment of pupil" activities under Program 111(new) instructions issued 1/2/07.

State Controller's Office | **SCHEDULE 1(b)** | Mandated Cost Manual

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
CLAIM SUMMARY

FORM 1

(01) Claimant:	(02) Type of Claim		Fiscal Year
County of Los Angeles / Consolidated	Reimbursement	X	
	Estimated		**2005/2006**

(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. Renew Interagency Agreement							
B. Initial Assessment of Pupil	2,824,466						2,824,466
C. Participation in IEP Team							
D. Lead Case Manager							
E. Out-of-Home Residential Care	15,504,568						15,504,568
F. Due Process Hearings							
(05) Total Direct Costs	18,329,034						18,329,034

Indirect Costs		
(06) Indirect Cost Rate	***See attached FY 2004/2005 Indirect Cost Rate Schedule (Attachment I)***	1.8692%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x {line (05)(a) + line (05)(b)}]	342,613
(08) Total Direct and Indirect Costs	[Line (05)(g) + line (07)]	18,671,647

Cost Reduction		
(09) Less: Offsetting Savings		
(10) Less: Other Reimbursements	**See detail on Attachment 1, page 1**	15,033,605
(11) Total Claimed Amount	[line (08) - {line (09) + line (10)}] ***See Attachment 1***	3,638,042

Revised 01/07

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT

Pursuant to Government Code Section 17561

SERVICES TO HANDICAPPED STUDENTS

For State Controller Use Only	Program
(19) Program Number 00111	
(20) Date Filed JAN 17 2007	
(21) LRS Input / /	

LABEL HERE

(01) Claimant Identification Number 9919	
(02) Claimant Name **Auditor-Controller**	
County of Location **County of Los Angeles**	
Street Address or P.O. Box 500 West Temple Street, Room 603	
City Los Angeles / State CA / Zip Code 90012	

Reimbursement Claim Data

(22) HDS-1, (03)(a)					
(23) HDS-1, (03)(b)					
(24) HDS-1, (03)(c)					
(25) HDS-1, (04)(1)(d)					
(26) HDS-1, (04)(2)(d)					
(27) HDS-1, (04)(3)(d)					
(28) HDS-1, (04)(4)(d)					
(29) HDS-1, (04)(5)(d)					
(30) HDS-1, (06)					
(31) HDS-3, (05)					392,269
(32) HDS-3, (06)					
(33) HDS-3, (07)					1,583,547
(34) HDS-3, (09)					26,536,393
(35) HDS-3, (10)					
(36)					

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) **2006/2007**	(12) **2005/2006**	
Total Claimed Amount	(07) $9,911,386	(13) $9,010,351	
Less: **10% Late Penalty, but not to exceed $1,000**		(14)	
Less: **Estimated Claim Payment Received**		(15) $4,967,402	
Net Claimed Amount	$9,911,386	(16) $4,042,949	
Due from State	(08) $9,911,386	(17) $4,042,949	
Due to State		(18)	

(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 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 indentified, 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 1/12/07

J. Tyler McCauley — Auditor-Controller

Type or Print Name — Title

(38) Name of Contact Person for Claim
Leonard Kaye

Telephone Number (213) 974-8564 Ext.

E-mail Address lkaye@auditor.lacounty.gov

Form FAM-27 (Revised 9/03)

COUNTY OF LOS ANGELES

FISCAL YEAR (FY) 2005-06 SB 90 CHAPTER 1747/84

SERVICES TO HANDICAPPED STUDENTS REIMBURSEMENT CLAIM

TABLE OF CONTENTS

ATTACHMENT 1	FAM-27 Claim Form
ATTACHMENT 2	HDS-3 Claim Summary
ATTACHMENT 3	HDS-4 Component/Activity Cost Detail
	HDS-5 Component/Activity Cost Detail
	(Omitted - no claimable costs for Due Process Proceedings)
	HDS-6 Component/Activity Cost Detail
ATTACHMENT 4	Supplemental Cost Report Data For Special Education Program
	(FY 2005-06 Cost Report Form MH1912)
ATTACHMENT 5	FY 2005-06 Final Allocation Worksheet
ATTACHMENT 6	Supporting Worksheet For Cost Report Form MH1912
ATTACHMENT 7	Offsetting Revenue Worksheets
ATTACHMENT 8	FY 2005-06 Indirect Cost Proposal (ICP)
ATTACHMENT 9	FY 2005-06 Year End Indirect Cost Rates by Program
ATTACHMENT 10	FY 2005-06 MH 1966 Cost Report Forms

Program 211

MANDATED COSTS
SERVICES TO HANDICAPPED STUDENTS
CLAIM SUMMARY

FORM HDS - 3

(01) Claimant: **Los Angeles County**

(02) Type of Claim: Reimbursement [X] Estimated [ ]

Fiscal Year: **2005/2006**

(03)	Reimbursable Components	
	Assessment of Individuals with Exceptional Needs	
	(a) Assessment: Interviews, Review of Records, Observations, Testing, etc.	2,958,020
	(b) Residential Placement: IEP Reviews, Case Management, and Expanded IEP	0
	(c) Related Services: Attendance at IEP meetings, Meetings with IEP Members and Parents, and Review of Independent Assessment.	0
	(d) Due Process Proceedings	0
	(e) Administrative Costs *[From HDS-6 line (07)]*	361,162
	Mental Health Treatment	
	(f) Treatment Services: Short-Doyle Program	24,379,654
	(g) Administrative Costs *[From HDS-6 line (07)]*	2,156,739
(04)	Sub-total for Assessment of Individual with Exceptional Needs [Sum of (03), lines (a) to (e)]	3,319,182
(05)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) *(Attachment 7a)*	392,269
(06)	Less: Amount Received from State Categorical Funding	0
(07)	Less: Amount Received from Other (Identify) - Federal IDEA Funds *(Attachment 7f)*	1,583,547
(08)	Total for Assessment of Individual with Exceptional Needs [Line (04) minus the sum of lines (05) to (07)]	1,343,366
(09)	Sub-Total for Mental Health Treatment [Block (03), lines (f) and (g)]	26,536,393
(10)	Less: Non-Categorical State General/Realignment Funds	0
(11)	Less: Amount Received from State Categorical Funding	0
(12)	Less: Amount Received from Short-Doyle/Medi-Cal (FFP only) *(Attachment 7a)*	4,733,002
(13)	Less: Amount Received from Other (Identify)	
	- Federal Financial Participation share of Admin. Cost *(Attachment 7a)*	604,736
	- State General Fund (SGF) from Early and Periodic Screening Diagnosis Treatment (EPSDT) and share of Admin Cost *(Attachment 7b)*	3,890,785
	- Third Party Revenues and share of Admin. Cost *(Attachment 7d)*	1,208
	- Case Management Out-Of-State Placement Adjustment - SB 90 Chapter 654 *(Attachment 7e)*	637,397
	- Federal Individuals with Disabilities Education Act (IDEA) Funds *(Attachment 7f)*	9,002,280
(14)	Total Mental Health Treatment [Line (09) minus the sum of lines (10) to (13)]	7,666,985
(15)	Total Claimed Amount [Sum of line (08) and line (14)]	9,010,351

Tab 6

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Santa Clara, Claimant	No. CSM-4282 Chapter **1747, Statutes of** 1984 Chapter **1274,** Statutes of 1985 Title 2, Div. 9, Sections 60000 through 60200, California Code of Regulations Handicapped and Disabled Students

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on April 26, 1990.

IT IS SO ORDERED April 26, 1990.

Fred R. Buenrostro,
Vice-Chairperson
Commission on State Mandates

WP0363h

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of COUNTY OF SANTA CLARA, Claimant	)	No. CSM-4282

PROPOSED DECISION

On December 1, 1988, in Sacramento, California, Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. Harlan E. Van Wye, Deputy Attorney General, represented the California State Departments of Finance, Education, and Mental Health. Susan A. Chapman, Deputy County Counsel, represented the County of Santa Clara.

Evidence was received and the record remained open for the submission of post hearing briefs. The opening brief from the State of California was received on January 30, 1989. The opening brief from the County of Santa Clara was received on January 30, 1989. Reply briefs were received from the State of California and the County of Santa Clara on February 27, 1989. The matter was thereupon submitted.

On November 30, 1989, in Sacramento, California, the Commission on State Mandates **("Commission")** heard this matter. Harlan E. Van Wye, Deputy Attorney General, represented the California State Departments of Finance, Education, and Mental Health. Susan A. Chapman, Deputy County Counsel, represented the County of Santa Clara.

I. ISSUES

Do the provisions of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, Division 9, sections 60000 through 60200, of the California Code of Regulations, require counties to implement a new program or provide a higher level of service in an existing program within the meaning of Government Code section 17514 and section 6, article XIIIB of the California Constitution? If so, are the counties entitled to reimbursement under the provisions of section 6, article XIIIB of the California Constitution?

II. FACTS

A. Background

The County of Santa Clara filed a Test Claim with the Commission under the provisions of the Government Code commencing with section 17500. Santa Clara County alleges that Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985, and Title 2, Division 9, sections 60000 through 60200, of the California Code of Regulations, relating to the provision of certain mental health services for handicapped and disabled students, impose a reimbursable state mandated program on the County within the meaning of section 6, Article XIIIB of the California Constitution and Government Code section 17514.

On January 28, 1988, this matter was referred to the Office of Administrative Hearings by the Commission for a hearing.

After a prehearing conference, the parties, at the suggestion of the Administrative Law Judge, arrived at a "Joint Statement of Facts??, by which the matter was submitted.

The following facts are based upon the "Joint Statement of Facts" to extent that they are pertinent in the Commission% determination of a reimbursable state mandated program.

The fundamental component of federal law prohibiting discrimination against handicapped individuals in any program receiving federal funds was enacted by Congress in 1973 as Public Law 93-112, Title V, section 504 (codified at Title 29 U.S. Code . section 794). "Section 504" requires the promulgation of regulations by each agency of the federal government as may be necessary to carry out the provisions of section 504 and other laws providing protection to the handicapped. At least 23 federal agencies and departments have promulgated "504 regulations."

In 1976, the "Education for All Handicapped Children Act", 20 U.S.C. section 1400 et seq. ("EHA") was enacted. Shortly thereafter, "504 regulations" were enacted (now recodified as 34 Code of Federal Regulations, Part 104) which require that recipients of federal funding which operate a public or elementary or secondary education program "...provide a free appropriate public education to each qualified handicapped person who is in the recipient% jurisdiction, regardless of the nature or severity of the persons handicap." 34 C.F.R. Part 104.33. The EHA and its implementing regulations, 34 C.F.R. section 300.1 et seq., establish procedural and substantive standards for educating handicapped students. The EHA also incorporates by reference state substantive and procedural standards concerning the education of handicapped students. 20 U.S.C. section 1401(18); 34 C.F.R. section 300.4. In order to receive federal funds, a state must adopt a plan specifying how it will comply with federal requirements. 20 U.S.C. sections 1412 and 1414(a).

Under the EHA, handicapped children are guaranteed the right to receive a free appropriate public education which emphasizes special education, and related services designed to meet their unique educational needs. 20 U.S.C. sections 1400(c) and 1412.

"Special education" means specially designated instruction to meet the unique needs of a handicapped child, including classroom instruction and instruction in physical education, as well as home instruction and instruction in hospitals and institutions. 20 U.S.C. section 1401(a)(16).

"Related services" are defined by statute to include transportation and such developmental, corrective, and other supportive supplemental services as may be required to assist a handicapped child to benefit from special education. 20 U.S.C. section 1401(a)(17). Supportive services include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services, and limited medical services. Related services are to be provided at no cost to parents or children. 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 of the child. 34 C.F.R. section 300.302.

"Handicapped children" are defined as children who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or health impaired, or children with specific learning disabilities, who by reason thereof require special education and related services. 20 U.S.C. section 1401(1).

The EHA provides a specific mechanism for insuring that handicapped children receive a free appropriate public education: the Individualized Education Program **("IEP").** The IEP is a written statement for a handicapped child that is developed and implemented in accordance with federal IEP regulations. 34 C.F.R. section 300.340; 34 C.F.R. section 300.346. The state educational agency of a state receiving federal funding must insure that each public agency develops and implements an IEP for each of its handicapped children. 34 C.F.R. section 300.341.

The IEP process begins when a child is identified as possibly being handicapped. He or she must be evaluated in all areas of suspected handicaps by a multidisciplinary team, which includes a teacher or specialist with knowledge in the area of suspected disability. Parents also have the right to obtain an independent assessment of their child by a qualified professional. School districts are required to consider the independent assessment as part of their educational planning for the pupil.

If it is determined that the child is handicapped within the meaning of EHA, an IEP meeting must take place. Participants in the IEP meeting (the **"IEP team")** include a representative of the local educational agency **("LEA"),** the child's teacher, one or both of the child's parents, the child if appropriate, and other individuals, at the discretion of the parent or agency. 34 C.F.R. section 300.344.

The written IEP is an educational prescription which includes statements of the child's present levels of educational performance, annual goals (including short term instructional objectives), and specific special education and related services to be provided to the child and the setting in which the services will be provided, along with the projected dates for initiation of services and the anticipated duration of the services. It also includes appropriate objective criteria, evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. 20 **U.S.C.** section 1414(a) (5); 34 C.F.R. sections 300.340-349. This document serves as a commitment of resources necessary to enable a handicapped child to receive needed special education and related services, and becomes -- a management tool, a compliance and monitoring document, and an evaluation device to determine the extent of the child's progress.

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. 34 C.F.R. section 300.342. Meetings must be conducted at least once a year to review and, if necessary, to revise each handicapped child's IEP. More frequent meetings may take place if needed.

In response to the EHA, California adopted a state plan and enacted a series of statutes and regulations designed to comply with federal law. Education Code section 56000 et seq.; Government Code section 7570 et seq.: Title 2, California: Code of Regulations section 60000 et seq.: and Title 5 California Code of Regulations section 3000 et seq.

