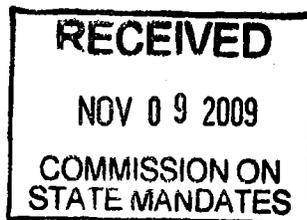




*Excellence  
Integrity  
Service*

COUNTY OF ORANGE  
HEALTH CARE AGENCY

BEHAVIORAL HEALTH SERVICES



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November 3, 2009

CERTIFIED MAIL

Nancy Patton, Asst. Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Ginny Brummels  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, CA 95816

Re: Incorrect Reduction Claim for  
Handicapped and Disabled Students Claim  
Fiscal Years 1997-98 and 1998-99  
County of Orange, Claimant

Ms. Patton and Ms. Brummels,

This letter is to serve as our written rebuttal to the State Controller's Office letter dated 10/6/2009 (**attachment A**) per California Code of Regulations. TITLE 2, DIVISION 2., CHAPTER 2.5. ARTICLE 5. § 1185.1. (c).

**Reduction of Medication Monitoring**

The State's position is that medication monitoring "was not included in the adoption of the parameters and guidelines as a reimbursable cost." In fact, the guidelines state that "*Any costs* related to the mental health treatment services rendered under the Short Doyle act" are reimbursable (**attachment B**). While the guidelines go on to say that certain specific treatment services are eligible; and medication monitoring is not mentioned specifically, it is not excluded either. There is no disputing the fact that medication monitoring was a mental health treatment service rendered under the Short Doyle act. Per the State's response they concur with the fact that medication monitoring was defined in regulation at the time the parameters were adopted. There is no mention in the Parameters and Guidelines that the listing of services was an all inclusive list.

The original audit report states "...since Medication Monitoring and Crisis Intervention...were not included as reimbursable costs, the only reasonable conclusion is that they were intentionally excluded and, therefore, not reimbursable." (**attachment C**)

Their "reasonable conclusion" has since come under question given the adoption of HDS II and its inclusion of medication monitoring. The parameters and guidelines are not the mandate itself, but a tool used to claim for services mandated by the State. HDS II allows us to go back to July 2001, and unless that mandate on the County had changed from June 2001 to July 2001, the mandate on the County existed at the time of the claim in question. The SCO asserts that, according to the HDS II test claim, counties were seeking reimbursement for activities required by statutory amendments to the original HDS program, and that these amendments included medication monitoring. However according to the HDS II corrected P's and G's submitted with the SCO rebuttal, even the prior regulations included medication monitoring (**see attachment D**). The inclusion of medication monitoring in these specific regulations was also a point brought up in our original audit response (**attachment E**.)

The SCO also contends that the dates set forth in HDS II define the period of reimbursement for the amended portions beginning July 1, 2001 and as a result of that fact the Counties cannot claim for these services. We would like to point out that we are not claiming reimbursement under HDS II, we are simply using the fact that medication monitoring has since been found to be a part of the mandate and in light of this fact the SCO's "reasonable conclusion" is no longer reasonable. There was no underlying change in the program that took place beginning July 2001. We would have to, barring any clarification, assume that medication monitoring has always been allowable since the original P's and G's are silent on the matter.

Per the State Controller's Office response, the Controller's Office is empowered to audit claims for mandated costs and to reduce those that are "excessive or unreasonable." Given this directive the County feels that the SCO incorrectly came to a conclusion using an assumption (or "reasonable conclusion"). With HDS II's inclusion of medication monitoring it is apparent that medication monitoring costs were neither excessive nor unreasonable. Even at the time of the audit (before HDS II) the County believes that the auditor was incorrect in making assumptions to deprive the county of millions of dollars. Medication monitoring was never excluded in the Parameters and Guidelines, and has always been part of the treatment services rendered under the Short Doyle act. There was no proof at the time of the original audit that these costs were excessive or unreasonable, and since HDS II there is actually evidence against that assumption.

