

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
October 28, 2016

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

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:04 a.m. Executive Director Heather Halsey called the roll. Members Chivaro and Saylor were absent at roll call.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Hariri, the September 23, 2016 hearing minutes were adopted by a vote of 4-0 with Member Ramirez abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATE

Item 7* *Training for School Employee Mandated Reporters, 14-TC-02*
Education Code Section 44691(b) and (c); Penal Code Section 11165.7(d);
As Added or Amended by Statutes 2014, Chapter 797 (AB 1432)
Lake Elsinore Unified School District, Claimant

Chairperson Ortega asked if there was any objection to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment.

Member Olsen made a motion to adopt the Consent Calendar. With a second by Member Alex, the Consent Calendar was adopted by a vote of 5-0.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Heather Halsey noted that after the agenda issued, Items 3 and 4 were postponed to the January 2017 hearing by the requests of the Controller and the claimant, respectively. Ms. Halsey swore in the parties and witnesses participating in the hearing.

Ms. Halsey suggested that Item 2 be skipped and returned to at a later time during the hearing and Chairperson Ortega agreed.

INCORRECT REDUCTION CLAIMS

Item 5 *Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services, 12-9705-I-04*

Government Code Section 7576 as amended by Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110

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

County of Los Angeles, Claimant

This Incorrect Reduction Claim addresses audit reductions made by the State Controller's Office to reimbursement claims filed under *Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services* program.

Senior Commission Counsel Julia Blair presented this item and recommended that the Commission deny this Incorrect Reduction Claim.

Parties were represented as follows: Edward Jewik and Hasmik Yaghobyan, representing the claimant; Jim Spano and Chris Ryan representing the State Controller's Office.

Member Saylor joined the meeting.

Member Chivaro joined the meeting.

Following discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to deny this Incorrect Reduction Claim was adopted by a vote of 7-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 *Appeal of Executive Director Decision, 15-AEDD-01*
County of San Diego, Appellant

This matter is an appeal by the County of San Diego of the executive director's decision to dismiss an Incorrect Reduction Claim filed by the County of San Diego because it was not filed within the period of limitation required by section 17551(c) of the Government Code and section

1185.1 of the Commission's regulations and was, therefore, incomplete.

Executive Director Heather Halsey stated that the appellant's representative notified Commission staff that he will not be appearing at this hearing, and will stand on the written and oral submissions in the record.

Chief Legal Counsel Camille Shelton presented the item and recommended that the Commission adopt the proposed decision to uphold the executive director's decision to deem the filing incomplete for lack of jurisdiction.

Parties were represented as follows: Jim Spano representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to reject the executive director's decision and grant the appeal on the basis that the revised audit report "superseded" the first audit report. With a second by Member Hariri, the motion to reject the staff recommendation and grant the appeal was adopted by a vote of 5-2.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 6 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

STAFF REPORTS

- Item 8 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 10 Executive Director: Workload Update and Tentative Agenda Items for the January 2017 and March 2017 Meetings (info/action)

Executive Director Heather Halsey presented this item and reported on the Commission's pending caseload.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

Nothing pending.

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)
Third District Court of Appeal, Case No. C070357
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
Fourth District Court of Appeal, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
3. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763,

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4. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
5. *California School Board Association (CSBA) v. State of California et al.*
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*
(petition and cross-petition)
California Supreme Court, Case No. S214855
Second District Court of Appeal, Case No. B237153
Los Angeles County Superior Court, Case No. BS130730
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a).

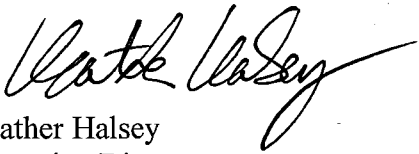
The Commission adjourned into closed executive session at 10:27 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION
REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:32 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 10:32 a.m.



Heather Halsey
Executive Director

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**COMMISSION ON
STATE MANDATES**

PUBLIC MEETING

COMMISSION ON STATE MANDATES

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TIME: 10:00 a.m.