The responsibility for supervising education and related services for handicapped children was delegated to the Superintendent of Public Education. Government Code section 7561; Education Code section 56135.

In California, public education services are directly delivered through LEAs throughout the state. The legislation that is the subject of this Test Claim shifted certain IEP responsibilities from LEAs to county mental health programs.

Chapter 797 of the Statutes of 1980 added Part 30 (commencing with section 56000) to Division 4 of Title 2 of the Education Code to set forth the basic California IEP process for identifying special education children and providing special education and related services necessary for an "individual with exceptional needs" to benefit from a free appropriate public education.

An "individual with exceptional needs" is defined in Education Code section 56026 and includes those individuals in need of mental health services.

Before July 1, 1986, LEAs, i.e., school districts and county offices of education, were responsible for the education of special education students, including the provision of related services necessary for the individual to benefit from education. These responsibilities for identifying and assessing individuals with suspected handicaps, as well as the responsibility for providing related services, includes mental health services required in individual IEPs. LEAs were financially responsible for the provision of mental health services required in the IEP.

///
///
///
///
///
///

B. Legislation That Is The Subject To This Test Claim and Other Relevant Statutes

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government Code and amended section 11401 of the Welfare and Institutions Code, relating to minors.

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Government Code, amended sections 5651, 10950, and 11401 and added Chapter 6, commencing with section 18350, to Part 6 of Division 9 of the Welfare and Institutions Code, relating to minors, and made an appropriation therefor.

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.

Government Code section 7576 provides that 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 Division 9, Title 2, California Code of Regulations, when required in an individual's IEP.

Section 60040, Title 2, California Code of Regulations, implements Government Code section 7572 and states that a responsible LEA preparing an initial assessment plan in accordance with section 56320 et seq. of the Education Code **may**, with parental consent, refer the person suspected of being an **"individual** with exceptional **needs"** to the local mental health program to determine the need for mental **health services** when certain conditions have been satisfied. Following that referral, the local mental health program shall be responsible for reviewing the educational information, observing, if necessary, the individual in the school environment, and determining if mental health assessments are needed. The local mental health program shall provide to the IEP team a written **assessment** report in accordance with Education Code section 56327.

If the written assessment report in accordance with Education Code section 56327 indicates that mental health services are to be provided in an individual's IEP, section 60050, Title 2, Code of California Regulations, requires that the following shall be included in the individual's IEP: a description of

the mental health services to be provided: the goals and objectives of the mental health services, with appropriate objective criteria and evaluation procedures to determine whether objectives are being achieved: and initiation, frequency, and duration of the mental health services to be provided to the individual.

If the written assessment report in accordance with Education Code section 56327 indicates that the "individual with exceptional needs" is classified as "seriously emotionally disturbed" and any member of the IEP team recommends residential placement based on relevant assessment information, Government Code section 7572.5, subdivision (a), requires the expansion of the IEP team to include a representative of the county mental health department.

The expanded IEP team, pursuant to Government Code section 7572.5, subdivision (b), requires the expanded IEP team to review the mental health assessment and determine whether the individual's needs can be reasonably met through any combination of nonresidential services, and whether residential services will enable the individual to benefit from educational services, and whether residential services are available which will address the individual's needs and ameliorate the conditions leading to the "seriously emotionally disturbed" designation. The provisions of Government Code section 7572.5, subdivisions (a) and (b), required, for the first time, the expansion of the IEP team to include county personnel as a member.

Section 60100, Title 2, California Code of Regulations, implements Government Code section 7572.5, subdivisions (a) and (b).

Government Code section 7572.5, subdivision (c)(1), provides that if the IEP requires residential placement, the county mental health department shall be designated as the lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the county mental health department. However, the county mental health department shall retain financial responsibility for provision of case management services. The provisions of Government Code section 7572.5, subdivision (c)(2), require the IEP to include provisions for review of case progress, of the continuing need for residential placement, of the compliance with the IEP, of the progress toward ameliorating the "seriously emotionally disturbed" condition, and identification of an appropriate residential facility for placement. There must be a review by the full IEP team every six months. The provisions of Government Code section 7572.5, subdivision (c)(1), required

the county personnel department, for the first time, to assume a lead case management role in the IEP process when it is determined that the **"individual** with exceptional needs" is "seriously emotionally disturbed" and requires residential placement.

Section **60110,** Title 2, California Code of Regulations, implements section 7572.5, subdivision (c), of the Government Code.

The law pertaining to the funding, organization, and operation of community mental health services in California, known as the **"Short-Doyle** Act", is contained almost exclusively in Part 2 (commencing with section 5600) of Division 5 of the Welfare and Institutions Code. The Short-Doyle Act was enacted in 1979 to organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. Before that time, state hospitals played a large role in the provision of mental health services. The Short-Doyle Act was a step in the de-institutionalization of the mentally ill.

The Short-Doyle Act was intended to efficiently utilize state and local resources, to integrate state-operated and community programs into a unified mental health system, to ensure appropriate utilization of all mental health professions, to provide a means for local government participation in determining the need for and allocation of mental health resources, to establish a uniform ratio of local and state government responsibility for financing mental health services, and to provide a means for allocating state mental health funds according to community needs.

The goals of Short-Doyle community mental health programs are threefold: to assist persons who are institutionalized because of mental disorder, or who have a high risk of becoming so, to lead lives which are as normal and independent as possible; to assist persons who experience temporary psychological problems which disrupt normal living to return as quickly as possible to a level of functioning which enables them to cope with their problems; and to prevent serious mental disorders and psychological problems. Welfare and Institutions Code section 5600.

Short-Doyle services are to be provided through community mental health services covering an entire county, or counties, established by the Board of Supervisors of each county. Welfare and Institutions Code section 5602. In most counties, the community mental health service area is the county, and the local mental health agency is an agency of the county.

Generally, each county is required under the Short-Doyle Act to develop and adopt a mental health plan annually specifying services to be provided in county facilities, in state hospitals, and through private agencies. Welfare and Institutions Code section 5650.

Welfare and Institutions Code section 5651 requires a programmatic description of each of the services to be provided in a county's annual Short-Doyle plan. Welfare and Institutions Code section 5651, subdivision (g), requires the county Short-Doyle annual plan to include a description of the services required by Government Code sections 7571 and 7576, including the cost of those services.

Welfare and Institutions Code section 5705 states that the net cost of all services specified in the approved county Short-Doyle plan shall be financed under the Short-Doyle program on the basis of ninety (90) percent state funds and ten (10) percent county funds, and the cost of the services shall be the actual cost or a negotiated net amount or rates approved by the Director of the Department of Mental Health.

The Budget Act of 1986 allocated $2'000,000 to the State Department of Mental Health for assessments, treatment, and case management services, and made available for transfer from the State Department of Education to the State Department of Mental Health an additional **$2,700,000** for assessments and mental health treatment services for IEP individuals. Item 4440-131-001, Chapter 186, section 2.00, Statutes of 1986; Chapter 1133, section 3, Statutes 1986.

Additional amounts were to be transferred from the State Department of Education to the State Department of Mental Health if reports of **LEAs** indicated higher costs during Fiscal Year 1985-86 for services that are the subject of this Test Claim. Relatively low figures were reported initially. The Auditor General's Report showed wide discrepancies among school districts in the manner in which they reported their costs, and it was determined by the State Auditor General that the figures submitted were unreliable. (Report by the Office of the Auditor General, April 1987, P-640)

County of Santa Clara alleged that it has incurred costs in excess-of **$200.00** as a result of the legislation that is the subject of this Test Claim.

///
///
///
///
///
///

III. FINDINGS

Based upon the above facts and evidence both oral and documentary having been introduced, in order to determine whether the legislation that is the subject of this Test Claim imposes costs mandated by the state as defined by Government Code section 17514 and are subject to the reimbursement requirements of section 6, article XIIIB, of the California Constitution, the Commission finds the following:

It was found that the legislation that is the subject of this test claim shifted certain IEP responsibilities, which were previously performed by LEAs, to local mental health programs.

It was found that section 60040, Title 2, California Code of Regulations, requires, for the first time, that the local mental health programs shall provide to the IEP team a written mental health assessment report, in accordance with Education Code section 56327, on the need for mental health services. The local mental health program is required to provide such report whenever an LEA refers an individual suspected of being an "individual with exceptional needs" to the local mental health department.

It was found that Government Code section 7572.5, subdivisions (a) and (b), requires, for the first time, that the IEP team be expanded to include mandatory participation by county personnel. This mandatory participation by county personnel is required when the written mental health assessment report provided by the local mental health program determines that an "individual with exceptional needs" is "seriously emotionally disturbed", and any member of the IEP team recommends residential placement based upon relevant assessment information.

It was found that Government Code section 7572.5, subdivision (c), designates, for the first time, that the local mental health program shall act as the lead case manager when the IEP prescribes residential placement for an "individual with exceptional needs" who is "seriously emotionally disturbed?

It was found that the following requirements of a local mental health program are not subject to the provisions of the Short-Doyle Act, Welfare and Institution Code section 5600 et seq.:

(i) the preparation of a written mental health assessment report pursuant to section 60040, Title 2, Code of California Regulations,

(ii) the participation on the expanded IEP team pursuant to Government Code section 7572.5, subdivisions (a) and **(b) , and**

(iii) the role as lead case manager, pursuant to Government Code section 7572.5, subdivision (c), when residential placement is prescribed for an **"individual** with exceptional needs" who is **"seriously** emotionally disturbed/

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.

Government Code section 7576 provides that the [county] community mental health service shall be responsible for the provision of psychotherapy or other mental health services as defined by Title 2, California Code of Regulations, commencing with section 60000, when required in an individual's IEP. It was found that such individuals are "individuals with exceptional needs," including those designated as **"seriously** emotionally **disturbed."**

Welfare and Institutions Code section 5651 requires a programmatic description of each of the services to be provided in a county's Short-Doyle annual plan. Welfare and Institutions Code section 5651, subdivision (g), requires, for the first time, the county Short-Doyle annual plan to include a description of the county mental health services required by Government Code sections 7571 and 7576, including the cost of those services. It was found that the provisions of Government Code sections 7571 and 7576 and their implementing regulations are mental health services provided pursuant to the county's Short-Doyle annual plan.

Welfare and Institutions Code section 5705 states that the net cost of all services specified in the approved county Short-Doyle annual plan shall be financed under the Short-Doyle program on the basis of ninety (90) percent state funds and ten (10) percent county funds, and the cost of the services shall be the actual cost or a negotiated net amount or rates approved by the Director of the Department of Mental Health. It was found that the mental health services provided, pursuant to Government Code sections 7571 and 7576, must be included in the county's Short-Doyle annual plan in accordance with Welfare and Institutions Code section 5651, subdivision **(g).** Therefore, such mental health services are subject to the financial provisions of the Short-Doyle Act.

The legislation that is the subject of this Test Claim does not implement a federal mandate contained in section 504 of the Rehabilitation Act of 1973. The provisions of section 504 of

the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 **U.S.C. 794),** together with the implementing regulations, prohibits discrimination against handicapped individuals in any program receiving federal funds. The section 504 regulation requirement that recipients of federal funding who operate educational programs **". . .** provide a free appropriate public education to each qualified handicapped person . . ." does not apply to counties which do not operate a public or elementary or secondary education program. The responsibility of providing public education and related services is on educational agencies and not **the counties.**

The legislation that is the subject of this Test Claim is not state legislation implementing a federal mandate contained in The Education for All Handicapped Children Act of 1975 (EHA). Under the EHA, handicapped children are guaranteed the right to receive a free appropriate public education which emphasizes special education, and related services designed to meet their unique educational needs. The EHA does not apply to counties which do not operate a public or elementary or secondary education program. The responsibility of providing public education and related services is on educational agencies and not on the counties.

The legislation that is the subject of this Test Claim does not merely affirm for the State that which had been declared existing law by actions of the court. No court decisions impose on counties the responsibility of providing services which relate to the provision of educational services.

It was found that none of the requisites for denying a claim specified in Government Code section 17556 were applicable.

IV. APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17551, subdivision (a) provides:

> **"The** commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California **Constitution."**

///
///
///
///

Government Code section 17514 provides:

> "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Section 6, article XIIIB of the California Constitution reads:

> 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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected:
> (b) Legislation defining a new crime or changing an existing definition of a crime; or
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

V. CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code section 17551, subdivision (a).

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. Furthermore, the Commission concludes that the aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, commencing with Welfare and Institutions Code section 5600. Accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

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 includes 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. However, such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of providing those mental health services set forth in Government Code sections 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

The claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations section 1183.1, to the Commission for its consideration.

The foregoing determinations are subject to the following conditions:

> The determination of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and

guidelines for reimbursement of the mandated program: approval of a statewide cost estimate: a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement: and subsequent review of the claim by the State Controller's Office.

Tab 7

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim Of: County of San Bernardino Claimant	No. CSM-4282 Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200 Chapter 1747, Statutes of 1984 Chapter 1274, Statutes of 1985 ***Handicapped and Disabled Students***

PARAMETERS AND GUIDELINES

The attached ***amended*** Parameters and Guidelines of the Commission on State Mandates are hereby adopted by the Commission on State Mandates in the above entitled matter.

IT IS SO ORDERED August 29, 1996.

K.G. Stewart

Kirk G. Stewart, Executive Director
Commission on State Mandates

f:\...\4282\p&gcvr.doc

Hearing Date: August 29, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
LL\4282\RevP&G.Amd

Original Adopted: 8/22/9 1
Revised: **8/29/96**

PARAMETERSANDGUIDELINES

Sections 60000-60200
Title 2, California Code of Regulations, Division 9
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Handicapped and Disabled Students

I. SUMMARY OF MANDATE

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. 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. Furthermore, any related county participation on the expanded "Individualized Education Program" (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 Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

The provisions of Welfare and Institutions Code section 565 1, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 757 1 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. 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.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 757 1 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county's Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 3 1 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, are reimbursable.