### **Statute of Limitations**

The SCO contends that our claim is late because it was filed on May 1, 2006. The letter was actually mailed April 28, 2006. The May 1<sup>st</sup> date the SCO references was the date received by the Commission. This is an important distinction because TITLE 2. California Code of Regulations, DIVISION 2., CHAPTER 2.5. ARTICLE 1. § 1181.1(g) states:

"Filing date" means the date of delivery to the commission's office during normal business hours. For purposes of meeting the filing deadlines required by statute, **the filing is timely if:**

**(1) the filing was mailed by certified or express mail or a common carrier promising overnight delivery, and**

**(2) the time for its filing had not expired on the date of its *mailing* by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt. (attachment F)**

The claim was *mailed* on April 28, 2006 and was received on May 1, 2006.

The County would also like to point out that s 1185.01(b) states:

*Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. (attachment G)*

The letter we received from the Commission was dated 5/12/06, the SCO response was dated 10/6/09. The county was to receive the SCO rebuttal *no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller* (simultaneously with the submission to the Commission.) Given the extreme delay caused by the State's submission the County would like the State's arguments removed from the discussion.

A three year delay is unacceptable as many key personnel have moved on to different positions and records may be lost. Fortunately we were able to maintain control over our records, but the fact that this rebuttal is untimely places the County in a difficult position since we have the burden of proof, not to mention it is also in violation of California Regulations. Also, per the commissions letter **(attachment H)**, "The failure of the SCO to respond within the 90 day timeline shall not cause the commission to delay consideration of this IRC." When, in fact, that is exactly what has happened. The County believes that this process should move forward without the SCO position being considered.

**Conclusion**

Medication monitoring is, and has always been, a part of the mandate on the County to provide mental health services to students. The fact that the Parameters and Guidelines did not enumerate this activity specifically is not basis to determine the activity was unreasonable or excessive. The facts clearly show that medication monitoring falls under the scope of mental health treatment services and those services were allowable under the original Parameters and Guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Refowitz', written over a circular stamp or seal.

Mark A. Refowitz  
Behavioral Health Director

Attachments



**JOHN CHIANG**  
California State Controller

October 6, 2009

Nancy Patton, Asst. Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Bang Quan  
Auditor-Controller, Orange County  
P.O. Box 567  
Santa Ana, CA 92702

Re: **Incorrect Reduction Claim**  
*Handicapped and Disabled Students*, 05-4282-I-02  
County of Orange, Claimant  
Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274  
Fiscal Years 1997-98 and 1998-99

Dear Ms. Patton and Ms. Quan:

This letter is in response to the above-entitled Incorrect Reduction Claim. The subject claims were reduced because the Claimant included costs for services that were not reimbursable under the Parameters & Guidelines in effect during the audited years. In addition, the Incorrect Reduction Claim should be denied because it was filed after the expiration of the deadline provided for in regulation. The reductions were appropriate and in accordance with law.

The Controller's Office is empowered to audit claims for mandated costs and to reduce those that are "excessive or unreasonable."<sup>1</sup> This power has been affirmed in recent cases, such as the Incorrect Reductions Claims (IRCs) for the *Graduation Requirements* mandate.<sup>2</sup> If the claimant disputes the adjustments made by the Controller pursuant to that power, the burden is upon it to demonstrate that it is entitled to the full amount of the claim. This principle likewise has been upheld in the *Graduation Requirements* line of IRCs.<sup>3</sup> See also Evidence Code section 500.<sup>4</sup> In this case, the audit determined that the Claimant was claiming costs for medication monitoring, which was not an identified reimbursable activity in the Parameters & Guidelines as amended in 1996, and effective for the two fiscal years that were the subject of this audit. Therefore, these claimed costs are unsupportable and thus, disallowed.

<sup>1</sup> See Government Code section 17561, subdivisions (d)(1)(C) and (d)(2), and section 17564.

<sup>2</sup> See for example, the Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District [No. CSM 4435-I-01 and 4435-I-37], adopted September 28, 2000, at page 9.

<sup>3</sup> See for example, the Statement of Decision in the Incorrect Reduction Claim of San Diego Unified School District [No. CSM 4435-I-01 and 4435-I-37], adopted September 28, 2000, at page 16.