DATE: Friday, October 28, 2016

**PLACE: State Capitol, Room 447
Sacramento, California**

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by:

Daniel P. Feldhaus

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer
(Vice Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

KEN ALEX
Director
Office of Planning & Research

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 10)

CAMILLE N. SHELTON
Chief Legal Counsel
(Items 2 and 9)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

JULIA BLAIR
Senior Commission Counsel
(Item 5)

KERRY ORTMAN
Program Analyst
(Item 8)



PUBLIC TESTIMONY

Appearing Re Item 2:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost and Financial Audits Bureaus
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 5:

For Claimant County of Los Angeles:

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

ED JEWIK
Program Specialist V
Department of Auditor-Controller Accounting Division
500 W. Temple Street, Room 603
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost and Financial Audits Bureaus
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

CHRISTOPHER B. RYAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816



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1 BE IT REMEMBERED that on Friday, October 28, 2016,
2 commencing at the hour of 10:04 a.m., thereof, at the
3 State Capitol, Room 447, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 

7 CHAIR ORTEGA: Okay, good morning, everyone.

8 I'm going to go ahead and get us started, and then
9 we'll shuffle as people come in.

10 If you could please call the roll.

11 MS. HALSEY: Mr. Alex?

12 MEMBER ALEX: Here.

13 MS. HALSEY: Mr. Chivaro?

14 *(No response)*

15 MS. HALSEY: Mr. Hariri?

16 VICE CHAIR HARIRI: Here.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Here.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: Here.

23 MS. HALSEY: Mr. Saylor?

24 *(No response)*

25 CHAIR ORTEGA: Okay, we do have a quorum.

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1 And, for the record, since I didn't say it at the
2 beginning, this is the October 28th hearing of the
3 Commission on State Mandates.

4 Our first item is the minutes from September 23rd.
5 Any corrections or comments on the minutes?

6 MEMBER OLSEN: I'll move adoption.

7 CHAIR ORTEGA: Okay, moved by Ms. Olsen.

8 VICE CHAIR HARIRI: Second.

9 CHAIR ORTEGA: Second by Mr. Hariri.

10 All in favor of adoption of the minutes, say "aye."

11 *(A chorus of "ayes" was heard.)*

12 MEMBER RAMIREZ: I wasn't here, so I'd like to
13 abstain.

14 CHAIR ORTEGA: Okay, we'll have Ms. Ramirez
15 abstaining; and we still have four. So we're good;
16 right?

17 Okay, so the minutes are approved.

18 MS. HALSEY: And now we will take up comment for
19 matters not on the agenda.

20 Please note that the Commission cannot take action
21 on items not on the agenda; however, it can schedule
22 issues raised by the public for consideration at future
23 meetings.

24 CHAIR ORTEGA: Any comments from the public on items
25 not on the agenda?

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1 *(No response)*

2 CHAIR ORTEGA: Seeing none, we'll move to consent.

3 MS. HALSEY: Item 7 is proposed for consent.

4 CHAIR ORTEGA: Okay. Any comments from
5 commissioners on the consent?

6 MEMBER OLSEN: Move adoption of consent calendar.

7 CHAIR ORTEGA: Moved by Ms. Olsen.

8 MEMBER ALEX: Second.

9 CHAIR ORTEGA: Second by Mr. Alex.

10 Any public comment on the consent item?

11 *(No response)*

12 CHAIR ORTEGA: All right, seeing none, all in favor,
13 say "aye."

14 *(A chorus of "ayes" was heard.)*

15 CHAIR ORTEGA: It passes unanimously here.

16 MS. HALSEY: Let's move to the Article 7 portion of
17 the hearing.

18 Please note that after the agenda issued, Items 3
19 and 4 were postponed to the January 2017 hearing by the
20 requests of the Controller and the claimant,
21 respectively.