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

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

V. REIMBURSABLE COSTS

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 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, section 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. (Government Code section 7572, subd. (d)(1)).

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

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 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. (Government Code section 7572.5).

g. Required participation in due process procedures, 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 (Government 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.

Vi. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

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

   b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.

4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions :

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.

B. The following reimbursements for this mandate shall be deducted from the claim:

1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and

2. 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.

IX. REQUIRED CERTIFICATION

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

Tab 8

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. <u>The residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility</u>

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 9

Adopted: August 22, 1991
Amended: August 29, 1996
Amended: January 26, 2006
j:mandates/reconsideration/2004 statutes/sb1895-handicapped/psgs/4282adoptedpga

AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

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))

Handicapped and Disabled Students (CSM 4282)

I. SUMMARY OF MANDATE

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. 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. Furthermore, any related county participation on the expanded "Individualized Education Program" (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 Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

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 Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. 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.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISIONS

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county's Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state.

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission to reconsider the 1990 Statement of Decision and parameters and guidelines for this program. On May 26, 2005, the Commission adopted a Statement of Decision on reconsideration of Handicapped and Disabled Students (04-RL-4282-10). The Commission found that the 1990 Statement of Decision 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. The Commission's Statement of Decision on reconsideration has a period of reimbursement beginning July 1, 2004.

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RI-4282-10).

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

If the total costs for a given fiscal year do not exceed $200[1], no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

V. REIMBURSABLE COSTS

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 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, section 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. (Government Code section 7572, subd. (d)(1)).

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

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 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

[1] Beginning September 30, 2002, claims must exceed $1000. (Stats. 2002, ch. 1124.)

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. (Government Code section 7572.5).

g. Required participation in due process procedures, 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 (Government 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.

VI. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

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

   b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.

4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.

B. The following reimbursements for this mandate shall be deducted from the claim:

1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and
2. 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.

IX. REQUIRED CERTIFICATION

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

Tab 10

Adopted January 26, 2006

PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 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])

Handicapped and Disabled Students (04-RL-4282-10)

I. SUMMARY OF THE MANDATE

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission on State Mandates (Commission) to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). On May 26, 2005, the Commission adopted a Statement of Decision on *Handicapped and Disabled Students* (04-RL-4282-10) pursuant to Senate Bill 1895.

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.

The Commission determined that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution for the activities expressly required by statute and regulation. The Commission also concluded that there is revenue and/or proceeds that must be identified as an offset and deducted from the costs claimed.

Two other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *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).

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program.

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 parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental*

Health Services (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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. 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.

B. 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)

   1. 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.
   2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
   3. If necessary, interview the pupil and family, and conduct collateral interviews.
   4. 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.
   5. Assess the pupil within the time required by Education Code section 56344.
   6. 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.
   7. 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.

8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
9. 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.
10. Review independent assessments of a pupil obtained by the parent.
11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

C. 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)

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.

D. 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)

1. 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:
    a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
    b. Complete the local mental health program payment authorization in order to initiate out of home care payments.
    c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
    d. Coordinate the completion of the residential placement as soon as possible.
    e. 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.
    f. Facilitate the enrollment of the pupil in the residential facility.

g. 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.

h. 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.

E. 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))

1. 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.

   Beginning July 19, 2005, 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.

2. 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.

F. 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.

Reimbursement to parents for attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV. 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.

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 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 (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. RECORDS 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[1] is subject to the initiation of an audit by the State 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. 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings 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. 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), 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), and the $69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).
3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated $120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students program* (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)
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.

---

[1] 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(E)(1) 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 (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised 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 revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), 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 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 (a), and the California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides 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 the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Tab 11

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* ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND STATITES 2004, CHAPTER 493, SECTION 7 (Sen. Bill No. 1895) *(Adopted January 26, 2006; Corrected on July 21, 2006)*

CORRECTED PARAMETERS AND GUIDELINES

On January 26, 2006, the Commission on State Mandates adopted the parameters and guidelines for this program and authorized staff to make technical corrections to the parameters and guidelines following the hearing.

On May 26, 2006, the State Controller's Office filed a letter with the Commission requesting a technical correction to the parameters and guidelines to identify and add to the parameters and guidelines language allowing eligible claimants to claim costs using the cost report method. The cost report method was included in the parameters and guidelines for the original *Handicapped and Disabled Students* program (CSM 4282) and inadvertently omitted from the parameters and guidelines on reconsideration. The State Controller's Office states the following:

> The majority of claimants use this method to claim costs for the mental health portion of their claims. The resulting costs represent actual costs consistent with the cost accounting methodology used to report overall mental health costs to the State Department of Mental Health. The method is also consistent with how counties contract with mental health service vendors to provide services.

The following language is added to Section V, Claim Preparation and Submission:

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 by the Department of Mental Health from categorical funding sources, 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.

In addition, technical corrections have been made to Section X, Legal and Factual Basis for the Parameters and Guidelines, to clarify that the Statement of Decision in this case refers to the Statement of Decision on reconsideration. Section X is amended as follows:

> The Statement of Decision on reconsideration is legally binding on all parties and provides 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 the test claim and the reconsideration. The administrative record, including the Statement of Decision, is on file with the Commission.

Dated: _____

_____
Paula Higashi, Executive Director

Corrected: July 21, 2006
Adopted January 26, 2006
j:mandates/reconsideration/sb1895/psgs/correctedpsgs

CORRECTED
PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 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])

Handicapped and Disabled Students (04-RL-4282-10)

I. SUMMARY OF THE MANDATE

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission on State Mandates (Commission) to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). On May 26, 2005, the Commission adopted a Statement of Decision on *Handicapped and Disabled Students* (04-RL-4282-10) pursuant to Senate Bill 1895.

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.

The Commission determined that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution for the activities expressly required by statute and regulation. The Commission also concluded that there is revenue and/or proceeds that must be identified as an offset and deducted from the costs claimed.

Two other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *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).

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program.

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 parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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. 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.

B. 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)

   1. 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.
   2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
   3. If necessary, interview the pupil and family, and conduct collateral interviews.
   4. 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.
   5. Assess the pupil within the time required by Education Code section 56344.
   6. 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.
   7. 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.

8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
9. 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.
10. Review independent assessments of a pupil obtained by the parent.
11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

C. 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)

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.

D. 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)

1. 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:
    a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
    b. Complete the local mental health program payment authorization in order to initiate out of home care payments.
    c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.
    d. Coordinate the completion of the residential placement as soon as possible.
    e. 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.

f. Facilitate the enrollment of the pupil in the residential facility.

g. 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.

h. 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.

E. 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))

1. 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.

   Beginning July 19, 2005, 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.

2. 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.

F. 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.

Reimbursement to parents for attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV. 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 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 (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.

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 by the Department of Mental Health from categorical funding sources, 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. RECORDS 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[1] is subject to the initiation of an audit by the State 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. 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings 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. 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), 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), and the $69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).

3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office,

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

which appropriated $120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students program* (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)

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

Except as expressly provided in section IV(E)(1) 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 (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised 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 revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), 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 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 (a), and the California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision on reconsideration is legally binding on all parties and provides 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 the test claim and the reconsideration. The administrative record, including the Statement of Decision, is on file with the Commission.

Tab 12

Amendment Adopted: October 26, 2006
Corrected: July 21, 2006
Adopted January 26, 2006

AMENDED PARAMETERS AND GUIDELINES

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 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])

Handicapped and Disabled Students (04-RL-4282-10)

EFFECTIVE FOR REIMBURSEMENT CLAIMS FILED FOR COSTS INCURRED THROUGH THE 2005-2006 FISCAL YEAR

I. SUMMARY OF THE MANDATE

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission on State Mandates (Commission) to reconsider its prior final decision and parameters and guidelines on the *Handicapped and Disabled Students* program (CSM 4282). On May 26, 2005, the Commission adopted a Statement of Decision on *Handicapped and Disabled Students* (04-RL-4282-10) pursuant to Senate Bill 1895.

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.

The Commission determined that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution for the activities expressly required by statute and regulation. The Commission also concluded that there is revenue and/or proceeds that must be identified as an offset and deducted from the costs claimed.

Two other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *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).

These parameters and guidelines address only the Commission's findings on reconsideration of the *Handicapped and Disabled Students* program. These parameters and guidelines are effective for reimbursement claims filed through the 2005-2006 fiscal year. Commencing with the 2006-2007 fiscal year, reimbursement claims shall be filed through 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).

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 parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2004-2005, for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), or *Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services* (97-TC-05). In addition, estimated and actual claims filed for fiscal years 2004-2005 and 2005-2006 pursuant to the parameters and guidelines and claiming instructions for *Handicapped and Disabled Students* (CSM 4282) shall be re-filed under these parameters and guidelines.

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. 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.

B. 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)

   1. 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.
   2. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
   3. If necessary, interview the pupil and family, and conduct collateral interviews.
   4. 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.
   5. Assess the pupil within the time required by Education Code section 56344.
   6. 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.

7. 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.
8. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting.
9. 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.
10. Review independent assessments of a pupil obtained by the parent.
11. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team.
12. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested.

C. 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)

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.

D. 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)

1. 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:
    a. Convene parents and representatives of public and private agencies in accordance with section 60100, subdivision (f), in order to identify the appropriate residential facility.
    b. Complete the local mental health program payment authorization in order to initiate out of home care payments.
    c. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.

d. Coordinate the completion of the residential placement as soon as possible.

e. 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.

f. Facilitate the enrollment of the pupil in the residential facility.

g. 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.

h. 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.

E. 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))

1. 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.

   Beginning July 19, 2005, 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.

2. 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.

F. 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.

Reimbursement to parents for attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements is not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV. 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 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 (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.

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. RECORDS 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[1] is subject to the initiation of an audit by the State 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. 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 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. 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), 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), and the $69 million appropriation in 2005 (Stats. 2005, ch. 38, item 6110-161-0890, provision 9).

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

3. Funds received and applied to this program from the appropriation made by the Legislature in the Budget Act of 2005 for disbursement by the State Controller's Office, which appropriated $120 million for costs claimed for fiscal years 2004-2005 and 2005-2006 for the *Handicapped and Disabled Students program* (CSM 4282) and for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05). (Stats. 2005, ch. 38, item 4440-295-0001, provisions 11 and 12.)
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.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(E)(1) 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 (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised 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 revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), 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 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 (a), and the California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision on reconsideration is legally binding on all parties and provides 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 the test claim and the reconsideration. The administrative record, including the Statement of Decision, is on file with the Commission.

Tab 13

JOHN CHIANG
California State Controller

August 12, 2008

Wendy L. Watanabe, Acting Auditor-Controller
County of Los Angeles
500 West Temple Street, Room 525
Los Angeles, CA 90012

Re: Audit of Mandated Cost Claims for Handicapped and Disabled Students Program For the Period of July 1, 2003, through June 30, 2006 and Audit of Mandated Cost Claims for Handicapped and Disabled Students II Program for period of July 1, 2002, through June 30, 2004

Dear Ms. Watanabe:

This letter confirms that Anna Pilipyuk has scheduled an audit of the County of Los Angeles' legislatively mandated Handicapped and Disabled Students Program cost claims filed for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 and Handicapped and Disabled Students II Program cost claims filed for FY 2002-03 and FY 2003-04. Government Code sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Monday, September 22, 2008, at 11:00 a.m. We will begin audit fieldwork after the entrance conference.

Please furnish working accommodations for and provide the necessary records (listed on the Attachment) to the audit staff. If you have any questions, please call me at (916) 327-0696.

Sincerely,

Christopher B Ryan

CHRISTOPHER RYAN, Audit Manager
Mandated Cost Audits Bureau
Division of Audits

6954

CR/sk

Attachment

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 300 Capitol Mall, Suite 518, Sacramento, CA 95814 (916) 324-8907
LOS ANGELES 600 Corporate Pointe, Suite 1000, Culver City, CA 90230 (310) 342-5656

cc: Leonard Kaye, ESQ
Certified Public Accountant
County of Los Angeles
Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits, State Controller's Office
Ginny Brummels, Manager
Division of Accounting and Reporting
State Controller's Office
Anna Pilipyuk, Auditor-in-Charge
Division of Audits, State Controller's Office

COUNTY OF LOS ANGELES
Records Request for Mandated Cost Program
Handicapped and Disabled Students
FY 2003-04, FY 2004-05, and FY 2005-06
and Handicapped and Disabled Students II
FY 2002-03 and FY 2003-04

---

1. Copy of claims filed for the mandated cost program and all related supporting documentations.

2. Copy of external and internal audit reports performed on the mandated cost program.

3. Copy of the single audit report performed during the period and the primary contact for the CPA firm.

4. Organization charts for the county effective during the audit period and currently, showing employee names and position titles.

5. Organization charts for the department or unit handling the mandated cost program, effective during the audit period and currently, showing employee names and position titles.

6. Chart of accounts applicable to the period under review, including service function and provider identification codes.

7. Access to cost reports submitted to the Department of Mental Health, general ledger accounts, and financial reports used to support the claims.

8. Access to supporting documentation for units charged and applicable rates, vendor invoices and payments, and client files.

9. Sample of supporting documents for units of service charged, documenting the billing process (attending mental health professional billing slips, progress notes in client file, billing logs, or summaries by providers, etc.).

10. Support for costs used to compute the indirect cost rate proposal (ICRP).

11. Support of offsetting revenues identified in the claim.

Tab 14

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

June 16, 2010

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

Dear Mr. Spano:

HANDICAPPED AND DISABLED STUDENTS PROGRAM
JULY 1, 2003 THROUGH JUNE 30, 2006

In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:

1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.

2. We designed and implemented the County's accounting system to ensure accurate and timely records.

3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines.

5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.

6. Excluding mandated program costs, the County did not recover indirect cost from any state or federal agency during the audit period.