<sup>4</sup> "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

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October 6, 2009

Page 2

The Claimant points to subsequent amendments of the Parameters & Guidelines adopted in 2005 and 2006, which refer to medication monitoring, to support its claim that it is a reimbursable cost. However, amendments to Parameters & Guidelines are not retroactive, and the amendments in question were only effective from July 1, 2001, forward, therefore, they did not apply to the fiscal years audited. In fact, the addition of medication monitoring as a reimbursable activity supports the Controller's position in this case; it does not contradict it, as the Claimant asserts. If medication monitoring had been covered in the prior Parameters & Guidelines, there would have been no need to add an explicit reference to the activity in the amendments. Therefore, medication monitoring was not a reimbursable activity prior to July 1, 2001.

In addition, the Claimant failed to file its Incorrect Reduction Claim in the time frame required by Title 2 of the California Code of Regulations, Section 1185. Section 1185, subdivision (b) states that "[a]ll incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction." In this case, the remittance advice and accompanying letter were dated April 28, 2003 (See pages 2-5 of Exhibit C of the Claimant's IRC). Therefore, the last date to file an IRC was April 28, 2003. However, the Claimant did not file its claim until May 1, 2003, outside the time frame provided, and thus, the IRC is precluded by the limitations provision of Section 1185.

Enclosed please find a complete detailed analysis from our Division of Audits, exhibits, and supporting documentation with declaration.

Sincerely,



SHAWN D. SILVA  
Senior Staff Counsel

SDS/ac

Enclosure

cc: Denise Steckler, Manager, Financial Reporting & Mandated Costs, Orange County  
Ginny Brummels, Division of Accounting & Reporting, State Controller's Office (w/o encl.)  
Jim Spano, Division of Audits, State Controller's Office (w/o encl.)

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. (G. C. § 7572.5).
- (g) Required participation in due process procedures, including but not limited to due process hearings.
- (b) One hundred (100%) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.

#### B. Treatment Services

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 (G. C. § 7576):
  - (a) Individual therapy
  - (b) Collateral therapy and contacts
  - (c) Group therapy
  - (d) Day treatment
  - (e) Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
- (b) Ten (10%) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

#### 7. Reimbursement Limitations

- 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.
  - 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.

#### 8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms HDS-1, HDS-2, HDS-3, HDS-4, HDS-5, and HDS-6 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated or reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

By citing the above code sections that mandate medication monitoring as a service provided under Chapter 26.5, the *Parameters and Guidelines* includes medication monitoring by implication and reference. That this service was not specifically listed in the guidelines was clearly an oversight and indicates that the *Parameters and Guidelines* need to be amended accordingly.

c) Treatment Costs for Crisis Intervention

The County does not concur that these are ineligible costs.

It was the intent of AB3632 and later amendments not to include mental health services designed to respond to "psychiatric emergencies or other situations requiring an immediate response" (Article 2, section 60040(e)). This language was related primarily to inpatient hospitalization. The services currently in dispute were not provided as psychiatric emergency services leading to hospitalization or other emergency care, but rather were provided in the normal course of mental health treatment. These services were provided as defined in the California Code of Regulations, Title 9, Section 543, and designed to alleviate problems which, if untreated, presented imminent threat to the pupil.

SCO's Comments

The finding and recommendation for ineligible case management costs for clients placed in out-of-state residential facilities, and treatment costs for medication support and crisis intervention, remain unchanged.

Case management costs incurred for handicapped and disabled students placed in out-of-state schools are an ineligible cost for the Handicapped and Disabled Students Program but are eligible under the Seriously Emotionally Disturbed Pupils: Out-of State Mental Health Services Program. *Parameters and Guidelines* for this program, adopted October 26, 2000, allows claimants to claim costs commencing on January 1, 1997.

*Parameters and Guidelines*, Section V(B)2, specifies the following treatment services, when required by a child's individualized education program (IEP), are reimbursable: individual therapy; collateral therapy and contacts; group therapy; day treatment; and the mental health portion of residential treatment in excess of the California Department of Social Services' payments for residential placement. Each treatment service above is defined under Title 9, Section 543 of the *California Administrative Code*. Since medication monitoring and crisis intervention were both defined in regulation at the time *Parameters and Guidelines* was adopted and were not included as reimbursable costs, the only reasonable conclusion is that they were intentionally excluded and, therefore, not reimbursable.