22 Will the parties and witnesses for Items 2 and 5
23 please rise?

24 *(Parties/witnesses stood to be sworn or affirmed.)*

25 MS. HALSEY: Do you solemnly swear or affirm that

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1 the testimony which you are about to give is true and
2 correct, based on your personal knowledge, information,
3 or belief?

4 (A chorus of affirmative responses was heard.)

5 MS. HALSEY: Thank you.

6 I would suggest that we skip Item 2 for now and come
7 back to it.

8 CHAIR ORTEGA: Yes.

9 MS. HALSEY: So we'll go ahead to Item 5.

10 Senior Commission Counsel Julia Blair will present
11 Item 5, an incorrect reduction claim on *Seriously*
12 *Emotionally Disturbed Students, Out-of-State*
13 *Mental-Health Services*.

14 MS. BLAIR: Good morning. This incorrect reduction
15 claim addresses the Controller's reduction of vendor
16 costs claimed for board and care and treatment services
17 for out-of-state residential placement of seriously
18 emotionally disturbed, SED, pupils in facilities
19 organized and operated for profit, and indirect costs
20 claimed.

21 During all of the fiscal years at issue in these
22 claims, the parameters and guidelines only allow vendor
23 payments for SED pupils placed in an out-of-state program
24 organized and operated on a nonprofit basis.

25 Since the facilities providing the service are

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1 for-profit facilities, the costs are not reimbursable
2 under the parameters and guidelines, and the reduction is
3 correct as a matter of law.

4 There is no evidence in the record that the
5 Controller's findings relating to the indirect cost rate
6 are incorrect as a matter of law or are arbitrary,
7 capricious, or entirely lacking in evidentiary support.

8 Staff recommends the Commission adopt the proposed
9 decision to deny this IRC.

10 Will the parties and witnesses please state your
11 names for the record?

12 MR. JEWIK: Ed Jewik, Los Angeles County.

13 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of the
14 County of Los Angeles.

15 MR. SPANO: Jim Spano with the State Controller's
16 Office.

17 MR. RYAN: Chris Ryan, State Controller's Office,
18 Audits Division.

19 CHAIR ORTEGA: Okay, go ahead, Mr. Jewik.

20 MR. JEWIK: Good morning. And we just want to thank
21 the Commission for giving us the opportunity to appear
22 before this hearing.

23 We would like to respectfully disagree with the
24 proposed decision from the Commission staff. The basis
25 for the disallowance of -- I'm going to emphasize --

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1 mental-health services as a result of this audit, we
2 disagree with. The reason we disagree with it is that
3 the State Controller's Office is relying on Welfare and
4 Institutions Code, which does reference -- which I'm
5 going to read -- which does reference the nonprofit
6 issue.

7 It states, and it was included in the record,
8 "Except as specifically provided for in statute,
9 reimbursement for AFDC-foster care rates shall only be
10 paid to a group home or short-term residential treatment
11 center organized and operated on a nonprofit basis."

12 We did not disagree, and we allow the disallowance
13 of the placement costs from our social services
14 department as a result of the audit conducted by the
15 State Controller's Office. However, we disagree with the
16 mental-health services component of the costs that was
17 disallowed by the State Controller's Office.

18 In the same Welfare and Institutions Code that the
19 State Controller's Office relies on, it clearly states
20 what goes into the AFDC-FC rate. And it makes a
21 reference that the AFDC-FC rate -- and it's defined in
22 that Welfare and Institutions Code -- is related to care
23 and supervision.

24 And I'll read for the record from Welfare and
25 Institutions Code 11460(b). It states that, "'Care and

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1 supervision' includes food, clothing, shelter, daily
2 supervision, school supplies, a child's personal
3 incidentals, liability insurance with respect to a child,
4 reasonable travel to the child's home for visitation, and
5 reasonable travel for the child to remain in the school
6 in which he or she is enrolled at the time of placement."