7. We are not aware of any:

   a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

   b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

   c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

   d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:hy
H:\SB90\QSTClaim Submission\Ch1747\Audit Mgmt. Letter 6-15-10.doc

Tab 15

Ryan, Christopher

From: Yaghobyan, Hasmik <HYAGHOBYAN@auditor.lacounty.gov>
Sent: Tuesday, April 13, 2010 10:52 AM
To: Pilipyuk, Anna
Cc: Ryan, Christopher; Johnson, John E.; Spano, Jim
Subject: RE: SEDP (FYs 2003-06)

Hi Anna,

We agree with your proposal and would like to move the excess IDEA funding (954,297) revenue offset from HDS to the SED program.

Let me know if you have any questions.

Hasmik Yaghobyan
SB90 Administrator
Dept. of Auditor Controller-Accounting Division
Tel: (213) 893-0792
Fax: (213) 617-8106
Email: *hyaghobyan@auditor.lacounty.gov*

From: APilipyuk@sco.ca.gov [mailto:APilipyuk@sco.ca.gov]
Sent: Tuesday, April 13, 2010 9:48 AM
To: Yaghobyan, Hasmik
Cc: cryan@sco.ca.gov; jejohnson@sco.ca.gov; jspano@sco.ca.gov
Subject: FW: SEDP (FYs 2003-06)
Importance: High

Hasmik,
I just wanted to follow up with you regarding the changes to the overstated offsetting revenue finding (Finding #4) for SED Pupils: Out-of-State Mental Health Services (SEDP) Program audit. I have not heard from you on how the county would like to handle the changes. As we suggested during the HDS exit conference (March 30, 2010), you can just e-mail me any comments and concerns that the county has in regard to the changes. If the county concurs with changes, please e-mail your confirmation, authorizing the SCO to issue the final SEDP report.

Attached are summaries of findings for the SEDP audit for FYs 2003-06.

If you have any further questions you can contact either John or me.

Thank you,

-Anna

Anna Pilipyuk
Auditor
State Controller's Office
Division of Audits - Mandated Cost
(916) 323-4206 - phone
(916) 324-7223 - fax
apilipyuk@sco.ca.gov

From: Pilipyuk, Anna
Sent: Tuesday, April 06, 2010 04:05 PM
To: 'Yaghobyan, Hasmik'
Cc: Ryan, Christopher; Johnson, John E.; Spano, Jim
Subject: SEDP (FYs 2003-06)
Importance: High

Hasmik,

During our exit conference for Handicapped and Disabled Students Program on March 30, 2010, we also discussed changes to the overstated offsetting revenue finding (Finding #4) for SED Pupils: Out-of-State Mental Health Services (SEDP) Program audit. Subsequent to the issuance of the draft report and the county's response to the SEDP Program audit, we finalized the Handicapped and Disabled Students (HDS) Program audit. Our HDS audit disclosed that the county over applied Individuals with Disabilities Education Act (IDEA) funds by $954,297 for FY 2003-04. So, we proposed moving the excess of IDEA revenues from the HDS to the SEDP Program for FY 2003-04.

During the conference we provided the county with revised audit findings (Funding #4) and schedules for SEDP Program audit. Further, at the meeting we discussed issuing the final report for the SEDP Program incorporating the IDEA adjustment. Since the county has already responded to the initial draft, we discussed the county providing an e-mail agreeing to the revised SEDP Program report.

So, before we issue the final report with revised audit findings (Funding #4) and schedules, please e-mail me any comments and concerns that the county has in regard to the changes. If the county concurs with changes, please e-mail your confirmation, authorizing the SCO to issue the final SEDP report.

Attached are summaries of findings for the SEDP audit for FYs 2003-06.

If you have any further questions you can contact either John or me.

Thank you,

-Anna

Anna Pilipyuk
Auditor
State Controller's Office
Division of Audits - Mandated Cost
(916) 323-4206 - phone
(916) 324-7223 - fax
apilipyuk@sco.ca.gov

Tab 16

9/23/08

Paul McIver

A Guide to Community Mental Health Rehabilitation Service Activity Codes

FOR

Clinic Service Providers

County of Los Angeles – Department of Mental Health

Marvin J. Southard, D.S.W.
Director of Mental Health

March 2002

Prepared by: [illegible] Date: 9/23/08
Revised by: [illegible] Date: 11/5/08

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

TARGETED CASE MANAGEMENT SERVICES (MODE 15)

TARGETED CASE MANAGEMENT –CLIENT OR COLLATERAL CONTACT

Activity assisting one or more clients to **access** needed medical, educational, social, prevocational, vocational, rehabilitative and other community services; or providing assistance with securing appropriate living arrangements; or consulting with the client or others in an effort to determine the need for, or access to, any of these services. It also may include the supportive activities related to linkage and consultation such as making telephone calls, completing forms, as well as developing a case management plan. Client or collateral must be present. *Inclusive of travel, plan development and documentation time.*

Example: Staff person discusses housing situation with client/parent who reports lack of cooperation from landlord to correct significant defects with apartment, e.g., rat infestation that poses health and safety issues to client and family. Staff person contacts by phone the City Health Department, reports the landlord and facilitates linkage for client/parent with the city ombudsman.

Site Location	SFC	Activity Code	Activity (An indicator for family/significant other involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	[redacted]	[redacted]	TCM, **SEP** Targeted Case Management Client or Collateral Contact, RS	[redacted]	All except #9
	04	300	TCM, Targeted Case Management Client or Collateral Contact, RS	M/C GF	
		9090	TCM, **SAMHSA/ADP** Targeted Case Management Client or Collateral Contact, RS (DMH Only)	SAMHSA	
		9110	TCM, **CalWORKS/GROW** Targeted Case Management Client or Collateral Contact	DPSS	
	05	9070	TCM, **PATH** Homeless Targeted Case Management Client or Collateral Contact	PATH	
	06	8080	TCM, **FP** Targeted Case Management Client or Collateral Contact, RS	Family Pres	
	08	1710	TCM, **AB1733/2994** Targeted Case Management Client or Collateral Contact, RS	AB1733/ 2994	

Notes:

- If services are provided to, or on behalf of, more than one client at the same time, record and report the number of client's represented at the contact so the MIS (automatically) can appropriately pro-rate staff time to each client.

W/P Section 4.4-3 Page 40
Prepared by: MP Date: 8/23/04
Reviewed by: CL Date: 11/5/10

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

TARGETED CASE MANAGEMENT – CASE ACTIVITY (NO CLIENT OR COLLATERAL CONTACT)

A Targeted Case Management activity provided on behalf of a client in the absence of the client or collateral, such as completing forms, preparing reports, or intra/inter-agency consultations or conferences related to linking a client to services. **Includes re-authorization of FFS clients if a case is open.** To be used only in reference to a targeted case management activity. *Refer to MHS, Individual Rehabilitation (not psychotherapy) for activities that are not related to linking client to services.*

Example: In the example on previous page, the phone call to the City Health Department is made at a later time, not in the presence of the client/parent.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	09	832	TCM, **SEP** Targeted Case Management Case Activity, RS	SEP/	All except #9
	04	305	TCM, Targeted Case Management Case Activity, RS	M/C GF	
		9111	TCM, **CalWORKS/GROW** Targeted Case Management Case Activity	DPSS	
	05	9072	TCM, **PATH** Homeless Targeted Case Management Case Activity	PATH	
	06	8082	TCM, **FP** Targeted Case Management Case Activity, RS	Family Pres	
	08	1711	TCM, **AB1733/2994** Targeted Case Management Case Activity, RS	AB1733/ 2994	

Notes:

- Case Management is NOT skill development, assistance in daily living or training clients to access services by themselves, which are mental health services.
- Services within an activity code on the same day may be summarized in one note and claimed collectively, i.e., 5 phone calls related to one client on the same day can be summarized in one note to support a single claim.

W/P Section H4-3 Page 10 of 20
Prepared by: KP Date: 9/23/08
Reviewed by: DR Date: 11/5/10

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MHS, PSYCHOLOGICAL TESTING/DIAGNOSTIC SERVICES, CASE ACTIVITY NO CLIENT OR COLLATERAL CONTACT

Activities **related to psychodiagnostic assessment** such as scoring and interpreting tests, and writing psychological testing reports in the absence of a face-to-face or phone contact. *Inclusive of travel and documentation time.*

Example: Interpreting test results and writing psychological testing reports for submission to courts, DPSS or DCFS.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
❑ Office ❑ Field ❑ Tel. ❑ Inpt. ❑ Jail	[redacted]	[redacted]	MHS, **SEP** Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	[redacted]	#2
	34	043	MHS, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	M/C GF	
	36	9005	MHS, **PATH** Homeless, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	PATH	
	37	8037	MHS, **FP**, Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	Family Pres	
	39	1704	MHS, **AB1733/2994** Psychological Testing/Diagnostic Services, Case Activity No Contact, RS	AB1733/ 2994	
	34	9127	MHS, **CalWORKS/GROW** Psychological Testing/Diagnostic Services, Case Activity No Contact	DPSS	

Note:

- See Medi-Cal Lockouts on Page 26.

W/P Section ___ Page ___
Prepared by: ___ Date: 9/23/08
Reviewed by: ___ Date: 1/5/10

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MHS, PSYCHOLOGICAL TESTING/DIAGNOSTIC SERVICES

Established testing for the psychodiagnostic assessment of personality, development assessment and cognitive functioning. Requires face-to-face contact. For children, referrals are made to clarify symptomology, rule out diagnoses and help delineate emotional from learning disabilities. *Inclusive of travel and plan development time.*

Example: Child's behavior is aggressive and marked by uncontrolled outbursts of profane language; he is beginning to have facial tics and is also below grade level in reading. Referral for testing is made to determine diagnosis and rule out learning disorder.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office+ ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	33	857	MHS, **SEP** Psychological Testing/Diagnostic Services, RS	SEP/	
	34	034	MHS, Psychological Testing/Diagnostic Services, RS	Medicare+ M/C GF	
		9126	MHS, **CalWORKS/GROW** Psychological Testing/Diagnostic Services	DPSS	#2+
	36	9002	MHS, **PATH** Homeless, Psychological Testing/Diagnostic, Services, RS	PATH	
	37	8035	MHS, **FP**, Psychological Testing/Diagnostic Services, RS	Family Pres	
	39	1717	MHS, **AB1733/2994** Psychological Testing/Diagnostic Services, RS	AB1733/ 2994	

Note:

- See Medi-Cal Lockouts on Page 26.

+ Medicare reimburses only for qualified services provided in the Office to Medicare recipients by licensed psychologist.

W/P Section 4.4-3 Page 12 of 40
Prepared by: MP Date: 9/23/04
Reviewed by: CR Date: 11/5/04

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MENTAL HEALTH SERVICES (MODE 15)

MHS, INDIVIDUAL THERAPY

Therapeutic interventions for an individual client by an appropriately trained clinician consistent with the client's goals/desired results identified in the Service Plan. Focuses primarily on symptom reductions as a means to improve functional impairments. Can include family therapy (as long as only 1 client is represented in the contact) and substance abuse treatment (for EPSDT only). Clinical interventions must be included in the progress note. *Inclusive of travel, plan development and documentation time.*

Example: Clinician encourages client to consider the obstacles to constructive work relationships, assists client with understanding his/her feelings and invites client to react differently. Chart note includes problem behavior, therapeutic intervention and outcome.

Site Location	SFC	Activity Code	Activity (An indicator for family/significant other involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
☐ Office+ ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	41	8083	MHS, **SEP** Individual Therapy, RS	SEP/ [redacted]	Trained Clinician+ #1 - #5.
	42	040	MHS, Individual Therapy, RS	Medicare+ M/C GF	
		085	MHS, Individual Family Therapy, RS		
		1319	MHS, Individual Therapy w Medical Evaluation and Management, RS **(inactive until notified)**	Medicare+	
		9113	MHS, **CalWORKS/GROW** Individual Therapy	DPSS	
		9092	MHS, **SAMHSA/ADP** Individual Therapy, RS (DMH Only)	SAMHSA	
	45	1718	MHS, **AB1733/2994** Individual Therapy, RS	AB1733/ 2994	
	47	8000	MHS, **FP** Individual Therapy, RS	Family Pres	

Notes:

- If more than one staff provides service, each must be identified in the note indicating the time expended by each, and the specific interventions performed by each during the time noted.
- See Medi-Cal Lockouts on Page 26.

+ Medicare reimburses only for qualified services provided in the Office to Medicare recipients by licensed clinicians #1-#5.

W/P Section [illegible] Page [illegible]
Prepared by: [illegible] Date: [illegible]
Reviewed by: [illegible] Date: [illegible]

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MHS, CASE CONSULTATION

Includes time spent with inter/intra-agency (includes Board and Care) staff to discuss clinical and/or other information to enhance a specific client's diagnosis and treatment plan. Client may be present. Supervision is not reimbursable. *Inclusive of travel, plan development and documentation time.*

Example: Clinician presents case history at clinical case conference and requests feedback on differential diagnosis and treatment strategies.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	[redacted]	[redacted]	MHS, **SEP** Case Consultation, RS	[redacted]	All except #9
	42	1220	MHS, Case Consultation, RS	M/C GF	
		9114	MHS, **CalWORKS/GROW** Case Consultation	DPSS	
	45	1721	MHS, **AB1733/2994** Case Consultation, RS	AB1733/ 2994	
	47	8040	MHS, **FP** Case Consultation, RS	Family Pres	

Note:

- Clinician receiving the consultation generally makes the chart note. The note must state the name of clinician(s) providing the consultation, participants, specific contributions of each and recommendations. The clinician(s) providing the consultation does not **also** chart.
- See Medi-Cal Lockouts on Page 26.