In addition, a correction is made to Section IV(G), Reimbursable Activities, "Providing Psychotherapy or Other Mental Health Treatment Services." On May 26, 2005, the Commission adopted the Statement of Decision in the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), and approved as a reimbursable state-mandated activity, beginning July 1, 2004, providing mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. When adopting the parameters and guidelines on the reconsidered program, the Commission determined that it would include psychotherapy and other mental health treatment activities in the parameters and guidelines in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), since it had an earlier reimbursement period (July 1, 2001) and the definition of mental health treatment services was substantially amended. The Commission's finding is as follows:

The Commission's Statement of Decision authorizes reimbursement for 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. As noted in the Statement of Decision, however, the original definition of the types of services was repealed and replaced by the Departments of Mental Health and Education in 1998. [Footnote omitted.] The Commission concluded that the new definition of psychological and other mental health services constitutes a reimbursable new program or higher level of service in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) and, in December 2005, the Commission adopted parameters and guidelines for *Handicapped and Disabled Students II*. The reimbursement period for *Handicapped and Disabled Students II* begins July 1, 2001.

Therefore, costs incurred by eligible claimants for the activity of providing psychological and other mental health services may be claimed pursuant to the parameters and guidelines in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), beginning July 1, 2001. Since the proposed parameters and guidelines for the reconsideration of the original *Handicapped and Disabled Students* program (04-RL-4282-10) has a later reimbursement period, the activity is not included in these proposed parameters and guidelines.<sup>1</sup>

On May 26, 2005, the Commission adopted the Statement of Decision in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) and found that section 60020 of the test claim regulations continued to include mental health assessments, collateral services, intensive day treatment, and day rehabilitation in the definition of "mental health services." However, the activities of crisis intervention, vocational services, and socialization services were deleted by the test claim regulations. The Commission also found that case management services were reimbursable. The Commission's findings are as follows:

In addition, section 60020, subdivision (i), changed the definition of mental health services. As indicated above, the former regulations defined "psychotherapy and other mental health services" to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health regulations. (Former Cal. Code Regs., tit. 2, § 60020, subd. (a).) Under the prior regulations, these services included the following: day care

<sup>1</sup> Staff analysis adopted by Commission on January 26, 2006.

intensive services, day care habilitative (counseling and rehabilitative) services, vocational services, socialization services, collateral services, assessment, individual therapy, group therapy, medication (including the prescribing, administration, or dispensing of medications, and the evaluation of side effects and results of the medication), and crisis intervention.

Section 60020, subdivision (i), of the regulations, now defines "mental health services" as follows:

"Mental health services" means mental health assessment and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.

Section 60020 of the test claim regulations continues to include mental health assessments, collateral services, intensive day treatment, and day rehabilitation within the definition of "mental health services." These services are not new. [Footnote deleted.]

However, the activities of crisis intervention, vocational services, and socialization services were deleted by the test claim regulations. ...

Thus, counties are not eligible for reimbursement for providing crisis intervention, vocational services, and socialization services since these activities were repealed as of July 1, 1998.

Nevertheless, section 60020 of the regulations increases the level of service of counties providing mental health services by including case management services and "psychotherapy" within the meaning of "mental health services." The regulation defines psychotherapy to include both individual and group therapy, based on the definition in Business and Professions Code section 2903.

The parameters and guidelines for the program, however, inadvertently included in the identification of activities that were *not* reimbursable the activities of mental health assessments, collateral services, intensive day treatment, and case management. The parameters and guidelines also inadvertently did not include reimbursement for day rehabilitation services. Based on the Commission's Statements of Decision for these programs, claimants are eligible for reimbursement, beginning July 1, 2001, for case management services. Claimants are also eligible for reimbursement, beginning July 1, 2004, for mental health assessments, collateral services, intensive day treatment, and day rehabilitation services.