7 We did not disagree with the State Controller's
8 Office on the cost of placement. However, what's absent
9 from this Welfare and Institutions Code is mental-health
10 services.

11 *(Mr. Saylor entered the meeting room.)*

12 MR. JEWIK: In fact, mental-health services is not
13 even referred to in this Welfare and Institutions Code.

14 So if the basis of the denial of the mental-health
15 services costs -- again, I emphasize, it's mental-health
16 costs we are disagreeing with -- if the basis of the
17 denial is mental-health services based on this Welfare
18 and Institutions Code, while this Welfare and
19 Institutions Code makes no references to mental-health
20 services. In fact, the word "mental health" is not even
21 referred to in this Welfare and Institutions Code. It's
22 only in reference to AFDC-Foster Care.

23 So we allowed for the disallowance of the costs of
24 placement. We are disagreeing, that the State
25 Controller's Office is making error in law based on this

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1 Welfare and Institutions Code by disallowing the mental-
2 health services costs.

3 Okay, so that is our disagreement with the State
4 Controller's Office and with the proposed decision.

5 CHAIR ORTEGA: Thank you.

6 Anything to add?

7 MS. YAGHOBYAN: Thank you. Good morning.

8 Without repeating whatever Mr. Jewik said, I would
9 just like to make a point of the standard of review that
10 the Commission staff used in order to decide the IRC on
11 the merits.

12 As the Commission stated on page 17 of their
13 proposed decision, they said that they must examine the
14 audit decisions only to determine whether the State
15 Controller's Office's decision was arbitrary, capricious,
16 et cetera, et cetera. However, we believe that the
17 Commission's review must have been de novo. They should
18 have done their independent review without even
19 considering the State Controller's Office's decision,
20 which they did not do it. So we would like to just
21 oppose their decision based on that standard of review
22 also.

23 CHAIR ORTEGA: Okay.

24 MS. YAGHOBYAN: Thank you.

25 MEMBER ALEX: Why would it be de novo? Just because

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1 it's a matter of law?

2 MS. YAGHOBYAN: Exactly.

3 MEMBER ALEX: Okay, so it's -- okay, got it. Thank
4 you.

5 MS. YAGHOBYAN: Right, right. Because they have to
6 do their own independent review, not based on whatever
7 they said or just looking for if their decision was
8 arbitrary or capricious.

9 MEMBER ALEX: Well, I mean, just -- my understanding
10 is that it would be arbitrary and capricious if they
11 acted against the legal requirement.

12 MS. YAGHOBYAN: Right. But if you're doing it
13 de novo, you're not just considering what they said, you
14 would just do your independent review. That's what we
15 are saying. That's the standard that should have been
16 used.

17 Thank you.

18 MS. HALSEY: Can I clarify something?

19 The page Hasmik is citing to is our boilerplate.
20 And it says there that audit issues have the standard
21 that she is referring to; but issues of law are de novo.
22 And in this case it is an issue of law, and the de novo
23 standard was applied in the analysis.

24 CHAIR ORTEGA: Okay, thank you.

25 MS. YAGHOBYAN: With all due respect, we disagree,

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1 though.

2 Thank you.

3 CHAIR ORTEGA: Thank you.

4 Mr. Spano or Mr. Ryan, any comments?

5 MR. RYAN: The Controller supports the staff's
6 conclusion and recommendation.

7 *(Mr. Chivaro entered the meeting room.)*

8 CHAIR ORTEGA: Okay, for the record, I'd like to
9 note that Mr. Saylor and Mr. Chivaro have joined the
10 meeting.

11 Any comments or questions from commissioners?

12 MEMBER ALEX: Well, I wouldn't mind staff responding
13 to the issue raised about mental health versus welfare.

14 MS. BLAIR: Right. So, if you look at the sections
15 that were actually included in the parameters and
16 guidelines, they specifically refer to Welfare and
17 Institutions Code 11460(c)(2) through (3) and
18 11460(c)(3), when they're talking about all the program
19 treatment program services. And so they are borrowing a
20 section from the Welfare and Institutions Code that
21 doesn't actually apply holistically to this program.
22 It's just the specific limitation on it being a nonprofit
23 facility for the entire program.