W/P Section 240-3 Page 14 of 40
Prepared by: [redacted] Date: 9/23/08
Reviewed by: [redacted] Date: 1/15/09

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MHS, INDIVIDUAL REHABILITATION (NOT PSYCHOTHERAPY)

Assistance in restoring or maintaining a client's functional skills, ADL skills, social skills, medication compliance and support resources; counseling of the client or family; training in leisure activities consistent with client's goals/desired results; medication education; writing of client letters, SSI forms. Substance abuse intervention to meet mental health goals and case management activities beyond facilitating access to services fit in this category. *Inclusive of travel, plan development and documentation time.*

Example: Staff assists client in achieving any of the goals set out in treatment or service plan in any fashion not including psychotherapy.

Site Location	SFC	Activity Code	Activity (An indicator for family/significant other involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
❑ Office ❑ Field ❑ Tel. ❑ Inpt. ❑ Jail	[redacted]	[redacted]	MHS, **SEP** Individual Rehabilitation (not psychotherapy), RS	[redacted]	All except #9.
	42	062	MHS, Individual Rehabilitation (not psychotherapy), RS	M/C GF	
		9113	MHS, **CalWORKS/GROW** Individual Rehabilitation (not psychotherapy)	DPSS	
		9092	MHS, **SAMHSA/ADP** Individual Rehabilitation (not psychotherapy), RS (DMH Only)	SAMHSA	
	45	1718	MHS, **AB1733/2994** Individual Rehabilitation (not psychotherapy), RS	AB1733/ 2994	
	47	8000	MHS, **FP** Individual Rehabilitation (not psychotherapy), RS	Family Pres	

Note:
- See Medi-Cal Lockouts on Page 26.

W/P Section MH-3 Page 15 of 40
Prepared by: QP Date: 9/23/08
Reviewed by: CK Date: 11/5/10

MHS, GROUP REHABILITATION (NOT PSYCHOTHERAPY)

May include any and all of the following skills: assistance in restoring or maintaining a client's functional skills, ADL skills, medication compliance and support resources; counseling of the client or family (which includes significant support persons as long as more than 1 client is represented); training in leisure activities consistent with client's goals/desired results; medication education.

Example: Case manager leads a group of 10 clients on Lieberman module to develop conversational skills.

Site Location	SFC	Activity Code	Activity (An indicator for family/significant other involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	52	105	MHS, Group Rehabilitation (not psychotherapy), RS	M/C GF	All except #9.
		9115	MHS, **CalWORKS/GROW** Group Rehabilitation (not psychotherapy)	DPSS	
		9093	MHS, **SAMHSA/ADP** Group Rehabilitation (not psychotherapy), RS (DMH Only)	SAMHSA	
	53	1723	MHS, **AB1733/2994** Group Rehabilitation (not psychotherapy), RS	AB1733/ 2994	
	[redacted]	[redacted]	MHS, **SEP** Group Rehabilitation (not psychotherapy), RS	SEP/ [redacted]	
	57	8004	MHS, **FP** Group Rehabilitation (not psychotherapy), RS	Family Pres	

Notes:

- Co-therapist time must be documented in the progress note with justification.
- See Medi-Cal Lockouts on Page 26.

W/P Section MH-5 Page 18
Prepared by: RM Date: 9/23/08
Reviewed by: CR Date: 11/5/08

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

MEDICATION SUPPORT (MODE 15)

MEDICATION SUPPORT

Services include prescribing, administering, dispensing, and monitoring of psychiatric medication(s) or biologicals necessary to alleviate the symptoms of mental illness which are provided by a staff person within the scope of practice of his/her profession. Activities also include evaluation of the need for medication and the effects of the medication prescribed, obtaining informed consent, medication education. *Inclusive of travel, plan development and documentation time.*

Example: A client exhibiting major depressive symptoms is referred to a psychiatrist for evaluation and treatment. Once informed consent is obtained and medication is prescribed, a nurse explains the medication regimen and possible side effects to his/her significant other. A follow-up session is scheduled.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office[+] ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	60	1727	MED, **AB1733/2994** Medication Support, RS	AB1733/ 2994	#1[+], #5, #6, #7, and #9
	61	811[redacted]	MED, **SEP** Medication Support, RS	[redacted]	
	62	035	MED, Medication Support, RS	Medicare[+] M/C GF	
		9116	MED, **CalWORKS/GROW** Medication Support	DPSS	
		9094	MED, **SAMHSA/ADP** Medication Support, RS (DMH Only)	SAMHSA	
	65	9008	MED, **PATH** Homeless Grant Medication Support, RS	PATH	
	67	8011	MED, **FP** Medication Support, RS	Family Pres	

Notes:

- When a physician and a nurse provide Medication Support services to a client, the time of both staff should be claimed. If one note is written covering both staff, one claim is made; if 2 notes are written, 2 claims are made. In the unusual circumstance where the client or significant other is not present, plan documentation is reimbursable without a direct contact. If a staff person ineligible to claim Medication Support participates in the contact, then a separate note must be written documenting service time as either TCM or MHS.
- Medication Support services is reimbursable up to a maximum of 4 hours a day per client.

[+] Medicare reimburses only for medication support services provided in the Office to Medicare recipients by a physician.

W/P Section [illegible] Page [illegible]
Prepared by: [illegible] Date: 4/23/03
Reviewed by: [illegible] Date: 4/25/03

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

CRISIS INTERVENTION (MODE 15)

CRISIS INTERVENTION

Crisis Intervention means a service, lasting less than 24 hours, provided to or on behalf of a client for a condition that requires more timely response than a regularly scheduled visit. Service activities may include but are not limited to assessment, collateral and therapy. Crisis intervention is distinguished from crisis stabilization by who delivers the service and where. Crisis stabilization can only be delivered by eligible providers at a site certified by the State to provide the service. *Inclusive of travel, plan development and documentation time.*

Example: A walk-in client states her mother who was her sole support system has just died. She is hysterical, crying and unable to make short-term plans for herself. Client is assisted to set priorities, focus on discrete, very short term and limited goals. A follow-up session is scheduled.

If any portion of the service a qualified staff provides is Medication Support, the time spent providing that service should be claimed to Medication Support.

Site Location	SFC	Activity Code	Activity (An indicator for family/significant other involvement in the contact will be provided on the MIS screen.)	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	[redacted]	8541	CI, **SEP** Crisis Intervention, RS	S[redacted]	All except #9.
	75	1745	CI, **AB1733/2994** Crisis Intervention, RS	AB1733/ 2994	
	76	8032	CI, **FP** Crisis Intervention, RS	Family Pres	
	77	141	CI, Crisis Intervention, RS	M/C GF	
		9117	CI, **CalWORKS/GROW** Crisis Intervention	DPSS	

Note:

- See Medi-Cal Lockouts on Page 26.

W/P Section ___ Page 18.40
Prepared by: AP Date: 9/23/08
Reviewed by: ___ Date: 11/5/08

DAY SERVICES (MODE 10)

DAY TREATMENT INTENSIVE, HALF DAY

An organized and structured multi-disciplinary treatment program designed as: **1) an alternative to hospitalization or placement in a more restrictive setting or 2) to maintain the client in a community setting or out-of-home placement.** Services are provided to a distinct group of clients as part of a packaged program available for more than 3 but no more than 4 hours a day each day that the program is open. The program focuses on symptom reduction of severely impaired and low functioning clients. Activities may include assessment, therapy, crisis intervention, Service Plan development, rehabilitation, collateral and charting. Medication services are not included.
For SED children, this service focuses on social and functional skills necessary for appropriate development and social integration. It may be integrated with an educational program. Contact with families of these clients is expected.

Example: Client is just released from hospital, continues to respond to internal stimuli even while on medication, has trouble focusing on daily living skills and needs to be seen 5 days a week if possible. Approach is to enroll client in program for a limited short-term course of treatment with the goal of reducing symptomology and transitioning client to a less intensive mental health service.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	[redacted]	[redacted]	Day, **SEP** Day Treatment Intensive, Half Day, RS	[redacted] AB3632	All except #9, but only #1 - #8 count as part of the staffing ratio.
	82	430	Day Treatment Intensive, Half Day, RS	M/C GF	Note: an LPHA must be included in the staffing.

Notes:

- Staff to client ratio is 1:8. An LPHA (see Page III) must be included in the staffing. When clients exceed 12, staff must be from at least 2 disciplines.
- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.

W/P Section [illegible] Page [illegible]
Prepared by: [illegible] Date: 2/23/08
Reviewed by: [illegible] Date: 4/4/08

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

DAY TREATMENT INTENSIVE, FULL DAY

Same as *Day Treatment Intensive, Half Day*, but the length of the program exceeds 4 hours each day.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	85	435	Day Treatment Intensive, Full Day, RS	M/C GF	All except #9, but only #1-#8 count as part of the staff ratio. Note: an LPHA must be included in the staffing.
	[redacted]	[redacted]	Day, **SEP** Day Treatment Intensive, Full Day, RS	SEP/[redacted]	

Notes:

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:8. An LPHA (see Page III) must be included in the staffing. When clients exceed 12, staff must be from at least 2 disciplines.

W/P Section 4A-3 Page 20 of 46
Prepared by: AP Date: 9/23/09
Reviewed by: CE Date: 11/5/09

DAY REHABILITATIVE, HALF DAY

An organized, structured program providing **evaluation, rehabilitation and therapy to restore or maintain personal independence and functioning consistent with requirements for learning and development.** Services are provided to a distinct group of clients as part of a packaged program for at least 3 but no more than 4 hours each day that the program is open. Activities may include assessment, therapy, crisis intervention, Service Plan development, rehabilitation, collateral and charting. Medication services are not included.

For SED children, this service focuses on maintaining them in their community and schools consistent with their requirements for learning, development and enhanced self-sufficiency. It may be integrated with an educational program Contact with families of these clients is expected.

Example: Patient is anxious, is unable to relate to peers, stays isolated, and has difficulty with daily living activities. Attends program 3 days a week with goal of decreasing anxiety and increasing ability to interact with others and ability to perform skills of daily living.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
☐ Office ☐ Field ☐ Tel. ☐ Inpt. ☐ Jail	92	429	Day Rehabilitative, Half Day, RS	M/C GF	All except #9, but only #1 - #8 count as part of the staff ratio.
		9121	Day, **CalWORKS/GROW** Day Rehabilitative, Half Day	DPSS	
	[redacted]	840	Day, **SEP** Day Rehabilitative, Half Day, RS	[redacted]	

Notes:

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:10.

W/P Section [illegible] Page [illegible]
Prepared by: [illegible] Date: 4/23/03
Reviewed by: [illegible] Date: 4/24/03

Guide To Community Mental Health Rehabilitation Service Activity Codes
for
Clinic Service Providers

DAY REHABILITATIVE, FULL DAY

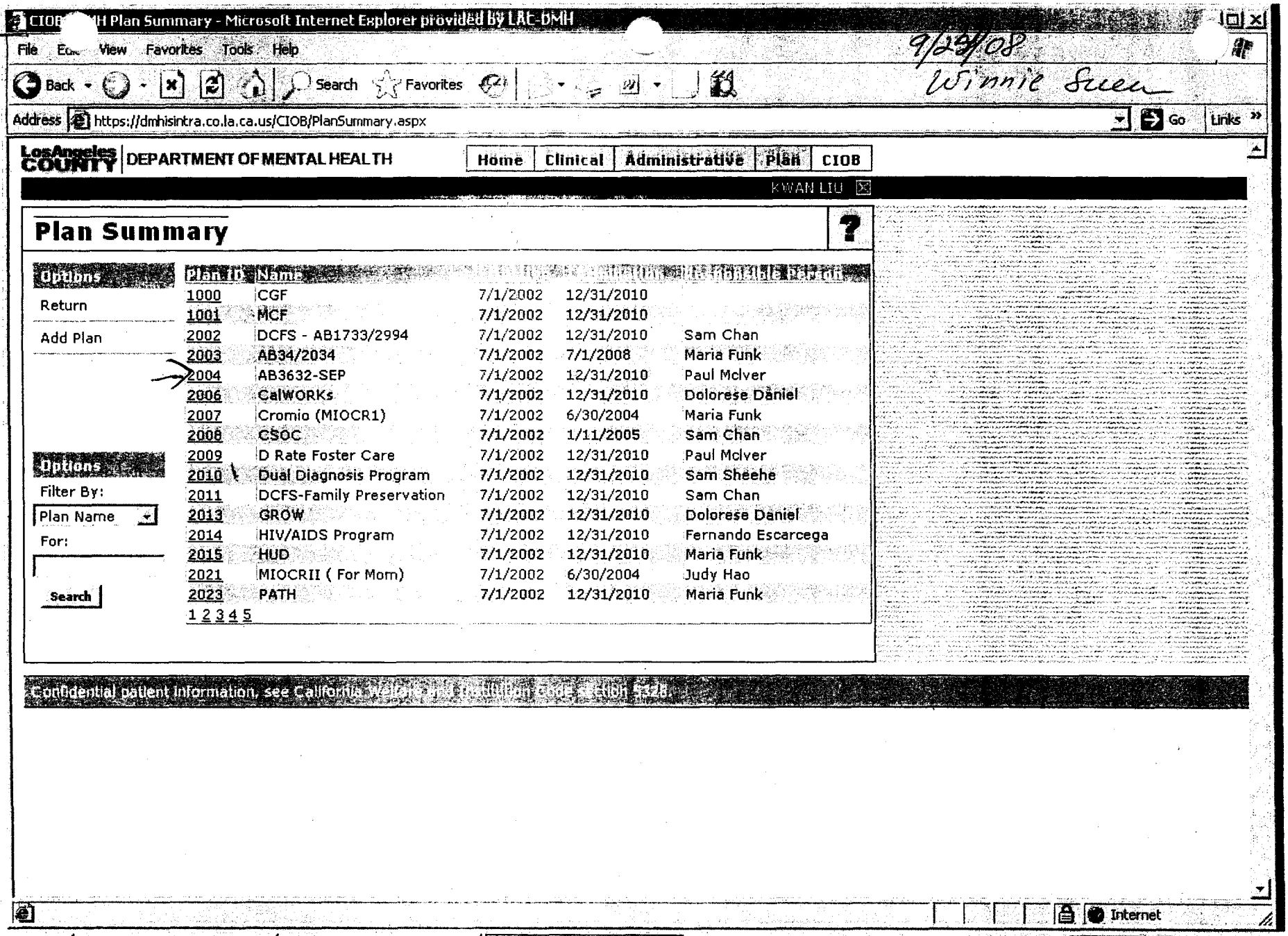
Same as *Day Rehabilitative, Half Day*, but the length of the program exceeds 4 hours each day.