Thus, in order for the parameters and guidelines to conform to the findings of the Commission in the reconsideration of *Handicapped and Disabled Students* (04-RL-4292-10) and *Handicapped and Disabled Students II* (02-TC-40, 02-TC-49), Section IV(G) is corrected as follows:

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

Health Services Program, and we have subsequently claimed these costs in the SED claim for Fiscal Years 1997-98, 1998-99, 1999-2000, and 2000-01.

However, at the time we filed the *Handicapped and Disabled Students Program* claims for Fiscal Years 1997-98 and 1998-99, which are the years being audited, the *SED Program* had not been identified as a mandated program, and the County believed that these costs were eligible to be claimed as part of the *Handicapped and Disabled Students Program* mandate. Claiming instructions for the *SED Program* were not issued until January 2001.

b) Treatment Costs for Medication Support.

The County does not concur that these are ineligible costs.

The *Parameters and Guidelines, Summary of Mandates*, references California Code of Regulations, Division 9, Sections 60000-60200, Title 2, as well as Division 7, Title 1 of the Government Code commencing with Section 7570. The *Parameters and Guidelines* specifically cites Government Code sections 7571 and 7576 and their implementing regulations as governance. The "implementing regulations" for the provision of Chapter 25.6 of the Government Code are found in the California Code of Regulations, Title 2, Division 9, the Joint Regulations for Handicapped Children.

Section 7576 (amended in 1996) of the Government Code identifies the Department of Mental Health's responsibility for the provision of Mental Health services and states, in part, that the Department of Mental Health "shall be responsible for the provision of mental health services as defined in regulations by the State Department of Mental Health, developed in connection with the State Department of Education, when required in the pupil's individualized education plan."

Additionally, the *Parameters and Guidelines* references Section 5651 of the Welfare and Institutions code which assures, in part, that "the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirement of that chapter."

The California Code of Regulations in Section 60020(i) defines Mental Health services as such: "Mental Health services" means mental health assessments and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code; provided to the pupil individually or in a group, collateral services, *medication monitoring*, intensive day treatment, day rehabilitation, and case management. "Medication monitoring" is clearly defined in 60020(f) as including all medication support services including prescribing, administering, dispensing, and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness. The cost of the medications is not a covered service and has not been billed in the SB90 claiming process.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES  
ARTICLE 1. GENERAL  
This database is current through 10/16/09 Register 2009, No. 42

§ 1181.1. Definitions.

Unless otherwise indicated, the definitions in this chapter and those found in Government Code sections 17510 through 17524 apply to Articles 1, 2, 3, 4.5, 5, 6, 7, 8, and 8.5 of this chapter:

- (a) "Affected state agency" means a state department or agency that is responsible, in whole or in part, for implementation, enforcement, or administration of any statute(s) or executive order(s) that is the subject of a claim.
- (b) "Amendment" means the addition of new allegations based on new statutes or executive orders to an existing test claim. The addition or substitution of parties and supporting declarations based on the original statutes or executive orders alleged in an existing test claim is not an "amendment."
- (c) "Claim" means test claim or incorrect reduction claim.
- (d) "Claimant" means the local agency or school district filing a test claim or incorrect reduction claim.
- (e) "Commission staff" means the executive director, legal counsel, or other commission employee authorized by the commission or the executive director to represent the commission on a specific claim or request, or to receive filings at the commission office.
- (f) "Completed" means that all requirements for filing a claim, proposed parameters and guidelines, request to amend parameters and guidelines, request for reconsideration, or request to review claiming instructions have been satisfied by the claimant or requestor.
- (g) "Filing date" means the date of delivery to the commission's office during normal business hours. For purposes of meeting the filing deadlines required by statute, the filing is timely if:
- (1) the filing was mailed by certified or express mail or a common carrier promising overnight delivery, and
  - (2) the time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.
- (h) "Good cause" may include, but is not limited to, the following factors: (1) the number and complexity of the issues raised; (2) a party is new to the case, or other counsel is needed; (3) the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) the individual responsible for appearing at the hearing has other time-limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation that cannot reasonably be rearranged; (8) a pending public records request; and (9) any other factor, which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines that as a practical matter preclude filing the document by the due date without impairing quality.
- (i) "Incorrect reduction claim" means a claim alleging that the Office of State Controller incorrectly reduced the reimbursement claim of a local agency or school district.
- (j) "Informational proceeding" means any hearing designed to gather and assess information to assist

the commission in formulating policies, informing the public of commission actions, or obtaining public comment and opinion.