24 MS. SHELTON: Just to dovetail on that, the Welfare
25 and Institutions Code section that Mr. Jewik was

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1 referencing is part of the foster-care program, and the
2 handicapped and disabled regulations incorporated by
3 reference that code section and made it applicable to the
4 entire residential program, which, by regulation, is
5 required to provide educational and mental-health
6 services on a nonprofit basis.

7 MR. JEWIK: May I comment?

8 CHAIR ORTEGA: Sure.

9 MR. JEWIK: Well, this code here, as stated, is
10 related to the welfare side of the program, it is the
11 cost of placement in the Welfare and Institutions Code
12 which I read from. It defines what the care and
13 supervision is within the context of the foster-care
14 rate. Mental-health services is not included in
15 that foster-care rate. It hasn't been included in that
16 foster-care rate. And if the State Controller's Office
17 is basing their denial on this Welfare and Institutions
18 Code, mental-health services is not included in this
19 code. It's not even referenced in this code. In fact,
20 the word mental-health services is never stated in this
21 code. And if that is their basis for denying it, then
22 it's an error in law.

23 Now, if there's some other Welfare and Institutions
24 Code that they can rely on, that's fine. But if they're
25 going to rely on this code, then this code does not make

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1 reference to mental-health services.

2 MS. SHELTON: Just to clarify, that the denial is
3 based on Title 2, section 60100 of the Handicapped and
4 Disabled regulations.

5 CHAIR ORTEGA: Okay, any other questions?

6 *(No response)*

7 CHAIR ORTEGA: Are there any comments from the
8 public on this item?

9 *(No response)*

10 CHAIR ORTEGA: Okay, seeing none, I'd entertain a
11 motion.

12 MEMBER ALEX: I'll move the staff recommendation.

13 CHAIR ORTEGA: Okay, moved by Mr. Alex.

14 MEMBER CHIVARO: Second.

15 CHAIR ORTEGA: Second by Mr. Chivaro.

16 Please call the roll.

17 MS. HALSEY: Mr. Alex?

18 MEMBER ALEX: Aye.

19 MS. HALSEY: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MS. HALSEY: Mr. Hariri?

22 VICE CHAIR HARIRI: Aye.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Ms. Ortega?

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1 CHAIR ORTEGA: Aye.

2 MS. HALSEY: Ms. Ramirez?

3 MEMBER RAMIREZ: Aye.

4 MS. HALSEY: Mr. Saylor?

5 MEMBER SAYLOR: Aye.

6 MS. HALSEY: Thank you.

7 MS. YAGHOBYAN: Thank you.

8 MS. HALSEY: Going back to Item 2, Chief Legal
9 Counsel Camille Shelton will present Item 2, the appeal
10 of the Executive Director decision filed by the County
11 of San Diego for the dismissal of its incorrect reduction
12 claim because it was not filed within the period of
13 limitation.

14 Appellant's representative notified Commission staff
15 that he will not be appearing at this hearing, and will
16 stand on the written and oral submissions in the record.

17 MS. SHELTON: Good morning. This item was heard by
18 the Commission at the last three prior hearings but has
19 not received a sufficient number of votes to take action.

20 No changes have been made to the proposed decision.
21 Staff recommends that the Commission adopt the proposed
22 decision to uphold the Executive Director's decision.

23 Will the parties and witnesses please state your
24 name for the record?

25 MR. SPANO: Jim Spano, State Controller's Office,

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1 Division of Audits.