Site Location	SFC	Activity Code	Activity	Tracks To	Scope of Practice (See Legend)
❑ Office ❑ Field ❑ Tel. ❑ Inpt. ❑ Jail	98	434	Day Rehabilitative, Full Day, RS	M/C GF	All except #9, but only #1 - #8 count as part of the staff ratio.
		9122	Day, **CalWORKS/GROW** Day Rehabilitative, Full Day	DPSS	
	[redacted]	[redacted]	Day, **SEP** Day Rehabilitative, Full Day, RS	[redacted]	

Notes:

- Medication Support Services must be billed separately.
- A client in a half/full day program who does not attend for the entire length of the program is nevertheless claimed for the service.
- While these are ordinarily an all inclusive, bundled service, DMH Deputy Directors may determine that it is appropriate for clients to receive, outside the hours of the program, specific Case Management or Mental Health Services. If this occurs, a Mode 15 episode must be opened for the additional service and separate documentation is required.
- Staff to client ratio is 1:10.

W/P Section 44-3 Page 22 of 40
Prepared by: [illegible] Date: 7/28/08
Reviewed by: [illegible] Date: 7/5/10



W/P Section 44-3 Page 23940
Prepared by: GP Date: 9/29/08
Reviewed by: AL Date: 9/30/08

Tab 17

Ryan, Christopher

From: Paul McIver <PMcIver@dmh.lacounty.gov>
Sent: Monday, October 06, 2008 5:36 PM
To: Ryan, Christopher; Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen
Cc: Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie
Subject: RE: HDS and HDSII

The previous audit was before the advent of the IS, (Plans) so we were still in the MIS (Activity Codes) The basis for the inquiry was my own suspicion and also of the auditor, that some contractors and directly operated clinics were sometimes confused about he proper coding of claims. We took a small sample and found enough mistakes in the sample to warrant looking at about 1500 cases.

The key then, as it would still be now, is that all AB 3632 students are deemed eligible through the assessment process. All assessments to establish eligibility are conducted in just two reporting units: 1939 or 7437. So in the review of episode overview screens, we threw out any claims that did not link to an episode of assessment in 1939 or 7437.

From: Ryan, Christopher [mailto:cryan@sco.ca.gov]
Sent: Monday, October 06, 2008 5:14 PM
To: Paul McIver; Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen
Cc: Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie
Subject: RE: HDS and HDSII

Paul,

In the previous case when you printed 1,500 client episode screens, was this due to a lack of a unique identifier for AB 3632?

Basically, what we are trying to get from the county is the population of clients and their units that support the units claimed. Initially, we were told that the county uses AB 3632 plan as the identifier. The AB 3632 identifier only supports a portion of the claimed units (roughly 20%-30%). Subsequently, it appears that the contractor units are commingled in EPSDT/SDMC plan identifier. Again, we need the county to identify the client population and their units of service that support the claim in order to select a sample of client files to test.

If tomorrow doesn't work maybe Wednesday would be better.

Christopher B. Ryan, CIA
Audit Manager
Mandated Costs Bureau
Division of Audits
State Controller's Office
(916) 327-0696

From: Paul McIver [mailto:PMcIver@dmh.lacounty.gov]
Sent: Monday, October 06, 2008 04:40 PM
To: Pilipyuk, Anna; Yaghobyan, Hasmik; Winnie Suen
Cc: Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie
Subject: RE: HDS and HDSII

I am only available for a conference call tomorrow after 4:00pm.

Also, during the previous audit of this program, there were similar questions about which claims were attributable to AB 3632 students. Ultimately, we printed about 1,500 client episode overview screens, which I personally reviewed one by one, and eliminated about 15% of the claims as ineligible (miscoded) for AB 3632. We may have to do that again.

From: Pilipyuk, Anna [mailto:APilipyuk@sco.ca.gov]
Sent: Monday, October 06, 2008 4:12 PM
To: Yaghobyan, Hasmik; Winnie Suen
Cc: Paul McIver; Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie
Subject: RE: HDS and HDSII

Winnie,
We understand that the CD that you had provided to us on 10/24/2008 includes the AB3632 units unidentified by AB 3632 Plan (Plan ID Code 2004). But the CD's units only partially support the Los Angeles claims since many of contract providers used MC/EPSDT Funding Source Plan instead of AB 3632 Funding Source Plan. Contract providers failed to identify AB 3632 population with AB 3632 Funding Source Plan. Instead, contract providers commingled AB 3632 and non-AB 3632 clients under the MC/EPSDT Funding Source Plan. Los Angeles County noted that discrepancy and required contract providers to prepare supplemental detail to MH 1901 schedule B to identify AB 3632. We received supplemental detail to MH 1901 schedule B for each contract provider for FY 2003-04, FY 2004-05, and FY 2005-06. But we still do not know how contract providers identify the AB 3632 units. You stated that "*Contract providers need to provide the back up documentation with the AB 3632 Client Name/Client Identification Number in order for us to extract the eligible AB3632 units in the MC/EPSDT plan*". Do you mean that County MH employees manually go over each client file to verify his/her eligibility?

I would like to schedule the conference call for tomorrow (10/7/08) afternoon (any time in afternoon that is suitable to Los Angeles County) so we could discuss all the outstanding issues. I also would like if Paul McIver and Hasmik Yaghobyan would be present during the conference call. My supervisor number is 916-327-0696. Please let me know if the date and time are suitable for you.

We would prepare the document request from information we had been provided so far and e-mail it to you tomorrow.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

-Anna

Anna Pilipyuk
Auditor, Division of Audits
State Controller's Office
(916) 323-4206 - phone
(916)324-7223 - fax
apilipyuk@sco.ca.gov

From: Yaghobyan, Hasmik [mailto:HYAGHOBYAN@auditor.lacounty.gov]
Sent: Monday, October 06, 2008 02:43 PM
To: Winnie Suen; Pilipyuk, Anna

Cc: Paul McIver; Ryan, Christopher; Johnson, John E.; Michael Boyle; Genciana Macalalad; Yee, Connie
Subject: RE: HDS and HDSII

Thanks Winnie.

From: Winnie Suen [mailto:WSuen@dmh.lacounty.gov]
Sent: Monday, October 06, 2008 1:59 PM
To: Pilipyuk, Anna
Cc: Yaghobyan, Hasmik; Paul McIver; Ryan, Christopher; jeJohnson@sco.ca.gov; Michael Boyle; Genciana Macalalad
Subject: RE: HDS and HDSII

Hi Anna,

You can get the AB3632 reporting units from the CD that we provided to you as follows:

(1) FY 2004-05 and 2005-06
Data from the Integrated System (IS) - Filter the AB3632 Plan (Plan ID Code 2004), you will get the reporting units for the AB3632 services.

One of our contract providers, Pacific Clinics, was still using the MHMIS in FY 2004-05 and partial year in FY 2005-06. Their AB3632 units of service will be based on MHMIS and the unique service function codes (SFCs) until they rolled out to the IS during FY 2005-06.

(2) FY 2003-04
There are two dataset files for FY 2003-04, data from MIS (UOS MIS 04) and data from IS (UOS IS Data 04). For MIS data (UOS MIS 04), units are recorded under the AB3632 SFCs. You can get the AB3632 reporting units and services by filter the Fund Priority Code D060. For IS data (UOS IS Data 04), you can filter the AB3632 plan (Plan ID 2004).

In addition, client information can be used to run the IS data to extract AB3632 units of service. Contract providers need to provide the back up documentation with the AB 3632 Client Name/Client Identification Number in order for us to extract the eligible AB3632 units in the MC/EPSDT plan. Contract providers certified the accuracy of their cost report and supposed to maintain the back up detail for audit purpose.

Attached for your reference are the reporting units that provide AB3632 units of service. We extract the information from the files in the CD based on (1) and (2) above.

Please let me know if you have any questions and the next step.

Winnie

From: Pilipyuk, Anna [mailto:APilipyuk@sco.ca.gov]
Sent: Monday, October 06, 2008 9:38 AM
To: Winnie Suen
Cc: HYAGHOBYAN@auditor.lacounty.gov; Paul McIver; Ryan, Christopher; Johnson, John E.
Subject: HDS and HDSII

Winnie,

In order for us to select a sample, the County must identify the client population that makes up the units charged to the program. If AB 3632 Funding Source Plan does not work for contact providers, then how contract providers identify AB3632 units of service reported on the supplemental form LAC102. You had mentioned that contract providers are responsible for the AB3632 units of service reported on the supplemental form LAC102. Does LA County verify how contract providers identify AB 3632 units?

In order for us to continue with testing, we would need the county to provide the following information:

1. AB 3632 identifier each contract provider;

2. Brake down of AB 3632 clients between reporting units (RU) within each legal entity for FY 2003-04, FY 2004-05, and FY 2005-06. (From that report we would be able to select RUs for testing);

3. Once we have selected our sample of RUs, we would be able to request detailed reports for each selected RU. (detailed reports would need to include the following information: client's ID, service provided, minutes/units, date, duration of the service); and

4. Once we have received detailed reports of selected RUs, we would be able to request clients' files.

If you have any questions, please do not hesitate to contact me.

Thank you,
-Anna

Anna Pilipyuk
Auditor, Division of Audits
State Controller's Office
(916) 323-4206 - phone
(916)324-7223 - fax
apilipyuk@sco.ca.gov

Tab 18

COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

ROBIN KAY, Ph.D.
Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

600 S. COMMONWEALTH AVE., 2nd fl., LOS ANGELES, CALIFORNIA 90005

BOARD OF SUPERVISORS
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.gov

Reply To: Child, Youth & Family Program Admin.
Countywide Case Management / Interagency Program
Phone: (213) 739-2334
Fax: (213) 738-6521

May 11, 2009

TO: Anna Pilipyuk, Auditor
Division of Audits

FROM : Paul McIver, LCSW, District Chief
Child, Youth, and Family Program Administration

SUBJECT: **RESPONSES TO QUESTIONS OF APRIL 22, 2009**

ELIGIBILITY

Soon after our telephone conference call of March 12, 2009, I requested and received the claims data file from John Ortega of our Chief Information Office. I requested the claims data for FY 02-03, FY 03-04, FY 04-05, and FY 05-06, the entire period which is subject to your current audit. The claims data file was supposed to contain all claims for services in which "AB 3632" was identified as the " PLAN", regardless of the source of funding for the services, consistent with DMH policy and practice for claiming Units of Service in the Integrated System (IS).

Upon receipt of the data, my Administrative Assistant, Marina Taylor, reviewed the entire file and annotated each case as "YES" (eligible for AB 3632) or "NO" (ineligible for AB 3632). She did not review each claim line, but used the seven digit identifier for each client and cross referenced each client in the IS, looking for a prior episode of assessment in Provider # 1939, #7191; or #7437, the only authorized providers of AB 3632 Assessment in Los Angeles County during the past fifteen years.

Upon completion of this first round of reviews, we selected a sample of 122 clients from 20 different agencies, including some contract agencies as well as some directly operated county programs. Each of the 122 selected were from the pool of "INELIGIBLE" clients identified by Ms. Taylor's review. We sent letters to the agencies requesting "proof of eligibility", as evidenced by a copy of an Assessment Report, an IEP, or at the very least, a Letter of Referral from one of my Assessment Unit staff. (See attached sample letter)

The responses to the letter were inconsistent. Indeed, some agencies sent copies of the aforementioned "proof of eligibility", and after my review, Ms. Taylor updated the annotated data file to indicate "Yes", when eligibility was confirmed. In some cases, agencies notified me that they did not have the proof of eligibility requested, and that in

most cases the clients were also eligible for EPSDT/MediCal, which was the funding utilized for the services attributed to "AB 3632" in error. Incredibly, some agencies sent in information that clearly proved that the clients were INELIGIBLE. It is my belief that the vast majority of errors are related to inaccurate coding and are attributable to the confusion and inadequate training at the time of the implementation of the IS system.

As noted above, Ms. Taylor and I did not do any tests of the individual claim lines to validate the services. One would need to compare the claims against the clinical records and IEP documents to determine if the services delivered were appropriate and consistent with the IEP. The tasks performed by Ms. Taylor and I did not address the issues of duplicate transactions, ineligible services, and miscoded services, but rather only to verify that the clients for whom services were claimed were indeed eligible as "AB 3632" students. Approximately ten days ago, I discovered that the data files sent to me by John Ortega did not contain all of the data for the entire audit period as I had requested. The data for FY 05-06 was omitted, so the detailed review conducted by Ms. Taylor covered only FY 02-03, FY 03-04, and FY 04-05.

I will forward under separate cover the updated file that Ms. Taylor was working from, if that would be helpful. I am not sure what data John Ortega sent to you, or if he modified it after Ms. Taylor reviewed it for me.

REHABILITATION

Los Angeles County does not provide, and has never authorized rehabilitation services to any AB 3632 eligible clients. As you may know, Los Angeles County filed a test claim with the Commission on State Mandates seeking inclusion of rehabilitation services in the menu of mandated and reimbursable services under AB 3632. In 2005, the Commission ruled that such services are not mandated and not reimbursable, so we have never included recommendations for rehabilitation in our assessment reports and to the best of my knowledge it has never appeared in any student IEPs.

Even when State DMH issued DMH Information Notice # 08-15 on June 23, 2008, which indicated that rehabilitation could be provided and funded with IDEA or State General Funds, I felt that State DMH was incorrect. We maintained our position that it is neither mandated nor reimbursable, despite vehement protestations from both local and statewide mental health service providers.