(k) "Interested party" means a local agency or school district; an organization or association representing local agencies or school districts; or a person authorized to represent a local agency or school district, having an interest in a specific claim or request other than the claimant.

(l) "Interested person" means any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, having an interest in the activities of the commission.

(m) "Party" means the test claimant, the Department of Finance, Office of State Controller, or affected state agency.

(n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule, regulation, or standard of general application that implements, interprets, or makes specific any provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any other statute enforced or administered by the commission.

(o) "Statewide cost estimate" means the approximate sum of money that local agencies or school districts may have incurred to implement a state-mandated program or any increased level of service of an existing mandated program. A statewide cost estimate submitted by a test claimant shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes and executive orders alleged in a test claim, except as provided in Government Code section 17557.1, subdivision (a). A statewide cost estimate adopted by the commission shall be an estimate based on the commission's determination of a test claim for the initial period of reimbursement to be reported to the Legislature.

(p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed by a test claimant and the Department of Finance, adopted by the commission, and reported to the Legislature pursuant to Government Code section 17557.2.

(q) "Teleconference" means a conference of individuals in different locations, connected by electronic means, through audio, video, or both.

(r) "Written material" shall include, but is not limited to, requests and correspondence on substantive and procedural matters, e.g., informal conferences, prehearing conferences, postponements of hearings, extensions of due dates for submission of opposition, recommendations, comments, reasonable reimbursement methodologies, statewide estimates of costs, supplemental declarations, stipulations, applications for subpoenas and subpoenas duces tecum, witness lists, etc. Test claims, incorrect reduction claims, or amendments thereto, are not considered written material.

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§ 1185.1. Review of Incorrect Reduction Claims.

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

**COMMISSION ON STATE MANDATES**

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May 12, 2006

Ms. Bang Quan  
County of Orange  
Auditor-Controller  
P.O. Box 567  
Santa Ana, CA 92702

Ms. Ginny Brummels  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 501  
Sacramento, CA 95816

Re: **Incorrect Reduction Claim**  
*Handicapped and Disabled Students*, 05-4282-I-02  
County of Orange, Claimant  
Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274  
Fiscal Years 1997-1998 and 1998-1999

Dear Ms. Quan and Ms. Brummels:

On May 1, 2006, the County of Orange filed an incorrect reduction claim (IRC) with the Commission on State Mandates (Commission) based on the *Handicapped and Disabled Students* program for fiscal years 1997-1998 and 1998-1999. Commission staff determined that the IRC filing is complete.

Government Code section 17551, subdivision (b), requires the Commission to hear and decide upon claims filed by local agencies and school districts that the State Controller's Office (SCO) has incorrectly reduced payments to the local agencies or school districts.

**SCO Review and Response.** Please file the SCO response and supporting documentation regarding this claim within 90 days of the date of this letter. Please include an explanation of the reason(s) for the reductions and the computation of reimbursements. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based on the declarant's personal knowledge, information or belief. The Commission's regulations also require that the responses (opposition or recommendation) filed with the Commission be simultaneously served on the claimants and their designated representatives, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1185.01.)

The failure of the SCO to respond within this 90-day timeline shall not cause the Commission to delay consideration of this IRC.

**Claimant's Rebuttal.** Upon receipt of the SCO response, the claimant and interested parties may file rebuttals. The rebuttals are due 30 days from the service date of the response.

## PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 515 N Sycamore, Suite 512, Santa Ana, California 92701. I am not a party to the within action.

On November 4, 2009, I served the foregoing

### **Rebuttal to SCO's response to the Incorrect Reduction Claim for County of Orange, CSM 05-4282-I-02**

on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

(BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(BY OVERNIGHT DELIVERY) I placed such envelope(s) addressed as shown below for collection and delivery by UPS with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day by UPS.

(BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

(BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

  
Lindsay Chung

Nancy Patton, Asst. Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Ginny Brummels  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
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