2 CHAIR ORTEGA: Okay, any --

3 VICE CHAIR HARIRI: I have a couple of questions.

4 CHAIR ORTEGA: Sure.

5 VICE CHAIR HARIRI: Can the findings be segregated
6 and separated into separate claims?

7 MR. SPANO: Say it again?

8 VICE CHAIR HARIRI: The findings. The revised
9 report speaks of findings, Finding 1, 2, 3, and 4. Can
10 these findings be segregated and treated as separate
11 claims? Or were they also excluded from the revised
12 report? Although the revised report addressed Finding 4,
13 not the finding that the County had an issue with. Did
14 the revised report include all claims?

15 MR. SPANO: Yes. Both -- the original and a revised
16 report base included all fiscal years being audited right
17 now. So it's not that -- we didn't exclude any of the
18 findings. All we did was updated one of the findings to
19 incorporate on the EPSDT settlement that was made late
20 by the Department of Mental Health. But because of the
21 offsetting revenues exceeded costs claimed right now, it
22 didn't have any impact on the dollar. So we revised the
23 report to incorporate the settlement information, but
24 it didn't have any dollar impact at all on the findings.
25 But the revised report incorporated all findings.

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1 VICE CHAIR HARIRI: The reason I ask this question
2 is because there was a discussion whether the term
3 "supersedes" means what it means; or based on an argument
4 by our counsel, is that the revised report only addressed
5 Finding 4, and made no fiscal changes, while the County
6 has an issue with Finding 2.

7 So if the revised report included the entire claim,
8 and it, verbatim, states "it supersedes all previous
9 reports," how can one not consider that the clock begins
10 to tick at that point, when the revised report was
11 issued? "Supersedes" means supersedes. And it included
12 the entire claim, even though there were various elements
13 that were discussed at one time or another. But it
14 doesn't really lessen or reduce the fact that the revised
15 report included the entire claim. That's how we saw it.

16 And I really struggled with this issue, even at the
17 office. We met with our chief deputy counsel and two
18 deputy treasurers. We try to be fair in our vote.

19 CHAIR ORTEGA: Camille, do you want to say anything
20 additional about your conclusion about "supersedes"
21 versus...

22 MS. SHELTON: We also had a lot of discussion in our
23 office about the facts of this particular case. And
24 when -- we obviously saw the word "supersedes," and
25 obviously that is a reasonable interpretation of what's

1 going on.

2 The other side of it, though, which I think is also
3 a reasonable interpretation -- and it makes for an issue
4 to be pretty gray -- is that when you looked at what
5 happened, all they did was update the offsetting savings,
6 and made no change -- no language change, even, with
7 respect to the other findings. They're exactly the same
8 as they were.

9 And so when you look at the law of statute of
10 limitations, it's really all about notice to the claimant
11 about when they have enough information to believe that
12 they have been wronged and can file an incorrect
13 reduction claim.

14 And we took the position that you definitely were
15 on notice when that first audit report came out. And
16 the challenge that you're making to the finding never
17 changed. And so that was the basis of our
18 recommendation.

19 CHAIR ORTEGA: Okay. Anyone else have any comments
20 or any further discussion?

21 MEMBER OLSEN: Well, I'll make a motion; but I'm
22 obviously not sure quite how to frame this motion, so --

23 CHAIR ORTEGA: Well, perhaps the chief counsel can
24 give you some advice on that.

25 MEMBER OLSEN: I would like to move rejection of the

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1 director's decision -- the Executive Director's decision.

2 MS. SHELTON: So you'd be granting the appeal?

3 MEMBER OLSEN: There you go.

4 I want to move to grant the appeal.

5 MS. SHELTON: On the basis of?

6 MEMBER OLSEN: On the basis of, language matters.

7 MS. SHELTON: That the second audit report

8 supersedes the first audit report?

9 MEMBER OLSEN: That's right.

10 CHAIR ORTEGA: Okay.

11 VICE CHAIR HARIRI: I second that.

12 CHAIR ORTEGA: That's the motion on the table; and

13 seconded by Mr. Hariri.