To be clear, rehabilitation is a legitimate mental health service in the EPSDT/ MediCal program, and there are clients who are eligible under both programs (EPSDT/MediCal and AB 3632). If clients received rehabilitation services, it was under the EPSDT /MediCal program and was not indicative of an AB 3632 related service.

As you know, State DMH recently rescinded DMH Information Notice # 08-15, confirming my position on this issue.

MODE 60 SFC 63

To date, I have been unable to complete my evaluation and research on this issue. I am going to be out of town at a conference from May 12.through May 17. You have been very patient on this, and I assure you I will address this upon my return to give you a written response to your questions.

If you have any questions about any of the above information, please contact me. Thank you

PM:ya

Attachment

c: Hasmik Yaghobyan, Auditor-Controller
Winnie suen, DMH

Tab 19

Pilipyuk, Anna

From: Pilipyuk, Anna
Sent: Wednesday, April 22, 2009 02:26 PM
To: HYAGHOBYAN@auditor.lacounty.gov; Paul McIver; 'Winnie Suen'; John Ortega
Cc: Ryan, Christopher; Johnson, John E.; Read, Rebecca
Subject: HDS and HDSII audits

Importance: High

To all,
I would like to update everyone on the current audit status and follow up on some outstanding issues.

We received UOS data yesterday (4/21/2009). The file included FYs 2001-09 (we requested only FY 2002-06). We had difficulty downloading and querying the data because all years were included in data table. I an addition, the Medi-Cal units column was inadvertently deleted. I spoke to John Ortega this morning and he stated that he will post new data (broken by FYs and including Medi-Cal units) by the close of business today.

Paul,

We have some questions on how you and your staff arrived to the list of all the eligible clients:

1. What is the total population of eligible clients?
2. In terms of client eligibility, what steps did you take to verify eligibility?
3. Did you discover any ineligible clients? If so, how many?
4. What portion of the total population did you test?
5. Did you perform tests to validate the services provided? If so, what steps did you perform to verify services?
6. Do you feel that the steps performed address all of the issues noted in testing? These issues include duplicate transactions, ineligible services and miscoded services.

We also wanted to follow up with you on Mode 60 SFC 63. During our last conference call you stated that you would like to research this matter before providing a response. Specifically, you were going to respond as to why the county believes that the pre-services are eligible in accordance with the parameters and guidelines of the program. We have not heard from you on this matter.

Furthermore, we have some questions on rehabilitation services:

1. Does Los Angeles County provide any rehabilitation services? If yes, how does the county identify the services?
2. Does Los Angeles County provide any rehabilitation (Mode 15) to AB3632 clients?
3. Does the county include any rehabilitation services in the claim?

Thank you,
-Anna

Anna Pilipyuk
Auditor
State Controller's Office

Prepared by: AP Date: 12/18/09
Reviewed by: CR Date: 12/22/09

Division of Audits - Mandated Cost
(916) 323-4206 - phone
(916) 324-7223 - fax
apilipyuk@sco.ca.gov

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

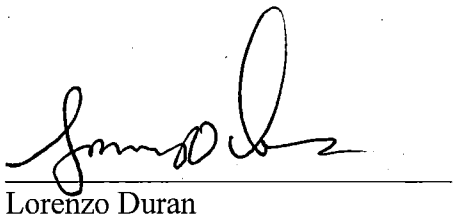
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 26, 2014, I served the:

State Controller's Office (SCO) Comments
Handicapped and Disabled Students, 13-4282-I-06
Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, 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 26, 2014 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: 11/26/14

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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

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

Michael Byrne, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
michael.byrne@dof.ca.gov

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

Tom Dyer, *Department of Finance (A-15)*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
tom.dyer@dof.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

Dorothy Holzem, *California Special Districts Association*
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

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

Robin Kay, *County of Los Angeles*
Claimant Representative
Department of Mental Health, 550 S. Vermont Avenue, 12th Floor, Los Angeles, CA 90020
Phone: (213) 738-4108
rkay@dmh.lacounty.gov

Jean Kinney Hurst, Senior Legislative Representative, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814-3941
Phone: (916) 327-7500
jhurst@counties.org

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

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*
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

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

Lee Scott, *Department of Finance*
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@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

Attachment C

JOHN CHIANG
California State Controller

May 7, 2013

Robin C. Kay, Ph.D.
Chief Deputy Director
Los Angeles County Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

Re: Los Angeles County's Request for the State Controller's Office to Consider Additional Costs After Issuance of the Final Audit Report for the Handicapped and Disabled Students (HDS) Program Audit on June 30, 2010, and the HDS II Program Audit on May 28, 2010

Dear Dr. Kay:

This letter is in reference to Lyn Wallensak's May 3, 2013, email related to our denial of the county's request for the State Controller's Office to reconsider costs for our audits of the HDS Program for the period of July 1, 2003, through June 30, 2006, and the HDS II Program for the period of July 1, 2002, through June 30, 2004.

This letter confirms that we denied the county's reconsideration request through a telephone conference with Ed Jewik, county SB 90 Coordinator, on April 17, 2013, and a follow up telephone conference with Mr. Jewik and Ms. Wallensak on April 29, 2013. During these conference calls, we discussed the reasons for the denial and informed county representatives that we will not be reissuing the audit reports.

Based on information the county provided to us in June and August 2012, our analyses of that information, and subsequent discussions with county staff, we determined that the county did not support that it claimed costs subject to the reconsideration within the statutory period provided for in Government Code sections 17560 and 17561. Furthermore, documentation for such costs was not provided during the course of our two audits. In addition, Government Code section 17568 states that the State will not reimburse any claim that is submitted more than one year after the filing deadline specified in the SCO's claiming instructions. We have no authority to allow costs that were not claimed. Any documentation supporting claimed costs should have been provided during the course the audits. In its response to the two audits, the county agreed with the audit results and provided management representation letters indicating that it had provided our office with complete information.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 700, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754-7619 (323) 981-6802

In reference to your question on the appeal process, the State Controller's Office does not have an internal audit appeal process. Appeals are filed with the Commission on State Mandates through an incorrect reduction claim (IRC). An IRC must be filed within three years following the date that we notified the county of a claim reduction. The State Controller's Office notified the county of a claim reduction on August 6, 2010, for the HDS Program audit and on June 12, 2010, for the HDS II Program audit. Information related to filing an IRC can be found on the Commission on State Mandates' website at www.csm.ca.gov/docs/IRCForm.pdf.

I discussed your request with my supervisor, Jeffrey V. Brownfield, Chief, Division of Audits. Mr. Brownfield concurs that the proper avenue to resolve your issue is through the Commission on State Mandates.

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

Sincerely,

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

JS/kw

12006

cc: Lyn Wallensak, Health Program Analyst III
Los Angeles County Department of Mental Health
Ed Jewik, Program Specialist V
Los Angeles County Department of Auditor-Controller
Jeffrey V. Brownfield, Chief
Division of Audits, State Controller's Office
Chris Ryan, Manager
Division of Audits, State Controller's Office

Attachment 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

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, <u>all claimable</u> 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.

Dated: September 30, 2015

Heather Halsey, Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

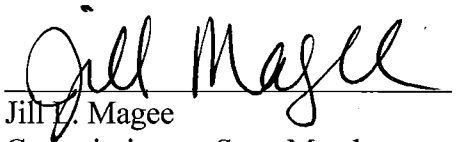
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/28/15

Claim Number: 05-4282-I-03

Matter: Handicapped and Disabled Students

Claimant: County of San Mateo

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

Patrick Dyer, *MGT of America*
Claimant Representative
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 502-5243
pdyer@mgtamer.com

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

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Harshil Kanakia, Administrative Services Manager, *County of San Mateo*
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smcgov.org

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

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, *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*
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

Juan Raigoza, Auditor-Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

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

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

Attachment 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

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. <u>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.</u>

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

Attachment F

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

May 20, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

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: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

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 **June 10, 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. 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, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 8, 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. 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

J:\MANDATES\IRC\2013\4282 (Handicapped and Disabled Students)\13-4282-I-06\Correspondence\draftPDtrans.docx

ITEM ___

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Government Code Sections 7572 and 7572.5;
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);

California Code of Regulations, Title 2, Division 9, Section 60040
(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][1]

Handicapped and Disabled Students

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

13-4282-I-06

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $18,180,829.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and
2. By clear and convincing evidence, the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

[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 specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Accordingly, staff recommends that the Commission deny this IRC.

Procedural History

The claimant submitted its reimbursement claim for fiscal year 2003-2004, dated January 5, 2005.[2] The claimant submitted its 2004-2005 reimbursement claim dated January 10, 2006.[3] The claimant then submitted an amended reimbursement claim for fiscal year 2005-2006, dated April 5, 2007.[4]

The Controller sent a letter to the claimant, dated August 12, 2008, confirming the scheduling of the audit.[5]

The Controller issued the Draft Audit Report dated May 19, 2010.[6] The claimant sent a letter to the Controller dated June 16, 2010, in response to the Draft Audit Report, agreeing with the findings and accepting the recommendations.[7] The claimant sent a letter to the Controller, also dated June 16, 2010, with regard to the claims and audit procedure.[8] The Controller issued the Final Audit Report dated June 30, 2010.[9]

On August 2, 2013, the claimant filed this IRC.[10] On November 25, 2014, the Controller filed late comments on the IRC.[11] On December 23, 2014, the claimant filed a request for an extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[12]

Commission staff issued the Draft Proposed Decision on May 20, 2016.[13]

---

[2] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[3] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[4] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[5] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[6] Exhibit A, IRC, page 547.

[7] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[8] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[9] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[10] Exhibit A, IRC, pages 1, 3.

[11] Exhibit B, Controller's Late Comments on the IRC, page 1.

[12] Exhibit C, Claimant's Rebuttal, page 1.

[13] Exhibit D, Draft Proposed Decision.

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 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, of the California Constitution.[14] 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."[15]

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.[16]

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.[17] In addition, sections 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.[18]

---

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

[15] *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.

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

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

[18] 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.

Claims

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

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated June 30, 2010. The Controller issued three documents, dated August 6, 2000, summarizing the audit findings that were stated in the Final Audit Report and setting a deadline for payment. On August 2, 2013, the claimant filed this IRC.	*Deny IRC as untimely* – 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), renumbered as § 1185(c) effective January 1, 2011.) Remittance advices and other communications which merely re-state the findings of the Final Audit Report do not re-set the running of the three-year limitations period.
Did the claimant waive the objections it is now raising?	In two letters both dated June 16, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Staff Analysis

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> 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.[19]

[19] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was re-numbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[20] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[21]

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[22]

On its face, the IRC was untimely filed.

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[23] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A-1)."[24]

The claimant's argument fails because: (1) the three documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the claimant's receipt of the Final Audit Report and did not re-commence upon claimant's receipt of the three documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant 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.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant

[20] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[21] See Code of Civil Procedure section 12a; Government Code section 6700(a)(1).

[22] Exhibit A, IRC, page 1.

[23] Exhibit A, IRC, pages 21-27.

[24] Exhibit A, IRC, page 6.

fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[25]

The Commission's regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.[26] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[27]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission.

Accordingly, the IRC should be denied as untimely filed.

B. In the Alternative, the County Waived Its Right To File An IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[28] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the audit findings.[29]

---

[25] Compare Exhibit A, IRC, pages 21-27 with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[26] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[27] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[28] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[29] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v.*

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[30] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[31] Waiver is a question of fact and is always based upon intent.[32] Waiver must be established by clear and convincing evidence.[33]

On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[34] In response to the Draft Audit Report, the claimant's Auditor-Controller issued a four-page letter dated June 16, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[35] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[36]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following three pages of the four-page letter contain further statements of agreement with each of the Controller's findings and recommendations.[37]

The claimant also filed a separate two-page letter dated June 16, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC. For example, in its IRC, the claimant argues that it provided cost report data — not actual cost data — to the

---

City of Santa Clarita (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

[30] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[31] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[32] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[33] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[34] Exhibit A, IRC, page 547.

[35] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[36] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[37] Exhibit A, IRC, pages 559-561.

Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[38] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[39] However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[40]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[41] However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[42] "We designed and implemented the County's accounting system to ensure accurate and timely records."[43] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[44] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[45]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[46] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[47] "We are

---

[38] Exhibit A, IRC, pages 6-10.

[39] Exhibit A, IRC, page 9. (Emphasis in original.)

[40] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added.)

[41] Exhibit A, IRC, pages 11-15, 17-18.

[42] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[43] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[44] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[45] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[46] Exhibit A, IRC, pages 15-17.

[47] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[48]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision denying the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

[48] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Section 60040 (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])[49] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *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 July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 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.

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:

[49] 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 specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case

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 was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[50] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts (which would then become subject to the program's reimbursement formula):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[51]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims, and that the IRC should be denied and dismissed with prejudice on that separate and independent basis.

[50] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[51] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

Accordingly, the Commission denies this IRC.

I. Chronology

01/05/2005 Claimant dated the reimbursement claim for fiscal year 2003-2004.[52]

01/10/2006 Claimant dated the reimbursement claim for fiscal year 2004-2005.[53]

04/05/2007 Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[54]

08/12/2008 Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[55]

05/19/2010 Controller issued the Draft Audit Report dated May 19, 2010.[56]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[57]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 with regard to the claims and audit procedure.[58]

06/30/2010 Controller issued the Final Audit Report dated June 30, 2010.[59]

08/02/2013 Claimant filed this IRC.[60]

11/25/2014 Controller filed late comments on the IRC.[61]

12/23/2014 Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

---

[52] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[53] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[54] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[55] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[56] Exhibit A, IRC, page 547.

[57] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[58] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[59] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[60] Exhibit A, IRC, pages 1, 3.

[61] Exhibit B, Controller's Late Comments on the IRC, page 1.

03/26/2015 Claimant filed rebuttal comments.[62]

05/20/2016 Commission staff issued the Draft Proposed Decision.[63]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act ("EHA") with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[64] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[65] The EHA was ultimately re-named the Individuals with Disability Education Act ("IDEA") and 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.[66]

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[67] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[68] And, in 1985, the Legislature further amended chapter 26.5.[69]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[70]

---

[62] Exhibit C, Claimant's Rebuttal, page 1.

[63] Exhibit D, Draft Proposed Decision.

[64] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) [current version].

[65] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) [current version].

[66] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[67] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[68] Statutes 1984, chapter 1747.

[69] Statutes 1985, chapter 1274.

[70] "With the passage of AB 3632 (fn.), 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 [local education agencies] to acquire qualified staff to handle 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

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines approving, *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[71] The Commission found that the activities of providing mental health assessments; participation in the IEP process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[72] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[73]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[74] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.[75]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for

---

providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[71] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

[72] Former Welfare and Institutions Code sections 5600 et seq.

[73] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[74] Statutes 2004, chapter 493 (SB 1895).

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

providing mental health services under IDEA back to school districts, effective July 1, 2011.[76] On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[77]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[78] The first page of this four-page letter contains the following statement:

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[79]

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[80]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct

---

[76] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[77] Exhibit A, IRC, page 547.

[78] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[79] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[80] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[81]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[82]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[83] Material statements in the two-page letter include:

- "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[84]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[85]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[86]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[87]
- "We are not aware of any . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[88]

---

[81] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[82] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[83] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[84] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[85] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[86] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[87] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[88] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

- "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[89]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[90]

On June 30, 2010, the Controller issued the Final Audit Report.[91] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[92]

On August 2, 2013, the claimant filed this IRC with the Commission.[93]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[94]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of

[89] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[90] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[91] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[92] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[93] Exhibit A, IRC, pages 1, 3.

[94] Exhibit A, IRC, pages 10-11.

Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[95]

3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[96]

4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[97]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[98]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[99]

2. The documentation provided by the claimant did not verify the claimed costs.[100]

3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[101]

[95] Exhibit A, IRC, pages 11-12.

[96] Exhibit A, IRC, pages 12-15, 17-18.

[97] Exhibit A, IRC, pages 15-17.

[98] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with re-filing of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

[99] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[100] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[101] Exhibit B, Controller's Late Comments on the IRC, page 29.

4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[102]

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 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, of the California Constitution.[103] 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."[104]

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.[105] Under this standard, the courts have found:

> 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

[102] Exhibit B, Controller's Late Comments on the IRC, page 28.

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

[104] *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.

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

between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[106]

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. [107] In addition, sections 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.[108]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> 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.[109]

Thus, the applicable limitations period is "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."[110]

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[111] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[112]

---

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

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

[108] 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.

[109] Former Code of California Regulations, title 2, section 1185(b), which was re-numbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "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." Code of California Regulations, title 2, section 1185.1(c).

[110] Former Code of California Regulations, title 2, section 1185(b).

[111] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[112] See Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."). See also Code of

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[113]

On its face, the IRC was untimely filed.[114]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[115] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[116]

The claimant's argument fails because: (1) the three documents were not notices of claim adjustment; (2) even if they were, the limitations period commenced upon the claimant's receipt of the Final Audit Report and did not re-commence upon the claimant's receipt of the three documents.

1. The Three Documents Dated August 6, 2010, Are Not Notices Of Adjustment.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment."

Government Code section 17558.5(c) reads in relevant 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."

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of

---

Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[113] Exhibit A, IRC, page 1.

[114] "The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[115] Exhibit A, IRC, pages 21-27.

[116] Exhibit A, IRC, page 6.

all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[117]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[118]

None of the three documents provides the claimant with notice of any new finding. When the claimant received the Final Audit Report, the claimant learned of the dollar amounts which would not be reimbursed and learned of the dollar amounts which the Controller contended that the claimant owed the State.[119] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not

---

[117] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment.").

[118] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[119] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

In a subsequent letter, the Controller appeared to state that the claimant was notified of the claim reductions on August 6, 2010, the date of the three documents. "An IRC must be filed within three years following the date that we notified the county of a claim reduction. The State Controller's Office notified the county of a claim reduction on August 6, 2010, for the HDS Program . . . ." Exhibit A, IRC, page 486 (Letter from Jim L. Spano to Robin C. Kay, dated May 7, 2013).

The Controller's statement is not outcome-determinative for several reasons. First, the Controller's letter does not explicitly state that August 6, 2010, was the first or earliest date on which claimant was informed of the reductions. Second, to the extent that the Controller was stating its legal conclusion regarding the running of the limitations period, the Commission is not bound by the Controller's interpretation of state mandate law. See, e.g., Government Code section 17552 (Commission's "sole and exclusive" jurisdiction). Third, to the extent that the Controller was making a statement of fact, the relative vagueness of the statement in the letter dated May 7, 2013 (which was sent more than two and a half years after the fact), is, on a preponderance of the evidence standard, outweighed by the evidence contained in the Final Audit Report and its cover letter.

remitted.[120] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously un-announced adjustments.[121]

For these reasons, the Commission is not persuaded that the three documents are notices of adjustment which re-set the running of the limitations period.

2. The Limitations Period to File this IRC Commenced on June 30, 2010, and Expired on July 1, 2013.

From May 8, 2007, to June 30, 2014, the regulation containing the limitations period read:

> 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.[122]

Per this regulation, the claimant's IRC was untimely filed.

The regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim could have been filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element"

[120] Exhibit A, IRC, page 547.

[121] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. Government Code section 17558.5(c) ("Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."). Whatever term may accurately be used to characterize the three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

[122] Former Code of California Regulations, title 2, section 1185(b), renumbered as 1185(c) effective January 1, 2011.

> accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[123]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][124]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that day, the claimant had been (from its perspective) harmed by a claim reduction, had received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission. The claimant could have filed its IRC one day, one month, or even three years after June 30, 2010; instead, the claimant filed its IRC three years and 32 days after — which is 32 days late.

This finding is consistent with three recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of adjustment in the record.[125] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[126] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[127]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a

---

[123] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[124] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[125] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[126] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[127] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

notice to the claimant of the adjustment that includes the reason for the adjustment."[128] In the instant IRC, the limitations period therefore began to run when the claimant received the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was sent after the Controller's Final Audit Report.[129] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[130] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[131]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[132]

Consequently, the limitations period to file this instant IRC commenced on June 30, 2010, and expired on July 1, 2013.

The IRC is denied as untimely filed.

---

[128] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[129] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

[130] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. 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." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[131] Exhibit A, IRC, page 542.

[132] All that being said, an administrative agency's adjudications need not be consistent. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

B. In the Alternative, the County Waived Its Right To File An IRC.

Even if the claimant filed its IRC on time (which is not the case), the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on this separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 14)."[133] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[134]

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[135]

---

[133] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[134] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's June 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding").

[135] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[136] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[137] Waiver is a question of fact and is always based upon intent.[138] Waiver must be established by clear and convincing evidence.[139]

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims. On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[140] The record contains no evidence of the claimant objecting to the draft audit report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings, and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a four-page letter dated June 16, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[141] The first page of this four-page letter[142] contains the following statement:

---

[136] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[137] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[138] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[139] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

[140] Exhibit A, IRC, page 547.

[141] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[142] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield) (the "four-page letter").

> *The County's attached response indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDS are eligible, mandate related, and supported.[143]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance."

The following three pages of the four-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1, that the claimant overstated assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[144]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[145]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

---

[143] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[144] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[145] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[146]

Each of the claimant's responses to the Controller's three findings supports the Commission's conclusion that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the four-page letter to reserve rights or to clarify issues,[147] the overall intention communicated in the letter is that the claimant intended to agree with and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the four-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated June 16, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

> June 16, 2010
>
> Mr. Jim L. Spano, Chief
> Mandated Costs Audits Bureau
> Division of Audits
> California State Controller's Office
> P.O. Box 942850
> Sacramento, CA 94250-5874
>
> Dear Mr. Spano:
>
> **HANDICAPPED AND DISABLED STUDENTS PROGRAM**
>
> **JULY 1, 2003 THROUGH JUNE 30, 2006**
>
> In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:

---

[146] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[147] For example, the claimant purports, without citation to legal authority, to "reserve[] the right to claim these unallowed [assessment and treatment] costs in future fiscal year claims." (Exhibit A, IRC, page 560.) The claimant also purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provided additional information to support its claims. (Exhibit A, IRC, page 558.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs these sporadic, pro forma statements.

1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.

2. We designed and implemented the County's accounting system to ensure accurate and timely records.

3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines.

5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.

6. Excluding mandated program costs, the County did not recover indirect cost from any state or federal agency during the audit period.

7. We are not aware of any:

a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[148]

The admissions made by the claimant in the two-page letter contradict arguments now made by claimant in the instant IRC.

In its IRC, the claimant argues that it provided cost report data — not actual cost data — to the Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[149] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[150] "The inclusion of the Cost Report Method in the original parameters and guidelines and in all subsequent parameters and guidelines indicates that the intent of such a methodology was to provide a basis to reimburse counties for the costs of the State-mandated program based on an allocation formula *and not actual costs*," the IRC continues.[151]

However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[152]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[153] For example, the claimant now contends that "repeated attempts to develop a 'query' that would extract data from the County's Mental Health Management Information System (MHMIS) and Integrated System (IS) generated results that were unreliable"[154] and "[t]he source documentation, therefore, would be in each agency's internal records and these are the documents that the SCO should have used in conducting the audit."[155]

However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate

---

[148] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010) (the "two-page letter").

[149] Exhibit A, IRC, pages 6-10.

[150] Exhibit A, IRC, page 9. (Emphasis in original.)

[151] Exhibit A, IRC, page 10. (Emphasis added.)

[152] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added).

[153] Exhibit A, IRC, pages 11-15, 17-18.

[154] Exhibit C, Claimant's Rebuttal, pages 3-4.

[155] Exhibit C, Claimant's Rebuttal, page 4.

financial records and data to support the mandated cost claims submitted to the SCO."[156] "We designed and implemented the County's accounting system to ensure accurate and timely records."[157] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[158] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[159]

In the IRC, the claimant argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[160]

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[161] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[162]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in June 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Therefore, the Commission denies this IRC.

---

[156] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[157] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[158] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[159] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[160] Exhibit A, IRC, pages 15-17.

[161] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[162] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

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 May 20, 2016, I served the:

> **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
> *Handicapped and Disabled Students*, 13-4282-I-06
> Government Code Sections 7572 and 7572.5
> Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
> California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
> (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])
> Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
> County of Los Angeles, 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 May 20, 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: 3/24/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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

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

Robin Kay, *County of Los Angeles*
Claimant Representative
Department of Mental Health, 550 S. Vermont Avenue, 12th Floor, Los Angeles, CA 90020
Phone: (213) 738-4108
rkay@dmh.lacounty.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

Paul Lukacs, Senior Commission Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
paul.lukacs@csm.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

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

Attachment G

RECEIVED
June 06, 2016
Commission on
State Mandates

BETTY T. YEE
California State Controller

June 3, 2016

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, 13-4282-I-06
Government Code Sections 7576 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60040
(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])
Fiscal Years: 2003-04, 2004-05, and 2005-06
Los Angeles County, Claimant

Dear Ms. Halsey:

The State Controller's Office has reviewed the Commission on State Mandates' (Commission) draft proposed decision dated May 20, 2016, for the above incorrect reduction claim (IRC) filed by Los Angeles County. We support the Commission's conclusion and recommendation. The Commission found that the claimant's IRC was untimely filed and that, even if it had been timely filed, the claimant waived its arguments when responding to the draft audit report.

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/ls

17337

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

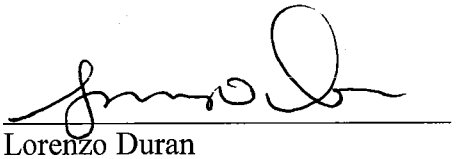
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 6, 2016, I served the:

SCO Comments on the Draft Proposed Decision
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(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])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, 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 June 6, 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: 3/24/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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

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

Robin Kay, *County of Los Angeles*
Claimant Representative
Department of Mental Health, 550 S. Vermont Avenue, 12th Floor, Los Angeles, CA 90020
Phone: (213) 738-4108
rkay@dmh.lacounty.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

Paul Lukacs, Senior Commission Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
paul.lukacs@csm.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

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

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 2, 2016, I served the:

Requests for Reconsideration of an Adopted Decision (Gov. Code § 17559(a); Cal. Code Regs., tit. 2, § 1187.15), Notice of Consolidation, and Notice of Hearing

16-RAD-01
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Sections 60020, 60050,
60030, 60040, 60045, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26]
final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years 2002-2003 and 2003-2004
County of Los Angeles, Requester

AND

16-RAD-02
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5;
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Section 60040
(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]
Fiscal Years 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Requester

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 2, 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: 9/1/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

Claimant: County of Los Angeles

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

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

Robin Kay, *County of Los Angeles*
Claimant Representative
Department of Mental Health, 550 S. Vermont Avenue, 12th Floor, Los Angeles, CA 90020
Phone: (213) 738-4108
rkay@dmh.lacounty.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

Peter Lee, Deputy County Counsel, *County of Los Angeles*
500 West Temple Street, 648 Kenneth Hahn Hall of Administration, Los Angeles, CA 90012-2713

Phone: (213) 974-1857
plee@counsel.lacounty.gov

Paul Lukacs, Senior Commission Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
paul.lukacs@csm.ca.gov

John Naimo, Acting Auditor-Controller, *County of Los Angeles*
Auditor-Controller, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
jnaimo@auditor.lacounty.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

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

Mary Wickham, County Counsel, *County of Los Angeles*
500 West Temple Street, 648 Kenneth Hahn Hall of Administration, Los Angeles, CA 90012-2713
Phone: (213) 974-1811
mwickham@counsel.lacounty.gov