14 Please call the roll.

15 MS. HALSEY: Mr. Alex?

16 MEMBER ALEX: Aye.

17 MS. HALSEY: Mr. Chivaro?

18 MEMBER CHIVARO: No.

19 MS. HALSEY: Mr. Hariri?

20 VICE CHAIR HARIRI: Yes. Aye.

21 MS. HALSEY: Ms. Olsen?

22 MEMBER OLSEN: Aye.

23 MS. HALSEY: Ms. Ortega?

24 CHAIR ORTEGA: No.

25 MS. HALSEY: Ms. Ramirez?

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1 MEMBER RAMIREZ: Aye.

2 MS. HALSEY: Mr. Saylor?

3 MEMBER SAYLOR: Aye.

4 CHAIR ORTEGA: Okay, the motion passes.

5 MS. HALSEY: Yes.

6 CHAIR ORTEGA: So we will revisit this at a future
7 meeting; right?

8 MS. SHELTON: It just goes back in the queue. We'll
9 address the jurisdictional issue with the merits in a
10 proposed decision.

11 CHAIR ORTEGA: Okay.

12 MR. SPANO: And for the record right now, we have
13 since -- to eliminate any confusion, we have updated our
14 reports right now, and no longer use the word "supersede"
15 right now to provide -- and basically, we clarify that
16 the original report is the one that is consistent with
17 statute. It's based on the statute of limitations. It's
18 used for statute of limitation.

19 MEMBER RAMIREZ: May I ask, you're not going to use
20 "supersede" anymore? Is there another word?

21 MR. SPANO: Yes, it revises or updates.

22 MEMBER RAMIREZ: Okay, thanks.

23 MS. HALSEY: And does it just revise or update a
24 particular finding or the whole document?

25 MR. SPANO: It actually goes in the transmittal

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1 letter itself.

2 MS. SHELTON: I can't comment on that until we
3 receive an IRC.

4 MR. SPANO: Okay, thank you.

5 CHAIR ORTEGA: Yes, Ms. Olsen?

6 MEMBER OLSEN: But we've also updated our
7 regulations; correct?

8 MS. HALSEY: Yes. The first notice.

9 MS. SHELTON: Yes. The regulations do clarify
10 whatever form your notice takes, whatever it is, whether
11 it's a letter or an audit report or whatever, it's the
12 first notice received by the claimant of a reduction.

13 CHAIR ORTEGA: Yes, so all of this will have
14 better --

15 MEMBER OLSEN: No ongoing?

16 CHAIR ORTEGA: Yes, we have better results going
17 forward.

18 So that takes us to Item 6.

19 MS. HALSEY: Item 6, which is reserved for County
20 applications for a finding of significant financial
21 distress, or SB 1033 applications.

22 No SB 1033 applications have been filed.

23 Item 7 was on consent.

24 And Item 8 will be presented by Program Analyst
25 Kerry Ortman, and is the end-of-session legislative

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1 update.

2 CHAIR ORTEGA: Great.

3 MS. ORTMAN: Hi, good morning.

4 The following is the end-of-session review of the
5 2016 legislation regarding mandates.

6 On June 27th, the Governor signed SB 826, the
7 2016-17 Budget Act, which added a one-time \$1.28 billion
8 increase in Prop. 98 funds to K-12 school districts, and
9 a one-time \$105.5 million increase to community college
10 districts to reimburse for state-mandated programs.

11 The Budget Act newly added four programs to the list
12 of suspended mandates. They are: *Sex Offenders*
13 *Disclosure Requirement; Absentee Ballots; Open Meetings,*
14 *Brown Act Reform; and Mandate Reimbursement Process I*
15 *and II.* The Budget Act also newly added *Post Election*
16 *Manual Tally* to the list of funded mandates.

17 SB 836, the state government trailer bill, was
18 chaptered on June 27th. SB 836 amended Government Code
19 section 17518.5 to require that reasonable reimbursement
20 methodologies based on costs included in reimbursement
21 claims submitted to the Controller shall use only costs
22 that have been audited by the Controller. The bill
23 requires the State Controller, in coordination with the
24 Commission and Finance, by October 1st, 2018, to prepare
25 a report on the new RRM process, and specifies that the

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1 Legislature will hold hearings on that report. The bill
2 also contains a sunset date of July 1st, 2019.

3 We also monitored two other bills during this last
4 legislative session:

5 AB 2851, *State Mandates*, was introduced in February
6 of 2016 as a spot bill. This bill never made it out of
7 its house of origin prior to the deadline.

8 On June 20th, AB 575, *Teachers Best Practices*,
9 *Teacher Evaluation System* was gutted and amended so that
10 it no longer affected the mandates process.

11 CHAIR ORTEGA: Okay, any questions for Kerry?

12 *(No response)*

13 CHAIR ORTEGA: Chief Legal Counsel report?

14 MS. SHELTON: Nothing really new has changed since
15 the last hearing. I did include in the written report,
16 that the petition for rehearing was filed in the
17 *Municipal Stormwater and Urban Runoff Discharge* case
18 pending in the Supreme Court. The Court has extended the
19 final date of that decision to November 27th; so we have
20 not yet heard anything from the Court on what they're
21 going to do.

22 CHAIR ORTEGA: Okay, any questions?

23 All right.

24 MS. HALSEY: Item 10 is the Executive Director's
25 report.

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1 After this hearing, there are 15 test claims
2 pending, all but one of which are regarding *NPDES*
3 *Permits*, one parameters and guidelines, and one statewide
4 cost estimate also regarding *NPDES Permits* is also
5 pending.

6 In addition, we have one parameters-and-guidelines
7 amendment on inactive status pending the outcome of the
8 *CSBA* litigation, which is now in the First District Court
9 of Appeal.

10 Finally, we have three additional statewide cost
11 estimates and 24 incorrect reduction claims pending.

12 As of today, Commission staff expects to complete
13 all currently pending test claims and IRCs by
14 approximately the September 2018 Commission meeting,
15 depending on staffing and other workload.

16 With regard to tentative agenda items, please check
17 the executive director report and see if your item is
18 listed there. And then it may be coming up, issuing
19 draft proposed decisions at least eight weeks prior to
20 the hearing, and then a proposed decision two weeks prior
21 to the hearing.

22 CHAIR ORTEGA: Okay, any questions or comments?

23 *(No response)*

24 CHAIR ORTEGA: All right, seeing none, I think we're
25 ready to go to closed session.

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1 Thank you, everyone for being here.

2 The Commission will meet in closed executive session
3 pursuant to Government Code section 11126(e) to confer
4 with and receive advice from legal counsel for
5 consideration and action, as necessary and appropriate,
6 upon the pending litigation listed on the published
7 notice and agenda; and to confer with and receive advice
8 from legal counsel regarding potential litigation.

9 The Commission will also confer on personnel matters
10 pursuant to Government Code section 11126(a)(1).

11 We will reconvene in open session in approximately
12 15 minutes.

13 *(The Commission met in closed executive session*
14 *from 10:27 a.m. to 10:32 a.m.)*

15 CHAIR ORTEGA: Okay, we will reconvene.

16 The Commission met in closed executive session
17 pursuant to Government Code section 11126(e)(2), to
18 confer with and receive advice from legal counsel for
19 consideration and action, as necessary and appropriate,
20 upon the pending litigation listed on the published
21 notice and agenda; and to confer with and receive advice
22 from legal counsel regarding potential litigation; and
23 pursuant to Government Code section 11126(a)(1), to
24 confer on personnel matters.

25 With no other business to discuss, we'll be

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adjourned.

Thank you.

(The Commission meeting concluded at 10:32 a.m.)

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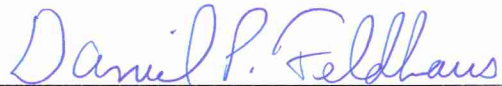
REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 18th day of November 2016.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter