MS, CHAPMAN: And, again, we disagree that it's fundamentally part of the Short-Doyle program. There could have been an addition to the Short-Doyle program. There could have been a statute added to -- that would incorporate mental health responsibilities under this legislation into the Short-Doyle program; there was not.

Going back to the funding issue for a minute, to show the impact on the county, in 1985-86, the county received $21.6 million in general Short-Doyle funding. That is, it wasn't highlighted for a specific program. In 1986-87, we received $22.5 million, a four.percent increase. Our responsibilities under our contract did not change. There was no -- we -- our responsibilities remained the same, There was this slight increase for cost of living. And when you compare that $22.5 million to almost $2 million that it cost to do this program, you see, it's almost a 10 percent impact. It's really quite a large impact. And the Short-Doyle program was designed to organize and finance mental health services through locally-administrated and controlled programs for allocating Short-Doyle mental health funding according to community needs. And the mental -- Welfare and Institutions Code lists the priorities, and these priorities were not changed. Although children are included on the priorities, as I've already said, there are many children who are not IEP children that we have to serve

1 who are very sick.

2 The -- as I think the document from -- the
3 declaration from the County of Riverside shows, this is such
4 a substantial drain, if you don't overmatch -- if you don't
5 compensate by overmatching, it's such a substantial drain on
6 the Short-Doyle program that a county cannot meet its basic
7 Short-Doyle obligations. In the County of Riverside, they
8 cannot -- they have all their adolescent day treatment beds
9 -- or all their day treatment beds now are for IEP children.
10 None of them are available anymore for any other children.
11 They are not able to serve kids who are referred from
12 juvenile court who may have a high need for mental health
13 services and may be in quite a lot of distress,

14 CHAIRPERSON GOULD: I appreciate what you're
15 saying. From my perspective, the issues of adequacy of
16 funding -- we have to wrestle with the ultimate determina-
17 tion of any requirement to serve a clientele within a block
18 grant kind of program, such as Short-Doyle, There could be
19 situations where that becomes consuming of the allocation
20 that's there in terms of saying, "This is the -- the first
21 folks that get served out of that." And there may be people
22 then that fall out. But we have to look at the fundamental
23 question, because there could also be very minor identifica-
24 tions of population groups that would be first served, which
25 would have a diminimous impact. So I appreciate what you're

1 saying in terms of -- and I know there are concerns about
2 adequacy of funding -- but we have to kind of look at the
3 broader question. And that's what I'm wrestling with.
4 Let me ask a question of Ms. Whetstone. When the
5 Legislature added funds, where did they add the funds to?
6 MS, WHETSTONE: They --
7 CHAIRPERSON GOULD: How did the funding -- how
8 did they handle the funding within the budget?
9 MS. WHETSTONE: Well, the funding -- the first
10 year, it was a combination of a transfer from education plus
11 new money in the mental health budget.
12 CHAIRPERSON GOULD: Okay.
13 MS. WHETSTONE: And then after that, it came
14 directly to the mental health budget.
15 CHAIRPERSON GOULD: Okay. When it went to the
16 mental health budget, did it go -- in what form? How did
17 that -- did it go into local mental health generally?
18 MS. WHETSTONE: Okay. It was set up as a
19 separate appropriation. One point I was going to make,
20 though, is in all of the discussions that were had about,
21 you know, when we were talking about augmentations, there
22 was always a discussion of maintenance of effort. And, in
23 fact, one of our earlier submittals, we included something
24 that the Children's Committee of the Conference of Local
25 Mental Health Directors had put together on -- it was an

1 estimate. It also had a maintenance of effort piece coming
2 out of regular Short-Doyle, So while the new money went
3 into a separate item, there was always the conscious
4 decision that some of the expenditures would continue from
5 the regular Short-Doyle appropriation.
6 CHAIRPERSON GOULD: Okay. Question?
7 MEMBER MARTINEZ: Mr. Chairman. Yeah, I'd kind
8 of like to get back to the -- to try to get a clarification
9 on the basic premise about whether or not there is a new
10 mandate under the provisions of the Government Code. And I
11 appreciate the reference that Mr. Harlan -- that Harlan has
12 made relative to his response on that on the chapter,
13 whether or not there was a reference and, therefore, a
14 mandate, And I guess I would ask counsel -- our counsel,
15 Mr. Hori, though there isn't a specific reference as is
16 correctly indicated on page 10 of the response to the
17 proposed decision, to mental health as a provision of
18 service to handicap children in the Legislative Counsel's
19 Digest, subsequently in the actual body of the new
20 Government Code additions, in Government Code Section 7572,
21 isn't there a specific enumeration of a new activity to be
22 conducted? I mean, doesn't it say a child shall be assessed
23 in the areas related to the suspected handicap, again
24 handicap reference to the Legislative Counsel Digest, but
25 then it specifically goes on to enumerate a new function

1 which says including but not limited to services in the area
2 of occupational therapy, physical therapy, psychotherapy,
3 and other mental health assessments. And then follow with
4 the actual -- as has been already well covered -- what the
5 IEP indicates the management process is actually all about,
6 So I guess I would ask for some guidance on that.
7 MR. HORI: Well, I think what -- correct me if
8 I'm wrong. Mr. Van Wye, in your rebuttal, you were
9 referring to the language in Chapter 1274?
10 MR. VAN WYE: Right. It's 1274 language.
11 MR. HORI: And in the back in Section 17 and 18,
12 I believe it's Section 17 --
13 MR. VAN WYE: I believe that's it.
14 MR. HORI: -- specifically? Is that correct?
15 MEMBER MARTINEZ: But what I was referring to are
16 sections of the Government Code that were enacted in the
17 statute that we're talking about, which is Chapter 1747,
18 Statutes of '84.
19 At least I thought that was the section we
20 were --
21 MR. HORI: Yeah.
22 MEMBER MARTINEZ: Are we dealing with --
23 MR. HORI: Mr. Van Wye, do you have that in front
24 of you?
25 MR. VAN WYE: Do I have what, Mr. Hori?

MR. HORI: The reference that --

MEMBER MARTINEZ: Part of the Willie Brown legislation, Statutes of '84, having to do with assumption of responsibilities and assessrnent of handicap needs children, which were previously, I suppose, responsibilities of the Department of Education.

Maybe I just -- 1 just took it right out of the G.C. So I just --

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Which sections again?

MR. HORI: Which sections?

MEMBER MARTINEZ: 7572.

CHAIRPERSON GOULD: Well, it's all -- it's the entitle -- it's the -- Chapter 26.5, which is the responsibilities for providing services to handicap children, the chapter that was operative as a result of the Statutes of 1984, subchapter 1747.

MS. CHAPMAN: I believe Section 5 of Chapter 1747 says notwithstanding Section 6 of Article VIII-B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this Act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 of Part 4 of

Division 1.

MR. VAN WYE: Let me also add a comment that -- and, of course, that language obviously appears in cases where there is some doubt.

CHAIRPERSON GOULD: Right.

MR. VAN WYE: What I think -- and let me be perfectly candid -- I think what you've identified is the State's fallback position --

CHAIRPERSON GOULD: Sure.

MR. VAN WYE: -- or an aspect of the State's fallback position, that if there is a mandate you've identified what the mandate is.

Now, we think -- for the record, we don't think that there's any mandate that's identified. But obviously, I think that the underlying provision, the ongoing provision of services is something that is totally within the context of historic Short-Doyle. And what we have is a specific priority population identified. If there is a mandate at all that is being created by this legislation, what it is is the -- those specific aspects that deal not with the underlying provision of services but with the intake of the student into -- the intake of an IEP student into the Short-Doyle process.

CHAIRPERSON GOULD: Is that the assessment and the case management aspects?

1 MR. VAN WYE: Yes, sir.

2 CHAIRPERSON GOULD: Right. Then -- yeah, go
3 ahead, Ms. Whetstone.

4 MS, WHETSTONE: I was going to further clarify on
5 case management because some of those children were case
6 managed by the County Department of Social Services before.
7 So there would be another issue if you were to look at --
8 you know, again, that was a county responsibility already
9 for some of those children.

10 MS. CHAPMAN: Although, I would comment that the
11 types of case management may have been very different.

12 MEMBER MARTINEZ: Yeah, this is -- this IEP
13 process looks substantially different, I mean, it doesn't
14 look like something that was being done by the Department of
15 Mental Health or -- you know, again, I am only presuming --
16 or by the Department of Social Services in terms of the
14 make-up, the responsibility, the follow-up. I mean --

18 MR. VAN WYE: My comment here is probably taken
19 -- should be taken anecdotally, and it derives from
20 essentially my 14 years of experience of practicing
21 education law in California. And I think that what you have
22 throughout the state is a system that has no particular
23 uniformity from county to county as to how this was
24 historically done, I'm certain that there were mental
25 health services provided and education services provided to

1 handicap students that predate the federal legislation,
2 94.142, here in the State of California.
3 The integration and the awareness of handicap
4 rights that has taken place in the last 20 years has been
5 not a smooth intellectually unified or satisfying process.
6 It's like the common law, it's developed by fits and starts
7 in different counties around the state. I suspect with 58
8 counties in the state and approximately 1,000 school
9 districts in the state, it's probably developed on at least
10 50 or 60 different models of how the handicap children, how
11 this process has been undertaken.
12 I would note that the revisions to Section 56000
13 and following of the Education Code, which occurred in the
14 early 1980s, where you have the master plan process, what
15 happens is that local education agencies get together under
16 the auspices of the County Superintendent of Schools or the
17 County Office of Education, by whichever name it's called in
18 a particular county, and they work out on a local basis the
19 division of educational responsibility within the local
20 education areas down there. And so it's -- frankly, it's
21 not a very easy -- you can't really -- I think it's very
22 difficult to draw a clear thread or some sort of a golden
23 rule that goes statewide. It just really can't be done.
24 And I would appreciate -- there's certainly no question in
25 my mind that, from working with my clients of State Mental

1 Health, there's no question in my mind that the adequacy of
2 funding for mental health services is an area of substantial
3 concern to large numbers of people here in the state.
4 Would we -- were that we had the magic wand to
5 grant more funding, that would be wonderful. But that's,
6 unfortunately or fortunately, not our function here today.
7 MR. HORI: Mr. Chairman?
8 CHAIRPERSON GOULD: Mr. Hori.
9 MR. HORI: I'd just like to add --
10 CHAIRPERSON GOULD: No, please go ahead.
11 MR. HORI: -- that one of the aspects that we're
12 probably overlooking is -- 1 just want to place on the
13 record that some of the discussions that we have here have a
14 relationship to the Huff (phonetic) case, But I want to
15 point out that this particular case I don't believe, and
16 counsel for Santa Clara would agree, that what we're doing
17 here is not what the issues are in Huff, with these --
18 the EHA 94.142 --
19 CHAIRPERSON GOULD: Uh-huh.
20 MR. HORI: -- or Section 503 of the
21 Rehabilitation Act can impose a state mandate. The Huff
22 case, that was local educational agencies, those agencies
23 delivering school services,
24 What we have here is a different local group,
25 county mental health agencies, So I want to point that --

and put that on the record that the Huff case, even though whatever decision that may have, I believe is not pertinent to our going forward in this matter.

MEMBER CREIGHTON: Mr. Chairman, it seems to me that the testimony which has gone on for now for almost an hour is becoming a little repetitious. And I would be prepared to make a motion that we -- the Commission adopt the ALJ's proposed statement of decision.

CHAIRPERSON GOULD: Okay. We have a motion before the Commission.

MEMBER SHUMAN: Second.

CHAIRPERSON GOULD: We have a second. Any further discussion?

I have to indicate that, frankly I'm more persuaded by the arguments of the Attorney General, Mr. Van Wye. I believe that the Legislature does have the authority to establish priorities within programs, and that in doing so they may in fact direct services, and to say that a certain client group gets first shot at the resources that are available. And so I'll not be supportive of the motion.

Okay. Any further discussion?

MEMBER MARTINEZ: Well, yes. I would like to -- 1 guess I -- I believe in looking at the statutes and looking at the chronology of events that I believe that, you

1 know, I certainly understand what the Chair is saying,
2 relative to the Legislature certainly having the authority
3 to make decisions relative to a priority of services to a
4 community of clientele, But I still have a concern about
5 not acknowledging what I believe to be a mandate relative to
6 the -- a new process, this requirement having to do with the
7 Department of Health role and the county role, I should say,
8 relative to the IEP process and the case management process.
9 And so I think I would have to make a distinct
10 split on what I believe to be a new mandate versus what I do
11 concur with the Chair on. So I'm in a little bit of a
12 problem relative to what we'll proceed on.
13 CHAIRPERSON GOULD: Okay. Any other comments?
14 MEMBER SHUMAN: Well, is it possible that that
15 concern could be dealt with in the parameters and guidelines
86 which --
17 CHAIRPERSON GOULD: I don't know. I guess I
18 would ask -- can that be dealt with under the parameters?
19 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: The way the
20 ALJ decision is written right now, it's sort of an all-or-
21 nothing deal.
22 CHAIRPERSON GOULD: And I appreciate that.
23 That's why I'm --
24 MEMBER MARTINEZ: That's my impression also, is
25 that if we were to adopt the ALJ's decision, I'm not sure

1 that they separate between what may be those portions --
2 CHAIRPERSON GOULD: Right,
3 MEMBER MARTINEZ: -- which you're making a
4 dinst nguishment in your mind about what might be a mandate
5 or not a mandate. I don't know if counsel has any different
6 impression, but that's my impression.
7 MR. VAN WYE: With the Chair's permission, may I
8 comment?
9 CHAIRPERSON GOULD: Mr. Van Wye.
10 MR. VAN WYE: I've obviously given this
11 considerable thought because this -- as we've articulated,
12 I think implicitly, if not explicitly, this is the State's
13 fallback position on that. I would think, in order that if
14 that's the will of the Commission that the matter could be
15 returned to the ALJ under the processes and procedures for
16 him to draw the distinctions between the regular provision
17 of services, which is not a mandate, and the new aspects
18 which I think, as Mr. Martinez has indicated he feels that
19 do mandate something new that the county did not have to do
20 before.
21 MS. CHAPMAN : If I may comment on that, I think
22 the ALJ's decision is very clear that he saw this as an
23 entirely new mandate, separate from the Short-Doyle process
24 entirely, which is our position.
25 MR. VAN WYE: Which, of course, is why it should

1 be returned to the ALJ with instructions to separate these
2 two out, if that's the will of the Commission,
3 MEMBER CREIGHTON: I call for the question on
4 the motion, please. We can -- if this motion fails, we can
5 go on to something else, but I call for the question.
6 CHAIRPERSON GOULD: Okay. We have a call for the
7 motion. I guess we have a motion before us and a second.
8 Call the roll, please.
9 EXECUTIVE DIRECTOR EICH: Member Buenrostro?
10 MEMBER BUENROSTRO: No.
11 EXECUTIVE DIRECTOR EICH: Member Creighton?
12 MEMBER CREIGHTON: Aye.
13 EXECUTIVE DIRECTOR EICH: Member Martinez?
14 MEMBER MARTINEZ: No.
15 EXECUTIVE DIRECTOR EICH: Member Shuman?
16 MEMBER SHUMAN: Aye.
17 EXECUTIVE DIRECTOR EICH: Chairperson Gould?
18 CHAIRPERSON GOULD: No.
19 EXECUTIVE DIRECTOR EICH: The motion fails.
20 MEMBER MARTINEZ: Mr. Chairman, I would like to
21 make a motion along the lines of the suggestion by the
22 Attorney General's Office that we instruct the ALJ to
23 prepare a decision which acknowledges a mandate relative to
24 a new function being performed for the IEP and the case
25 management process under the provisions of this law, I guess

-- of this new service and declare -- and present a decision which declares it a mandate.

CHAIRPERSON GOULD: Okay. We have a motion before the Committee.

MEMBER BUENROSTRO: Second.

MS. CHAPMAN: If I could get a clarification, would that also include the impact it's providing free services to students who otherwise would be required under the Short-Doyle Act to pay for their services? We have here a situation --

CHAIRPERSON GOULD: I appreciate what you're saying.

MS. CHAPMAN: -- where the law has now deprived us of a way of collecting payment for --

CHAIRPERSON GOULD: Right.

MS. CHAPMAN: -- services that we could have received payment for before.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Well, all I was going to say is basically if you start to make that distinction, and I think the ALJ did, you come back full circle to the decision we have before us.

CHAIRPERSON GOULD: Yeah.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: So there may be a problem with sending this back to the ALJ --

CHAIRPERSON GOULD: There may.

1 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: -- to make
2 the distinction based upon his findings right now.
3 MEMBER SHUMAN: I would suggest that --
4 CHAIRPERSON GOULD: We just --
5 MEMBER SHUMAN: -- staff could probably make that
6 decision if the Commission is inclined to separate it as
7 such and prepare a decision for the --
8 CHAIRPERSON GOULD: That's a good point.
9 MEMBER SHUMAN: -- Commission,
10 MEMBER MARTINEZ: This falls under the recommen-
11 dation that they were, basically.
12 CHAIRPERSON GOULD: Okay. We had a motion and a
13 second before --
14 MEMBER MARTINEZ: Well, I'd like to amend that
15 motion,
16 CHAIRPERSON GOULD: Okay.
87 MEMBER MARTINEZ: I appreciate the assistance and
18 the comment of counsel and the staff. So I would like to
19 amend my motion to basically say that I would like to move
20 that in fact the staff do prepare a decision that in fact
21 there is a new mandate -- that there is a mandate finding
22 relative to the activities of the IEP and case management
23 process that have been put upon the counties relative to
24 this population of special education handicap pupils.
25 MR. HORI: Mr. Martinez, I would like to add that

1 if staff does proceed in that manner, that we do the first
2 draft and get comments from --
3 MEMBER MARTINEZ: Fine.
4 MR. HORI: -- counsel -- from both counsel.
5 MEMBER CREIGHTON: I'll second your amended
6 motion.
7 CHAIRPERSON GOULD: Okay. We have a motion and a
8 second for the Committee. Any further comments?
9 EXECUTIVE DIRECTOR EICH: Mr. Chairman, I have --
10 I'd like to ask a question on the motion, Does your motion,
11 Mr. Martinez, encompass including the IEP program as part of
12 the Short-Doyle Act, or are you considering keeping that
13 separate?
14 MEMBER MARTINEZ: They're keeping it separate.
15 EXECUTIVE DIRECTOR EICH: As a separate part, not
16 as part of Short-Doyle,
17 MEMBER MARTINEZ: Well, I -- what I'm basically
18 saying is that I -- in other words, you're saying what is
19 this mandate against? And I -- again, I -- I guess I'm
20 having some difficulty in deciding that at this point
21 because the reference to the mandate falls under the
22 Government Code. The reference to this new activity, the
23 IEP and the case management process. Unless there is a --
24 is there a concurrent reference in some other body of law?
25 MR. HORI: There are some in Mr. Van Wye's

1 rebuttal. There are references of the program in the
2 Welfare and Institutions Code that a description of these
3 services under 7571 and 7576 of the Government Code include
4 these services. Some of these points were raised in
5 Mr. Van Wye's rebuttal.. However, the ALJ was more persuaded
6 by Ms. Chapman's points, saying that notwithstanding, there
7 are other factors and that the underlying objective or
8 purpose of Short-Doyle is not compatible with the IEP
9 program,
10 MEMBER CREIGHTON: Mr. Chairman, excuse me. I
11 will vote aye on this motion. I'd like my vote registered
12 as aye. Unfortunately, I do have an 11:45 meeting in the
13 Office of the Governor, and I do have to leave right now.
14 CHAIRPERSON GOULD: Okay. Fine,
15 MEMBER CREIGHTON: Excuse me. See you next time.
16 CHAIRPERSON GOULD: All right, Very good.
17 MEMBER MARTINEZ: Let me say that I wasn't -- I
18 wasn't intending it to be encompassing Short-Doyle,
19 MR. VAN WYE: May I -- may I comment? I --
20 MEMBER MARTINEZ: How's that for an answer?
21 MR. VAN WYE: I think I have a sense of what
22 you're talking about, and I think that Mr. Hori's comment or
23 perhaps it was Mr. Lehman's, we certainly from the Attorney
24 General's side will be glad to add such comments to the
25 staff brief and work with staff to achieve what I think is

1 the sense of the Commission on this,

2 MEMBER MARTINEZ: That's fine with me.

3 CHAIRPERSON GOULD: Is it -- Bob?

4 MR. HORI: And would you not agree that it wou

5 be -- that the IEP program is separate and apart from the

6 Short-Doyle, whatever that may be, when we describe it?

7 MR. VAN WYE: I think -- without abandoning the

8 ultimate position that none of this is a mandate, I can

9 agree with that.

10 MR. HORI: Okay.

11 MEMBER MARTINEZ: Thank you. Otherwise we'd have

12 to go through this again, and I'm --

13 CHAIRPERSON GOULD: Well --

14 MEMBER MARTINEZ: That's my motion.

15 CHAIRPERSON GOULD: Okay. We have a motion and

16 a second. I think Mr. Creighton had made the second before

17 he left.

18 MEMBER MARTINEZ: Yes, he did.

19 EXECUTIVE DIRECTOR EICH: Yes, he did.

20 CHAIRPERSON GOULD: I -- just from my perspective

21 as a comment on the motion, I appreciate that it's a, you

22 know, a reasonable attempt to try to differentiate here in

23 terms of what may be a mandate. I guess I'm still with the

24 position that was originally argued, that what we have he re

25 is a prioritization within a defined fund ing arrangement,

1 and I'm still persuaded along those lines,
2 And we have a motion and a second --
3 EXECUTIVE DIRECTOR EICH: Mr. Chairman, on that,
4 we do not have a second to the amended motion,
5 CHAIRPERSON GOULD: Oh, I'm sorry. Okay. Is
6 there a second?
7 EXECUTIVE DIRECTOR EICH: Who did the second to
8 the amended motion? Did --
9 MEMBER MARTINEZ: Was Shuman.
10 MR. HORI: I thought he did before he left.
11 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: He did.
12 MEMBER MARTINEZ: I thought he did.
13 EXECUTIVE DIRECTOR EICH: To the amended motion,
14 also? Okay. I just didn't get that. All right,
15 CHAIRPERSON GOULD: Okay. Any further comment?
16 Okay. Take the roll, please.
17 EXECUTIVE DIRECTOR EICH: Member Buenrostro?
18 MEMBER BUENROSTRO: Aye.
19 EXECUTIVE DIRECTOR EICH: Member Martinez?
20 MEMBER MARTINEZ: Aye.
21 EXECUTIVE DIRECTOR EICH: Member Shuman?
22 MEMBER SHUMAN: Uh, I have a question before I
23 cast my vote.
24 (Laughter)
25 MEMBER SHUMAN: How do you record Member

1 Creighton on this?

2 EXECUTIVE DIRECTOR EICH: He's recorded as "aye"

3 on the motion.

4 MEMBER SHUMAN: On the motion itself, okay. I'm

5 going to abstain because although I think that half a loaf

6 is better than none at all, I don't want my vote to be

a recorded as supporting this motion in lieu of

8 Mr. Creighton's initial motion, So I'm abstaining.

9 EXECUTIVE DIRECTOR EICH: Chairperson Gould?

10 CHAIRPERSON GOULD: No.

11 EXECUTIVE DIRECTOR EICH: Okay. Then, the motion

12 carries.

13 CHAIRPERSON GOULD: Okay. Very good. Next item.

14 MS. CHAPMAN: Thank you very much.

15 CHAIRPERSON GOULD: Thank you very much.

16 MR. VAN WYE: Thank you very much.

17 EXECUTIVE DIRECTOR EICH: The final item on the

18 agenda, Mr. Chairman, is item number 8. The Chair may want

19 to consider a short break before we tackle it. It's up to

20 the Members.

21 CHAIRPERSON GOULD: Why don't we take five

22 minutes, and we'll return. Thank you all.

23 (Short break.)

24 CHAIRPERSON GOULD: Let the record show we've

25 returned from our five-minute break, promptly, and --

(Laughter)

CHAIRPERSON GOULD: -- I'd like to move on to item number 8, which I think is the final item for the day.

MEMBER MARTINEZ: I think so.

MS. F,RAGA-DECKER: Item 8 is a test claim which alleges that Title 9, California Code of Regulation, Section 860, et seq. and Chapter 841, Statutes of '81, have imposed a new program and a higher level of service on an existing program by requiring counties to establish a patients' rights advocacy program within the Short-Doyle program.

The State Department of Mental Health and the State Department of Finance have recommended that the Commission find that no mandate exists in these regulations and in the statute.

And staff recommends that the Commission find that the statute and the regulations do not impose a reimbursable state mandate on counties because, one, the regulations initially implement legislation enacted prior to January 1 of '75, and, two, the statute codified the previous requirements contained in those regulations, and, therefore, no new program or higher level of service is contained in Chapter 841, Statutes of '81.

Could you introduce yourselves, please?

MR. DUTTON: My name is Terence Dutton. I'm

1 Deputy County Counsel for the County of San Diego,
2 representing the claimant, County of San Diego.
3 MR. DANFORD: I'm Richard Danford. I'm the
4 Director of the Patient Advocacy Program at the University
5 of San Diego Law Institute and the Title 9 advocacy program
6 for the County of San Diego.
7 MS. LURIE: My name is Barbara Lurie, and I head
8 the Patients' Rights Advocacy Program for the County of
9 Los Angeles. I work for the Los Angeles County Department
10 of Mental Health,
11 MS, WIGAND: Donna Wigand, Mental Health Director
12 of Fresno County,
13 MS. STONE: Pamela Stone, Senior Deputy County
14 Counsel, County of Fresno, for the County of Fresno as
15 claimant,
16 MR. WIEDNER: I'm Bill Wjedner. I was head of
17 the Patients' Rights Office when these regulations were
18 written, and I wrote the regulations myself.
19 (Laughter)
20 MR. BLACK: Norman Black. I'm the Counsel with
21 the State Department of Mental Health.
22 CHAIRPERSON GOULD: Okay. I don't know who'd
23 like to begin. Mr. Dutton or Ms. Stone, which -- have you
24 discussed among yourselves who would like to begin?
25 MS. STONE: Yeah,

1 CHAIRPERSON GOULD: Okay.

2 MR. DUTTON: Mr. Chair, Members of the Commission,
3 we would first like to have Richard Danford, the Patients'
4 Advocate for the County of San Diego, talk about this very
5 briefly, just review for you the start of our Patients'
6 Rights Advocate Program down in San Diego and the initiation
a of the monitoring function after the 1981 statute was
8 passed.

9 So, very briefly, the three main issues that are
10 involved here, we believe, don't involve whether the 1981
11 statute or the 1976 regulations actually created a new
12 mandate but rather whether the 1976 regulations fit the
13 exception to Article XIII-B, Section 6 that says that any
14 regulations adopted after 1975 that were initially imple-
15 menting statute before '75 don't have to be reimbursed, may
16 be reimbursed but do not have to be reimbursed actually.
17 That's a principal issue.

18 A second issue that comes up is if the Commission
19 determines that the 1976 regulations fit that exception,
20 actually, which, of course, we oppose, argue against, if the
21 Commission decides the '76 regulations fit that exception,
22 then we believe that anyway the 1981 statute brought a new
23 level of service, an increased level of service, in terms of
24 the monitoring function, requiring the Patients' Rights
25 Advocates monitor facilities. We believe that that was not

1 specific in the 1976 regulations and not at all a require-
2 ment of the '76 regulations.
3 And then the third issue is if the Commission
4 goes along with either of those two mandates, then the issue
5 of 10 percent match of the county versus 100 percent of the
6 county's actual cost for these services comes up. We would
7 only deal with that momentarily or make a comment on that.
8 So we'd first like to have Richard Danford talk
9 about the difference between the services that the
10 Patients' Rights Advocate was providing down in the County
11 of San Diego under the '76 regulations and then the
12 monitoring function that was initiated after the 1981
13 statutes started.
14 MR. DANFORD: I'll try to make this brief. Our
15 program was started following the enacted 1976 regulations.
16 The University of San Diego Law Institute contracted with
17 the County of San Diego to provide Title 9 services.
18 Originally, we had two advocates, and their
19 primary responsibilities were, essentially, to respond to
20 complaints or requests for services from clients and family
21 members of clients for those in the community and doing
22 basic patient and staff inservicing and education in the
23 community.
24 EXECUTIVE DIRECTOR EICH: Excuse -- I hate to
25 interrupt, Mr. Chairman, It sounds like we're getting into

1 some testimony here by Mr. Danford. And I think it might be
2 best for the record to swear him in.
3 CHAIRPERSON GOULD: Okay. Counsel, is that -- do
4 you concur?
5 MR. HORI: Yes, I do.
6 EXECUTIVE DIRECTOR EICH: I have the statement.
7 MR. DUTTON: Could we ask that everyone who would
8 provide testimony as opposed to argument be sworn, just to
9 make it clear?
10 EXECUTIVE DIRECTOR EICH: Yeah, that would be
11 fine. We do it all at one time, then.
12 MR. DUTTON: Thank you.
13 EXECUTIVE DIRECTOR EICH: Want to do that? Okay.
14 Those that are going to be providing testimony,
15 it looks like it might be up to four.
16 SECRETARY GIROLAMO: One, two, three, four.
17 EXECUTIVE DIRECTOR EICH: Four all together?
18 Yeah, excluding the attorneys.
19 Could you please raise your right hand. Do you
20 swear the testimony you are about to give to this Commission
21 is the truth and the whole truth?
22 (Whereupon, those being sworn answered in the
23 affirmative.)
24 EXECUTIVE DIRECTOR EICH: Thank you.' Please
25 continue.

1 MR. DANFORD: Where was I? 1976 somewhere, I
2 think.
3 (Laughter)
4 MR. DANFORD: Okay. The big problem that we had
5 early on -- 1 should maybe qualify some of what I'm saying
6 here, too -- is that I -- I was not a patients' rights
7 advocate in 1976. I've been a patients ' rights advocate
8 since 1983 and director of our program for the last three
9 years. I've gone back and rev ewed the documentation with
10 our program and the agreements with the County. I 've
11 researched the history of how patient advocacy has evolved
12 in San Diego County. But I wasn't directly involved until
13 1983.
14 But a big problem after '76 was that there was a
15 lot of difficulty with access to clients, access to medical
16 records. There was no direct access absent a specific!
17 request for services by a client, and usually including a
18 signed release of information to gain access to the medical
19 records.
20 I spoke with the former director of our program,
21 James R. Johnson, just last night specifically about the
22 issue of monitoring. And according to him, because of the
23 problem with access to clients and to medical records, there
24 was essentially no monitoring going on other than keeping
25 track of the complaints that did come in and where they came

1 from. But there was no specific responsibility or task
2 identified within our program to fulfill that function.
3 I'm not aware of any problems that the State had
4 at that time with how we were functioning, We seemed to be
5 in compliance with whatever the expectations were for
6 advocacy services at that time,
7 Then in 1982, according to Mr. Johnson, in
8 response to the '81 statutes that did call specifically for
9 monitoring, that specific task and responsibility was
10 included then in our program responsibilities. And he began
11 and I have since completed the development of a monitoring
12 tool to apply to facilities to assess compliance with the
13 OPS Act. At that time regularly-scheduled reviews of the
14 facility's policies and procedures were begun. Random
15 access to patient records was allowed, but only on a
16 periodic basis. We still have some problem with access to
17 patient records.
18 In 1983, we expanded our program from the two
19 advocates to four advocates when certification review
20 hearings were added. And now, currently, 'we have a staff of
21 five advocates.
22 That's as brief as I can make it.
23 MR. DANFORD: I'd like to ask Barbara Lurie, who
24 works up in Los Angeles as the patients' right advocate, to
25 talk just briefly also about how the monitoring requirement

1 came into being. She was involved in helping to write the
2 requirement in the 1981 statute.
3 MS. LURIE: I've been heading the patients'
4 rights program in Los Angeles since 1977. I guess I'm the
5 -- as Bill Wiedner introduced me this morning -- I'm the
6 oldest pat ents' rights advocate in California.
7 And in --
8 CHAIRPERSON GOULD: The longest duration,
9 certainly.
10 (Laughter)
11 MS. LURIE: Yes. I'n duration. I'm glad you
12 clar fied that.
13 Anyhow, prior -- well, back in 1977-78, the
14 counties were not really doing monitoring, or the counties
15 that I'm familiar with at least. But we, our county,
16 started doing it on our own initiative in 1978 because we
17 thought it was very important to achieve compliance with
18 patients' rights requirements. And we did then, and we
19 still do now, make regularly-scheduled monitoring visits
20 annually and even more often if the facilities are shown to
21 have significant problems.
22 And the components of the review, and again I'll
23 try and be brief, are examining the facilities' policies and
24 procedures, review charts, we interview clients, we
25 interview staff, we inspect the facility to make sure, for

1 example, that the -- they have privacy in the rooms, they
2 have bathroom privacy, that there's phones, and so on, At
3 any rate, we then follow that up with a written report of
4 our findings along with our recommendations. And we monito
5 and make sure that the facilities implemented those
6 recommendations.
7 When we were doing this in '78 through '81, our
8 authority to do that was challenged sometimes. The
9 facilities would say, "Where do you get the access to our
10 facilities, to the clients, to the charts?" And so when the
11 bill was being drafted that's being considered right now, I
12 had asked that a specific monitoring provision be put in
13 there to give us that authority, We just wanted statutory
14 authority to back it up, and I was very glad when that came
15 out and that achieved that end.
16 I do think monitoring is a very separate function
17 from our other duties; like, for example, responding to
18 patients' complaints. Responding to complaints puts us in a
19 reactive mode. And it concentrates our activities on
20 individual. prob1ems. In doing the monitoring, I wanted to
21 complement that by taking a more systemic approach to
22 patients' rights problems and issues. And you really can't
23 do that without monitoring. You can't, for example, get an
24 idea of how pervasive a particular problem is. Morever, a
25 lot of problems you just can't spot if you're just

1 responding to patients' complaints. For example, all of the
2 facilities are required to give all the patients a little
3 handbook with our name and number on it. They're also
4 required to post our name and number up on the wall so
5 patients can call us if they have a complaint. Well if the
6 facilities aren't doing those two things, we're never going
7 to get a call from a patient. So here the facility's out of
8 compliance, but we'll never even know about it.
9 Or let's say that the facility is drugging their
10 patients into oblivion, and the patients don't have the
11 wherewithal to even pick up a phone and call us. Again,
12 we'll never know that unless we do systematic monitoring,
13 And we' 1 never know, for example, what the facilities'
14 written policies and procedures are unless we do that.
15 So that's why I thought it was important enough
16 to ask for and get it to be included in the 1981 statutes.
17 MR. DUTTON: We'd like Donna Wigand, the Mental
18 Health Director for the County of Fresno, which filed the
19 initial claim on this matter, to talk just a moment about
20 funding, how the Patients' Rights Advocate Program fits
21 within funding for the counties.
22 MS. WIGAND: I think it's important to note a
23 couple of things which have made it important in terms of
24 the administration of this program on a local level in the
25 county mental health systems.

Prior -- 1 just want -- 1 will be very brief here historically -- but prior to 1981 in Fresno County, there was less than a full-time body doing patient advocacy work, which consisted primarily of only responding to individual complaints, Since that time, in just a few years after the 1981 piece, Fresno County went to hiring a minimum of a full-time equivalent, and now we have over -- anywhere from one and a quarter to one and a half full-time equivalent patients' rights advocate, whose responsibility is not solely just focusing on individual complaints but, as these folks were saying before, is monitoring the facilities in the county, which I believe is a departure from what happened prior to that time.

The cost of providing these services has increased concurrently over the years. Basically, right now, we have a contract that is over $50,000. And I am in the process of getting ready to let that out to bid because no longer does one-and-a-quarter body do what I need to do.

I have no memory -- and maybe these folks can refresh it -- but I certainly have no memory since working in the county mental health system in three different counties since 1978 of experiencing an increase in a Short-Doyle allocation to -- an augmentation or an appropriation, which would fund these increased duties and responsibilities, which I believe are a mandate.

1 Basically, the other issue that I wanted to bring
2 up, and this is a larger global issue, and I won't get into
3 it, but the money that I must use to pay this patients'
4 rights advocate or provide the contract to provide that
5 indirect service does take away from the bigger pot of
6 Short-Doyle money, which my primary mission is to use to
7 expend on direct services to patients, And there was no
8 additional compensation given to counties to do this addi-
9 tional work.
10 MR. DUTTON: I'd like to make just a couple of
11 points, just to review what our arguments have been in the
12 papers that we presented, just to see whether I can make it
9% any clearer at this point. And I'll also try to be very
14 brief on that.
15 Just on that first issue of whether the '76 regu-
16 lations were authorized by or initially implementing the '73
17 statute, there are two main points I'd like to make, And
8% that -- the first one of those is that the '73 statute seems
19 very clear on what it was going to be allowing the
20 regulations to do. It called for promulgation of regula-
21 tions that specified the conditions under which patients'
22 rights would be denied. In that -- in terms of that
23 language then, the conditions -- specifying the conditions
24 under which rights would be denied was, we submit, intended
25 to be directed to the facilities so the facilities would

1 know by these regulations when they could properly put
a someone in restraints, how long they could keep someone in
3 restraints, those sorts of things about the patients'
4 rights.
5 As far as conditions then, we believe that the
6 system of patients' rights advocacy, the program of putting
7 together advocates in each of the counties had nothing to do
8 with those conditions at all.
9 Secondly, the legal test for whether regulations
10 are authorized by a statute brings in the term of whether
11 the regulations were necessary to effectuate the purpose of
12 the statute, In this statute, the 1973 statute, we see that
13 the Legislature was very specific about the protection that
14 would be granted for patients' rights. And the protections
15 were to be that records had to be kept by the facilities
16 whenever patients' rights were to be denied first. And
17 quarterly reports had to be made by the local mental health
18 director and sent to the State, and the State then, the
19 State Director of Health at the time, later Director of
20 Mental Health, would be the one who would investigate
21 complaints.
22 Now these were the protections, the system of
23 patients' rights advocates then became in the regulations a
24 new protection that we think was not contemplated at all
25 within this language of specifying conditions under which

1 rights would be denied.

2 Now this all isn't to say that those regulations
3 were bad. The counties, I'm sure, all believed that those
4 were a great thing, The county mental health directors, in
5 fact, at the time and ever since, even though they've
6 undoubtedly got disputes with their patients' rights
7 advocates here, think those are a good thing. And we think
8 now that they were a good thing,

9 As to whether they were authorized, that's
10 another question once again, We believe they'd be
11 authorized under the general powers of the Director of
12 Health then, who promulgated the regulations, So the
13 -- so the question isn't whether they were authorized at
14 all, either, or whether they should be invalidated or
15 whether they should have been invalidated. None of that.

16 The question is whether they were initially
17 implementing the '73 statute. Now, we submit that the
18 question of authorization for those regulations is the same
19 as initially implementing, Actually, initially implementing
20 should have two requirements to it; first that those
21 regulations are the ones authorized by the statute in
22 particular in order to fit this specific exception in
23 Article XIII-B, first that it has to be authorized, and,
24 secondly, that these are the regulations that are initially
25 implementing this statute, not something that 60 years later

1 after 20 sets of regulations have been promulgated actually
2 implement the thing,
3 So the Commission's duty here is not to determine
4 whether those are improper regulations at all, but rather
5 only to see the narrower term of whether they were initially
6 implementing the '73 regs. Given that very specific
7 language of conditions and the specific protections for
8 patients' rights that were in the '73 statute, we believe
9 that that does not fit at all.
10 The second point -- the second issue that we
11 talked about is monitoring. If in fact the Commission
12 determines that the '76 regs were initially implementing the
13 '73 statute, there is still that question, of whether there
14 was a new requirement in 1981 under the statute itself as
15 far as the monitoring. And that question -- that question
16 then goes as far as -- as looking at whether -- whether this
17 is a function that had been done that was being accepted by
18 the State as sufficient as far as what we were doing already
19 and whether this fits the terms of those regulations. Now,
20 the term that the State relies on, to show that monitoring
21 should have been done or monitoring was being done, is a
22 term that says that the advocates were being required to
23 act as an advocate on behalf of patients who were unable to
24 file complaints, who were unable to register complaints.
25 And that's as far as monitoring goes in the 1976 regulations

1 under the State's view for this.

2 Now, we see that before 1981, in fact, there were
3 a lot of things that advocates could have been doing and
4 were doing on behalf of patients who couldn't register
5 complaints. Perhaps they'd hear about the complaints from
6 other sources. The patients' rights advocates will be out
7 at facilities on behalf of other complaints. They will also
8 set up in-service training, and so forth. That's what our
9 program was doing. Our program, then, never heard from the
10 State that in fact they had to be going out and monitoring
El each and every facility. So that's the requirement that
12 we're talking about there that came in in the 1981 statutes,
13 actually.

14 The third point just on the 10 percent, 100
15 percent match of the county, if the Commission finds that in
16 fact there is a mandate here, we would certainly be
17 contending either at this hearing or a future one that 100
18 percent of the funding ought to be provided as the
19 reimbursement for the program. I'm sure you've heard the
20 argument before, We'd like to emphasize that this
21 particular program, Patients' Rights Advocates, this was not
22 a rearrangement of priorities within Short-Doyle, actually,
23 that this was a very new mandate, a new program that was set
24 up by the counties that hired new people for doing it. It
25 was a very new additional requirement. Now, what happens

when one is doing the funding through Short-Doyle, it is certainly acceptable legally for the State to reduce Short-Doyle funding to the counties, as desperate as that may actually be. For the State to do that with the intention of circumventing Article XIII-B, Section 6, we think is, in fact, very improper. We think XIII-B, Section 6 as the voters adopted it then has no meaning at all, if in fact the State can put programs into a block grant broader program like this every time in order to avoid reimbursement under XIII-B, 6. And that's very important to us, actually.

Perhaps one of the ways the states should have been required to provide funding to each new program is through separate line items to make it clear or perhaps through a statement within the Budget Act that says that we're reducing this in order to come up with money for this other program. I don't think it's clear how the Legislature should have done such things, And I don't think it's your duty to say how the Legislature should have done such things. But in this situation, and probably in others as well, when there is not a rearrangement of priorities at all but a very new mandate, we think it certainly makes XIII-B, 6, entirely useless to allow that to happen.

CHAIRPERSON GOULD: Ms. Stone, do you have anything to say?

MS. STONE: Just very briefly. What I would like

1 to add is that if you take a look at the Patients' Rights
2 Advocacy Program on a time continuum, you see that the 1973
3 statute requires that there be limitations upon the denial
4 of constitutional rights. The methodology by which this is
5 initially implemented was when the Department of Mental
6 Health -- the Department of Health, now the Department of
9 Mental Health -- determined to create the position of
8 advocacy, but if you take a look at the character of that
9 advocacy, there is a substantial difference in the character
10 of the advocacy prior to the 1981'statute.
11 Before 1981, the role and character of the
12 patients' rights advocate was more of a reactive one,
13 reacting to situations in existence, What you have since
14 1981 is a change in emphasis to a very proactive position,
15 with more monitoring required to make sure that the
16 statutory requirements have been met. You take a look at
19 the fact that there is more than outreach, given the
18 authorization now to be able to have unrestricted access to
19 records without the necessity of battling either the
20 institution or the client for records.
21 So what you have is a total change in emphasis in
22 this program, making the duties of the patients' rights
23 advocate not only more onerous but in addition creating the
24 necessity for having a new program to be able to accommodate
25 the increased duties imposed upon the patients' rights

1 advocate, which when we are looking at with the Short-Doyle
2 funding is that although this particular program comes
3 within the Short-Doyle ambit, the Short-Doyle program has
4 never been increased, to the best of our knowledge, to cove
5 the increased costs as a result of the Patients' Rights
6 Advocacy Program. And, as a result of which, the
7 diminishing resources, which are available for direct client
8 resources and services, are further being diminished by
9 having to do another layer of administration, albeit for a
10 wonderful. purpose, but again it is diminishing the ability
11 to provide direct case services to the folks who are most in
12 need of it.
13 CHAIRPERSON GOULD: Okay. Mr. Black?
14 MR. BLACK: Yes. Well, I don't -- counsel for
15 San Diego did such a good job in summarizing the issues, I
16 don't think we really need for me to attempt that at this
17 point. I'll just briefly make some comments about the
18 Department's position on the three main issues, and then
19 I'll have Mr. Wiedner make a few comments.
20 The first issue that was identified was whether
21 or not the 1976 regulations initially implement the '73
22 legislation. That is the position of the Department. And
23 I think, partly by the testimony of Mr. Weidner, it will be
24 shown that that was the intention of the Department at that
25 time. And I think it's important to reiterate, to some

1 extent, the comments that were just made. You have to view
2 this whole issue, this whole program, the system, in the
3 context of the time that has gone on because what we're
4' doing here today is looking at a system which we're going
5 back like -- if we start -- the starting point is 1973
6 legislation, that's 16 years, And, you know, people have
7 retired, people leave, documents disappear, It's
8 exceedingly difficult sometimes to reconstruct what the
9 intention was at the time. But I think it's important to
10 keep in mind that things have progressed over time. With
11 the initial legislation in '73, it got the whole concept off
12 the ground. The Department of Health at that time
13 promulgated the regulations in Title 9 to implement that,
14 and it was, and I believe Mr. Wiedner's testimony will be,
15 that at that time, it was felt that a necessary part of that
16 scheme was to have someone at the local level designated as
97 an advocate to do some of the monitoring.
18 It was, therefore, seen by the Department as a
19 necessary part of that regulatory package to specify the
20 conditions under which rights could be denied. Now, I think
21 there was an earlier reference to some of the language in
22 there that talked about, in the '73 legislation, that the
23 records should be kept, denial of rights should be put in
24 the.treatment record, the content of the quarterly reports
25 shall enable the Director of Health to identify individual

1 treatment records if necessary. That is not the same as
2 saying the Department of Health is the one who should, and
3 exclusion of all others, take on the job of investigating
4 any instances of abuse.
5 For that matter, there's other language in that
6 statute that talks about those reports also being available
7 to the person -- 1 assume that means the patient -- his
8 attorney, his conservator, or guardian, or the State
9 Department of Health, Members of the State Legislature, or a
10 Member of a County Board of Supervisors, So taking that
11 argument, all of those people that I just mentioned,
12 organizations would have an equal obligation for
13 investigating reported abuses,
14 I think that -- well, I'll let Mr. Wiedner speak
15 more about the regulations because he was personally
16 involved in that.
17 I think the second issue -- general issue is the
18 1981 legislation and whether it did anything new or went any
19 further than the regulations. And, although there certainly
20 are some differences in some of the wording, again it's the
21 Department's position that, for all intents and purposes,
22 the legislation did not go further than the regulations that
23 had been promulgated in '76.
24 Specifically to the issue of monitoring, yes, the
25 word "monitor" itself first appears. But, again, I think

1 Mr. Wiedner will talk to -- that concept was not new at that
2 point in time. Some of the activities of the advocates
3 necessarily involved what we now call monitoring to that
4 time in the sense that any time an advocate was
5 investigating or addressing a complaint without specific
6 authorization or consent of that individual patient, that
7 would have to fall under the general rubric of monitoring
8 because it's not related to a specific complaint of the
9 patient, and it's not with the authorization of the patient.
10 So the Department's position is that the concept
11 of monitoring, although the word seems to be newly appearing
12 at that point, the concept is not new. And, in fact, many
13 of the advocates were performing those functions prior to
14 that. And, again, I'll have to defer to Mr. Wiedner on that
15 point,
16 Now, finally, as to the funding, it's certainly
17 true that there's no separate line item, no separate piece
18 of appropriation in the Budget Act that specifically identi-
19 fies it as for the purpose of reimbursing advocacy functions.
20 But the Department is taking the position that it has always
21 been considered reimbursable under Short-Doyle and that, in
22 fact, much or most of the activity of the advocates at the
23 county level has been reimbursed by Short-Doyle. Unfortu-
24 nately, there aren't any documents to verify that. But the
25 thing about that is that there are many aspects of the

1 et cetera.

2 Another condition was that if his rights were to
3 be taken away, he should be informed that they were being
4 taken away, and not just noted in somebody's record and he'd
5 just be denied access to the phone without any information,

6 And third, that there be a good reason for taking
7 away a person's rights, spelled out in law, commonly assumed
8 to be individual's rights in our society or as set forth in
9 the Constitution, So for that reason, we specified in great
10 detail in the regulations what a good cause was, that good
11 causes for denials could not be just punitive actions. If a
12 person answered back to a staff person, you couldn't say no
13 visitors, no phone. The good cause had to be related to the
14 exercise of that specific right. Only if the phone was
15 abused or the use of visitors abused for that right to be
16 denied. And that would have to be documented and subse-
17 quently reported to the State.

18 Then I went one step further, And that is, if a
19 patient was involuntarily retained in an in-patient unit
20 with no contact necessarily with the outside world, if a
21 right were denied, the only one they could complain to would
22 be a staff person, who probably was involved in the decision
23 to deny him the right. So that person had a conflict of
24 interest.

25 So here is a patient locked up involuntarily,

could be as much as 17 days or longer, The only one that can complain of rights taken away would be the staff, and so it seems essential, in the interest of justice to that patient, that somehow she should have access to somebody outside that facility that would be sure to look into an improper, inappropriate, capricious, arbitrary denial of rights. And that's why we said somebody in the county should be available -- his name posted in the facility, and that person available to respond to that patient, that would keep a lid on any arbitrary, multiple denials of rights that were either unjustified or were maybe excessive. And we debated'for a while what to call that person, whether to call him an ombudsman, a consumer representative, or whatever, and we said, well, what that patient needed was someone to speak in his or her behalf. And so we used the name of " advocate. "

So that was the original reasoning. When that was presented to the Conference of Local Mental Health Directors in June of 1975, surprisingly, there was no objection, strong objection, to that concept or that creation of a position. The reason may be no one quite knew how this whole thing would evolve over time. The only thing that really became a concern was the word "harmful." We said it had to be -- you couldn't take a right away unless it were harmful to the patient. So we argued and dickered

1 over whether to call it physically harmful, psychologically
2 injurious, and on and on and on, and finally we compromised
3 using the attorneys in the Department and came up with a
4 felicitous term that still exists today in the regulations.
5 Because of that argument over that one word in
6 the June meeting of the conference, the decision --
7 recommendation of that particular committee of the
8 conference was postponed until October of 1975. At that
9 time, they accepted the amended wording of that one section,
10 and they approved it, and it went to the executive committee
91 of the conference in between the June and the October
12 meeting. And then at the full meeting in October of 1975,
13 the conference approved these regulations. And they were
14 subsequently subjected to public hearing, I think, in
15 February of 1976. We had minimal problems with the public
16 hearing. We filed the regulations with the Secretary of
17 State in early May of 1976, and they were then promulgated,
18 or they were effective in June of 1976.
19 So that is the explanation of the reasoning that
28 I thought justified the creation of an advocacy role as
21 inclusive -- as one of the conditions, that the Department
22 was mandated to produce in the form of regulations, that
23 there was no other way of insuring a protection of rights of
24 a patient who was locked up if he did not have access to
25 somebody outside who would speak in his behalf.

1 The second point I want to address, and I'll do
2 this as briefly as I can, is the issue of monitoring.
3 Granted the word "monitoring" did not appear in those early
4 regulations. However, as I -- at that time, I was
5 responsible for the 58 or the more local problems. For all
6 the 58 county mental health programs, the 13 state hospitals
7 and the 21 regional centers, most of whom did not know much
8 about what rights were, so I went county to county, hospita
9 to hospital over a three-year period and began talking to
10 the advocates who were appointed as of June, 1976. I even
11 went earlier than that to instruct the director and staff as
12 to what these rights were that were in the law, because most
13 weren't aware of them even though they were passed in 1967,
14 became effective in 1969. So as -- when the '76 regulations
15 went out, then I instructed the advocates by going county
16 to county what their jobs were, and part of my instruction
17 was, "You must visit the facility to see what's going on."
18 And I was cognizant of the fact that some counties,
19 particularly at that time San Diego, did have problems with
20 access to records. They were one of the most difficult
21 counties for advocates to get into a facility and look at
22 the chart to see if there is documentation that the patient
23 was informed of his rights, et cetera, et cetera, and if the
24 rights were taken away was the cause adequate, was he put in
25 seclusion, arbitrarily put in there too long, were they

1 doing the checks every 15 minutes, all those things. So
2 the only way to do that was to go and visit the facilities
3 and to look at the records.
4 So in 1978, or maybe in '77, I went to our
5 attorneys and said, "We must find in law something that
6 entitles the advocates for access to records," and we did
a obtain a 1978 Attorney General's Opinion, which is in the
8 record somewhere, which said that there were, even though it
9 didn't say explicitly in law, advocates could go and look at
10 and check records, it did say that the mental health record
11 could delegate under certain conditions to the advocate
12 access to records of facilities in the county. So that was
83 grounds for our understanding, even though the word
14 "m0nit0r" may not have been used, that we did expect
15 advocates to go in and check records.
16 A further thing to show that we had that in mind
17 was that in 1977, counties began to be more serious about,
18 well, how many advocates should we have. We never did say
19 how many they should have. So I devised a formula, from my
20 experience throughout the counties, as to how many advocates
21 would there be necessary to do the job in the county. And,
22 believe it or not, this may sound made up, but I used Fresno
23 County as an example, saying that about 500,000 population,
24 in my experience, showed me that it would take one full-time
2% advocate to monitor or to review -- visit and review the

1 residential care or community care facilities and the health
a care facilities in that county to see if patients' rights
3 were being complied with. And that became a formula the
4 Department issued in 1978 in the form of a guideline, not a
5 mandate but a guideline, saying to do the job properly, the
6 advocate -- there should be one advocate for every 500,000
7 population in the county.
8 And the final point I want to make regarding the
9 monitoring function was that a law was passed in '77, I
10 think it was, and beginning with Section 4030 of the W and I
11 Code which mandated the State Department of Mental Health to
12 review all county mental health programs before January 1 of
13 1980, I think it was. And so we -- we had six service area
14 teams, and we went on to all the counties and reviewed them,
15 and I went along from my office -- at that time I finally
16 had a staff person with me -- and we went out -- I think we
17 went to 35 or 40 counties in the 58 county reviews. We just
18 couldn't get to all of them because some of them were done
19 simultaneously. And part of my action at that time, when I
20 reviewed a county, was to go to every facility, look at the
21 charts in the intake units, make sure rights information was
22 properly documented, rights denials were et cetera,
23 et cetera, and what I would do is invite the local advocate
24 with me to show that person that this was part of their duty
25 to review the records in facilities, to see that the rights

1 were posted, that there was a public phone that they could
2 have access to, et cetera.
3 So I think, even though we may not have used the
4 word "monitoring" in the initial regulations, that was a
5 growing understanding of the role of the advocate. He
6 couldn't insure that rights of patients were being protected
7 unless he went and looked in the locked facilities or in the
8 board-and-care homes.
9 MR. DUTTON: I wonder if I might be permitted a
10 brief reply just --
11 CHAIRPERSON GOULD: All right, if I could --
12 MR. DUTTON: -- on two points.
13 CHAIRPERSON GOULD: -- are there questions from
14 the Members first, in terms of what you've heard? Okay.
15 All right.
16 MR. DUTTON: Just on the question of monitoring
17 here and access, actually, the question for monitoring is
18 when did it become a mandate of the counties, actually. It
19 became mandated in 1981, even though it was a good idea,
20 certainly, before that time. And Los Angeles was doing this
21 before that time. No quarrel with that. It's very helpful
22 to have Mr. Wiedner here today, And I thank you for that.
23 On that question of access and the Attorney
24 General Opinion from 1979, I believe it's dated, I haven't
25 had a chance to reply to that yet because that first came up

1 in the Commission staff recommendation, actually; and that
2 Attorney General Opinion says that the patients' rights
3 advocates have access to all of the records at facilities
4 that are part of the local county program, actually; and,
5 secondly, they have access in private facilities when a
6 patient gives them a release, a consent to those records,
7 only. They don't have access to those otherwise.
8 Now, next this is an Attorney General Opinion.
9 It's not a decision of the courts, of course. And down in
10 our county, the attorneys for the hospitals didn't agree
11 with it besides, or, apparently, still may not. So we have
12 access problems. But the point there is that monitoring
13 should have gone along with access. We didn't have access;
14 we also didn't have a monitoring requirement until '81.
15 Both of those were added, access provisions were begun in
16 the 1981 statute.
17 Separately, and just very briefly again, on the
18 question of the '76 regs., and the authority in the '73
19 statute, again we must agree with Mr. Wiedner that it was a
20 great idea to have patients' rights advocates. The rights
21 were actually in place in the statutes before 1973. The
22 patients' rights were specified in the statutes before that
23 time already. To be enforcing those, then, at any
24 particular time was a good idea, And the Patients' Rights
25 Advocate Program was put together to protect those.

1 In Mr. Wiedner's own terms, the requirement of
2 patients' rights advocates came from his mind as he was
3 thinking about what would be good for protecting those
4 rights. And the point that we want to make is that that was
5 not a condition that could be specified in promulgating
6 those regulations, a condition under which rights could be
7 denied. And that's the distinction that we think is
8 important.
9 Thank you.
10 CHAIRPERSON GOULD: Questions of Members?
11 Mr. Shuman.
12 MEMBER SHUMAN: Mr. Black, do you currently have
13 regulations that specify what constitutes monitoring?
14 MR. BLACK: No. The patient rights regulations
15 have -- they may have remain changed.
16 REPORTER: Use the microphone, please.
17 MR. BLACK: The patient rights regulations have
18 remain unchanged since 1976 when they were first
19 promulgated. And, to my knowledge, we don't have any other
20 regulations in Title 9 which would define the term
21 "monitoring."
22 MEMBER SHUMAN: Okay. I think you -- you've
23 gotten to my question. I was really wondering whether any
24 new regulations were adopted after the '81 act that tried to
25 further define or expand upon what constituted the

monitoring. And the answer is no, That's right.

MR. BLACK: Correct.

MEMBER SHUMAN: Well, maybe Ms. Stone or somebody else would like to take this one, and that is the Code Section 5520 specifically states, and that's the code section we're talking about here with respect to monitoring, it says this section does not constitute a change in but is declarative of existing law. Doesn't that pretty well indicate the Legislature's understanding that there's nothing new in that section?

MS. STONE: With all due respect to the State Legislature, just because there is a recitation of a finding that this is declarative of existing law does not necessarily mean that the law was in that type of condition at the time the law was passed,

This particular statute poses somewhat of an anomaly. The Department of Mental Health is arguing, "Hey, this statute did nothing more than to codify what was pre-existing." And notwithstanding the fact that, I believe, the County of San Diego as well as ourselves have pointed out the changes, and if there was no necessity for changing the regulations why bother with the recodification. We respectfully submit that the monitoring of mental health facilities' services and programs was necessitated in this enactment because of the fact that the regulations were not

1 sufficient to provide the access and impetus to be able to
2 garner the information at other than county -- at other than
3 county facilities. And because of that, there has been,
4 as Mr. Wiedner aptly put it, a growing evolution of this
5 program. And whether you look at it as a new program
6 arising with the regulations in 1976 or increasing sophisti-
7 cation with respect to the duties of the patients' rights
8 advocate, this wonderful concept to protect the rights of
9 individuals who could not otherwise have access to someone
10 from the outside has created an administrative program
11 which within the terms of W and I Code Section 5520
12 specifies that there must be monitoring of mental health
13 facilities, services, and programs. And so although it was
14 a wonderful idea beforehand, there was not the necessary
15 statutory authorization to be able to effectuate monitoring.
16 MR. DUTTON: Commissioner Shuman, if I might add
17 on that, the regulations for the sake of monitoring have,
18 apparently, been under consideration for some number of
19 years in fact. We would contend that the statute itself is
20 sufficient and specific on the monitoring. But, apparently,
21 there has been consideration of such regulations for a great
22 length of time already.
23 CHAIRPERSON GOULD: Okay, If I might, it seems
24 that there has been a participation of local government as
25 part of this process also, There was a ratification by the

Conference of Local Mental Health Directors in reviewing regulations. And, in fact, as I understand it, didn't they have some veto power over those regulations?

MR. DUTTON: They had to consent.

CHAIRPERSON GOULD: They had a consent power, And, in fact, they did consent with them, And then in Ms. Lurie's discussion, she indicated that she worked with the author in terms of clarifying the language and what-not, because prior to 1981 they were doing monitoring, but she wanted to make sure that those rights were very clear so as to meet the intent of what they were trying to accomplish already, meaning that local government was a participant in trying to clarify that question to make sure that that was, in fact, something that they could continue.

MR. DUTTON: I --

CHAIRPERSON GOULD: I look at that, and I look at that in conjunction with the Legislature's finding, that they felt that they were making a declaration of existing law, and quite frankly in watching the continuum of the development of this, it strikes me that it's been something that has been done in concert with local governments, that it was based on the '73 statute. And, frankly, I'm compelled by staff's argument that it does not constitute a mandate.

MR. DUTTON: If I may, the question of -- the

1 question of whether these were already required for -- the
2 regulations already required monitoring or not, I believe
3 we've heard testimony from Mr. Danford that the County of
4 San Diego was not doing monitoring like that, and Ms. Lurie
5 that other counties, counties other than Los Angeles, were
6 not doing monitoring. And the patients' rights advocate
7 wished to require, to mandate, monitoring by the counties,
8 So I don't think there we've -- we've heard the testimony
9 from our side that, in fact, it was already required and
10 that the Legislature was only adopting what's already in
11 place.
12 Secondly, as to that point,, there is also case
83 law that shows that since Article XIII-B was adopted, that
14 the Legislature's own statements that may well be self-
15 serving as to whether they're only adopting an existing
16 program into statute doesn't have to be given weight.
17 CHAIRPERSON GOULD: I understand.
18 MR. DUTTON: Because the Legislature has an
19 interest in avoiding additional costs reimbursement in this
20 program.
21 CHAIRPERSON GOULD: Yeah, I understand your
22 point.
23 MR. BLACK: If I might offer a couple of
24 comments along the lines that you're entering into here, it
25 is the Department's position that the language does have

1 significance. You know, we did work with some representa-
2 tives from the county on that legislation, and there are
3 some differences. There are some wording differences. The
4 word "monitoring" is used. But I think that was a mutual
5 effort, in large part, to refine the system. One could say
6 that, you know -- 1 was not personally involved in that
9 process. I don't know all the details. But certainly one
8 argument that could be advanced is that to the extent there
9 is anything different on the issue of monitoring in the
10 Statute of 1981, that is there at the request of the local
11 program people. I -- well -- that's just the main point I
12 wanted to make at this.
13 MS. STONE: With respect to the argument that I
14 see coming up that because counties cooperated in the
15 formulation of the regulations, and with respect to the
16 statute, and therefore this is a county-initiated legisla-
19 tion or regulation which thereby deprives the Commission of
18 jurisdiction to go further, I would like to reply to this.
19 It is extremely difficult for counties to operate in a
20 vacuum and to address legislation or regulations which come
21 on high without any type of input whatsoever from the local
22 governmental agencies, If the cooperation with state
23 agencies and regulations puts us in a position of having,
24 quote, requested, close quote, the legislation so that we
25 are ineligible to request reimbursement through this process

it will then mean even greater problems because then the State will not benefit by the -- with the input of local government and can well end up with a situation that does not work at the local level,

I think there is a substantial difference betw'een cooperating with state agencies to work for the common good as opposed to coming to the Legislature with hat in hand, saying, "We're specifically requesting this legislation to take care of our particular local problem."

CHAIRPERSON GOULD: Yeah. Ms. Stone, I appreciate your comments. I think the point I was making is that it was a statute in '73, and there was participation with local government in clarifying the intent of that statute. That was my point. Is there any further questions?

MS. STONE: Then I'm sorry that I misunderstood.

CHAIRPERSON GOULD: Yeah. Is there any further questions? Okay.

What's the desire of the Committee?

MEMBER BUENROSTRO: I will move the staff recommendation.

CHAIRPERSON GOULD: We have a motion.

MEMBER SHUMAN: Second.

CHAIRPERSON GOULD: And a second. Any further discussion? Okay. Call the roll, please.

1 EXECUTIVE DIRECTOR EICH: Member Buenrostro?
2 MEMBER BUENROSTRO: Aye.
3 EXECUTIVE DIRECTOR EICH: Member Martinez?
4 MEMBER MARTINEZ: Aye.
5 EXECUTIVE DIRECTOR EICH: Member Shuman?
6 MEMBER SHUMAN: Aye.
7 EXECUTIVE DIRECTOR EICH: Chairperson Gould?
8 CHAIRPERSON GOULD: Aye.
9 EXECUTIVE DIRECTOR EICH: Motion carries.
10 CHAIRPERSON GOULD: Thank you very much.
11 MS. STONE: Thank you very much.
12 MR. DUTTON: Thank you.
13 CHAIRPERSON GOULD: Is there any further business
14 for the Commission?
15 EXECUTIVE DIRECTOR EICH: Mr. Chairman and
16 Members, that concludes the agenda on today's hearing.
17 CHAIRPERSON GOULD: Okay. Very good. The
18 meeting stands adjourned, Thank you all.
19 (Whereupon, at 1:00 p.m., the public hearing of
20 the Commission on State Mandates was adjourned.)
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1
2 C E R T I E I C A T E
%
4
5 THIS IS TO CERTIFY that I, Madonna M. Kushen,
6 Reporter, have duly reported the foregoing proceedings
7 which were held and taken in Sacramento, California, on
8 Thursday, the 30th day of November, 1989, and that the
9 foregoing pages constitute a true, complete and accurate
10 transcription of the aforementioned proceedings.
11 I further certify that I am not of counsel or
12 attorney for any of the parties to said hearing, nor in
13 any way interested in the outcome of said hearing.
14
15
16 Madonna M. Kushen
17 Madonna M. 'Kushen --
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MINUTES

COMMISSION ON STATE MANDATES
NOVEMBER 30, 1989
10:00 a.m.
State Capitol, Room 447
Sacramento, California

Present: Chairperson Russell Gould, Chief Deputy Director, Department of Finance; Member Fred R. Buenrostro, Representative of the State Treasurer: Member Robert C. Creighton, Public Member; Member Robert P. Martinez, Director, Office of Planning and Research: and Member D. Robert Shuman, Representative of the State Controller.

Absent: None.

There being a quorum present, Chairperson Gould called the meeting to order at 10:08 a.m.

Item 1 Minutes

Chairperson Gould asked if there were any corrections or additions to the Minutes of the Commission's hearing of October 26, 1989. There were no corrections or additions.

Member Creighton made a motion that the Minutes be adopted: Member Martinez seconded the motion. The vote on the motion was unanimous. The motion carried and the Minutes were adopted.

Consent Calendar:

The following items were on the Commission's consent calendar:

A. PARAMETERS AND GUIDELINES

Item 2 Chapter 980, Statutes of 1984
State Controller's Office
Manual of Accounting and Audit Guidelines for Municipal and Justice Courts
Prorations of Fines and Court Audits

B. STATEWIDE COST ESTIMATE

Item 3 Chapter 1659, Statutes of 1984
Emergency Procedures, Earthquakes and Disasters

C. SCHEDULE OF APPROPRIATION DEFICIENCIES

Item 4 State Controller's Office
1987-88 Budget Act
Schedule of Appropriation Deficiencies

D. STATEMENTS OF DECISION

Item 5 Chapter 1327, Statutes of 1984
Chapter 1286, Statutes of 1985
Short-Doyle Tarseted Supplement Fund

Item 6 Public Law 99-519
Title 40, CFR, Part 763(e)
Asbestos-Containins Materials in Schools

Robert W. Eich, Executive Director of the Commission on State Mandates, advised the Commission of the five items on the consent calendar. Chairperson Gould expressed his concern regarding Item 3. Item 3 was therefore pulled from the consent calendar. Member Martinez moved to adopt the consent calendar consisting of Items 2, 4, 5, and 6; Member Buenrostro seconded the motion. The vote on the motion was unanimous. The motion carried and the consent calendar consisting of Items 2, 4, 5, and 6 was adopted.

Item 3 Chapter 1659, Statutes of 1984
Emersencv Procedures, Earthquakes and Disasters

Executive Director Robert W. Eich summarized Item 3. Ms. Carol . Miller, Education Mandated Cost Network, introduced herself and addressed concerns raised by the Commission. Mr. Allan Burdick, County Supervisors Association of California, introduced himself and presented his association's question regarding redirected efforts to all mandates or just specifically to the mandate before the Commission. Discussion followed.

Member Creighton made a motion to continue this item to the next Commission hearing: Member Buenrostro seconded the motion. Executive Director Eich stated the issue of redirected effort would be set up as a discussion item on the next hearing. No further discussion. The vote on the motion was unanimous. The motion carried.

Ms. Miller suggested a prehearing conference and Executive Director Eich stated a prehearing conference would be arranged.

Item 7 Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Mr. Stephen Lehman, Assistant Executive Director, Commission on State Mandates, summarized Item 7. Ms. Susan Chapman, Deputy County Counsel for Santa Clara County, and Mr. Harlan E. Van Wye, Attorney General's Office, San Francisco, introduced themselves and appeared in conjunction with this item. Ms. Chapman and Mr. Van Wye presented their respective office's positions on this matter. Extensive discussion followed. Ms. Lynn E. Whetstone, Acting Chief Deputy Director of the State of California, Department of Mental Health, introduced herself and presented her department's position on this matter. Further discussion followed.

Member Creighton made a motion for the Commission to adopt the Administrative Law Judge (ALJ) proposed statement of decision: Member Shuman seconded the motion. Roll call: Member Buenrostro, no; Member Creighton, aye; Member Martinez, no; Member Shuman, aye; Chairperson Gould, no. Motion failed. Further discussion followed.

Member Martinez made a motion to instruct the ALJ to prepare a decision which acknowledges the mandate relative to a new function being performed with the Individualized Education Program (IEP) and the case management under the provisions of this claim and present its decision and its recommendation. Member Buenrostro seconded. Discussion followed.

Member Martinez then amended the motion to move that staff prepare a decision that in fact there is a mandate finding relative to the activities of the IEP and case management process put upon the counties relative to the population of special education students. Member Creighton seconded the amended motion. Clarification of the motion was discussed. Member Creighton advised the Commission that he would vote aye on the motion and excused himself from the hearing to attend an appointment at the Governor's office. Clarification of the motion continued. The roll call vote on the motion was: Member Buenrostro, aye; Member Martinez, aye; Member Creighton, aye: Member Shuman, abstain; Chairperson Gould, no. Motion carried.

Chairperson Gould recessed the hearing at 11:50 a.m. and reconvened at 12:00 p.m.

Item 8 Title 9, CCR, Section 860 et seq.
Welfare and Institutions Code
Sections 5325, 5326, 5326.1, 5326.9,
5328, and 5500 through 5550
Chapter 841, Statutes of 1981
Patients' Rights Advocates

Ms. Deborah Fraga-Decker, Program Analyst, Commission on State Mandates, summarized Item 8. Mr. Terence G. Dutton, Deputy County Counsel, County of San Diego; Mr. Richard Danford, Director of the Patients' Advocates Program, University of San Diego; Ms. Barbara Demming Lurie, Director of Patients' Rights Advocacy Program, County of Los Angeles; Ms. Donna M. Wigand, Director of Mental Health, County of Fresno; Ms. Pamela A. Stone, Senior Deputy County Counsel, County of Fresno; Mr. William J. Wiedner, Chief, Program Review Section, State of California Department of Mental Health (head of the Patients' Rights office when the regulations were written and author of the regulations); and Mr. Norman Black, Department of Mental Health, Office of Legal Services, introduced themselves.

Mr. Danford began providing testimony. Executive Director Eich suggested that those providing testimony be sworn in. Executive Director Eich then swore in: Mr. Danford, Ms. Lurie, Ms. Wigand, and Mr. Wiedner. The parties then presented their respective positions regarding this test claim. Extensive discussion followed.

Member Buenrostro made a motion to adopt the staff recommendation: Member Martinez seconded the motion. The roll call vote on the motion was unanimous. The motion carried.

There being no further business, Chairperson Gould adjourned the meeting at 1:00 p.m.

ROBERT W. EICH
Executive Director

RWE:ddd/0219h

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
Thursday, April 26, 1990
10: 00 a.m.
State Capitol, Room 437
Sacramento, California

A. ROLL CALL

RULEMAKING AND INFORMATIONAL HEARINGS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8.

B. MINUTES

Item 1 Hearing of March 27, 1990

C. PARAMETERS AND GUIDELINES

Item 2 Chapter 670, Statutes of 1987
Assianed Judaes

Item 3 Chapter 1327, Statutes of 1984
Chapter 1286, Statutes of 1985
Short-Dovle Supplemental Fund

Item 4 Chapter 1393, Statutes of 1978
Chapter 328, Statutes of 1982
Chapter 1594, Statutes of 1982
Chapter 1327, Statutes of 1984
Mental Health Oualitv Assurance

D. PARAMETERS AND GUIDELINES AMENDMENTS

Item 5 Chapter 1502, Statutes of 1982
Chapter 49, Statutes of 1984
Civic Center Act

Item 6 Chapter 1659, Statutes of 1984
Emersencv Procedures, Earthquakes and Disasters

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

G. STATEMENT OF DECISION

Item 7 Health and Safety Code Sections 25150.1, and 25280 through 25289
Chapter 1046, Statutes of 1983
Title 23, CCR, Ch. 3, Sub. 16
Undersround Storase Tanks

Item 8 Penal Code Sections 14205, 14206, 14207, 14209, 14210, and 14213
Chapter 1456, Statutes of 1988
Missing Person Reports III

Item 9 Chapter 1747,. Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and-Disabled Students

H. TEST CLAIMS

Item 10 Chapter 1607, Statutes of 1984
Chapter 78, Statutes of 1988
Department of Education's "Instructions for Completing the Standard School Crime Reporting Forms"
School Crimes Reporting

I. REVIEW PER ATTORNEY GENERAL'S OPINION No. 88-702

Item 11 Chapter 1567, Statutes of 1984
Minimum Tire Tread

CLOSED EXECUTIVE SESSION

Discussion of litigation matters pursuant to Government Code section 11126, subdivision (q)(l)

County of Los Anseles and County of San Bernardino v. State of California, etc., et al.: Los Angeles County Superior Court Case No. C 731 033

County'of San Bernardino v. State of California. et al.: (1990) 217 Cal.App.3d 1153

Note: All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Robert W. Eich, 1414 K Street, Suite 315, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP0415b

CONSENT CALENDAR

COMMISSION ON STATE MANDATES

Public Hearing
Thursday, April 26, 1990
10:00 a.m.
State Capitol, Room 437
Sacramento, California

A. PARAMETERS AND GUIDELINES

Item 3 Chapter 1327, Statutes of 1984
Chapter 1286, Statutes of 1985
Short-Dovle Supplemental Fund

Item 4 Chapter 1393, Statutes of 1978
Chapter 328, Statutes of 1982
Chapter 1594, Statutes of 1982
Chapter 1327, Statutes of 1984
Mental Health Oualitv Assurance

B. PARAMETERS AND GUIDELINES AMENDMENTS

Item 5 Chapter 1502, Statutes of 1982
Chapter 49, Statutes of 1984
Civic Center Act

C. STATEMENTS OF DECISION

Item 7 Health and Safety Code Sections 25150.1, and 25280 through 25289
Chapter 1046, Statutes of 1983
Title 23, CCR, Ch. 3, Sub. 16
Underground Storage Tanks

Item 8 Penal Code Sections 14205, 14206, 14207, 14209, 14210, and 14213
Chapter 1456, Statutes of 1988
Missing Person Reports III

WP 0432b

ADDENDUM TO CSM AGENDA

ITEM 9

PROPOSED STATEMENT OF DECISION
Adopted Mandate
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

TABLE OF CONTENTS

Attachment A	Transcript from Commission's hearing of November 30, 1989
Attachment B	Agenda Package from Commission's hearing of November 30, 1989

the determination that yes, in fact, this is the kind of thing that consistently we want to be moving on, we'd be prepared to take action on it. So if that could be the order -- why don' t we -- we had a motion and a second. Any further discussion on it?

Okay. All those in favor, aye?

MEMBERS: Aye.

CHAIRPERSON GOULD: opposed? Motion passes. Thank you.

MS. MILLER: Mr. Chair? May I make a suggestion? A pre-hearing conference might be appropriate in this case to focus the issues and take care of some of the time-consuming discussion.

CHAIRPERSON GOULD: Okay. .

EXECUTIVE DIRECTOR EICH: That's a good idea. We'll set one up.

CHAIRPERSON GOULD: Okay. We'll have staff pursue that. Thank you.

EXECUTIVE DIRECTOR EICH: Mr. Chairman and Members, the next item on the agenda would be item number 7.

CHAIRPERSON GOULD: Okay.

ASSISTANT EXECUTIVE'DIRECTOR LEHMAN: Item'7 is a proposed statement of decision from an administrative law judge regarding a test claim submitted by the County of Santa Clara on handicapped and disabled student-s.

The Attorne'y General's Office, representing the State in this matter, recommends the Commission reject the proposed decision because the conclusions reached by the administrative law judge are erroneous. The County of Santa Clara recommends the Commission adopt the proposed decision because the ALJ has issued a comprehensive decision setting forth factual determinations which thoroughly analyze the legal issues before it.

In reviewing the ALJ decision, it is apparent to staff that all positions from all parties were considered, and apparently the position of the Attorney General's Office was not persuasive to the ALJ. Therefore, staff is recommending that the Commission adopt the ALJ decision,

Would you state your names, please.

MS. CHAPMAN: Susan Chapman, Deputy County Counsel for the County of Santa Clara, appearing for the County of Santa Clara.

MR. VAN WYE: Good morning, ladies and gentlemen. Harlan Van Wye, Deputy Attorney General for the State.

CHAIRPERSON GOULD: Well, I appreciate both of the principal attorneys who have been involved in this case being here. Obviously, this is one that the Commission decided to listen to arguments from both of you to understand your perspective on the issue, and I know we've all reviewed the background materials associated with it. So I think

some summary comments might be very helpful to us in understanding your perspective on it.

Ms. Chapman, could we ask you to go first and kind of give us your perspective on the situation?

MS. CHAPMAN: Certainly. Thank you. First of all, I'd like to state very briefly that this is really a simple case of the State transferring a substantial responsibility from one political entity, or group of entities, the school districts, 'to the County of Santa Clara And it's clear -- 1 know the Commission has had an opportunity to iook at the supporting papers.. It's very clear that it requires the county of Santa Clara to do things that it was not required to do before. And it's very clear and uncontroverted that the costs of doing the services required by this legislation is in the neighborhood of $2 million for this one year.

So very simply, it's a transfer of responsibility from the Department of Education to the County Mental Health Department. So that's a summary statement. And then if you'd like, I will go into more detail as to the specific issues,

CHAIRPERSON GOULD: Okay. That would be helpful..

MS. CHAPMAN: To do that at the present time?

CHAIRPERSON GOULD: Yeah. Members of the Commission, you've al.1 read -- are there specific questions,'

1 or would you like to have her do more of a background?

2 MEMBER SHUMAN: I'd prefer to hear her

3 presentation,

4 CHAIRPERSON GOULD: Okay. We'd like to hear

5 you summarize, please.

6 MS: CHAPMAN: Several issues, primarily legal

7 issues, were presented by this case. And I'd like to direct

8 first what I think is the real issue, the heart of the

9 issue, and that has to do with the relationship of this

10 program to the Short-Doyle program. .

11 Chapter 1747 in 1984 and. 1274 of 1985 do mandate

12 a new program and a higher level of service as.defined by

13 the Constitution. And it's fundamentally different from the

14 Short-Doyle plan, The Short-Doyle plan, as you know, is the

15 program for community-based mental health programs. The

16 statutes that set forth the responsibilities of the Short-

17 Doyle program are found in the Welfare and Institutions

18 Code. And from time to time, you have issues about whether

19 certain additions to that program by new legislation create

20 mandates within the Short-Doyle program.

21 This is something different, This legislation is

22 in the Government Code. It's not part of the Short-Doyle

23 program. And, in fact, if the Department of Mental Health

24 in allocating its funding to the various counties had done

25 it separately, not involving it in the Short-Doyle program,

1 the only issue that we would have before us now is the fact
2 that we have an underfunded mandate because it's clear that
3 the Legislature thought it was a mandate, that they intended
4 to fund it. I think it was -- the reason that we are so
5 short in funding is that the need for services was greatly
6 underestimated in that program, There is nothing in the
7 Legislation that says it's part of Short-Doyle, There's
8 nothing that directed the Department of Mental Health to
9 include it in the Short-Doyle program or in the Short-Doyle
10 funding.
11 And the effect of trying to do'that, trying to
12 take on this very big responsibility of providing mental
13 health services to handicapped students, to provide case
14 management services if they're placed out of home, to check
15 on them to make sure that the placement is proper, that
16 they're receiving the proper treatment, to provide the
17 treatment, to sit in on IEP meetings, all of that shifts
18 such a substantial portion of the Short-Doyle budget, if it
19 has to come from the Short-Doyle budget, such a substantial
20 portion away from the Short-Doyle budget, that the purposes
21 of Short-Doyle cannot be fulfilled.
22 In the County of Santa Clara, we fortunately were
23 able to meet our obligations under the Short-Doyle plan and
24 our obligations to provide mental health services to handi-
25 capped students. But we did that by using extra dollars

from our County general fund over and above the money that we were required to provide for mental health services.

Some of the things that make this program so very different from Short-Doyle have to do with the nature of the Education of Handicapped Act, which is an'entitlement program. Under that program, the State program and the federal program, a handicapped student who needs mental, health services in order to.take advantage of his education is entitled to receive those services at no cost. That's an entitlement program. He's entitled to receive them within a certain timeframe, There are certain due process rights attached to it. And if he doesn't receive those services free in a timely manner, he can go into district court, sue the 'County, and you would be out of pocket for paying for placement, We could also be out of pocket for attorney's fees.

There is nothing like this in the mental health plan, in the Short-Doyle plan. No one has an entitlement to mental health services. No particular individual has an entitlement to mental health services in the Short-Doyle plan. No one. And a recent case decided that the County is not obligated to expend anything more for Short-Doyle mental health services other than its allocation from the State plus its required match. So that's very different.

Another thing that's different is that these

1 services have to be provided free, It happens in our county
2 that quite a number of the students who are receiving these
3 services come from wealthy families, come from families who
4 are employed by corporations who have good insurance plans
5 that would cover psychiatric or mental health services. In
6 the Short-Doyle program, they would be required to pay for
7 the services based on their ability to pay; and if they had
8 insurance, they would be required to use their insurance,
9 They cannot be required to pay at all, and all we can do is
10 ask them, please, if they-will use their insurance. And if
11 using their insurance would result in any negative effect,
12 say on the lifetime cap on insurance, they.cannot be
13 required to use that insurance. So that's another very
14 fundamental difference.
15 This also represents -- and this is one other
16 thing that's very troubling -- is an open-ended financial
17 demand on the county. As I said, for the other mental
18 health services, we cannot be required to pay more than our
19 Short-Doyle allocations plus our required match. Here,
20 there's no limit as long as the kids come forward and
21 they're required to have services under their IEP, we are
22 required to provide them. There's no cap. There's no stop
23 on that. We can't say, "I'm sorry.. We just ran out of
24 money and nobody else gets services for the rest of the
25 year, or we're only going to take the top 10 percent of you

1 who are most in need."' The effect of trying to use the'
2 Short-Doyle money, which I think the Legislature did not
3 intend, and I think is incorrect to fund this program, is
4 that we can't provide what we are required to provide under
5 the Short-Doyle program and under our Short-Doyle contract.
6 For' example, in -- and bear with me -- in 1986-87
7 Santa Clara County had a contract with the State Department
8 of Mental Health for Short-Doyle services, And as part of
9 that contract, we agreed to provide a certain level of
10 services in certain areas: We agreed to provide outreach
11 services that -- at a level that would give an estimated
12 cost of $2.5 million. We promised to provide or to have
13 ready to provide 24-hour care that would cost $14.9 million,
14 $5 million for day treatment, $16 million for outpatients,
15 And for many of these things, you would never use these for
16 these kind of students. These students are not going to be
17 receiving 24-hour care or outreach services as part of their
18 IEPs.
19 And what happens is, there's only -- only certain
20 children quality for IEP services. Not all mentally ill
21 children qualify for the services. There's a strict defini-
22 tion -- as I'm sure you know going over through the papers,
23 there has to be an impact over several years that has to
24 impact their ability to be educated, Their difficulties
25 have to show in several different spheres of their lives.

1 It cannot be because they're simply conduct disordered. It
2 cannot be simply because they've suffered a recent traumatic
3 event. It cannot be that it's a result of immigration. And
4 so by -- because of that definition, most -- many, many of
5 our young people who are in need of mental health services
6 are in greater'need of mental health services than the
7 students who are served under the IEPs. All our children in
8 state hospitals are in greater need of mental health
9 services, They don't have their mental health services
10 provided for them on their IEPs because that does not allow
11 for hospital-level care. Students -- children in the state
12 hospital alternative programs -- and that's aiso a high-cost
13 item -- they are not receiving those services through their
14 IEPs. There can be children who are suicidal who -- there
15 can be children who -- one area of functioning is school,
16 but everything else is a mess. And they're suffering
17 serious emotional difficulties, There can be children
18 referred from juvenile court. There can be children that
19 have suffered recent tragedies of rape or death or other
20 things that have not gone on long enough. There can be a
21 child who has suffered a recent schizophrenic break, a first
22 break, and would not be entitled to IEP services because it
23 hadn't gone on long enough, but certainly would be in need
24 of services.
25 And taking the money from Social Services to fund

1 this program makes us unable to meet the Short-Doyle demand
2 in our contract obligations. And I believe there was not --
3 there's nothing in the legislation that would indicate that
4 it was intended to be part of Short-Doyle. Our contention
5 is it's not part of Short-Doyle. It's clearly a mandate,
6 clearly asks us to do things we did not have to do before,
7 clearly transfers the responsibility from one agency to.
8 another; and, on that basis, it is a mandate.
9 Other issues have been raised about whether it's
10 a federal mandate or whether it's something required by due
11 process and equal protection. I think those items are red
12 herrings. I would rather defer discussion of that. If the
13 Commission feels those really are critical issues -- the
14 Attorney General argued that those are critical issues -- I
15 would discuss those at that time.
16 Briefly, on -- it's not a federal mandate or
17 something that's -- there was nothing in case law or federa
18 mandate or state mandate before this legislation that
19 required counties who do not provide education to provide
20 mental health services to allow students to benefit from
21 education, Nothing. There's no case, no statute, no
22 regulation, nothing that would require somebody who's not
23 involved in the education process to provide supportive
24 services -- to be required to provide supportive services in
25 order for a child to benefit from his education.

CHAIRPERSON GOULD: Okay. Other questions from Members?

MEMBER SHUMAN: Not at this point.

CHAIRPERSON GOULD: Okay, fine. Mr. Van Wye?

MR. VAN WYE: Yes. First, let me thank the Commission for' the courtesies that have been extended-and also thanks to Ms. Chapman and the staff of Santa Clara County for working very cooperatively with the State authorities to, I think, present a record hopefully that's very succinct and detailed; and I trust that it provides the Members the type of information that they need.

Let me first comment on a bit of background, from my perspective as a'former Deputy County Counsel and former General Counsel for a county Office of Education, it would seem to me that what happened with this legislation is, in no small. part, a transfer of the fact that before the legislation occurred, the identification -- the primary responsibility for identifying and the primary responsibility for funding handicapped services was integrated within the education establishment. The legislation bifurcated responsibility for identification and responsibility for financing. And I can certainly understand where the County feels that they have a problem in this area, and I can understand why they feel that it's a mandate.

I would suggest to the Commission for the reas'ons

1 that we've outlined in the several briefs that we have filed
2 in this regard that it is not. One thing that I think is
3 particularly striking is that classically when you get a
4 mandate situation, what you have is a transfer of a program
5 or a financial responsibility from the State to a local
6 entity, and that's what the Constitution is designed to deal
7 with, In fact, the State has not really transferred
8 anything from the State to a local entity. What they've
9 done, if at all, is to rearrange certain priorities within
10 the local agency structure'.
11 One of the things that strikes. me as particularly
12 complex about the interrelation of education, and as anybody
13 has ever had the temerity to dip into the Education Code and
14 practice that archane field of law, you know that as the
15 Court of Appeal said in Horton v. Whipple back in 1922, that
16 anybody that tries to make total sense of all the provisions
17 of the then School Code is doomed to failure. What is
18 significant, of course, is that while the County of Santa
19 Clara has a fiscally independent County Office of Education,
20 this decision that's going to be coming out of this
21 Commission is going to be relating to every county in the
22 State of California, as you well know. Many of the county
23 Offices of Education are fiscally and totally integrated
24 within the county structure, and so to the extent that
25 County Superintendents of Schools, County Offices of,

1 Education provide education services for the handicapped,
2 which of course most if not all of them do under Section
3 56000 of the Education Code, what you're talking about is
4 some shifting within a county structure.
5 So I think that in dealing -- should a mandate
6 ultimately be discovered in the process of identifying what
7 those mandates are, that's something that's going to have to
8 be taken into account.
9 It was mentioned by Ms. Chapman that there's
10 something special because-this is not in the Welfare and
11 Institutions Code but rather it's in the Government Code.
12 I think the Members of this Commission are obviously
13 familiar with the fact that the Government Code is probably,
14 by far, the largest code in the State of California. And
15 when statutes impact on multiple agencies, the statutes
16 are frequently for convenience placed in the Government
17 Code, one only needs to think of the Education and
18 Employment Relations Act, which was placed in the Government
19 Code as the Education and Employment Relations Act, and as
20 the Public Employment Relations Board expanded its jurisdic-
21 tion, other aspects were brought in. But multi-
22 jurisdictional, multi-entity type of things oftentimes find
23 their way in the Government Code. And I certainly think
24 that that's not dispositive in any respect.
25 Ms. Chapman stated that the Legislature did not

1 recognize a mandate -- or recognized a mandate in the
2 AB 3632. I would refer you to the brief that we filed
3 before this Commission, our final brief in response,
4 indicating that in that very legislation, other items were
5 recognized as a mandate by the Legislature, but this speci-
6 fically was not. And I would submit that that's fairly
7 strong evidence that the Legislature in fact did not see
8 this as a mandate.
9 It's clear that in large part, the Short-Doyle
10 Act does not provide -- or strike that, It's clear in large
11 part the Short-Doyle Act provides the 'county with a great
12 deal of discretion, the local mental health agencies with a
13 great deal of discretion, in deciding where their mental
14 health funds are to go and how they are to go. But as we
15 pointed out in our briefings, that discretion is not
16 entirely unfettered, and that the Legislature has seen to
17 impose certain requirements of certain general priorities on
18 the counties with regard to the expenditures of their
19 Short-Doyle funds.
20 We would submit that what has happened in this
21 case is that the counties have been not directed to do, in
22 large part, anything new. We would submit they haven't been
23 directed to do anything substantially new at all. It's all
24 of the same type of things that the County Mental Health
25 Services have been doing for years and years and years, well.

1 antedating SB 90.

2 What we see is that the Legislature has said to
3 the counties, "When you're doing this, certain populations
9 have head-of-the-line privileges." And that population is
5 identified as people who, as we pointed out in our briefs,
6 have been recognized under federal law, both 94.142, 504,
7 and the case law, that handicapped individuals, handicapped
8 students, have certain rights.

9 The legislation in question that we're dealing
10 with today essentially says to the County Mental Health
11 people, "By the way, these folks have certain priority
12 rights, so *serve* them first." And while I can understand
13 and appreciate that there is some impact in reducing the
19 ability of the county to be flexible in arranging its
15 priorities within the expenditures under the Short-Doyle, I
16 think that the record will show that that's only a minute
17 percentage of the county's overall. Short-Doyle budget. I
18 haven't had an opportunity to really look at it during the
19 counsel's remarks, but I believe it's in the six to eight
20 percent range. And I may be wrong; and if I am, I stand
21 corrected. But it's not a -- it's not an overall
22 devastating amount on Short-Doyle.

23 And these, of course -- the nature of the
29 services providing mental health services to individuals is
25 precisely the type of things that County Mental Health

1 Agencies are in business to provide, so it's not --
2 certainly not putting together a new program.
3 Theoretically, the counsel for the county said
4 that it's an open-ended requirement. I would say that that
5 certainly is only in theory because of the vast amounts of
6 money that are'being spent by County Mental Health, and this
7 is only a very small percentage of them.
8 Ms. Chapman also remarked about how the entitle-
9 ment -- it's an entitlement program and that that's a
10 difference from Short-Doyle. But let me suggest that the
11 entitlement to this does not really derive from the Act
12 itself, The entitlement to free public education derives,
13 in part, from the federal legislation, the Education-for the
14 Handicapped Act. But I would submit that that entitlement
15 in California, were it put to a test, derives much, much
16 earlier. It derives right now from Article IX, Section 5 of
17 the California Constitution, which establishes the common
18 school system and provides that the Legislature shall
19 maintain -- and reads, and I quote, "The Legislature shall
20 provide for a system of common schools by which a free
21 school shall be kept up and supported in each district at
22 least six months in every yea'r after the first year in which
23 a school has been established." That section not only comes
24 from the Constitution as it was revised in 1872,'the
25 annotations indicate that that derives from the Constitution

1 of 1849, the very basic document under which the State of
2 California was founded. Beyond that, it derives in American
3 history from the Northwest Ordinance, which was passed by
4 the Continental Congress in 1787, which set aside one
5 section of every 36 for the support of a free common and
6 public school'system. So it's a very--ancient concept in
7 United States and California law.
8 We don't think that what is really being required
9 -- and this is extensively briefed in our briefs, and I
10 won't belabor the point -- we don't think that what is being
11 required is a higher level of service of the county,. Short-
12 Doyle provides a great deal, a massive amount, of
13 flexibility of the county. In fact, it's designed for
14 flexibility. The record is clear that the County of Santa
15 Clara has historically chosen to supplement its mental
16 health and Short-Doyle funds beyond the 10 percent required
17 match and provides a considerable amount of general funding
18 for its mental health program. I would submit that this
19 mental health program and the way that the mental health
20 program is carried out in Santa Clara County as shown in the
21 record and as I believe is undisputed is one in which the
22 County has a very, very high degree of flexibility. They
23 retain control. They can, to a very great extent, do -what
24 they want with it. The County can certainly work with its
25 school districts, can work with the County Office of

1 Education, and the people in the mental health aspects of
2 the County certainly work with the other agencies in
3 administering what is required.
4 If any mandate-- and we don't concede that there
5 is a mandate that has been created -- but if a mandate has
6 been created by this legislation in question, we would
7 submit that the only mandate that has been created is the
8 mandate'related to the assessment after identification of
9 students to deem whether or not they should be entitled to
10 mental health services, which is specifically dovetailed
11 into the federal requirements and possibly some case
12 management cost. But the basic underlying provision of
13 mental health services to the county, to the residents of
14 the county, is precisely what the County Mental Health
15 Agencies have been set up and funded by Short-Doyle to do.
16 It's precisely the job that they exist to do. The only
17 imposition that this legislation has had on that fundamental
18 underlying requirement is the fact that it has identified
19 one population within that as having a priority.
20 The legislation in question does not give these
21 people an entitlement to free services; rather, the free
22 services derive from federal law. The free -- both 'in the
23 statutory and in the case law that's been cited in our
24 briefs. And above and beyond that, the entitlement to a
25 free education derives from the California Constitution all

1 the way back to 1849 at the founding of the State of
2 California. A case has not been cited in our briefs, and it
3 struck me, literally, as I was sitting here this morning, is
4 the famous California Supreme Court case of Meinares v.
5 Newton, which is a 1956 case involving the requirement that
6 the school district that services the Big Sur provide free
7 bus transportation of children who were living way up in the
8 mountains above Big Sur so that they could take advantage of
9 public education. This was something that the Supreme Court
10 just basically said, ingrained within the California system
11 is that when you provide educational-related services, that
12 they be provided free.
13 I think that what the County, and understandably,
14 is trying to do is to remove itself from the political
15 processes of'going to the Legislature on an annual basis for
16 Short-Doyle funding. And it's understandable if you can
17 create a mandate that will be funded out of a different
18 source,, that that obviously has the tendency to make life a
19 little bit easier. But I think that there's really no
20 mandate as such created here; or if it is, it's only a very
21 limited mandate related to the assessment process. And that
22 to attempt to carve out an exception to the general rule
23 that local agencies and all political entities within the
24 State of California need to fight out their political
25 battles in the committees and the floors of the Legislature,

is not something that'should be.promoted here.

I certainly stand ready to answer any questions if the Members have any of the State,

MEMBER CREIGHTON: Yes, I have a question.

CHAIRPERSON GOULD: Mr. Creighton.

MEMBER CREIGHTON: Yes. Mr. Van Wye, are you suggesting that in some of these ancient statutes that you referred to, going back to the Continental Congress, that they -- the schools systems under those statutes routinely accepted handicapped children until this more recent legislation?

MR. VAN WYE: I am not an expert in the history of handicapped legislation in other states other than California.

MEMBER CREIGHTON: But you have -- you've referred to those statutes.

MR. VAN WYE: Right.

MEMBER CREIGHTON: That's why I asked my question.

MR. VAN WYE: I'm referring to the general prospe the, general concept that education, systems, when they are provided, public education systems are provided at no cost. That's a historical American concept, and it's been enshrined in the California Constitution since 1849.

MEMBER CREIGHTON: Thank you.

MEMBER SHUMAN: Well, but in that regard, you're

1 not arguing that every student has a right to have a school
2 nurse available to him or free medical treatment or some-
3 thing of that nature, are you?
4 MR. VAN WYE: I'm not suggesting that every
5 student has the right to a free school nurse. But it seems
6 fairly clear from -- and I think Smith v. Robinson in the
7 Pennsylvania case that we cited in our briefs -- the United
8 States Supreme Court has identified the fact that handi-
9 capped children, as a matter of equal protection, are
10 entitled to participate ih the educational'prograrns to the
11 extent that they are able and that it would seem clear from
12 those decisions that to the extent that supplemental
13 services are required to enable them to benefit from
14 legislation -- benefit from education, that those services
15 probably have to be provided as a matter of constitutional
16 law. Now, what has happened, of course, is that this -- in
17 Public Law 94.142, the Education for the Handicapped Act,
18 the 94th Congress identified this, set up a federal funding
19 mechanism, and invited all the states to join. Historically,
20 all the states, but one, joined very quickly., New Mexico
21 being the last hold-out. It finally realized that it had to
22 get in the program because of the massive amount of litiga-
23 tion that was taking place down in New Mexico.
24 Now, while theoretically, I said it's possible --
25 and I know it's been argued that theoretically this is a

1 voluntary program that the State of California participates
2 in 94.142 on a voluntary basis, I would submit that that's
3 almost a disingenuous position. I just cannot conceive in
4 1989 that any state could opt out of the 94.142 scheme. I
5 -- the legislation that would -- the litigation that would
6 ensue on equal protection grounds make this the type of
7 federal program that I submit is -- it's illusory to say
8 that this is an optional federal program. I think it has
9 the patina of an option; but when. you. look at the substance
10 of the 94.142 scheme, to Say that the State of California or
11 any other state could not participate in that program, I
12 just don't think that that's a position'that can be upheld.
13 MEMBER SHUMAN: Is that the federal legislation
14 you're referring to?
15 MR. VAN WYE: Right. 94.142 is the --
16 MEMBER SHUMAN: That requires -- as you, put it,
17 that requires the free services?
18 MR. VAN WYE: Right. And the federal legislation,
19 of course, tracks the basic concept which has existed in
20 this country since the Northwest Ordinances of 1797. I grew
21 up in Ohio, which is the first state that came into the
22 Union out of the old Northwest Territories, and I remember,
23 again as I was thinking of the California Constitution
24 literally on the road up this morning from the Bay Area, I
25 recalled my ancient high school history about how this was a

very important concept. And this is a concept of free education that is so deeply ingrained in the American ethic, and it's deeply ingrained in the California ethic, that the fact that the counties cannot charge students who might otherwise be able to pay whereas they could charge for other Short-Doyle services from people that can pay derives not from the legislation that we're dealing with here, AB 3632, but it derives rather from, in our case principally, the California Constitution. But it's well ingrained in federal law. And, to my knowledge, it's ingrained in the state law of every state of the Union.

MEMBER SHUMAN: I'm not sure about the breadth of your argument here, It sounds to me that you would argue that anything that falls within the rubric of education takes on this constitutional aura and, therefore, could never be considered a mandate, state-reimbursable mandate.

MR. VAN WYE: I'm not sure if I would -- I don't think -- 1 certainly would not go that far. For instance, the mandates that arose out of SB 160, when the Education and Employment Relations Act was passed. Those certainly would not take on that type of rubric, And also, the underlying funding formulas for state education, the underlying concepts, the underlying programs for state education, were in place well before SB 90 and well before the constitutional amendment of, I believe, approximately 1980, when the

1 SB 90 concept was enshrined in the Constitution.

2 so I -- to answer your question, Mr. Shuman, I'd
3 have to take a look on an individual basis at a given
4 program to see whether there was a constitutional enshrine-
5 ment. The thrust of my argument vis-a-vis the Constitution
6 is basically that the reason the County can't charge other-
7 wise wealthy students for the provision of these services
8 that they could with regard to other noneducationally-
9 related Short-Doyle services derives not from the legisla-
10 tion in question that we're dealing with today, but it
11 derives from sources of much longer lineage and'much greater
12 authority.

13 CHAIRPERSON GOULD: I have a question for
14 Ms. Chapman. Maybe you can help me understand your argument
15 a little bit.

16 Let's take a circumstance in which clients which
17 have traditionally been part of the Short-Doyle program
18 within a county, and the Legislature makes a determination
19 that there is an entitlement aspect to a certain group
20 within that population, and they say, "These people shall be
21 served. They shall receive services. And they shall
22 receive services from under the umbrella funding that is
23 provided under the. Short-Doyle. " Tell me how your view of
24 the mandate relationship that you've argued would interpret
25 that circumstance.

MS. CHAPMAN: If you're with something within the Short-Doyle Act and within the Short-Doyle program that specifically said, "You are to treat under Short-Doyle certain people specially," we would argue that that would -- and provide certain services that we necessarily were not required to provide before, although we may or may not have -- we would argue that as to our required match, that that is a mandate; that it is a mandate, but that it's a funded mandate through Short-Doyle, except to the extent that there's a 10 percent required county match.

CHAIRPERSON GOULD: Okay. So you allow for the fact that the Legislature can make a determination as to the priorities within the Short-Doyle program.

MS. CHAPMAN: And certainly has many times.

CHAIRPERSON GOULD: Okay.

MS. CHAPMAN: There have been additions that you must have patients' rights advocates, that you must provide for some jail diversion programs for the mentally ill, any number of programs that come before the Commission, and I believe many of them have been found to be mandates and would be -- and would be subject to reimbursement insofar as the county's required match is concerned.

CHAIRPERSON GOULD: Okay. Yet in your concluding arguments regarding the situation, you make reference to the fact that if we are to take these responsibilities and fund

1 them out of Short-Doyle, that clearly there will be some
2 needs that go unmet. It kind of speaks to adequacy of
3 funding,, if you will; and, although I appreciate that
4 circumstance, and in my experience in dealing with the
5 counties, I have heard probably more times than I wish to
6 reiterate concerns regarding the adequacy of mental health
7 funding at the local level, that's clearly a concern and a
8 pressure -- I guess what I'm trying to do is to not look at
9 the question of funding adequacy, because I think that's
10 almost a separate question, but the question of how when the
11 state or the federal government determines a priority for a
12 certain group of people within a block grant such as Short-
13 Doyle do we address the question of whether there's a
14 mandate, recognizing that there may be people who fall out
15 the bottom, if you will, from a priority standpoint.
16 'MS. CHAPMAN: Okay. If I could back up a little
17 and then maybe ask you to ask your question again, because I
18 think maybe there's a point that needs to be clarified.
19 When Mr. van Wye referred to children having an entitlement
20 to a free public education and certain supportive services,
21 all of the legislation and the case law have to do with
22 those services being provided by the people who provide
23 education. The County of Santa Clara does not provide
24 education. So any entitlement that's coming down on a
25 federal level or on a state level insofar as the general

program is concerned has to do with the responsibilities for education.

And I might point out that under the federal law that there's an exchange, that the federal government says, "You adopt Education for All Handicapped Act with all its procedural and substantive requirements, and we will give you some grant money, And that grant money goes to your Department of Education to be distributed to local educational agencies to fund those programs.' What's happened here is the money that filtered down, because we promised as a state that we would have that program -- filters down to the local education agencies, and' it doesn't filter to the Department of Mental Health. But now the responsibility for providing a good portion of those services has been transferred to us.

CHAIRPERSON GOULD: Okay. It would be helpful for me to listen to someone who can detail what's happened in the funding scheme. And I don't know if there's someone here who could refresh our memories, or maybe either one of you can, in relation to transfer of resources from the education system to the social services and mental health system. And in conjunction --

MS. CHAPMAN: In -- for 1986-87, the transfer to our county for the responsibility to mental health was about $200,000. Our net unreimbursed cost came to $1.9 million.

As a side note --

CHAIRPERSON GOULD: Where was that money transferred to?,

MS. CHAPMAN: Pardon?

CHAIRPERSON GOULD: What program was it transferred to?

MS. CHAPMAN: It was included in our -- in -- as an addition to the Short-Doyle allocation. However, there is nothing in our Short-Doyle contract that requires us to provide the services that'we're talking about, what we see as a mandate, pursuant to this legislation. There's no reference to those responsibilities in our contract at all, although there are very specific references to what our priorities are, what we promise we will deliver, the populations we promise to serve. This legislation did not change the priorities, populations. It did not add this to the Short-Doyle program.

CHAIRPERSON GOULD: In terms of background, I thought I read that of the caseload, there were some 251 individuals that were already involved in Short-Doyle services. Is that incorrect?

MS. CHAPMAN: No, that is correct-. There were -- of the referrals that we received in 1986-87, or for that year, there were 251 students out of the 568 studentswho were referred who had previously been receiving services.

1 And I think that raises a question that will have
2 to be perhaps grappled with during parameters and guidelines
3 should the Commission find that this is a mandate. You
4 know, we previously were providing some level of service to
5 some of these children. And so should there be some sort of
6 reduction or offset or.something, I think that's a question
7 that's important and has to be addressed at some point.,
8 But we were -- first of all, we were not required
9 to serve those 257 -- or 251 students. That year, we had an
10 optional overmatch of $4.4 million that allowed us to serve
11 -- to provide the level of service that we did provide.
12 CHAIRPERSON GOULD: Yeah.
13 MS. CHAPMAN: And that may not continue to be an
14 option in the future,
15 CHAIRPERSON GOULD: Uh-huh.
16 MS. CHAPMAN: As the counties become more and
17 more strapped, even the County of Santa Clara, which has
18 such .a high dedication to providing mental health services,
19 may not be able to continue to overmatch.
20 CHAIRPERSON GOULD: Yeah.
21 MS. CHAPMAN: That may not be an option 'any
22 longer.
23 CHAIRPERSON GOULD: I appreciate that, and I
24 realize that there are counties in different situations in
25 terms of their ability to overmatch. That kind. of gets to

1 the funding adequacy question. And I guess I'm still.
2 wrestling with the mandate issue.
3 You know, you mentioned that the Legislature
4 recognized'that it was a mandate. And Mr. Van Wye said that
5 within the legislation, some specific elements of it were
6 identified as'being a mandate, and this piece was not.
7 What's your perception on what occurred there?
8 MS. CHAPMAN: To be honest, Mr. Gould, I do not
9 have that right at my fingertips. But I know that on -- I
10 believe it was in the second legislation that went through
11 the -- 1747, that it was recognized that it did -- that it
12 was a mandate.
13 Let me add something else that I think is
14 interesting and I think reflects what the true intent was.
15 The year following '86-'87, Santa Clara County received a
16 huge jump in the amount of allocation for these services.
17 And I think what really happened was that people thought
18 that this would not be an expensive program.
19 CHAIRPERSON GOULD: Uh-huh.
20 MS. CHAPMAN: Not many students had been identi-
21 fied as being seriously emotionally disturbed. Not many
22 students had been identified as needing mental health
23 services. The school districts were sort of in a position
24 of not wanting to identify them; because if they did, they'd
25 have to provide the services. The Auditor General's report

1 certainly substantiates that. I think they see the jump as
2 two and a half times the number of referrals once the
3 responsibility of providing the service was passed on to
4 Mental Health. And so once it became clear that this really
5 was a big responsibility, the funding or a large part of the
6 funding came through in the following year. So we may be
7 just dealing with an anomaly for one year that we really had
8 our problems because it was not anticipated that the level
9 of services required would be so high.
10 CHAIRPERSON GOULD: Ms. Whetstone, you've joined
11 .... Is there something you'd like to add to the
12 proceedings?
13 MS. WHETSTONE: I was just going to provide
14 further clarification on your questions about the funding if
15 you still have that question.
16 CHAIRPERSON GOULD: Okay. I think that would be
17 helpful..
18 MR. VAN WYE: Let me just add before she starts,
19 for the record, we -- that issue on the -- that you raised
20 regarding what was identified in this legislation as
21 containing a mandate is found at pages 9 and 10 of our
22 response that we filed, the final brief that we filed;
23 before this Commission.
24 MS. WHETSTONE: And I think some of this has been
25 brought up by Ms. Chapman already, but basically'the first

1 year of the program, there was a, combination of the transfer
2 of money from education, and an additional general fund
3 appropriation that went to the counties to provide for these
4 services.
5 As was stated, there was an Auditor General's
6 review of what education had reported was being sent, and
7 that showed that there was some -- you know, there was an
8 increase that was -- which also tied to the increase in
9 appropriation which came from the State. The next year,
10 there was also a significant increase in state funding. So
11 the first year, it was a combination of a transfer and new
12 money. And the second year, there was new money added as
13 well.
14 The only other comment I was going to make is
15 just talking about the clients that had already been seen by
16 the mental health system, what has been in our earlier
17 briefs is to point out that there is a requirement for
18 maintenance of effort for children services in the mental.
19 health statutes. And an addition, there's a requirement
20 that if there's new money, that "x" percent goes to
21 children.
22 So, again, they already were being required to
23 provide services to children.
24 MR. VAN WYE: I -- it seems to me explicit, if
25 not -- implicit if not explicit in Ms. Chapman's comments

1 was the thought that when a Short-Doyle requirement is laid
2 onto a county, the amount of funding that the county seeks
3 is the 10 percent county match. It would seem that what we
4 have here is clearly a requirement to provide these mental
5 health services is placed on the county mental health system
6 by the Government Code, which system is created within the
7 Welfare and Institutions Code. And it couldn't be more
a clear that the Short-Doyle -- the system created by Short-
9 Doyle is charged with providing, these services. And the
10 fact that the legislation'in question was, because it's
11 multi-faceted legislation, it involves both mental health
12 and education, so rather than putting it in the Education
13 Code, we're putting it in the Welfare and Institutions Code,
14 the Legislature for reasons of convenience placed it in the
15 Government Code would certainly not seem to me to be in any
16 way dispositive that this was not an aspect of the Short-
17 Doyle program as created by the Legislature.
18 When you have these multi-jurisdictional, if- you
19 will, multi-agency, multi-governmental conceptual aspects,
20 they're frequently, if not almost exclusively, placed in the
21 Government Code. And so I think that the provisions of the
22 Government Code certainly implicitly, if not explicity,
23 alter the Short-Doyle program. So this is inherently within
24. Short-Doyle, and we think that it's appropriate to be funded
25 out of Short-Doyle,

1 MS. CHAPMAN: And, again, we disagree that it's
2 fundamentally part of the Short-Doyle program. There could
3 have been an addition to the Short-Doyle program. There
4 could have been a statute added to -- that would incorporate
5 mental health responsibilities under this legislation into
6 the Short-Doyle program; there was not.
7 Going back to the funding issue for a minute,
8 to show the impact on the county, in 1985-86, the county
9 received $21.6 million in general. Short-Doyle funding. That
10 is, it wasn't highlighted-for a specific program. In
11 1966-87, we received $22.5 million, a four percent increase.
12 Our responsibilities under our contract'did not change,
13 There was no -- we -- our responsibilities remained the
14 same. There was this slight increase for cost of living.
15 And when you compare that $22.5 million to almost $2 million
16 that it cost to do this program, you see, it's almost a 10
17 percent impact. It's really quite a large impact. And the
18 Short-Doyle program was designed to organize and finance
19 mental health services through locally-administrated and
20 controlled programs for allocating Short-Doyle mental health
21 funding according to community needs. And the mental --
22 Welfare and Institutions Code lists the priorities, and
23 these priorities were not changed. Although children are
24 included on the priorities, as I've already said, there are
25 many children who are not IEP children that we have to serve

1 who are very sick,

2 The -- as I think the document from -- the
3 declaration from the County of Riverside shows, this is such
4 a substantial drain, if you don't overmatch -- if you don't
5 compensate by overmatching, it's such a substantial drain on
6 the Short-Doyle program that a county--cannot meet it&s-basic
7 Short-Doyle obligations. In the County of Riverside, they
8 cannot -- they have all their adolescent day treatment beds
9 -- or all their day treatment beds now are for IEP children.
10 None of them are available anymore for any other children.
11 They are not able to serve kids who are referred from
12 juvenile court who may have a high need for mental health
13 services and may be in quite a lot of distress.

14 CHAIRPERSON GOULD: I appreciate what you're
15 saying. From my perspective, the issues of adequacy of
16 funding -- we have to wrestle with the ultimate determina-
17 tion of any requirement to serve a clientele within a block
18 grant kind of program, such as Short-Doyle. There could be
19 situations where that becomes consuming of the allocation
20 that's there in terms of saying, "This is the -- the first
21 folks that get served out of that." And there may be people
22 then that fall out. But we have to look at the fundamental
23 question, because there could also be very minor identifica-
24 tions of population groups that would be first served, which
25 would have a diminimous impact. So I appreciate what you're

1 saying in terms of -- and I know there are concerns about
2 adequacy, of funding -- but we have to kind of look at the
3 broader question. And that's what I'm wrestling with. --
4 Let me ask a question of Ms. Whetstone. When, the
5 Legislature added funds, where did they add the funds to?
6 MS. WHETSTONE: They --
7 CHAIRPERSON GOULD: How did the funding -- how
a did they handle the funding within the'budget?
9 MS. WHETSTONE: Well, the funding -- the first
10 year, it was a combination of a transfer from education plus
11 new money in the mental health budget.
12 CHAIRPERSON GOULD: Okay.
13 MS. WHETSTONE: And then after that, it came
14 directly to the mental health budget.
15 CHAIRPERSON GOULD: Okay. When it went to the
16 mental health budget, did it go -- in what form.? How did
17 that -- did it go into local mental health generally?
18 MS. WHETSTONE: Okay. It was set up as a
19 separate appropriation. One point I was going to make,
20 though, is in all of the discussions that were had about,
21 you know, when we were talking about augmentations, there
22 was always a discussion of maintenance of effort. And, in
23 fact, one of our earlier submittals, we included something
24 that the Children's Committee of the Conference of Local
25 Mental Health Directors had put together on -- it was an

1 estimate. It also had a maintenance of effort piece coming
2 out of regular Short-Doyle. So while the new money went
3 into a separate item, there was always the conscious
4 decision that some of the expenditures would continue from
5 the regular Short-Doyle appropriation.
6 CHAIRPERSON GOULD: Okay. Question?
7 MEMBER MARTINEZ: Mr. Chairman. Yeah, I'd kind
8 of like to get back to the -- to try to get a clarification
9 on the basic premise about whether or not there is a new
10 mandate under the provisions of the Government Code. And I
11 appreciate the reference that Mr. Harlan.-- that Harlan has
12 made relative to his response on that on the chapter,
13 whether or *not* there was a reference and, therefore, a
14 mandate. And I guess I would ask counsel -- our counsel,
15 Mr. Hori, though there isn't a specific reference as is
16 correctly indicated on page 10 of the response to the
17 proposed decision, to mental health as a provision of
18 service to handicap children in the Legislative Counsel's
19 Digest, subsequently in the actual body of the new
20 Government Code additions, in Government Code Section 7572,
21 isn't there a specific enumeration of a new activity to be
22 conducted? I mean, doesn't it say a child shall be assessed
23 in the areas related to the suspected handicap, again
24 handicap reference to the Legislative Counsel Digest, but
25 then it specifically goes on to enumerate a new function

which says including but not limited to services in the area of occupational therapy, physical therapy, psychotherapy, and other mental health assessments. And then follow with the actual -- as has been already well covered -- what the IEP indicates the management process is actually all about,

So I guess I would ask for some guidance on that,

MR. HORI: Well, I think what -- correct me if I'm wrong. Mr. Van Wye, in your rebuttal, you were referring to the language in Chapter 1274?

MR. VAN WYE: Right. It's 1274 language.

MR. HORI: And in the back 'in. Section 17 and 18, I believe it's Section 17 --

MR. VAN WYE: I believe that's it.

MR. HORI: -- specifically? Is that correct?

MEMBER MARTINEZ: But what I was referring to are sections of the Government Code that were enacted in the statute that we're talking about, which is Chapter 1747, Statutes of '84.

At least I thought that was the section we were --

MR. HORI: Yeah.

MEMBER MARTINEZ: Are we dealing with --

MR. HORI: Mr. Van Wye, do you have that in front of you?

MR. VAN WYE: Do I have what, Mr. Hori?

MR. HORI: The reference that --

MEMBER MARTINEZ: Part of the Willie Brown legislation, Statutes of '84, having to do with assumption of responsibilities and assessment of handicap needs children, which were previously, I suppose, responsibilities of the Department of Education.

Maybe I just -- 1 just took it right out of the G.C. So I just --

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Which sections again?

MR. HORI: Which sections?

MEMBER MARTINEZ: 7572.

CHAIRPERSON GOULD: Well, it's all -- it's the entitle -- it's the -- Chapter 26.5, which is the responsibilities for providing services to handicap children, the chapter that was operative as a result of the Statutes of 1984, subchapter 1747.

MS. CHAPMAN: I believe Section 5 of Chapter 1747 says notwithstanding Section 6 of Article VIII-B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this Act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3, of Part 4 of

1 Division 1.

2 MR. VAN WYE: Let me also add a comment that --
3 and, of course, that language obviously appears in cases
4 where there is some doubt.

5 CHAIRPERSON GOULD: Right.

6 MR. VAN WYE: What I think -- and let me be
7 perfectly candid -- I think what you've identified is the
8 State's fallback position --

9 CHAIRPERSON GOULD: Sure.

10 MR. VAN WYE: -- or an aspect of the State's
11 fallback position, that if there is a mandate you've
12 identified what the mandate is.

13 Now, we think -- for the record, we don't think
14 that there's any mandate that's identified, But obviously,
15 I think that the underlying provision, the ongoing provision
16 of services is something that is totally within the context
17 of historic Short-Doyle. And what we have is a specific
18 priority population identified. If there is a mandate at
19 all that is being created by this legislation, what it is is
20 the -- those specific aspects that deal not with the
21 underlying provision of services but with the intake of the
22 student into -- the intake of an IEP student into the Short-
23 Doyle process.

24 CHAIRPERSON GOULD: Is that the assessment and
25 the case management aspects?

1 MR. VAN WYE: Yes, sir.

2 CHAIRPERSON GOULD: Right. Then -- yeah, go
3 ahead, Ms. Whetstone.

4 MS. WHETSTONE: I was going to further clarify on
5 case management because some of those children were case
6 managed by the County Department of Social Services before.
7 So there would be another issue if you were to look at --
8 you know, again, that was a county responsibility already
9 for some of those children.

10 MS. CHAPMAN: Although, I would comment that the
11 types of case management may have been very different.

12 MEMBER MARTINEZ: Yeah, this is -- this IEP
13 process looks substantially different. I mean, it doesn't
14 look like something that was being done by the Department of
15 Mental Health or -- you know, again, I am only presuming --
16 or by the Department of Social Services in terms of the
17 make-up, the responsibility, the follow-up. I mean --

18 MR. VAN WYE: My comment here is probably taken
19 -- should be taken anecdotally, and it derives from
20 essentially my 14 years of experience of practicing
21 education law in California. And I think that what' you have
22 throughout the state is a system that has no particular
23 uniformity from county to county as to how this was
24 historically done. I'm certain that there were mental
25 health services provided and education services provided to

1 handicap students that predate the federal legislation,
2 94.142, here in the State of California.
3 The integration and the awareness of handicap
4 rights that has taken place in the last 20 years has been
5 not a smooth intellectually unified or satisfying process.
6 It's like the 'common law, it's developed by fits and starts
7 in different counties around the state. I suspect with 58
8 counties in the state and approximately 1,000 school
9 districts in the state, it's probably developed on at least
10 50 or 60 different models'of how the handicap children, how
11 this process has been undertaken',
12 I would note that the revisions to Section 56000
13 and following of the Education Code, which occurred in the
14 early 1980s, where you have the master plan process, what
15 happens is that local education agencies get together under
16 the auspices of the County Superintendent of Schools or the
17 County Office of Education, by whichever name it's called in
18 a particular county, and they work out on a local basis the
19 division of educational responsibility within the local
20 education areas down there. And so it's -- frankly, it's
21 not a very easy -- you can't really -- I think it's very
22 difficult to draw a clear thread or some sort of a golden
23 rule that goes statewide, It just really can't be done.
24 And ,I would appreciate -- there's certainly no question in
25 my mind that, from working with my clients of State Mental

1 Health, there's no question in my mind that the adequacy of
2 funding for mental health services is an area of substantial
3 concern to large numbers of people here in the state.
4 Would we -- were that we had the magic wand to
5 grant more funding, that would be wonderful. But that's,
6 unfortunately or fortunately, not our function here today.
7 MR. HORI: Mr. Chairman?
8 CHAIRPERSON GOULD: Mr. Hori.
9 MR. HORI: I'd just like to add --
10 CHAIRPERSON GOULD: No, please go ahead.
11 MR. HORI: -- that one of the aspects that we're
12 probably overlooking is -- I just want to place on the
13 record that some of the discussions that we have here have a
14 relationship to the Huff (phonetic) case. But I Want to
15 point out that this particular case I don't believe, and
16 counsel for Santa Clara would agree, that what we're doing
17 here is not what the issues are in Huff, with these --
18 the EHA 94.142 --
19 CHAIRPERSON GOULD: Uh-huh.
20 MR. HORI: -- or Section 503 of the
21 Rehabilitation Act can impose a state mandate. The Huff
22 case, that was local educational agencies; those agencies
23 delivering school services.
24 What we have here is a different local group,
25 county mental health agencies. So I want to point that --

and put that on the record that the Huff case, even though whatever decision that may have, I believe is not pertinent to our going forward in this matter.

MEMBER CREIGHTON: Mr. Chairman, it seems to me that the testimony which has gone on for now for almost an hour is becoming a little repetitious. And I would be prepared to make a motion that we -- the Commission adopt the ALJ's proposed statement of decision.

CHAIRPERSON GOULD: Okay. We have a motion before the Commission. .

MEMBER SHUMAN: Second. .

CHAIRPERSON GOULD: We have a second. Any further discussion?

I have to indicate that, frankly I'm more persuaded by the arguments of the Attorney General, Mr. Van Wye. I believe that the Legislature does have the authority to establish priorities within programs, and that in doing so they may in fact direct services,, and to say that a certain client group gets first shot at the resources that are available. And so I'll not be supportive of the motion.

Okay. Any further discussion?

MEMBER MARTINEZ: Well, yes. I would like to -- 1 guess I -- 1 believe in looking at the statutes and looking at the chronology 'of events that I believe that, you

1 know, I certainly understand what the Chair is saying,
2 relative to the Legislature certainly having the authority
3 to make decisions relative to a priority of services to a
4 community of clientele, But I still have a concern about
5 not acknowledging what I believe to be a mandate relative to
6 the -- a new process, this requirement having to do with the
7 Department of Health role and the county role, I should say,
8 relative to the IEP process and the case management process.
9 And so I think I would have to make a distinct
10 split on what I believe to be a new mandate'versus what I do
11 concur with the Chair on. So I'm in a little bit of a
12 problem relative to what we'll proceed on.
13 CHAIRPERSON GOULD: Okay. Any other comments?
14 MEMBER SHUMAN: Well, is it possible that that
15 concern could be dealt with in the parameters and guidelines
16 which --
17 CHAIRPERSON GOULD: I don' t know. I guess I
18 would ask -- can that be dealt with under the parameters?
19 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: The way the
20 ALJ decision is written right now, it's sort of an all-or-
21 nothing deal.
22 CHAIRPERSON GOULD: And I appreciate that.
23 That's why I'm --
24 MEMBER MARTINEZ: That's my impression also, is
25 that if we were to adopt the ALJ's decision, I'm not sure

1 that they separate between what may be those portions --

2 CHAIRPERSON GOULD: Right.

3 MEMBER MARTINEZ: -- which you're making a .

4 dinstinguishment in your mind about what might be a mandate

5 or not a mandate. I don't know if counsel has any different

6 impression, but that's my impression.

7 MR. VAN WYE: With the Chair's_permission, may, I

8 comment?

9 CHAIRPERSON GOULD: Mr.. Van Wye.

10 MR. VAN WYE: I've obviously given this

11 considerable thought because this -- as we've articulated,

12 I think implicitly, if not explicitly, this is the State's

13 fallback position on that. I would think, in order that if

14 that's the will of the Commission that the matter could be

15 returned to the ALJ under the processes and procedures for

16 him to draw the distinctions between the regular provision

17 of services, which is not a mandate, and the new aspects

18 which I think, as Mr. Martinez has indicated he feels that

19 do mandate something new that the county did not have to do

20 before.

21 MS. CHAPMAN: If I may comment on that, I think

22 the ALJ's decision is very clear that he saw, this as an

23 entirely new mandate, separate. from the, Short-Doyle process

24 entirely, which is our position.

25 MR. VAN WYE: Which, of course, is why it should

be returned to the ALJ with instructions to separate these two out, if that's the will of the Commission.

MEMBERCREIGHTON: I call for the question on the motion, please. We can -- if this motion fails, we can go on to something else, but I call for the question.

CHAIRPERSON GOULD: Okay. We have a call for the motion. I guess we have a motion before us and a second. Call the roll, please,

EXECUTIVE DIRECTOR EICH: Member Buenrostro?

MEMBER BUENROSTRO: No.

EXECUTIVE DIRECTOR EICH: Member Creighton?

MEMBER CREIGHTON: Ay'e .

EXECUTIVE DIRECTOR EICH: Member Martinez?

MEMBER MARTINEZ: No.

EXECUTIVE DIRECTOR EICH: Member' Shuman?

MEMBER SHUMAN: Aye.

EXECUTIVE DIRECTOR EICH: Chairperson Gould?

CHAIRPERSON GOULD: No.

EXECUTIVE DIRECTOR EICH: The motion fails.

MEMBER MARTINEZ: Mr. Chairman, I would like to make a motion along the lines of the suggestion by the Attorney General's Office that we instruct the ALJ to prepare a decision which acknowledges a mandate relative to a new function being performed for the IEP and the case management process under the provisions of this law, 'I guess

-- of this new service and declare -- and present a decision which declares it a mandate.

CHAIRPERSON GOULD: Okay. We have a motion -- before the Committee.

MEMBER BUENROSTRO: Second.

MS: CHAPMAN: If I could get a clarification, would that also include the impact it's providing free services to students who otherwise would be required under the Short-Doyle Act to pay for their services? We have here a situation --

CHAIRPERSON GOULD: I appreciate what you're saying.

MS. CHAPMAN: -- where the law has now deprived us of a way of collecting payment for --

CHAIRPERSON GOULD: Right.

MS. CHAPMAN: -- services that we could have received payment for before.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Well, all I was going to say is basically if you start to make that distinction, and I think the ALJ did, you come back full circle to the decision we have before us.

CHAIRPERSON GOULD: Yeah.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: So there may be a problem with sending this back to the ALJ --

'CHAIRPERSON GOULD: There may.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: -- to make the distinction based upon his findings right now.

MEMBER SHUMAN: I would suggest that --

CHAIRPERSON GOULD: We just --

MEMBER SHUMAN: -- staff could probably make that decision if the Commission is inclined to separate it as such and prepare a decision for the --

CHAIRPERSON GOULD: That's a good point.

MEMBER SHUMAN: -- Commission.

MEMBER MARTINEZ: This falls under the recommendation that they were, basically.

CHAIRPERSON GOULD: Okay. We had a motion and a second before --

MEMBER MARTINEZ: Well, I'd like to amend that motion.

CHAIRPERSON GOULD: Okay.

MEMBER MARTINEZ: I appreciate the assistance and the comment of counsel and the staff. So I would like to amend my motion to basically say that I would like to move that in fact the staff do prepare a decision that in fact there is a new mandate -- that there is a mandate finding relative to the activities of the IEP and case management process that have been put upon the counties relative to this population of special education handicap pupils.

MR. HORI: Mr. Martinez, I would like'to add that

if staff does proceed 'in that manner, that we do the first draft and get comments from --

MEMBER MARTINEZ: Fine.

MR. HORI: -- counsel -- from both counsel.

MEMBER CREIGHTON: I'll second your amended motion,

CHAIRPERSON GOULD: Okay. We have a mot ion and a second for the Committee. Any further comments?

EXECUTIVE DIRECTOR EICH: Mr. Chairman, I have -- I'd like to ask a questioh on the motion. Does your motion, Mr. Martinez, encompass including the 'IEP program as part of the Short-Doyle Act, or are you considering. keeping that separate?

MEMBER MARTINEZ: They're keeping it separate.

EXECUTIVE D&RECTOR EICH: As a separate part, not as part of Short-Doyle.

MEMBER MARTINEZ: Well, I -- what I'm basically saying is that I -- in other words, you're saying what is this mandate against? And I -- again, I -- I guess I'm having some difficulty in deciding that at this point because the reference to the mandate falls under the Government Code, The reference to this new activity, the IEP and the case management process. Unless there is a -- is there a concurrent reference in some other body of law?

MR. HORI: There are some in Mr. Van Wye's

1 rebuttal. There are references of the program in the
2 Welfare and Institutions code that a description of these
3 services under 7571 and 7576 of the Government Code include
4 these services. Some of these points were raised in
5 Mr. Van Wye's rebuttal. However, the ALJ was more persuaded
6 by Ms. Chapman's points, saying that notwithstanding, there
7 are other factors and that the underlying objective or
8 purpose of Short-Doyle is not compatible with the IEP
9 program.
10 MEMBER CREIGHTON: Mr. Chairman, excuse me. I
11 will vote aye on this motion. I'd like my vote registered
12 as aye. Unfortunately, I do have an 11:45 meeting in the
13 Office of the Governor, and I do have to leave right now.
14 CHAIRPERSON GOULD: Okay. Fine.
15 MEMBER CREIGHTON: Excuse me. See you next time.
16 CHAIRPERSON GOULD: All right. Very good.
17 MEMBER MARTINEZ: Let me say that I wasn't -- I
18 wasn't intending it to be encompassing Short-Doyle.
19 MR. VAN WYE: May I -- may I comment? I --
20 MEMBER MARTINEZ: How's that for an answer?
21 MR. VAN WYE: I think I have a sense of what
22 you're talking about, and I think that Mr. Hori's comment or
23 perhaps it was Mr. Lehman's, we certainly from the Attorney,
24 General's side will be glad to add such comments to the
25 staff brief and work with staff to achieve what I think is

1 the sense of the Commission on this.

2 MEMBER MARTINEZ: That's fine with me.

3 CHAIRPERSON GOULD: Is it. -- Bob?

4 MR. HORI: And would you not agree that it would

5 be -- that the IEP program is separate and apart from the

6 Short-Doyle, whatever that may be, when we describe it?

7 MR. VAN WYE: I think -- without abandoning the

8 ultimate position that none of this is a mandate, I can

9 agree with that.

10 MR. HORI: Okay.

11 MEMBER MARTINEZ: Thank you. Otherwise we'd have

12 to go through this again, and I'm --

13 CHAIRPERSON GOULD: Well --

14 MEMBER MARTINEZ: That's my motion.

15 CHAIRPERSON GOULD: Okay. We have a motion and

16 a second. I think Mr. Creighton had made the second 'before

17 he left.

18 MEMBER MARTINEZ: Yes, he did.

19 EXECUTIVE DIRECTOR EICH: Yes, he did.

20 CHAIRPERSON GOULD: I -- just from my perspective

21 as a comment on the motion, I appreciate that it's a, you

22 know, a reasonable attempt to try to differentiate here in

23 terms of what may be a mandate: I guess I'm still with the

24 position that was originally argued, that what we have here

25 is a prioritization within a defined funding arrangement,

1 and I'm still persuaded along those lines.
2 And we have a motion and a second --
3 EXECUTIVE DIRECTOR EICH: Mr. Chairman, on that,
4 we do not have a second to the amended motion.
5 CHAIRPERSON GOULD: Oh, I'm sorry. Okay. Is
6 there a second?
7 EXECUTIVE DIRECTOR EICH: Who did the second to
8 the amended motion? Did --
9 MEMBER MARTINEZ: Was Shuman.
10 MR. HORI: I thought he did before he left.
11 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: He did.
12 MEMBER MARTINEZ: I thought he did.
13 EXECUTIVE DIRECTOR EICH: To the amended motion,
14 also? Okay. I just didn't get that. All right.
15 CHAIRPERSON GOULD: Okay. Any further comment?
16 Okay. Take the roll, please.
17 EXECUTIVE DIRECTOR EICH: Member Buenrostro?
18 MEMBER BUENROSTRO: Aye.
19 EXECUTIVE DIRECTOR EICH: Member Martinez?
20 MEMBER MARTINEZ: Aye.
21 EXECUTIVE DIRECTOR EICH: Member Shuman?
22 MEMBER SHUMAN: Uh, I have a question before I
23 cast my vote,
24 (Laughter)
25 MEMBER SHUMAN: How do you record Member

1 Creighton on this?

2 EXECUTIVE DIRECTOR EICH: He's recorded as "aye"

3 on the motion.

4 MEMBER SHUMAN: On the motion itself, okay. I'm

5 going to abstain because although I think that half a loaf

6 is better than none at all, I don't want my vote to be

7 recorded as supporting this motion in lieu of

8 Mr. Creighton's initial motion. So I'm abstaining.

9 EXECUTIVE DIRECTOR EICH: Chairperson Gould?

10 CHAIRPERSON GOULD: No.

11 EXECUTIVE DIRECTOR EICH: Okay. Then, the motion

12 carries.

13 CHAIRPERSON GOULD: Okay. Very good., Next item.

14 MS. CHAPMAN: Thank you very much.

15 CHAIRPERSON GOULD: Thank you very much.

16 MR. VAN WYE: Thank you very much.

17 EXECUTIVE DIRECTOR EICH: The final item on the

18 agenda, Mr. Chairman, is item number 8. . The Chair may want

19 to consider a short break before we tackle it. It's up to

20 the Members,

21 CHAIRPERSON GOULD: Why don't we take five

22 minutes, and we'll return. Thank you all.

23 (Short break.)

24 CHAIRPERSON GOULD: Let the record show we've

25 returned from our five-minute break,' promptly, and --

Hearing: 11/30/89
File: CSM-4282
Staff: Stephen R. Lehman
WP 0500s

PROPOSED ADMINISTRATIVE LAW JUDGE DECISION
Approved Mandate
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students'

Executive Summary

This item, which was continued from the September 21, 1989 Commission hearing, is a proposed statement of decision from an Administrative Law Judge (ALJ) regarding a test claim submitted by the County of Santa Clara.

The Attorney General's Office (AG) represented the Department of Finance, Department of Mental Health, and the Department of Education in this matter. The AG recommends the Commission reject the proposed statement of decision because the conclusions reached by the ALJ are erroneous since they are based on a misunderstanding of the applicable provisions of law and court decisions.

The County of Santa Clara recommends the Commission adopt the proposed ALJ decision because the AU has issued a comprehensive proposed decision setting forth factual determinations and thoroughly analyzing the legal issues presented.

In reviewing the ALJ decision, it is apparent that the ALJ considered the positions of all the parties to this test claim. Therefore, staff concludes that the AG's argument was not persuasive to the ALJ and recommends the Commission adopt the ALJ's proposed statement of decision.

Claimant

County of Santa Clara

Chronology

8/17/87	Test Claim filed with the Commission on State Mandates (Commission).
1/28/88	Commission hearing on options for adjudicating the test claim. Commission refers claim to Office of Administrative Hearings.
12/1/88	Test claim hearing before an Administrative Law Judge (ALJ).
4/25/89	Staff receives proposed decision from ALJ.
5/31/89	Attorney General's Office requests continuance from July 27, 1989 hearing. Claim set for September 21, 1989.
9/21/89	Commission hearing. The attorney representing the state was unable to attend the Commission hearing. Commission continues the proposed ALJ decision to its November 30, 1989 hearing.

Claim Summary

Prior to July 1, 1986, the State Department of Education (SDE), through school districts and county offices of education, was responsible for the education and care of special education students. However, Chapter 1747, Statutes of 1984 (Chapter 1747/84), Chapter 1274, Statutes of 1985 (Chapter 1274/85), and Title 2, California Code of Regulations (CCR), sections 60000 et seq., shifted the responsibility of providing psychotherapy and other mental health services for pupils with exceptional needs from the SDE to the Department of Mental Health (DMH). Also, the responsibility of providing residential care for seriously emotionally disturbed students was shifted from the SDE to the Department of Social Services (DSS). To facilitate this transfer of responsibilities, the Budget Act of 1986 provided for the transfer of $8.1 million of special education funds from the SDE. The DMH received $2.7 million, and the DSS received $5.4 million. In addition, the Budget Act of 1986 allocated $2 million to the DMH to determine if special education students need noneducational services.

The County of Santa Clara alleges that as a result of providing mental health assessments, case management, and treatment for children who are residents of the county, it has incurred unreimbursed costs mandated by the state in the amount of $1,929,011 during the 1986-87 fiscal year.

Staff Note

Due to the complexity and detail of the positions and submittals of the parties involved in this decision, staff will not restate in detail the positions of the parties or the ALJ decision. However, the ALJ decision and the positions of the parties regarding the ALJ decision are attached.

Summary of Proposed ALJ Decision

The proposed decision from the AU finds that Chapter 1747/84, Chapter 1274/85, and Title 2, CCR, sections 60000 et seq., mandate a new program or higher level of service on the claimant's Mental Health Bureau. The ALJ determined that such statutes and regulations require counties to provide mental health assessments, treatment, and case management to handicapped children who are in need of such supportive services in order to benefit from their Individualized Education Program (IEP).

Prior to Chapter 1747/84, Chapter 1274/85, and Title 2, CCR, sections 60000 et seq., the SDE, through the school districts and county offices of education, was solely responsible for the education and care of special education students through the IEP.

The ALJ concluded that the statutes and regulations in question have shifted the responsibility of providing psychotherapy and other mental health services for pupils with exceptional needs from local education agencies to counties; thus, requiring county mental health departments to provide a higher level of service.
(Attachment A)

Departmental Recommendations

The Attorney General (AG), representing the Department of Finance (DOF), DMH, and SDE, recommends the Commission reject the proposed decision from the ALJ. The AG states that the conclusions reached by the ALJ are erroneous because they are based on a misunderstanding of the applicable provisions of law and court decisions.

The AG concludes that Chapter 1747/84, Chapter 1274/85, and Title 2, CCR, sections 60000 et seq., are ". . . fundamentally a response to the mandates of the equal protection clause of the 14th Amendment as enunciated in Smith v. Robinson (supra). These pieces of legislation only set forth the intricate but

required details of how these constitutional mandates are to be implemented and represent policy determinations regarding the details of how these constitutional mandates are to be implemented and represent policy determinations regarding the details of implementation which were enacted by the Congress and by the State Legislature, in turn."

The AG also states that with the possible exception of the required county participation in the IEP process and the required IEP related case management, counties are not required to increase Short-Doyle expenditures or add new services. The AG believes that only a 'redirection of resources is involved.

Based upon the above, the AG recommends the Commission reject the proposed ALJ decision.
(Attachment B)

Claimant's Position

The claimant recommends the Commission adopt the proposed ALJ decision because the ALJ has issued a comprehensive proposed decision setting forth factual determinations and thoroughly analyzing the legal issues presented.

In rebuttal to the AG's recommendation, the claimant states that neither optional nor mandatory federal law, whether through cases or statutes, require local governments which do not provide educational services to provide IEP related services to handicapped students. Moreover, even if there is a federal mandate involving mental health services for handicapped students, then the mandate is on either'the state or the local educational agencies who receive the federal education funds. Therefore, the claimant maintains that the transfer to counties of'the responsibility of providing mental health services to handicapped students has imposed a new program or higher level of service that is subject to reimbursement.

In addition, the claimant states that Chapter 1747/84 and Chapter 1274/85 established a new program that is not part of the Short-Doyle program. Specifically, the statutes at issue are set forth in the Government Code, not in the Short-Doyle Act (Welfare and Institutions Code section 5600 et seq.). The claimant further states that although Chapter 1274/85 amended Welfare and Institutions Code section 5651 to reference the services required by Government Code sections 7571 and 7576, this one particular reference to the Government Code does not make the Government Code provisions a part of the Short-Doyle program. Consequently, the claimant refutes the AG's allegation that only a redirection of Short-Doyle resources is involved in the required county participation in the IEP process and the required IEP related case management.

Based upon the foregoing, the claimant recommends the Commission adopt the ALJ's proposed statement of decision. (Attachment C)

Staff Analysis

Issue: Should the Commission adopt the proposed ALJ decision?

At its hearing of September 21, 1989, the Commission continued action on the proposed decision because the attorney representing the state in this matter was unable to attend the Commission hearing. In addition, the Commission discussed the possibility of a decision being rendered in the litigation of Huff . Commission on State Mandates by the Commission's November hearing, and that the Huff decision may provide some direction on how the Commission should act on this claim. Staff would note that even though the parties involved in the Huff case completed the trial portion, they are currently preparing written briefs to the court. It is unlikely that the court will issue a decision until sometime in 1990 and there is also the possibility that one of the parties may file an appeal on the Superior Court's decision.

In any case, it is the position of staff, and the claimant, that the decision in Huff will not have any bearing on this claim because the laws involved in the Huff case are applicable to local educational agencies, and the laws involved in this claim are only applicable to county mental health agencies. Therefore, staff does not believe that the Huff decision, concerning state Education Code provisions, will have any affect on how the Government Code provisions involved in this claim will impact county mental health programs.

Staff would note that in reviewing the ALJ's administrative record, the evidence and arguments presented by the parties are generally the same arguments being presented to the Commission at this hearing. Staff believes that the ALJ's decision is supported by the record in this matter. Furthermore, staff and the claimant agree that the ALJ's decision is correct in finding the provisions of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and their implementing regulations, have resulted in a reimbursable state mandated program.

Staff would note that the Commission has the following three options regarding the proposed statement of decision:

1. Adopt the ALJ's proposed decision.

2. Refer the decision back to the ALJ with instructions to take additional evidence, and reconsider the proposed decision in light of the additional evidence.

3. The Commission, itself, could decide the claim at this hearing or at a future hearing, with or without the taking of additional evidence.

The Commission's authority for the second and third options are found in subdivision (d) of section.1188.1 of the Commission's regulations. This subdivision reads:

> "If the proposed decision of the hearing officer or hearing panel is not adopted by the commission, the commission itself may decide the case upon the record, including the transcript, with or without taking additional evidence or may refer the case to the same hearing panel or hearing officer to take additional evidence. If the case is so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are a part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party as prescribed in subdivision (c)."

Staff would note that the ALJ has conducted an evidentiary hearing and issued the decision based upon the evidence and testimony presented at that evidentiary hearing. Consequently, the Commission would be acting properly if it were to adopt the proposed statement of decision.

Staff Recommendation

Staff recommends the Commission adopt the ALJ's proposed statement of decision (Attachment A), for the following reasons:

1. The ALJ has conducted an evidentiary hearing and issued a decision based upon the evidence and testimony presented at that evidentiary hearing.

2. After reviewing the ALJ's record, it is staff's position that the proposed statement of decision is' supported by the record.

3. It is staff's position that referring the decision back to the ALJ with instructions to take additional evidence 'and to reconsider the proposed decision in light of the additional evidence is not likely to alter the decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of the TEST CLAIM OF THE COUNTY OF SANTA CLARA HANDICAPPED AND DISABLED STUDENTS Respondent.	)	OAH NO. N-30939

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 and marked as Exhibit D. The opening brief from the County of Santa Clara was received on January 30, 1989 and marked as Exhibit 8. Reply briefs were received from the State of California and the County of Santa Clara on February 27, 1989' and marked as Exhibits E and 9 respectively. The matter was thereupon submitted.

I

The County of Santa Clara filed a Test Claim with the Commission on State Mandates under the provisions of Revenue and Taxation Code section 2231 and Government Code Division 4 Part 7. Santa Clara County alleges that Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes 1985 and their implementing regulations, relating to the provision of certain mental health services for handicapped and disabled students, impose a mandate on the County as defined by the California Constitution and Government Code section 17514(a).

II

On January 28, 1988, this matter was referred to the Office of Administrative Hearings by the Commission on State Mandates for a

hearing. The Commission requested that the following issues be addressed in the decision as well as any others deemed appropriate by the Administrative Law Judge:

A. Does Chapter 1747, Statutes 1984; Chapter 1274, Statutes 1985, and Division 9, of Title 22, of the California Administrative Code mandate counties to implement a new program or higher level of service in an existing program within the meaninq of Government Code section 17514 and section-6 of Article XIII b of the California Constitution?

B. Do the statutes in question implement a federal mandate, specifically, section 504 of the Rehabilitation Act of 1973, and Public Law 94-142?

C. Has the claimant incurred unreimbursed costs, from state or federal funds, as a result of any activities mandated by these statutes and regulations?

D. If the statutes in question are found to require a new program or higher level service, do the affected local entities have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service as discussed in Government Code section 17556(d)?

E. Do any of the other provisions for denying a test claim, as set forth in Government Code section 17556, apply to this claim?

III

Following 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 findings are based on.that Joint Statement of Facts.

IV

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."

Congress soon recognized that this general protection was inadequate to address the special needs of handicapped school

children. 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's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. Part 104.33. The EHA and its implementing regulations, 34 C.F.R. sections 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).

V

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 is 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.

VI

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).

VII

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. 34 C.F.R. section 300.503.

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, 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.

VIII

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 extend 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. 3'4 C.F.R. section 300.342. Meetings must be conducted at least once a year to review and, if necessary, revise each handicapped child's IEP. More frequent meetings may take place if needed.

IX

California elected to participate in the EHA and adopted a state plan and enacted a series of statutes and regulations designed

to comply with federal requirements. Education Code sections 7570 et seq.; and section 56000 et sea., Government Code section 7570 et seq.; Title 2 California Code or Regulations sections 60000 et seq.; and Title 5 California Code of Regulations section 3000 et seq.

The Legislature has established its intent to assure receipt of federal funding, including the funds available for services to handicapped children. Government Code section 7560. A single line of responsibility with regard to the education of all handicapped children as required by the EHA was established. The responsibility for supervising education and related services for handicapped children specifically required pursuant to the federal requirements was delegated to the Superintendent of Public Instruction. Government Code section 7561; Education Code section 56135.

X

In California, public education services are directly delivered through school districts throughout the state. In addition, there are county offices of education and county superintendents of schools which have certain responsibilities for overseeing educational services within counties. The relationship of school districts and counties varies from county to county. In some counties, there is only one school district, covering residents of the county. In other counties, there are several school districts. Some school districts cross county lines.

The governing board of each school district must elect the organizational structure which will serve special education needs. One option is for a school district, in conjunction with one or more districts, to submit to the Superintendent a joint local plan which provides a -governing structure and administrative support for a system for determining the responsibility for participating agencies for the education of each individual with exceptional needs residing within the special education local plan area. Special districts of this type are known as SELPA districts.

There are 33 school districts in the County of Santa Clara. All have elected under Education Code section 56170(c) to join with the county office of education to submit special education plans to the State Superintendent of Schools, forming seven SELPA districts in the County. Five of the SELPAs serve more than one school district. Two serve single school districts (San Jose Unified School District and Santa Clara Unified School District).

The Santa Clara County Office of Education was established as an entity separate from the County of Santa Clara by the Board of Supervisors in 1973, pursuant to the authority of Education Code section 1043 (formerly section 658). It is governed by the County Board of Education, and is fiscally independent from the County of Santa Clara. The County Office of Education is administered by the County Superintendent of Schools.

While the details of the seven SELPA plans vary, under the plans submitted to the State Superintendent, the County Office of

Education has some responsibility in each SELPA plan. The County Office of Education receives special education monies from the State, including regional service funds and program specialist funds. After withholding an amount to cover the administrative costs of SELPA administration, the monies are disbursed to the different SELPAs. Each SELPA has its own budge, which is managed either by the SELPA administrator at the County Office of Education or by the local education districts themselves. The' County Office of Education is not responsible for the IEPs for any children, although it does operate some programs for severely handicapped children.

XI

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 implement the EHA. This legislation sets forth the basic California IEP process for identifying special education children and providing special education and related services necessary for a child with exceptional needs to benefit from a free appropriate public education.

Before July 1, 1986, local educational agencies (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 child to benefit from education. This included responsibilities for identifying and assessing children with suspected, handicaps, as well as the responsibility for providing related services (including mental health services) required in individual IEPs. Local educational agencies were financially responsible for the provision of mental health services required in the IEP.

XII

Chapter'1747 of the Statutes of 1984 added Chapter 26 to Division 7 of Title 1 of the Government Code and amended section11401 of the Welfare and Institutions Code. This legislation shifted some of the IEP responsibilities for related services which previously had been held by local educational agencies to local mental health programs.

This legislation requires psychotherapy and other mental health assessments for special education children with suspected mental health handicaps or mental health needs to be conducted by qualified mental health professionals, as specified in regulations developed by the State Department of Mental Health. Government Code section 7572(c). Mental health services may be added to a child's IEP only if a formal assessment is conducted and the qualified mental health professional conducting the assessment recommends the service in order for the child to benefit from special education. Government Code section 7572(d).

This legislation provides that the State Department of Mental Health, or designated community mental health service, is responsible for the provision of psychotherapy or other mental health services, if required in a handicapped child's IEP. Government Code section 7576.

The child's family shall not be liable for the cost of such treatment services. Government Code section 7582.

This legislation requires the expansion of the IEP team to include a representative of the county mental health department and a representative of the county welfare department if the child is classified as seriously emotionally disturbed (SED) and any member of the IEP team recommends out-of-home placement based on relevant assessment information. Government Code section 7572.5(a). The expanded team must review the assessment to determine whether the child's needs can be met through a combination of nonresidential services, whether residential services will enable the child to benefit from educational services, and whether residential services are available which will address the child's needs and ameliorate the conditions leading to the SED designation. Government Code section 7572.5(b).

If the IEP requires residential placement, a case manager must be selected from the public agency representatives on the team. The IEP must include provisions for review of case progress, of the continuing need for residential placement, of the compliance with the IEP, and of the progress toward ameliorating the SED condition. There must be a review by the full IEP team every six month. Government Code section 7572.5(c). Aid in the form of AFDC (Aid to Families with Dependent Children) is provided for any child under the age of 18 who is placed out of home pursuant to an IEP. Welfare and Institutions Code section 11401(b)(l)(D).

This legislation required each local agency affected by the legislation to report to the Department of Finance through appropriate state agencies either an estimate of expenditures which previously were borne by it and which would be shifted to another agency as a result of this legislation or an identification of its responsibility for expenditures which would be acquired by the agency as a result of this legislation. Government Code section 7583. The original estimates were to be submitted no later than March 15, 1985 to the state agencies. Actual shifts in funding were to be reported annually by March 15 in subsequent years. Id. The Department of Finance was directed to recommend appropriate adjustments in the annual Budge Act to reflect shifts in expenditures. Id. The March 15, 1985 report was to include an estimate of the special education expenditures for Fiscal Year 1984-85 for psychotherapy, the number of children receiving psychotherapy at the time of the April pupil count, the name of the agency providing the psychotherapy, including the name of the agency paying for such services. Section 4 of Chapter 1747 of the Statutes of 1984.

This legislation was originally scheduled to become operative July 1, 1985. Later legislation delayed the full implementation until July 1, '1986. During a "window period" from March 1, 1986 through June 30, 1986, local mental health agencies received referrals from local educational agencies, conducted assessments, participated in IEP meetings to develop IEPs for the 1986-87 school year, but were not responsible for providing the treatment services.

Chapter 1274 of the Statutes of 1985 amended Chapter 26 of Division 7 of Title 1 of the Government Code, and amended sections 5651, 10950, and 11401 and added Chapter 6 to Part 6 of Division 9 of the Welfare and Institutions Code. This legislation made certain technical changes and modified the responsibilities concerning IEP mental health services and made further changes to implement this program.

This legislation requires that the regulations be developed by Departments of Health Services and Mental Health in consultation with the Department of Education. Government Code section 7572(c).

This legislation requires the person who conducted the IEP mental health assessment to review and discuss his or her recommendations with the parent and appropriate IEP team members, and to attend the IEP team meeting if requested. Government Code section 7572(d)(l). If an independent assessment for the provision of related mental health services is submitted to the IEP team, that assessment must be reviewed by the mental health professional who conducted the assessment for the public agencies. Government Code section 7572(d)(2). Disputes between a parent and IEP team members regarding related services recommendations must be resolved pursuant to Education Code sections 56500 et sea. Government Code section 7572(d)(e).

This legislation eliminated the requirement of inclusion of a representative from the county department of social services on the expanded IEP team if the child is classified as seriously emotionally disturbed and any member of the IEP team recommends out-of-home placement.' Government Code section 7572.5(a). The legislation, clarified that, in order for a child to be placed out-of-home pursuant to an IEP, the expanded IEP team must determine whether residential care is necessary for the child to benefit from educational services. Government Code section 7572.5(b). This legislation specifies that the county mental health department is case manager for SED children for whom residential placement has been called for on' IEPs, and requires that an appropriate residential facility be identified on the IEP.. Government Code section 7572.5(c). The county mental health agency may delegate this responsibility to the county welfare department, but the county mental health department remains financially responsible. Government Code section 7572.5(c)(1). Funding for out-of-home placement was shifted from the AFDC program to a special program. Welfare and Institutions Code sections 18350 et seq. Upon receipt of proper documentation from the State Department of Mental Health or the county mental health agency, the county welfare department is authorized to make payments to licensed residential care facilities for children placed pursuant to IEPs, based on the AFDC rate for the facility. Welfare and Institutions Code section 18351(a). These costs are reimbursed by the State Department of Social Services, and are funded from a separate appropriation in the budget. Welfare and Institutions Code sections 18351(b) and 18355. The child or his or her parent or parents is not liable for the cost of 24-hour out-of-home care for SED children. Welfare and Institutions Code 18350.

This legislation provided that the State Department of Mental Health, or any community mental health service designated by the Department shall be responsible for the provision of psychotherapy or other mental health services, as defined by the regulations. Government Code section 7576.

This legislation clarified that assessments and therapy treatment services provided under programs of the State Departments of Health Services or Mental Health, or their designated local agencies, rendered to a child referred for IEP assessment, or a child with an IEP, are exempt from financial eligibility standards and family repayment requirements. Government Code section 7582. In no event should the inclusion of necessary related services on a child's IEP be contingent upon identifying the funding source. Government Code section 7572(d).

This legislation eliminated the reporting of estimated expenditures to appropriate state agencies as of July 1, 1986. Government Code section 7583.

This legislation required the annual Short-Doyle plan for each county of include a description of the services required by Government Code sections 7571 and 7576, as well as the cost of those services. Welfare and Institutions Code section 5651(g).

XIV

No appropriation was included in Chapter 1747 of the Statutes of 1984, although there was provision that local agencies and school districts may pursue remedies available under Chapter 3 (commencing with section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code. Section 5 of Chapter 1747 of the Statutes of 1984.

Chapter 1274 of the Statutes of 1985 included some funding for mental health services pursuant to Government Code sections 7570 et sea. Funds reported by the Department of Education and verified by the Department of Finance pursuant to section 4 of Chapter 1747 of the Statutes of 1984 were to be transferred on July 1, 1986 to the appropriate state departments responsible for the services specified in Chapter 26 (commencing with section 7570) of Division 7 of Title 1 of the Government Code and designated in each child's IEP. Section 16, Chapter 1274 of the Statutes of 1985. The sum of $1,600,000 was appropriated from the General Fund to the Department of Mental Health for purposes of conducting assessments and participating in developing IEPs during the period of March 1, 1986 through June 30, 1986. Section 18 of Chapter 1274 of the Statutes of 1985. Notwithstanding the county Short-Doyle match requirement of the Welfare and Institutions Code section 5707, these expenditures were to be funded on a basis of 100 percent state funds during the period March 1, 1986 through June 30, 1986. Id. The legislation further stated that reimbursement to local agencies and school districts should be made pursuant to Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost does not exceed $500,000, shall be made from the State Mandates Claims Fund. Section 17 of Chapter 1275 of the Statutes of 1985.

Item 4440-131-001 of Section 2.00 of Chapter 186 of the Statutes of 1986 (1986 Budget Act) provided $2,000,000 to the Department of Mental Health in Fiscal Year 1986-87 for local assistance for assessments and case management relative to special education for special education children pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985. Section 3 of Chapter 1133 of the Statutes of 1986 amended this provision to allow for the use of these funds for all services local mental health agencies are required to provide pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985, including treatment services,

Item 6100-161-001 of Section 2.00 of Chapter 188 of the Statutes 1986 (1986 Budget Act) also provided for a transfer of up to $2,700,000 during Fiscal Year 1986-87 from the Department of Education to the Department of Mental Health for the purpose of conducting assessments pursuant to Government Code sections 7572 and 7572.5. Section 4 of Chapter 1133 of the Statutes of 1986 amended this item to allow for transfer of these funds for mental health treatment services pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985 as well. Item 6100-161-001 also made available for transfer from the Department of Education to the Department of Social Services $5,400,000 for the cost of out-of-home placement of IEP children pursuant to Welfare and Institutions Code section 18350 et seq.

Item 6100-161-001 of the 1986 Budget Act also required local education agencies to report to the Superintendent of Public Instruction the total costs incurred providing noneducational services in the 1985-86 Fiscal Year to IEP children who received mental health services pursuant to IEPs or who were classified as seriously emotionally disturbed and placed out-of-home pursuant to IEPs. The Superintendent was directed to reduce funding to any education agency which he determines engaged in willful failure to report accurate data by 150 percent of the amount reported in error. The Auditor General was directed to review the data reported by local education agencies to determine if the amounts reported were accurate. Based on the Auditor General's recommendations, the Superintendent was authorized to transfer additional amounts to the State Departments of Mental Health and Social Services, provided that the total amount transferred did not exceed the amounts spent by local educational agencies in the 1985-86 Fiscal Year for residential care and mental health services for children pursuant to IEPs.

XV

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 ser-

vices. 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 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.

The Short-Doyle Act provides that a county must give priority to services required for acute patients and involuntary patients. Welfare and Institutions Code section 5651.3. Each county must consider and make provisions for certain other priority populations: the chronically mentally ill, including those who are homeless; mentally disturbed children and adolescents, including juvenile sex offenders and juvenile victims of sex offenses; mentally ill elderly, including those who are isolated; mentally ill inmates and, mentally ill wards of juvenile detention facilities, and mentally ill nuisance offenders to prevent inappropriate placement in the justice system; and underserved populations, including ethnic minorities, refugees, veterans, and other victims of posttraumatic stress disorders, and individuals diagnosed as both mentally ill and developmentally disabled. Welfare and Institutions Code section 5651.1.

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. This is true in the County of Santa Clara.

Generally, each county is required under the 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.

The annual Short-Doyle plan must include a detailed presentation of expected expenditures and revenues. Chapter 1274 of the Statutes of 1985 also required that the plan include a description of services required by Government Code sections 7571 and 7576 (which is the subject of this Test Claim).

Two alternative Short-Doyle planning and reimbursement methods exist: the county Short-Doyle plan and the negotiated net amount contract. Unless a county is selected by the Department of Mental Health and elects to enter into a negotiated net amount contract with the State, the Board of Supervisors must adopt and submit to the Department of Mental Health an annual county plan ("Short-Doyle plan") for mental health services to the county. Welfare and Institutions Code section 5650. The Department reviews and approves the Short-Doyle plan. The county Short-Doyle plan is deemed a contractual arrangement between the state and the county.' Welfare and Institutions Code section 5707.

Community mental health services are funded from a combination of sources: fee revenue from patients and third parties (such as insurance companies), grants from non-profit organizations, Medicare and federal Medi-Cal benefits from the federal government, Short-Doyle allocations and Short-Doyle Medi-Cal from the State, and required Short-Doyle "match" and voluntary "overmatch" though the county.

Among the major features of the Short-Doyle Act are provisions relating to the allocation of state funds to community mental health services. Through the Short-Doyle Act, state general funds are distributed to counties to provide partial funding for community mental health services. In theory, and with a few exceptions, the net cost (cost less revenues such as grants, patient fees, third party reimbursement, Medicare, and federal portion of Medi-Cal) of all services specified in approved county Short-Doyle plans or covered under the negotiated net amount contract is financed on a basis of 90 percent state funds (the "Short-Doyle allocation[1] and the state portion of Medi-Cal) and 10 percent county funds (the "required county match"). Welfare and Institutions Code section 5705.

Alternatively, subject to State approval, a county may elect to use the negotiated net amount (NNA) contract method in lieu of the annual Short-Doyle plan and budget. Welfare and Institutions Code section 5705.2. The NNA is a contract between the Department of Mental Health and the electing county. The NNA concept differs from the cost reimbursement concept of the Short-Doyle plan. Through the NNA, a county contractually agrees to make certain mental health services available, and the state agrees to allocate to the county a fixed Short-Doyle amount. The NNA contract contains a statement of units of certain modes of service which the county agrees to make available (the "dedicated capacity"). The county bears the financial risk in providing any and all mental health services to the population described and enumerated in the contract to the dedicated capacity limit. The State bears the risk that fewer units of service will need to be provided, and bears the risk that the county can provide the services at a cost saving. Any savings may be retained by the county as long as 'such funds are used for mental health services, including the defraying of operating and capital costs.

XVI

In the County of Santa Clara, community mental health services are provided through the Mental Health Bureau of the Department

of Health, which is the local mental health agency for the County of Santa Clara. Under direction from the Board of Supervisors for the County, the Mental Health Bureau administers the Short-Doyle funds, provides mental health services, and monitors contracts with Short-Doyle contract providers of mental health services.

Except for services provided under the legislation that is the subject of this Test Claim, families or patients are charged for assessment and treatment services provided by the County, based on the family's liability as determined by the Uniform Method for Determining Ability to Pay (UMDAP)'. Insurance, Medi-Cal and Medicare are billed to the maximum extent possible.

XVII

Prior to the legislation that is the subject of this Test Claim, none of the services to be provided under the Short-Doyle contracts were specifically referenced to serving IEP needs. With two exceptions, the Fiscal Year 1985-86 Short-Doyle contract agencies rendered services independent of the IEP process or requirements, charged parents based on UMDAP liability, and collected insurance, Medi-Cal and Medicare. The exceptions were two Short-Doyle agencies which also had contracts with local educational agencies to provide IEP-related services. These two agencies rendered IEP-related assessment and treatment services for the local educational agencies with which they had contracts, and received partial funding for these services from the local educational agencies instead of through parent fees, Medi-Cal and insurance.

XVIII

The County negotiated net amount (NNA) contracts with the State of California for both Fiscal Year 1985-86 and 1986-87.

During the Fiscal Year 1985-86, the year prior to the year that is the subject of this Test Claim, the County Mental Health Bureau submitted a mental health budget (excluding state hospital services) of $35,552,792. The non-categorical Short-Doyle allocation (including the state portion of federal Medi-Cal) received from the state general funds was $21,640,430. The County provided $6,431,014 ($2,018,400 in required match and $4,412,614 in *'overmatch", general County funds committed to mental health programs at the discretion of the Board of Supervisors). The remaining amount, $5,977,481, was from non-County, non-State sources such as grants, patient fees and insurance, federal Medi-Cal and Medicare.

During the Fiscal Year 1986-87, the year that is the subject of this Test Claim, the County Mental Health Bureau submitted a mental health budget (excluding state hospital services) of $43,215,710. The state's non-categorical Short-Doyle allocation to the County was $22,515,326, which represented an increase from Fiscal Year 1985-86 of 4% (1% cost of living increase and 3% for program expansion). State funding for categorical funding was $3,682,166, including $222,955 to fund the program subject to this Test Claim. The County provided

$7,481,097 ($2,547,225 in required match and $4,933,872 in "overmatch"). The estimated revenue from non-County, non-State sources was $9,537,122.

XIX

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 children. Item 4440-131-001, Chapter 186, section 2.00, Statutes of 1986; Chapter 1133, section 3, Statutes 1986. Of these amounts, $222,955 was allocated to the County of Santa Clara for Fiscal Year 1986-87. There was no required County match for this amount.

Additional amounts were to be transferred from the State Department of Education to the State Department of Mental Health if reports of local educational agencies indicated higher costs during Fiscal Year 1985-86 for services that are the subject to 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. An additional audit was to be conducted. Counties did not receive additional allocations for Fiscal Year 1986-87 as a result of these audits.

XX

Prior to the passage of Chapter 1747 of the Statutes of 1984, the County of Santa Clara, and local mental health programs generally, were not required to provide IEP assessments fdr local educational agencies, and were not required to participate in IEP meetings. Local educational agencies had these responsibilities. The County of Santa Clara is neither a local educational agency nor special education local plan area (SELPA), and has a fiscally independent Office of Education which is not involved in this Test Claim. The county mental health program and county welfare department had no statutory roles in the IEP process 'prior to this legislation.

XXI

Prior to the implementation of the legislation that is the subject of this Test Claim, County mental health clinicians did not participate in the IEP process in a formal manner. Frequently, if a child in therapy had an IEP, and the therapist was an employee of the County, the child's therapist voluntarily participated in the IEP process to a limited extent. Neither the therapist nor the County was required to participate. In each case, the therapist became involved at the invitation of the parent or the educational agency, after parental consent had been obtained. Depending upon insurance coverage, eligibility and ability to pay, parents, insurance, Medi-Cal and Medicare were billed for the services. The therapist did not sub-

mit an IEP assessment to the team and was not an IEP decision maker. The therapist may have discussed the case with the person conducting the assessment for the IEP team, or may have attended the IEP meeting. However, the therapist's presence at the IEP meeting was not required.

XXII

Prior to the implementation of legislation that is the sub-' ject of this Test Claim, representatives from the local mental health program did not have case management responsibilities for children placed out-of-home pursuant to IEPs. In Fiscal Year 1985-86, the County of Santa Clara did not have a responsibility to provide case management services.

Prior to the legislation that is the subject of this Test Claim, the Mental Health Bureau provided some case management services for the most severely mentally disturbed children: those placed in Napa State Hospital or receiving inpatient services at Don Lowe Pavilion, the County's acute psychiatric hospital. Generally, these children were dangerous to themselves or others and/or met the criteria of gravely disabled as a result of a mental disorder. All of the Santa Clara County children at state hospitals were in LPS conservatorships. These case management services did not overlap with IEP case management services, as the acute hospital and state hospital placements were not placements pursuant to IEPs.

Prior to the full implementation of the legislation that is the subject of this Test Claim, in Santa Clara County, the departments of social services and probation also provided some case management services unrelated to IEP case management services for children who were wards or dependents of the court. Counties were not required to provide these services. In Santa Clara County, parents were billed for these services, based on ability to pay. Not all children receiving these case management services were in IEPs, and few were in out-of-home placement pursuant to IEPs. Case management responsibilities did not include IEP case management responsibilities, even for-children who had IEPs.

XXIII

Generally, patients or other responsible parties are charged fees for mental health services, determined by their ability to pay. Welfare and Institutions Code section 5716. If a patient is covered by insurance, insurance companies are billed for any covered services, subject to the patient's consent.

Medi-Cal and Medicare are billed for covered services to Medi-Cal and Medicare patients. Cost 'recovery from the Medi-Cal program is limited to the federal portion of Medi-Cal for the year that is the subject of this Test Claim, as the County in that year had a NNA contract with the State. Under this contract, the amount of Short-Doyle allocation includes the state portion of Medi-Cal for Short-Doyle services.

XXIV

The Fiscal Year 1986-87 cost to the County for providing mental health assessments, case management, and treatment required by the legislation that is the subject of this Test Claim exceed the $222,955 specifically allocated to the County by the State for this program. The excess costs place this Test Claim within the jurisdiction of the Commission on State Mandates.

XXV

Handicapped children needing mental health treatment to take advantage of a free, appropriate education under the EHA and the State's implementation of the EHA have an entitlement to receive those services. No other persons served by local mental health programs have an entitlement to mental health services.

The effect of Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985, and Title 2 California Code of Regulations Division 9 is to give the highest priority to individualized education program treatment. If mental health resources are insufficient to meet the entire mental health needs of the community, treatment required by individualized education programs must continue to be provided. patients with more acute illnesses, but without IEPs--including children--may be placed on waiting lists.

With respect to non-IEP mental health services, counties have flexibility to determine treatment priorities in terms of who is served, what kind of treatment they receive, and how often they receive those services.

XXVI

As the assessments and treatment services are specifically required to be provided at no cost to the handicapped child or the child's families, affected local entities do not have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Some services rendered pursuant to these statutes for Medi-Cal eligible children are covered under Medi-Cal. The legislation does not impact the ability of the County to bill Medi-Cal, and this revenue is included as an off-set to expenses on this Test Claim.

XXVII

The following findings are not based on the "Joint Statements of Fact".

XXVIII

The Fiscal Year 1986-87 cost to Santa Clara County of providing IEP-related mental health services was $2,387,835. The breakdown of these expenses is as follows: $168,146 for IEP assessment and case management services; $1,784,076 for day treatment services; $419,349 for individual therapy services;, and $16,264 for group

therapy services. Fiscal year 1986-87 revenues relative to these services is estimated to be $235,869 in federal Medi-Cal revenue. In addition, an insignificant amount of revenue from third party insurance payments was received. State funding of this IEP program in Fiscal Year 1986-87 was $222,955. The net unreimbursed cost of the program is therefore estimated to be $1,929.001.

XXIX

There were some children referred through the IEP process in Fiscal Year 1986-87 who previously had been known to the county mental health system (251 out of 568). Although some of these children previously had been identified as IEP children, it is not clear the extent to which they had IEPs requiring the mental health services they in fact were receiving. To the County's knowledge, none of these children seen by the County were receiving mental health services pursuant to IEPs: the services were rendered by the County independent of the IEP process, and parents and third parties were charged for the services under the County's standard Short-Doyle process. Many of these children may have had IEP-related mental health needs which had not been identified by the local educational agencies prior to the transfer of responsibility to local mental health agencies, and which should have been the responsibility of the local educational agencies, with no contribution required from family or third party insurance. Prior to Fiscal Year 1986-87, the needs of these 251 children may have been partially or fully met through the County in an informal manner, even though they should have been entitled to receive free services through IEPs, as a matter of right.

The 251 children previously known to the mental health system were not individual children the County was mandated to serve prior to Fiscal Year 1986-87.

XXX

The effect of shifting the responsibility for assessing and funding IEP mental health needs away from the agency responsible for identifying those in need of services has been formidable. According to the California State Auditor General, by December 31, 1986 (the end of the first ten months of local mental health agencies' involvement in this process), the number of students referred for noneducational services was more than double the number of special education students who received services during the 1985-86 Fiscal Year.

For Santa Clara County SELPA Area I, which was included in the Auditor General's audit, the escalation in referrals was even more striking: during the period March 1, 1986 to June 30, 1986, more than twice the number of children who received noneducational services during that fiscal year were referred for mental health evaluation. By December 31, 1986, the number of children so referred was nearly triple the number of special education students receiving noneducational services during the immediately preceding fiscal year (1985-86).

Children in need of IEP-related mental health services were under-identified prior to the implementation of Chapter 1747 of the

Statutes of 1984. Generally, children who were referred through this process were in need of mental health services and received IEP recommendations for such services as a result of the referrals. In Santa Clara Countv durins Fiscal Year 1986-87, 494 of the 568 children referred for mental health IEP assessments subsequently received mental health services pursuant to IEPs.

DETERMINATION OF ISSUES

I

Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985 and their implementing regulations mandate a new program or higher level of service on the Mental Health Bureau of the County of Santa Clara as defined in the California Constitution Article XIII B, Section 6.

Article XIII B 56 requires state subvention of funds "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government . . . ." Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985, and their implementing regulations, impose on county local mental health agencies "a new program or higher level of service" subject to the constitutional imperative of subvention under Section 6 Article XIII B of the California Constitution.

The Supreme Court of California has determined that "program" has two alternate meanings: "[1] programs that carry out the governmental function of providing services to the public or [2] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.

The legislation that is the subject of this Test Claim is a "program" under either definition. The state chose to carry out a governmental function of providing mental health assessments, treatment, and case management of handicapped children who need supportive services in order to benefit from their education by delegating the responsibility to local mental health agencies. The legislation requires local mental health agencies to provide certain specific services to the public. The responsibilities imposed on local mental health agencies pursuant to this legislation are not imposed upon all residents and entities of the state, only on local mental health agencies.

This is a new program in several ways. Before this legislation, counties in general and local mental health agencies in particular had no formal responsibilities in the IEP process. The legislation requires the local mental health agencies to provide services not hitherto required. This legislation involves the local mental health agencies in the IEP process, with its full panoply of federal and state time lines, rights, and procedures. Prior to this

legislation, educational agencies had the responsibility for providing free, appropriate public education to each handicapped child, including whatever supportive services were necessary in order for that child to benefit from special education. Chapters 1747 and 1274 and their implementing regulations shifted from educational agencies to local mental health agencies substantial financial and program responsibilities for mental health services provided to handicapped children pursuant to the IEP process. The service mandated by this legislation had not previously been mandated by the general state mental health program, the Short-Doyle program.

II

The state argues that Chapters 1747 and 1274 and their implementing regulations do not impose a new program on local mental health agencies because "[c]ommunity mental health programs were already providing assessments and mental health treatment for many handicapped children under the Short-Doyle Act." The argument is unconvincing. It ignores fundamental differences between IEP-related services and Short-Doyle services which existed prior to this legislation:

1. Local educational agencies were responsible for providing IEP-related mental health assessments and treatments. Community mental health programs were not providing IEP-related mental health assessments, and were not formally participating in the IEP process. No community mental health representative was an IEP team member, regardless of the placement possibilities. Community mental health had no IEP team responsibilities, was not responsible for locating out-of-home placement pursuant to IEPs and was not responsible for case management for children placed out-of-home pursuant to IEPs. To the knowledge of the County, the County was not providing any mental health treatment required by individual IEPs prior to this legislation.

2. The IEP program, based on the federal EHA requirements, provides for very specific evaluations and services, to be delivered within certain time limits and with due process safeguards. There is no similar process for Short-Doyle services, no similar time lines for evaluations or reevaluations or delivery of services, no similar definition of what must be included in an evaluation, no mandatory process similar to the IEP meeting process, no similar due process procedure.

3. The Short-Doyle program is not an entitlement program. It is a broad mental health program that grants great discretion to the community mental health system to determine what ser-

vices are to be provided, and to whom. The County determines its service priorities based on program principles and clinical needs. It is the policy of the County that if resources are inadequate to meet demands on a particular mental health center, needs are triaged. Those in most urgent need of treatment are seen; others are placed on waiting lists. Although the Short-Doyle Act sets forth certain priority populations, it does not grant to any individual an entitlement to services. The IEP program, on the other hand, is an entitlement program. If an individual child meets certain criteria, he or she is entitled to services, a right that is enforceable through administrative and judicial remedies. There is no such thing as a waiting list for IEP services. Those services simply must be delivered.

4. Patients receiving Short-Doyle services are charged for the services, based on their UMDAP ability to pay. If the services are covered by insurance or some other third party, collection is made from that source. Families of children receiving IEP-related services are entitled to receive those services free of charge. The parents or child cannot be charged for the services. If the IEP-related services are covered by insurance, any submission of insurance claims to providers must be voluntary, unless such claims would result in neither an increase in premiums, nor a decrease of annual or lifetime insurance benefits, nor a cancellation of the insurance policy.

5. Since the IEP program is an individual entitlement program, the responsibility for providing IEP -related mental health services represents an open-ended financial demand on the County. Each individual child who qualifies for IEP-related services is entitled to receive them. Receipt of the services cannot be contingent on identifying a funding source. Government Code section 7572(d). Through the Short-Doyle program, on the other hand, a community mental health agency cannot be required to expend more for mental health programs than it receives in its state Short-Doyle allocation plus the required county match. Welfare and Institutions Code section 5709.

6. The Short-Doyle Act is designed to organize and finance community mental health services

in every county through locally administered and locally controlled programs, and to provide a means for allocating state mental health funding according to community needs. Welfare and Institutions Code 5600. The goals of the Act are to assist persons who are institutionalized, or at a high risk of becoming so, because of a mental disorder, lead lives as normal and independent as possible; to assist persons experiencing temporary mental health problems to return to a functioning level; and to prevent serious mental disorders and psychological problems. First priority must be given to services required for acute patients and involuntary patients. Welfare and Institutions Code section 5651.3. Other priority populations do include, mentally disturbed children and adolescents, including juvenile sex offenders and juvenile sex offense victims. Welfare and Institutions Code section 5651.1. However, this population is not synonymous with children entitled to IEP-related mental health services. The most severely mentally ill children, those in acute hospitals, state hospitals, or state hospital alternative programs did not receive their mental health services pursuant to IEPs. Hospital care is deemed "medical services" which is not the kind of supportive service required to be provided under the EHA. 20 U.S.C. section 1401(a)(17). Those mentally disturbed children and adolescents who are to be given first priority -- those in need of acute care and those involuntarily detained -- do not receive their mental health services pursuant to IEPs. Presumably, most juvenile sex offenders, juvenile victims of sex offenses, and wards of juvenile detention facilities -- all of whom are specifically targeted as priority populations -- also do not qualify for IEP-related mental health services.

The Short-Doyle Act is designed to give community control and direction to the complex mental health needs of a county's population. The legislation requiring local mental health agency involvement in the IEP process (Government Code section 7570 et. seq.) is not part of the Short-Doyle Act (Welfare and Institutions Code section 5600 et seq.) , and is in fact contrary to it. There is little local control over services to be offered, as the services to be provided are dictated by the specific criteria contained in federal and state law and regulation. The IEP program singles out a narrow population for separate, special treatment, as an entitlement program, outside the priorities of the Short-Doyle Act.

That the IEP program is separate from the Short-Doyle program is evident from the Short-Doyle contract itself. The County's negotiated net amount contract is authorized by, and subject to the provisions of, Welfare and Institutions Code section 5705.2. The Short-Doyle contract between the state and the County of Santa Clara for Fiscal Year 1986-87 is replete with references to the Short-Doyle Act. The introductory provisions of the contract refer to the Short-Doyle Act as the enabling legislation. Exhibit 4, Santa Clara County Negotiated Net Amount Short-Doyle Fiscal Year 1986-87 Contract. The contract defines "client" or "patient" as a person who receives services pursuant to the Short-Doyle Act. Paragraph 27(a).

The body of the Short-Doyle contract makes no references to Government Code section 7572 et seq., nor to any IEP responsibilities. The only specific mention of this program is the reference to the state's $222,955 allocation for the "S.E.P. [IEP] Program" on the tables of Exhibits B and F of the contract.

The increase in the basic Short-Doyle state allocation (excluding allocations for categorically funded programs) from Fiscal Year 1985-86 to 1986-87 was less than four percent ($22,515,326 compared to $21,640,430). If the net unreimbursed cost of the IEP program is to be absorbed by the Short-Doyle program, it would consume over eight-and-a-half percent of the county's general state Short-Doyle allocation for Fiscal Year 1986-87 ($1,929,011 out of $22,515,326).

The Legislature did not intend that the services mandated by Chapters 1747 and 1274 would be part of, and funded through, the Short-Doyle program. The IEP-related mental health services were never to be funded through the Short-Doyle program. Section 16 of Chapter 1274 provided for a transfer of funds from the State Department of Education to the State Department of Mental Health. Section 17 of Chapter 1274 recognized that the Chapter imposed a mandate and directed that reimbursement to local agencies be made through to State Mandates Claim Process. Chapter 1133 of the Statutes of 1986 further provided for funding for mental health for this program, by providing for a transfer of $2,000,000 from the Department of Education to the Department of Mental Health, to fund the IEP mental health program. This statute also provided that counties were not required to provide county match for this program, unlike the Short-Doyle program, and that the Department of Mental Health was to allocate funds based on individual county needs, in lieu of the Short-Doyle Act allocation. Section 3 of Chapter 1133 of the Statutes of 1986. It also provided for additional transfers from the Department of Education to the Department of Mental Health, based on the Auditor General's report. Id.

Even if it is determined that the services mandated by' Chapters 1747 and 1274 are included in the Short-Doyle program, the services are mandated services for which subvention is required.

III

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.

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. Section 504 does not require counties to give mental health services on a priority basis to handicapped students who receive services pursuant to their IEPs. If anything, Chapters 1.947 and 1274 require countries to discriminate against handicapped individuals who are not entitled to mental health services pursuant to IEPs, in violation of Section 504.

The burden of providing public education and related services is on educational agencies, not counties. 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. In Santa Clara County, local education agencies provide these services, even to children in the custody of the County, in the Juvenile Hall, Shelter, or Ranches.

IV

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.

The Education for All Handicapped Children Act is not a mandated program. A state may elect or decline to participate. Acceptance of federal funding for education is a state option. But once the option is accepted, its terms and conditions must be met by the recipient. The state, by accepting the federal monies, has agreed to abide by the terms and conditions of the EHA. It now seeks to impose the financial burden of this decision on counties, who do not even receive the federal monies which fund this program.

Section 6 of Article XIIIB of the California Constitution provides:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service....

In defining reimbursable mandates, Section 9, subdivision (b), of Article B of the California Constitution excludes "[a]ppropriations required for purposes of complying with mandates of the....federal government which, without discretion, require an expenditure" by the governmental entity.

If the state is to receive certain federal grants, the EHA requires that the state participate in the IEP program. Nevertheless., a financially induced choice is not the same as a statutory require-

ment. In City of Sacramento v. State of California, the appellate court twice determined that state legislation requiring local government employers to pay into the state unemployment insurance on behalf of their public employees was not a federal mandate exempt from reimbursement, but a financially induced choice, even though failure to impose such a requirement on local government employers would have resulted in federal de-certification of the State's unemployment insurance program, with a concomitant loss of federal tax credit for the State's private employers. City of Sacramento v. State of California (1980) 156 Cal. App. 3d 182, 196 (Sacramento I); disapproved of on other grounds, to the extent it conflicts, in County of Los Anaeles v. State of California (1987) 43 Cal. 3d 46, 58; Citv of Sacramento v. State California (1988) 201 Cal. App. 3d 409.

Similarly, acceptance of federal education monies, which only then requires the state to implement the IEP program, is a financially induced choice, not a federal mandate. In fact, the State is going-one step farther than they attempted to go in the City of Sacramento cases. At least in the City of Sacramento cases, federal law did rewire contribution into the state unemployment insurance fund from all local government employers, if the State program was to be certified. In the present case, nothing in the federal EHA law requires county mental health or county government involvement in the IEP process. Federal law requires states which receives federal funding to have in place a program applying to the state as a whole. See 34 Code of Federal Regulations §300.1 et seq. It is the State that has the responsibility to design such a program. Federal regulations generally do not dictate which state or local agency will be responsible for program execution. The state could impose the responsibilities on local school districts, as it did before the passage of Chapter 1.747. Alternatively, the state could provide the services directly.

Citing the Government Code section 17513 definition of "costs mandated by the federal government," the state, asserts that the cost of complying with Chapters 1747 and 1274 are federally mandated because failure to opt into Public Law 94-142 (the EHA) would result in "a substantial monetary loss" in the form of loss of federal education funding. The State asserts that the amount of this loss would be $100,000,000. There is no evidence in the record to support that assertion.

Even assuming that failure to opt into the EHA would result in a loss of a substantial sum of federal monies to the state, there is no evidence that this would result in a substantial net monetary loss. The net costs of complying with the IEP requirements to the mental health agency of the County of Santa Clara alone is $2,151,966 ($2,387,835 less $235,869 federal Medi-Cal). There are fifty-seven other countries in the state. There are also costs of the Department of Social Services, for out-of-home placement, and costs of state and local educational agencies, for special education and other supportive or related services. It may well be that the cost of compliance exceeds the funding received.

Even if failure to opt into Public Law 94-142 were to result in substantial monetary loss, Chapters 1747 and 1274 and their imple-

menting regulations are not federally mandated costs as defined by Government Code section 17513, which provides:

> Any increased costs incurred by a local agency... in order to comply with the requirements of a federal statute or regulation...[including] costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.

Failure to impose on counties -- which do not provide primary or secondary education -- a requirement that counties provide IEP-related mental health services does not result in substantial monetary penalties or loss of funds. It is the failure of state or local educational agencies to do so that would result in the loss of funds. When it opts into the EHA program, the State itself, as well as educational agencies, incur certain obligations. Nothing in the federal law requires involvement of counties in the IEP process. What the state is attempting to do is take the federal monies, and pass along the responsibility to the counties, without the monies. This is precisely the kind of delegation of responsibility which, under the California Constitution, the state must provide subvention funds.

V

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

Court decisions at the federal and state level heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973, which establishes the rights of handicapped individuals, were decided under due process and equal protection theories. Mills v. 'Board of Education of the District of Columbia. (1972) 348 F. Supp. 866 held that the Board of Education, by failing to provide special education to certain disturbed children, denied due process to the children and the class they represented. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1971) 334 F. Supp. 1257 involved the equal access to educational services for retarded children. Neither case involved the imposition on local mental health agencies of responsibilities to provide services supportive to the educational requirements of handicapped children.

VI

The County of Santa Clara and other affected local entities do not have the authority to levy services charges, fees, or assessments sufficient to pay for the mandated program or increased level of services. Both federal and state law provide that services that are the subject of the Test Claim must be provided at no cost to

parent or child, and federal law prohibits affected local entities from requiring that parents use insurance benefits to pay for the services provided if using such benefits would result in a decrease in coverage or an increase in the cost of coverage.

ORDER

The Test Claim, filed by the County of Santa Clara, is granted. The County of Santa Clara shall submit parameters and guidelines to the Commission for its consideration.

Dated: March 28, 1989

KEITH A. LEVY
Administrative Law Judge
Office of Administrative Hearings

COPY

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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STATE MANDATES

In the Matter of TEST CLAIM OF SANTA CLARA COUNTY REGARDING HANDICAPPED AND DISABLED STUDENTS	OAR NO. N-30939

RESPONSE TO PROPOSED DECISION ON
BEHALF OF THE STATE OF CALIFORNIA

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of TEST CLAIM OF SANTA CLARA COUNTY REGARDING HANDICAPPED AND DISABLED STUDENTS	)	OAR NO. **N-30939** RESPONSE TO PROPOSED DECISION ON BEHALF OF THE STATE OF CALIFORNIA

INTRODUCTION

This matter, now coming before the Commission on State Mandates as a Proposed Decision by the Administrative Law Judge, is a Test Claim filed by Santa Clara County ("County") related to the provision of mental heaith services pursuant to Individualized Education Programs ("IEP"). The claim alleges that, taken together, Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985 (along with their implementing regulations) impose a "mandate" on the County, as that term is used in Section 6 of Article XIII B of the California Constitution. The state denies this contention.

This claim relates to fiscal years 1985-86 and 1986-87. During those fiscal years, County received state mental health funding through the Short-Doyle Act in excess of thirty-one million and thirty-two million dollars, respectively. The amount set forth in the claim represents less than 6 percent of the State funding received by County for those fiscal years.

EARLIER BRIEFS

The State submitted briefs (Opening Brief, submitted January 27, 1989: Reply Brief, submitted February 24, 1989)

earlier which set forth in some detail the arguments advanced by tne State as to why this claim does not set forth a reimbursable mandate. The State will not repeat the contents of those documents in any detail here, but would urge a 're-reading of those briefs for a full understanding of the State's positions. However, to help put the subsequent portions of this response in context, a summary of the State's main arguments is offered here.

A. The costs claimed by County relate to services mandated by the federal government by Section 503 of the Rehabilitation Act of 1973 (as amended) and Public Law 94-142 and, thus, are not State mandates, but a delineation of the right of children to have a free education.

B. Chapters 1747 and 1274 and their implementing regulations affirm and implement that which had been declared existing law by action of the courts, as enunciated by the United States Supreme Court in Smith v. Robinson (1984) 468 U.S. 992. Regardless of the legislation in question, children have a right recognized by the United States Constitution to a free education which includes the related services provided pursuant to the legislation in question.

C. Chapters 1747 and 1274 do not impose a "new program" or a "higher level of service" in that the legislation in question does not mandate County to provide mental health services it was previously not required to provide. Under existing law counties must provide mental health services. The State and each county share in the cost of providing mental health services pursuant to the Short-Doyle Act.

D. While certain mandates were recognized by the Legislature, the Legislature did not recognize Chapters 1747 and 1274 as a mandate of new mental health services.

E. The mental health services required by Chapters 1747 and 1274 are not distinct from Short-Doyle mental health services. Both the State and the counties have treated mental health services provided pursuant to the legislation in question as services that are funded in accordance with the Short-Doyle Act, and, not only has Short-Doyle funding been provided to County for these services, but Short-Doyle funding continues to be available for reimbursement to County for these services.

WHY THE PROPOSED DECISION IS ERRONEOUS

A. General Comments

Many of the conclusions in the determination of issues set forth in the Proposed Decision are based on a misunderstanding of the applicable provisions of law and court decisions.

The discussion of each determination in the Proposed Decision focuses exclusively on the express provisions of law or the express holding in court decisions, and the conclusions are based on whether the words "County" or "county mental health" are contained in express terms. This completely ignores the necessary and inescapable implications which have been found by the courts to flow from various provisions of law, regardless of whether particular catch words are expressly stated in those provisions.

B. Specific Comments

I.

FEDERAL MANDATE

(CONSTITUTIONAL/STATUTORY ASPECT)

In Section III of the Determination of Issues (pages 22 and 23), the Proposed, Decision-concludes that Chapters 7747 and 1274 "do not implement a federal mandate contained in Section 504 of the Rehabilitation Act of 1973." This conclusion is based on the observation that Section 504 does not expressly require "counties to give mental health services on a priority basis to handicapped students who receive services pursuant to their IEPs." This observation fails to take into account that Section 504 has been viewed by the United States Supreme Court to impose almost the same requirements as Public Law No. 94-142. The court noted that "because both statutes [Section 504 and Public Law 94-142] are built around fundamental notions of equal access to State programs and facilities, their substantive requirements, as applied to the rights of a handicapped child to a public education, have been interpreted to be strikingly similar." (emphasis added) Smith v. Robinson (1984) 468 U.S. 992, at 1077.

Moreover, in Smith the court stated that Public Law 94-142 ". . . is a comprehensive scheme designed by Congress as the most effective way to protect the right of a handicapped child to a free appropriate public education. We concluded above that in enacting the EHA, Congress was aware of, and intended to accommodate, the claims of handicapped children that the Equal

Protection Clause required that they be ensured access to public education." Smith v. Robinson supra at 1016. Therefore, it must be concluded and recognized that Public Law 94-142 is a codified expression of certain inchoate rights, and that Chapters 1747 and 1274 represent the State's response and implementation of those rights.

Section 504, then, does constitute a federal mandate, does impose requirements "strikingly similar" to Public Law 94-142, and is required to be implemented in California. In implementing this federal mandate, California has chosen the counties, political subdivisions of the State, to be responsible for part of the implementation. This does not, however, alter the fact that the legislation in Chapters 1747 and 1274 is implementing a federal mandate imposed by Section 504.

In Section V of the Determination of Issues, the Proposed Decision concludes that Chapters 1747 and 1274 do not "merely affirm for the State that which had been declared existing law by 'actions of the courts." Again, this conclusion is based on the observation that no court decisions expressly impose on counties the responsibility of providing services in connection with IEPs. The Proposed Decision goes on to say that two of the federal cases cited by the State were decided under "due process and equal protection theories," as if this somehow renders those decisions meaningless in the context of this test claim.

Certainly, those court decisions did not expressly impose IEP responsibilities on counties. That issue was not

before the court in those cases. However, this focus on whether the word "count ies" appears in the decisions of those cases misses the significance of those cases entirely. Both Mills and Pennsylvania, prior to the enactment of Section 504 and Public Law 94-142, held in essence that handicapped individuals have a right to certain special services, The fact that these cases were decided on constitutional due process and equal protection theories only re-enforces the proposition that handicapped students are entitled under the United States Constitution to certain special services, like those provided in connection with IEPs.

II.

SHORT-DOYLE ASPECT

The conclusion contained in Section II (page 22) of the Proposed Decision that the Legislature did not intend that the services to be provided by local mental health programs pursuant to Chapters 1747 and 1274 would be part of, and funded through , the Short-Doyle program is clearly erroneous.

That those services may be funded through the Short-Doyle program is clearly evidenced by the provisions of the Short-Doyle Act (Sections 5600 et seq. W&IC).

Specifically, a description of the services required by Sections 7571 (relating to assessments) and 7576 (relating to mental health services provided by community mental health programs) of the Government Code, including the costs of those services, is required to be included in the annual Short-Doyle plan for each county (Sub.(g), Sec. 5651 W&IC).

That services specified in a county Short-Doyle plan are to be funded under the Short-Doyle program is clearly evidenced by the provisions of Section 5705 of the Welfare and Institutions Code. Sections 5705 provides, in pertinent part, ". . . The net cost of all services specified in the approved county Short-Doyle plan shall be financed-on a basis of 90 percent state funds and 10 percent county funds . . . the cost of services shall be the actual cost . . . or a negotiated net amount or rates approved by the Director of Mental Health as provided in Section 5705.2 . . ."

Thus, it is apparent by the express language of the Short-Doyle Act that the Legislature clearly intended that services provided by county community mental health programs pursuant to Chapters 1747 and 7274 be part of, and funded through, the Short-Doyle program.

The Short-Doyle Act specifically requires that mental health services be provided to children. Moreover, the Act also includes maintenance of effort requirements with regard to children's services. Specifically , Welfare and Institutions Code section 5704.5 provides that counties cannot decrease their proportion of mental health expenditures for children unless they can demonstrate that the need for such services has decreased. Further , Welfare and Institutions Code section 5704.6 requires that, with certain exceptions, counties must spend 50 percent of each noncategorical augmentation for children's services until children's services represent 25 percent of a county's total mental health program.

Additionally, a number of children receiving mental health services pursuant to the legislation in question were already one of the five identified priority populationg under Welfare and Institutions section 5651.1 and the legislation in question simply identified them as having head-of -the-line privileges.*

In point of fact, psychiatric assessments and case management, as well as other mental health services, are all exactly the types of services which have traditionally been funded through the Short-Doyle program, The conclusion that mental health services provided by counties pursuant to the legislation in question are funded pursuant to the Short-Doyle Act is consistent with both previous, as well as current, practice, since both the Department of Mental Health and the counties have always treated these services as being funded in accordance with the Short-Doyle program.

The Proposed Decision, on page 22, states that the "IEP-related mental health services were never to be funded through the Short-Doyle program," but fails to set forth any logical, cognizable rationale for such a conclusion. The Proposed

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* It is conceivable that the required participation in formulating the IEPs and the required IEP-related case management, may be viewed by the Commission as new *services.* However, County is not required to increase non-Short-Doyle expenditures to provide these services. Only a redirection of Short-Doyle funds is involved, and only a slight one, at that. The legislation in question really only gives certain clients "head of the line" privileges, not unlike those contained in other parts of the Short-Doyle program.

Decision points to two instances when funding was transferred from the Department of Education to the Department of Mental Health (Section 76 of Chapter 1274 and Section 3 of Chapter 1133, 1986) as if these funding transfers somehow, ipso facto, prove that IEP-related mental health services are not mental health services reimbursable in accordance with the Short-Doyle Act.

However, a transfer of funding from Education to Mental Health does not in any way support the conclusion that the services are not Short-Doyle reimbursable. In fact, just the opposite conclusion would be much more logical, since the funding transfers constitute a recognition that, previously, these specific services were funded through Education and now through Mental Health. A shift in fundi'ng logically follows a shift in primary responsibility. The long-standing, traditional method of funding mental health services provided by counties is through the Short-Doyle program. There is no reason why these mental health services were intended to be treated any differently than the funding mechanism. Thus, at the most, if any of the services are found by the Commission. to represent a mandate, only the 10 percent county share should be. reimbursed as a mandate, since the remaining 90 percent is reimbursable under Short-Doyle Act.

The Proposed Decision also points to Section 17 of Chapter 1274 as recognizing that. ". . . the Chapter imposed a mandate and directed that reimbursement to local agencies be made through to [sic] State Mandates Claim Process." However, Chapter 1274 contains mandates potentially subject to reimbursement. The Legislative Counsel's Digest for Chapter 1274 identifies those

mandates, but, significantly, did not identify IEP related mental health services as a mandate. The courts have held that it is presumed that the Legislature, in enacting bills, reads and is guided by the Legislative Counsel's Digest. (Maben v. Superior Court (1967) 255 (Cal.App.2d 708, 713; People v. Superior Court (Douglas), (1979) 24 Cal.3d 428, 434). Therefore, the fact that the Legislative Counsel's Digest does not identify IEP related mental health services as 'a mandate is extremely significant and leads necessarily to a conclusion exactly opposite to the one contained in the Proposed Decision,

Finally, the Proposed Decision makes reference to the fact that Chapter 1132 of tne Statutes of 1986 initially waived the usually required 10 percent county match. But, does temporarily waiving the match suddenly mean that these services are not Short-Doyle reimbursable? Just the opposite. Waiving the match makes these services 100% Short-Doyle reimbursable during the waiver period. Moreover, the Legislature has many times previously waived the County match, sometimes for particular programs, and sometimes for the whole Short-Doyle program itself. An examination of the history of Welfare and Institutions Code section 5705 reveals that during fiscal years 1979-80 and 1980-81, no County match was required at all **for** county community mental health services statewide. If the logic of the Proposed Decision were accepted, then during those years there was no Short-Doyle program at all (no services reimbursable by Short-Doyle funds). This was obviously not the case.

Thus, the conclusion in the Proposed Decision that IEP-related mental health services are not Short-Doyle reimbursable is based on misinterpretations of the legislation, misunderstanding about the Short-Doyle program, and faulty reasoning. What is more, such a conclusion would be inconsistent with all previous findings by the Commission which have involved claims related to the Short-Doyle program.

CONCLUSION

This then is the crux of the argument presented by the State: that the courts had already established that handicapped students were entitled under the U.S. Constitution to these kinds of services. Section 504, Public Law 94-142, and Chapters 1747 and 1274 all in essence implement what had alreaay been established in the courts. Chapters 1747 and 1274 are not a mere response to a federal financial "carrot," rather they are fundamentally a response to the mandates of the equal protection clause of the 14th Amendment as enunciated in Smith v. Robinson (supra). These pieces of legislation only set forth the intricate but required details of how these constitutional mandates are to be implemented and represent policy determinations regarding the details of implementation which were enacted by the Congress and by the State Legislature, in turn.

With the possible exception of the required participation in formulating the IEPs and the required IEP-related case management, County is not required to increase Short-Doyle expenditures or add new services. Only a redirection of resources is

involved, and only a slight one, at that. The legislation really only gives certain clients "head of the line" privileges, not unlike those contained in other parts of the Short-Doyle program. Moreover, the therapeutic/treatment modalities involved are exactly like what County' provides to non-IEP clients. If the legislation contains any reimbursable mandate at all, it would be limited solely to the role in formulating IEPs and to case management. In no way could a reimbursable mandate be said to exist with respect to the provision of mental health services.

For these reasons, the State urges the Commission on State Mandates to reject the conclusions reached in the Proposed Decision by the Administrative Law Judge.

Dated: July 25,' 1989

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

Re: *Test* Claim *of Santa Clara County Regarding Handicapped and Disabled Students*

OAR No. N-30939

I, JUDIE A. BRICE, declare that I am over-18 years of age, and not a party to the within cause; my business address is 350 McAllister Street, Suite 6000, San Francisco, California 94102. I served a true copy of the attached

RESPONSE TO PROPOSED DECISION ON
'BEHALF OF THE STATE OF CALIFORNIA

on each of the following, by placing same in an envelope (or. envelopes) addressed (respectively) as follows:

Susan Chapman
Deputy County Counsel
70 W. Hedding Street
San Jose, CA 95110

Each envelope was then, on July 26, 1989, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

Executed on July 26, 1989, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

J-UDIE A. BRICE
(Type Name)

Judie A. Brice
DECLARANT

3EFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of the TEST CLAIM OF COUNTY OF SANTA CLARA REGARDING MENTAL HEALTH SERVICES FOR HANDICAPPED AND DISABLED STUDENTS	)))))))))	OAH NO. N-30939

REBUTTAL ON BEHALF OF CLAIMANT COUNTY OF SANTA CLARA
TO RESPONSE OF STATE OF CALIFORNIA
TO PROPOSED DECISION OF THE COMMISSION ON STATE MANDATES

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of TEST CLAIM OF SANTA CLARA COUNTY REGARDING MENTAL HEALTH SERVICES FOR HANDICAPPED AND DISABLED STUDENTS	)	OAR NO. N-30939 REBUTTAL OF SANTA CLARA COUNTY JO RESPONSE OF STATE OF CALIFORNIA TO THE PROPOSED DECISION OF THE COMMISSION ON STATE MANDATES

I. INTRODUCTION

The County of Santa Clara ("County") filed a test claim with the Commission on State Mandates for Fiscal Year 1986-87 seeking a determination that Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985, together with their implementing regulations, impose a mandate on the County for which subvention is required under Section 6 of Article XIII B of the California Constitution. Chapters 1747 and 1274 and their implementing regulations require the County to provide free mental health assessment of handicapped and disabled students upon appropriate referral from the students' school districts, as well as to provide free mental health treatment which is included in the students' Individualized Education Programs ("IEPs") because the services are necessary for those students to benefit from a free, appropriate education. This legislation also imposed upon the County other substantive and procedural requirements relating to the IEP process.

The IEP process is an implementation of an optional federal program. Under the federal Education for All Handicapped Act (Public Law No. 94-142, or "EHA"), any state which accepts federal grants for education must provide a free, appropriate public education to its handicapped and disabled students, along with supportive services which are necessary for the child to benefit from that education. States accepting those federal funds also must comply with the detailed substantive and procedural requirements of the EHA. Under the EHA, each handicapped child qualifying for IEP services has an entitlement to receive them: an entitlement which can be enforced in administrative or judicial proceedings.

California had opted into this program by accepting federal grants for education. Chapters 1747 and 1274 and their implementing regulations transfer to county mental health agencies the State's responsibility to provide mental health services under the EHA, which previously had been assigned to local educational agencies.

The Commission referred the test claim to an Administrative Law Judge for a proposed decision. The County and the State submitted a Joint Statement of Facts and Positions to the Administrative Law Judge. The facts are uncontroverted. At issue are interpretation of those facts and application of legal principles. The Administrative Law Judge issued a Proposed Decision holding that the legislation mandates a new program for which subvention is required. The Proposed Decision concludes that Chapters 1747 and 1274 do not implement a federal mandate: The Proposed Decision finds that the County received $222,955 from

the State in fiscal year 1986-87 to fund this program; its cost was $2,387,835. For fiscal year 1986-87, the County received $22,515,326 in general Short-Doyle funding from the State. The Proposed Decision holds that general Short-Doyle monies received from the State funded the Short-Doyle program, and did not reimburse the County for the costs of this new program. The unreimbursed cost of complying with the mandate in fiscal year 1986-87 was $1,929,011.

II. GENERAL COMMENTS

This test claim has been the subject of extensive briefing; and the Administrative Law Judge issued a comprehensive Proposed Decision setting forth factual determinations and thoroughly analyzing the legal issues presented. This brief is limited to rebutting the State's Response to the Proposed Decision. The arguments presented in the County's Opening and Response Briefs will not be repeated. The County urges the Commission to re-read these for a full understanding of the County's position.

Two fundamental issues are presented by this test claim. The first is whether Chapters 1747 and 1274 and their implementing regulations merely affirm and implement that which is required under federal law, through the Equal Protection and Due Process clauses of the U.S. Constitution (as established by the courts); through Sections 503 and 504 of the Rehabilitation Act of 1973 (as amended), or through the Education for All Handicapped Act (Public Law No. 94-142, or "EHA"). The State's response to the Proposed Decision, and this Rebuttal, address the Constitutional and

Section 504 aspects of this issue, (For a thorough discussion of whether the EHA is a federal mandate, the Commission is referred to pages 22-27 of the County's Opening Brief and pages 22-29 of the County's Response Brief.) Neither the Constitution nor the Rehabilitation Act of 1973 establishes an entitlement to mental health services necessary for a handicapped child to benefit from education. Federal law does not require local government mental+ health providers to provide free menta1 health services to any group , much less to a narrow class of individuals.

The second fundamental issue concerns the interrelation between the IEP-related services required by Chapters 1747 and 1274 and the pre-existent Short-Doyle community mental health program: whether Chapters 1747 and 1274 impose a "new program" or "higher level of service" beyond the services the County must provide pursuant to the Short-Doyle Act and, if so, whether the County is reimbursed for those services through Short-Doyle funding received from the State.

Clearly, involvement in the IEP process, with its very specific substantive and procedural provisions, is a "new program" for counties. The mental health services which must be provided constitute a "higher level of service" than the County previously was required to provide. The services are outside the Short-Doyle Act, contrary to it; and are not reimbursed by Short-Doyle funding. In fact, utilizing Short-Doyle funds for this purpose jeapordizes the County's ability to fulfill its Short-Doyle responsibilities, and jeapordizes the health and safety of the mentally disordered residents of the County.

III. REBUTTAL TO STATE'S RESPONSE TO PROPOSED DECISION

A. FEDERAL MANDATE ISSUE (CONSTITUTIONAL/STATUTORY ASPECT)

The County's costs of complying with Chapters 1747 and 1274 and their implementing regulations are not "costs mandated by the federal government. " The State, in its Response to the Proposed Decision, argues that the services mandated by Chapters 1747 and 1274 are federally mandated by Section 504 of the Rehabilitation Act of 1973, or by the caselaw decided on Equal Protection and Due Process theories which preceded Section 504.

In essence, Section 504 and the caselaw which preceded it require a state offering public education to provide education and training to all its children, including those who are handicapped. "[W]here the state has undertaken to provide it, [public education] is a right which must be made available to all on equal terms." Mills v. Board of Education of District of Columbia (1972) 348 F.Supp. 866, 875, citing Brown v. Board of Education (1954) 347 U.S. 483, 493. See also Pennsylvania Association for Retarded Children v. Commonwealth (1971) 334 F.Supp. 866.

Contrary to the assertions of the State in its Response to the Proposed Decision, neither Mills nor Pennsylvania held that handicapped individuals had a right to special services such as mental health services. For that matter, neither case held that children had a constitutional right to public education. They held only that if public education is offered, it must be offered to all. Whether entities undertaking to provide public education

were required to provide supportive services was not addressed in these cases; certainly they did not reach the issue of whether all public entities were required to be drawn into the educational process.

Section 504 states that no otherwise qualified individual may be excluded from participation, denied the benefits of, or subject to discrimination under any federally funded program, solely by reason of his handicap. In the educational arena, Section 504 requires participants of federal funding which operate a public elementary or secondary education program to "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. Part 104.33. The County does not operate a public or secondary education program, and receives no federal funds to do so, Section 504, therefore, does not require the the County to provide public education to handicapped students.

The County, in its Short-Doyle program, serves handicapped individuals, particularly those whose handicap is mental or emotional. No one is excluded by reason of his or her handicap: Section 504 does not require the County to give one group of handicapped individuals special treatment. If anything, Section 504 requires the County not to discriminate against all handicapped persons who do not receive IEP-related services; many of whom are more seriously impaired and more in need of mental health services than those receiving services pursuant to IEPs.

Chapters 1747 and 1274 require such discrimination, by creating for one class of persons an entitlement to free services

which counties may, at their discretion, provide to others for a fee based upon ability to pay. Counties are not required to meet all the mental health needs of its residents. Outside the IEP-process, no individual, no matter how needful he may be, has an enforceable individual right to receive mentai health services. Disregarding the obligations arising from Chapters 1747 and 1274, counties are not required expend county general funds for mental health services beyond the required county Short-Doyle match. Board of Supervisors of the County of Los Angeles v. Superior Court (1989) 207 Cal.App.3d 552.

Moreover, neither the Equal Protection clause nor Section 504 creates unlimited demands on local government. In Mills, the court held that the Board of Education could not exclude handicapped children from its public education system. The decision did not, however, require the Board to increase its funding of education. Rather, if funds were insufficient to finance all needed services and programs, the court held that available funds should be expended equitably so that no child would be entirely excluded from a publicly supported education; Mills v. Board of Education, supra, at 876. This Equal Protection principle, if applied to the County's mental health system; would require the County to expend its limited funds in an equitable manner to meet the mental health needs of all of its residents;

Section 504 relief is limited to remedies requiring reasonable funding and reasonable administrative burdens to remove barriers to the handicapped. See Garrity v. Gallen (1981) 522 F.Supp. 121. Section 504 requires even-handed treatment of handicapped individuals, not extensive, costly modification of existing

programs or affirmative action programs on their behalf. Southeastern Community College v. Davis (1979) 442 U.S. 397, 410. In contrast, Chapters 1747 and 1274 and their implementing regulations impose unreasonable, excessive burdens on the County and go beyond the purposes of removing barriers to the handicapped.

The State argues that because Section 504 and the Equal Protection caselaw which preceded it establish rights of a handicapped child to public education, the requirement to provide supportive mental health services is a federai mandate on counties. The County does not provide public education. How can it be required, under Equal Protection or Section 504, to provide educational benefits or education related services to certain handicapped children? It is the State and public educational entities which have undertaken to provide public education, and are thus required to provide equal education. It is they who receive federal funds for education.

Imposing education related responsibilities on the County or county mental health agencies is not a "necessary and inescapable implication" of the law as the State argues; The reason the law does not "expressly" impose the burden of providing education related supportive services on counties is that counties do not have an obligation to provide "equal education" to all or an obligation to provide services to compensate for inequalities or inequities in the educational system.

The State also errs in asserting that the requirements of Section 504 and the Equal Protection clause are equivalent to the requirements of the EHA. The EHA intends to accommodate the

Section 504 and Equal Protection claims of handicapped children for insured access to public education, but establishes a much more comprehensive scheme of substantive and procedural rights than was established under Section 504. Smith v. Robinson (1984) 468 U.S. 992, 1011-18. It is precisely on the issue of whether a state providing education must provide supportive services, such as mental health services, that the EHA established rights not clearly in existence before. In Smith, the Court noted that prior to the EHA, courts "had expressed confusion about the extent to which Section 504 requires special services necessary to make public education accessible to handicapped children." Id. at 1018.

The State's argument also distorts the state law on mandates; The federal and court mandate exceptions are entity specific: If state law merely codifies federal law or caselaw, the state is not required to provide subvention. Thus, if federal law required all public entities, or all counties, to adopt a program, state subvention to counties for the costs of complying with the implementing state legislation would not be required.

In the present case, neither optional nor mandatory federal law, whether through cases or statutes, require local governments which do not provide education to provide IEP-related services; If there is a federal mandate involving mental health services for handicapped students--and; as discussed, this is far from established --the mandate is either on the state or the public educational agencies who ultimately receive the federal education funds. Transferring these responsibilities to counties creates precisely the kind of program for which subvention is required.

B. SHORT-DOYLE ASPECT

1. Using Short-Doyle resources to fund IEP services conflicts with the federai EHA program.

Federal educational grants are intended to augment, not supplant, existing resources for handicapped children. Assurance of this fact is a requisite for approval of the State Plan and the receipt of federal funding. 20 U.S.C. Section 1413(a)(9). Prior to the implementation of Chapters 1747 and 1274, local educational agencies received federal educational grants through the State to fund the special education and supportive services (including mental health services necessary for a handicapped child to benefit From his or her education) for which they were responsible.

The Short-Doyle program operated as a separate, existing resource for handicapped children. Although the Short-Doyle Program is directed at the mental health needs of the entire community, it specifically provides for the needs of children; Mentally disturbed children and adolescents are listed as one of the priority populations of the Short-Doyle Act. Welfare & Institutions Code section 5651.1. Counties have certain responsibilities for maintenance of efforts for children and for increasing funding to children's services through future augmentations to their Short-Doyle budgets. Welfare & Institutions Code section 5704.5. The County has been in compliance with these provisions.

Handicapped children in the County thus had two public resources for the satisfaction of their mental health needs: local educational agencies, for IEP-required services, and the County mental health agency; for Short-Doyle mental health

services. Short-Doyle serves a much broader range of children's mental health needs than the IEP program, as has been set forth in detail in the County's Opening Grief.

Now, handicapped children have only one public resource for the satisfaction of their mental health needs: the County. When the responsibility for conducting mental health assessments and providing IEP-required mental heaith services was passed to the County in fiscal year 1986-87, the County received $222,955, yet its costs were $2,387,835. If the existing Short-Doyie program is to absorb the unreimbursed cost, the mental health resources for handicapped children will be substantially reduced, as will the mental health resources of all residents of the County. Without additional funding, absorption of the IEP costs through the Short-Doyle program cannot occur without a substantial reduction of mental health services provided by the County. This necessarily is a supplantation of State and local funds for handicapped children. Clearly, this is in violation of the intent of the EHA. It may jeapordize the State Plan and the federal funding for education it secures.

2. Chapters 1747 and 1274 impose a new program, separate from the Short-Doyle Program.

The Short-Doyle Act is designed to organize and finance community mental health services in every county through locally administered and controlled programs, and to provide a means for allocating state mental health funding according to community needs. Welfare and Institutions Code section 5600. The Short-Doyle Act grants great discretion to the County to determine what services are to be provided, and to whom. The County

determines its service priorities based on program principles and clinical needs. The goals and extensive requirements of the Act, as well as the County's Short-Doyle contractual obligations, have been set forth in detail in the Joint Statement of Facts and Positions and in the briefs previously filed by the County. The Short-Doyle Act is designed to give community control and direction to the complex mental health needs of a county's population. This is antithetical to the precise responsibilities to individuals required by the IEP process.

Chapters 1747 and 1274 establish a new program which is not part of the Short-Doyle program, The statutes are set forth in the Government Code, not in the Short-Doyle Act (Welfare & Institutions Code section 5600 et seq.). Chapter 1274 did amend Welfare and Institutions Code section 5651, within the Short-Doyle Act, to require Short-Doyle plans to include a description of services required by Government Code sections 7571 and 75761 This one reference does not make such services Short-Doyle services:

When Chapters 1747 and 1274 were enacted, the legislature did not add handicapped students needing IEP-related mental health services to the list of priority populations, although it did have before it the subject matter when enacting the IEP legislation; Nor did it include the IEP statutes within the Short-Doyle Act itself. The clear inference from this is that the legislature did not intend either to include these services within the Short-Doyle Act or to add to the Short-Doyle priority populations handicapped children requiring IEP-related mental health services. Estate of McDill (1975) 14 Cal.3d 831, 837-38.

Moreover, the Welfare & Institutions Code section 5651

Short-Doyle requirement is not applicable to the County. The County has elected to enter into a negotiated net amount contract with the State, and has no Short-Doyle plan. The negotiated net contract Short-Doyle contract with the State, which sets forth the County's Short-Doyle responsibilities, does not require the County to provide IEP-related services. The oniy interface between this contract and the County's IE?-related responsibilities is that the State chose to include its $222,955 allocation to the County for this program within the contract budget.

The program is new and fundamentally different from the Short-Doyle program because it is an entitlement program, unlike any of the other mental health programs operated by the County. Having to provide mental health services on an entitlement basis is a revolutionary responsibility for the County. Having to provide those services at no cost to the recipient or his or her family, regardless of the recipient's financial resources is also revolutionary.

The State attempts to dodge its responsibilities by asserting that the program is not "new" because the County was providing similar mental health services before. Yet the facts clearly show that this legislation requires the County to do things it never did before, as is set forth in detail in the Joint Statement of Facts and Positions and the briefs previously submitted by the County. Prior to this legislation, the County had no official involvement in the IEP process. Local educational agencies were responsible for providing or funding IEP-related services; including mental health services.

The State asserts that the County was already providing

assessments and mentai health treatment under the Short-Doyle program. This is true. The assessments and treatment which are to be provided under Chapters 1747 and 1274, however, are fundamentally different and new. Assessments must conform to the statutory and regulatory educational requirements for IEP assessments. They must be in writing not just in the child's chart, but in a document submitted to the IEP team. The assessment must justify the recommendation and may be used in administrative or judicial proceedings to enforce a child's IEP rights. Similarly, IEP-related mental health treatment, focused as it must be on the educational needs of the child, is fundamentally different from services directed to the general mental health needs of the client which the County provided before;

Most IEP-referred children were new to the county mental health system. Certainly, there is some overlap of children who may receive Short-Doyle services and children who are entitled to receive IEP-required mental health services. In fiscal year 1986-87, there were some children referred through the IEP process who previously had received services through the county mental health system on an ability-to-pay fee basis. The County, however, was not mandated to serve them; and was certainly not required to provide free services regardless of family income.

3. The costs of complying with Chapters 1747 and 1274 are not reimbursed through the Short-Doyle Program.

The State asserts that funding has been provided through the Short-Doyle program. It has not. The State Short-Doyle responsibilities of the County and the Short-Doyle allocation scheme pre-existed this mandate.' The Short-Doyle State funding

which the County received in fiscal year 1986-87 was essentially the same as its allocation for the prior year, with a mere four percent increase. The Short-Doyle responsibilities of the County were not decreased for fiscal year 1986-87. It is clear that the legislature did not intend that these monies be robbed to pay for the cost of providing IEP-required mental health services.

Under the theory advanced by the State, the State could impose on the counties requirements to implement unlimited specialized free entitlement programs, provided they are loosely for mental health assessment and treatment services. The State cavalierly suggests that Short-Doyle funds could then be used to fund these programs, disregarding the fact that the County's Short-Doyle obligations and responsibilities--including specific responsibilities to maintain certain levels of service--were not. reduced to accommodate this increased responsibility.

The State, in its Response Brief to the Proposed Decision minimizes the impact on the County's Short-Doyle program of requiring Chapters 1747 and 1274 services through Short-Doyle funding. The State begins with a factual error, asserting that the County received in excess of $31 million and and $32 million in state Short-Doyle funding for the fiscal years 1985-86 and 1986-87, respectively, thus calculating that the amount of the claim represents "less than 6 percent of the State funding" for the year in question. This is flatly in error. The State non-categorical Short-Doyle funds received by Santa Clara County for fiscal year 1986-87 (the year for which this claim is filed) was $22.5 million, not $32 million. See Joint Statement of Facts and Positions, page 49.

Toward the end of its brief the State characterizes the use of Short-Doyle funds for this program as requiring only a "slight" redirection of resources. Given the comprehensive range of services which the County is required to provide through its Short-Doyle contract, and given the tremendous mental health needs of residents of the County, particularly those handicapped by mental or emotional disorders, absorption of 8.5 percent of the Short-Doyle budget to finance IEP-related services is much more than a "slight" redirection of resources: it is a profound crippling of the entire Short-Doyle program.

The IEP-related mental health services were never to be funded through the Short-Doyle program. Section 16 of Chapter 1274 provided for a transfer of funds from the State Department of Education to the State Department of Mental Health. Counties were not required to provide county match for this program and that the Department of Mental Health was to allocate funds based on individual county needs, rather than based on standard Short-Doyle Act allocation procedures. Section 3 of Chapter 1133 of the Statutes of 1986. (The County's $222.955 allocation was the result of this "individual county needs" formula, based on inaccurate data submitted by local educational agencies.) Chapter 1133 of the Statutes of 1986 further provided for funding for mental health for this program, by providing for a transfer of $2,000,000 from the Department of Education to the Department of Mental Health, to fund the IEP mental health program. Additional transfers were to be made from the Department of Education to the Department of Mental Health, based on a later audit (though no additional funds were received by the County).

Taken together, these provisions indicate a legislative intent to fully fund this program.

Section 17 of Chapter 1274 recognized that the Chapter imposed a mandate and directed that reimbursement to local agencies be made through to State Mandates Claim Process. The legislative counsel's disclaimer, like a legislative disclaimer, is not binding, particuliary when the characterization is the product of an attempt to avoid the imposition of financial responsibility. City of Sacramento v. State of California (1984) 156 Cal.App.3d 196-97.

CONCLUSION

That the IEP-related services were never to be funded through Short-Doyle is clear through the devastating impact on local mental health programs if Short-Doyle funds are used to fund IEP-mandated services. The County cannot meet its Short-Doyle contract obligations and cover the unreimbursed costs of its ZEP-required services with its Short-Doyle allocation and required match. In fiscal year 1986-87, the County was able to meet its obligations only because it contributed to its Short-Doyle program approximately $4.9 million in County general funds beyond its required county match. It is not required to do so.

Yet without increased funding, some of the fundamental needs of the County's residents with the most serious mental disorders will go unmet. Where could cuts be made? In outpatient care for the chronically mentally ill to prevent hospitalization? In alternative residential treatment for children who are so seriously disturbed that they would otherwise be placed in the state hospital? In acute services for psychotic or suicidal or

dangerous individuals? The mental health needs of the county are too critical, and the Short-Doyle funding already too thin, to absorb the loss in funding which results from utilizing Short-Doyle funds to pay for the cost of this newly-mandated program. State subvention must be provided.

According, the County urges adoption of the Proposed Decision of the Commission on State Mandates which was prepared by the Administrative Law Judge.

Respectfully submitted,

STEVEN WOODS IDE,
County Counsel

Dated: August 15, 1989

Susan A. Chapman
Deputy County Counsel

Attorneys for County of Santa Clara

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

CASE OAH No. N-30939

In the Matter of	)
	)
THE TEST CLAIM OF SANTA CLARA	)
COUNTY REGARDING MENTAL HEALTH	)
SERVICES FOR HANDICAPPED AND	)
DISABLED STUDENTS	)

PROOF OF SERVICE BY MAIL

I, Robin L. Bostwick, declare that:

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within action or cause. My business address is 70 West Hedding Street, Ninth Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served the within REBUTTAL OF SANTA CLARA COUNTY TO RESPONSE OF STATE OF CALIFORNIA TO PROPOSED DECISION OF COMMISSION ON STATE MANDATES by placing a true copy thereof in an envelope addressed to:

Harlan E. Van Wye, Deputy Attorney General
Office of the Attorney General
350 McAllister Street, Suite 6000
San Francisco, CA 94102-3600

Commission on State Mandates
1130 K Street LL50
Sacramento, CA 95814

which envelope was then sealed. with postage fully prepaid thereon, on August 17. 1989 and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on August 17, 1989, at San Jose, California,
CCP§1013a(3)

Robin L. Bostwick

ITEM 9

PROPOSED STATEMENT OF DECISION
Adopted Mandate
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

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Hearing: 4/26/90
File: CSM-4282
Staff: Stephen R. Lehman
WP 0580s

PROPOSED STATEMENT OF DECISION
Adopted Mandate
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Executive Summary

This proposed statement of decision is for the Commission's determination that the above cited laws and regulations constitute a reimbursable state'mandated program by requiring county participation in the "Individualized Education Program" process for' "individuals with exceptional needs." In addition, the Commission determined that mental health services provided to "individuals with exceptional needs" are currently provided under the provisions of the Short-Doyle Act and are therefore reimbursable pursuant to the current Short-Doyle cost sharing formula.

The Attorney General's Office disagrees with the proposed decision because it believes the Commission specifically excluded mental health services from the mandate determination.

The County of 'Santa Clara also takes issue with the decision, on different' grounds. The County argues that the Short-Doyle Act'and the "Individualized Education Program" are mutually exclusive programs and therefore, the proposed decision incorrectly subjects the "Individualized Education Program" to the cost sharing requirements of the Short-Doyle Act.

Staff recommends the Commission adopt the proposed statement of decision because it accurately reflects the Commission's mandate finding, and it is statutorily correct.

Claimant

County of Santa Clara

Chronology

8/17/87	Test Claim filed with the Commission on State Mandates (Commission).
1/28/88	Commission hearing on options for adjudicating the test claim. Commission refers claim to Office of Administrative Hearings.
12/1/88	Test claim hearing before an Administrative Law Judge (ALJ).
4/25/89	Staff receives proposed decision from ALJ.
5/31/89	Attorney General's Office requests continuance from July 27, 1989 hearing. Claim set for September 21, 1989.
9/21/89	Commission hearing. The attorney representing the state was unable to attend the Commission hearing. Commission continues the proposed ALJ decision to its November 30, 1989 hearing.
11/30/90	Commission hearing. Commission directs staff to amend the proposed decision to acknowledge a mandate relative to the activities of the Individualized Education Program (IEP) and case management process put upon the counties relative to the population of special education students, and present its decision and its recommendation.

Claim Sununarv

Chapter 1747 of the Statutes of 1984 (Chapter 1747/84) 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 (Chapter 1274/85) 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.

Section 60040, 'Title 2, California Code of Regulations (CCR), implements Government Code section 7572 and states that a responsible local educational agency 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.

Prior to July 1, 1986, the State Department of Education (SDE), through school districts and county offices of education, was responsible for the education and care of special education students. However, Chapter 1747/84, Chapter 1274/85, and Title 2, CCR, section 60000 et seq., shifted the responsibility of providing psychotherapy and other mental health services for pupils with exceptional needs from the SDE to the Department of Mental Health (DMH). Also, the responsibility of providing residential care for seriously emotionally disturbed students was shifted from the SDE to the Department of Social Services (DSS). To facilitate this transfer of responsibilities, the Budget Act of 1986 provided for the transfer of $8.1 million of special education funds from the SDE. The DMH received $2.7 million, and the DSS received $5.4 million. In addition, the Budget Act of 1986 allocated $2 million to the DMH to determine if special education students need noneducational services.

The County of Santa Clara alleges that as a result of providing mental health assessments, case management, and treatment for children who are residents of the county, it has incurred unreimbursed costs mandated by the state in the amount of $1,929,011 during the 1986-87 fiscal year.

Background

This test claim was heard by an ALJ, who issued a proposed statement of decision (Attachment D) which was heard by the Commission at its hearing of November 30, 1989. At that hearing, there was substantial discussion on the scope and extent of the ALJ's proposed decision. The Commission ultimately adopted a motion that directed staff to prepare a revised statement of decision that finds that county participation in the IEP process is a new program, and that any related mental health treatment is provided under the county's Short-Doyle program.

In order to familiarized the Commission with the discussion that took place at its November 30, 1989 hearing, staff has provided, to each Commissioner, a separate addendum to the Commission's agenda. This addendum contains the Commission's November 30, 1989 agenda package for this claim, as well as a copy of the transcript and minutes for this item. In addition, the addendum will be available for all parties to review at the Commission hearing.

Summary of Proposed Statement of Decision

Based upon the Commission's motion at its November 30, 1989 hearing, staff has prepared a revised proposed statement of decision (Attachment A). This proposed statement of decision

concludes that to the extent that the provisions of Government Code section'7572 and section 60040, Title 2, CCR, 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 decision 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 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 proposed decision also concludes that the provisions of Welfare and 'Institutions Code section 5651, subdivision (g), results in ahigher 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.

However, because such mental health services are a part of the county's annual Short Doyle plan, the costs related thereto are subject to the current cost sharing formula of the Short-Doyle Act. Under this formula, 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 costs mandated by, the state and reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

Attornev General's Office Position

The Attorney General's Office, who is representing the state agencies in this matter, believes that the proposed statement of decision is " . . . seriously flawed in that it seems to determine that the on-going cost of providing Short-Doyle mental health services constitutes, at least in part, a mandate." The Attorney General's Office states that the Commission specifically determined that the ongoing provisions of mental health services is a part of the county's preexisting Short-Doyle program/obligation, and in no way constitutes a reimbursable state mandated program. (Attachment B)

In sum, the Attorney General's Office submits that it is incorrect to permit the reimbursement of any mental health services related to IEPs.

County of Santa Clara's Position

The County states that the proposed statement of decision is correct in finding that certain services which counties were never required to provide, such as IEP assessments, participation in the IEP process! and IEP case management, are state mandated services for which reimbursement is required.

However, the County disagrees with the proposed decision insofar as it categorizes mental health treatment as part of the Short-Doyle program. The County maintains that the services provided under IEPs is incompatible with the Short-Doyle program. Nevertheless, the County states that if this objection is rejected by the Commission, ". . . . the tentative decision that Government Code sections 7571 and 7576 and their implementing regulations' constitute a higher level of service within the county Short-Doyle program, for which the county is entitled to receive ten percent reimbursement of the costs of such service, is correct, as far as it goes." (Attachment C)

Staff Analysis

Staff drafted the proposed statement of decision based upon the discussion and motion of the Commission at its hearing of November 30, 1989. Based upon staff's understanding of the Commission's motion, the proposed statement of decision concludes that the following services constitute a reimbursable state mandated program on counties:

(1) county participation in the mental health assessment for "individuals with exceptional needs,"

(2) any related participation on the expanded IEP team, and

(3) case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed"

Furthermore, in accordance with the Commission's motion, it was determined that the aforementioned mandatory county participation in the IEP process are not subject to the Short-Doyle Act, commencing with Welfare and Institutions Code section 5600. Consequently, any 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 County, along with the Attorney General's Office, agrees that this part of the proposed decision reflects the Commission's motion.

In addition to the above, it is staff's understanding of the Commission's motion that any related mental health services provided under an IEP, fell within the county's preexisting Short-Doyle plan. Accordingly, such mental health services are subject to the cost sharing formula of the .Short-Doyle Act, and since ninety (90) percent is currently funded by the State, only ten (10) percent of such program costs are costs mandated by the state and reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

The Attorney General's Office states that the proposed statement of decision is incorrect because it permits reimbursement for ten (10) percent of the mental health services provided under a county's annual Short-Doyle plan. The Attorney General's Office believes that the Commission specifically found that such costs were incurred as a result of the County's preexisting Short-Doyle obligations and, therefore, are not the result of the new mandate created by the laws that are the subject of-this test claim.

Staff does not dispute that the Commission found that mental health services required by the legislation related to this test claim were to be provided under the Short-Doyle Act. Specifically, the mental health services provided pursuant to Government Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Consequently, a higher level of service in the existing Short-Doyle program is required.

Staff would note that it has been the Commission's practice that when it determines that a law imposes new requirements within the Short-Doyle program, that ten (10) percent of such program costs are costs mandated by the state and reimbursable within the meaning of section 6, article XIIIB of the California Constitution. The Short-Doyle Act currently provides counties with the remaining ninety (90) percent of the costs of providing those mental health services.

The County, like the Attorney General's Office, takes exception to the proposed statement of decision permitting ten (10) percent reimbursement of the mental health services provided to IEPs under the Short-Doyle program. However, staff would note that the County's comments on this issue continue to argue that the requirements of the IEP process are separate from the Short-Doyle program and therefore, one hundred (100) percent. reimbursable as state mandated costs. It is staff's position that the Commission has already addressed this with its motion to find that certain portions of the IEP process are separate from the Short-Doyle Act, and that the mental health services rendered are within a county's Short-Doyle plan. Thus, staff does not believe that the County's comments in this area warrant any further discussion.

Moreover, the County also alleges that it is entitled to be reimbursed for those IEP services for which it can no longer

charge fees to the child's family. The County notes that under the Short-Doyle Act it is required to charge fees for the services it provides in accordance with an individual's ability to pay. However, the county is prohibited from charging fees for services provided under an IEP.

Staff submits that the Short-Doyle Act requires counties to contribute ten (10) percent of the cost of services provided under the Short-Doyle Act. Accordingly, the Commission's decision is limited to the ten (10) percent county. contribution, because statutorily, that is the amount of cost to be incurred by the county under the Short-Doyle Act. Furthermore, it is staff's position that if counties are unable to assess a fee for services provided under an IEP, then ninety (90) percent of the cost of those services will be provided by the state through the Short-Doyle Act, and the remaining ten (10) percent reimbursed through the parameters and guidelines for this mandate.

Summary

In summary, it is staff's interpretation of the Commission's motion found that county participation in the IEP process is a new program, and that mental health services required by the Government Code sections 7571 and 7576 and their implementing regulations must be provided under a county's Short-Doyle plan and, therefore, are subject to the cost sharing formula of the Short-Doyle Act.

Staff Recommendation

Staff recommends the Commission adopt the proposed statement of decision (Attachment A), because it accurately reflects that Commission's motion, and is statutorily correct.

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.

1. 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. Backsround'

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's 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's jurisdiction, regardless of the nature or severity of the person's 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 ERA, 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 i, 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.

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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)(l), 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)(l), 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.

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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 se&on 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 programmatic description of each of the services to be provide: 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 senrices. 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 ail 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."

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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.

WP0258h

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COMMISSION ON
STATE MANDATES

March 23, 1990

(415) 464-1173

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 "K" Street, Suite 315
Sacramento, California 95814

Dear Mr. Lehman:

CSM - 4282
Claim of County of Santa Clara, etc.
Handicapped and Disabled Statute

This responds to your letter of February 13th.

We believe that the Proposed Decision is'seriously flawed in that it seems to determine that the ongoing cost of providing Short-Doyle mental health services constitutes, at least in part, a mandate. This is contrary to the explicit determination of the members of the Commission during their November 30, 1989, hearing and implicitly conflicts with the findings contained in the paragraph of the Proposed Decision which begins on page 10, thereof, and carries over to page 11.

At that hearing the Commission determined that onlv the three items set out in that paragraph constitute a mandate (i.e., assessments, IEP team participation and case management). The Commission specifically determined that the ongoing provision of mental health services is a part of the County's historic Short-Doyle obligation, and in no way constitutes a mandate for which State compensation is required. This is made clear in the third full paragraph on page 11 of the Proposed Decision. The entire thrust of the State's fallback argument -- accepted by the Commission -- is that while the three previously identified services may constitute mandates the ongoing provision of mental health services is a regular Short-Doyle responsibility of the County for which no subvention is required.

Our position is amply supported in the record before the Commission. We specifically argued the same on November 30th (see Transcript, p. 46, 1. 24-p. 47, 1. 25, and p. 54, 11. 6-23), and the County stated its specific disagreement with the State's position (see Transcript, p. 48, 11. l-6 and p. 66, 1. 20-p. 67, 1. 1).

The State's fallback position ultimately carried the day (Transcript, p. 67, 1. 15-p. 68, 1. 12) winning the support of Members Buenrostro, Martinez and Creighton. Chairperson Gould would apparently go even further and would support the State's entire position (see Transcript, p. 58, 11. 14-21). Only Member Shuman ultimately sided with the County.

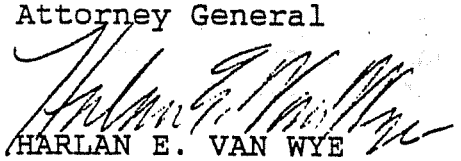
The Motion which ultimately passed was made by Member Martinez (Transcript, p. 61, 1. 20-p. 62, 1. 2) and later amended by him (Transcript, p. 63, 1. 17-p. 64, 1.3). It is crystal clear that the motion voted on and the Commission's instruction to staff were to separate the three new enumerated functions from the ongoing provision of Short-Doyle mental health services (see Transcript, p. 64, 1. 9-p. 65, 1. 18, wherein Member Martinez, referred to the "IEP program" as used in his amended motion, (i.e., participation on the extended IEP team pursuant to Government Code section 7572.5(a) and (b)) as separate and apart from the County's ongoing Short-Doyle responsibilities to provide mental health services,

Thus we believe that the large, middle paragraph on page 14 of the Proposed Decision misstates the intent of the Commission. The legislation at issue constitutes no new Short-Doyle mandate requiring additional funding by the State at any level. We therefore respectfully suggest that such paragraph be deleted and that the third full paragraph on page 11 of the Proposed Decision be amended by rewriting the last sentence thereof to read: "It was found that the provisions of Government Code sections 7571 and 7576 and their implementing regulations provide for the provision'of county mental health services wholly within the county's historic Short-Doyle plan."

Thank you very much for your ongoing consideration throughout these proceedings; Please feel free to contact me should you have any question concerning the State's position.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General



HARLAN E. VAN WYE
Deputy Attorney General

HEV:kgw

cc: Susan Chapman, Deputy County Counsel

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COMMISSION ON
STATE MANDATES

March 27, 1990

Steven M. Woodside
County Counsel

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 "K" Street, Suite 315
Sacramento, California 95814

RE: CSM-4202
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1987
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

This responds to your letter of February 13th. which transmitted a copy of the proposed decision of the Commission regarding the above test claim, The tentative decision that certain services which counties were never required to perform before, such as IEP assessments, participation in the IEP process, and IEP case management, are newly mandated services for which state subvention is required is correct. However, we implore the Commission to reevaluate its proposed decision insofar as it categorizes mental health-treatment mandated by this legislation as part of the Short-Doyle program for the County of Santa Clara. The two programs are incompatible. It is inconceivable that the Legislature intented to divert Short-Doyle funds for this purpose.

Assuming this argument is rejected, the tentative decision that Government Code sections 7571 and 7576 and their implementing regulations constitute a higher level of service within the county Short-Doyle program, for which the county is entitled to receive ten percent reimbursement of the costs of such service, is correct, as far as it goes. The county would, however, be entitled to receive additional reimbursement to compensate it for providing free services, regardless of the child or family's ability to pay. The entire Short-Doyle budget is built on the

Chief Assistant County Counsel: Ann Miller Ravel
Chief Deputies: Robert J. Menlfee, Susan G. Levenberg, William I. Anderson

assumption that the county has a requirement to charge fees for the services it provides. It is only the unreimbursed cost that is subject to the funding ratio of 90 percent State funds and 10 percent county funds. The county should be fully reimbursed by the State for services for which otherwise would have been. paid for by clients, their families or insurance companies.

I.

THE SERVICES REQUIRED UNDER CHAPTERS 1747 AND 1274 ARE NOT SHORT-DOYLE SERVICES FOR WHICH STATE SHORT-DOYLE FUNDING CAN BE USED TO SUBVENT THE COST OF COMPLYING WITH THE MANDATE.

We urge the Commission to reconsider its decision that the cost of providing mental health treatment pursuant to Chapters 1747 and 1274 is partially reimbursed by the Short-Doyle program. Chapters 1747 and 1274 establish a new program which is not part of the Short-Doyle program. There are only three links between the two programs:

1. Both programs involve mental health treatment;

2. 'The State included the allocation to each county for the new program as a separate line item on each county's Short-Doyle budget; and

3. One section of the Short-Doyle Act (Welfare & Institutions Code Section 5651[1].) requires Short-Doyle plans to include a description of services required. by Government Code sections 7571 and 7576.

These links are insufficient to bind'the two programs into one.

A. The Amendment to Section 5651 Does Not Brins Services Required by Government Code sections 7571 and 7576 Services into' the Definition of Short-Doyle Services for Purposes of the Necrotiated Net Amount Contract Between the County of Santa Clara and the State of California.

1. Section 5651(g) Requires Only a Description of Government Code section 7571 and 7576 Services and Their Related Costs.

Section 5651 enumerates the required contents of a county Short-Doyle plan. A critical analysis of Section 5651 as amended by Chapter 1274 reveals that, although it requires a description of IEP-related services 7571 and 7576 to be included in the plan, it does not make them Short-Doyle services.

---

1. All references are to the California Welfare and Institutions Code unless otherwise stated.

Section 5651(a) requires a detailed presentation of all expected expenditures of county, state, and federal funds and all anticipated public and private revenue. Section 5651(b) requires a programmatic description of each of the services provided for in subparagraph (a). These are the Short-Doyle services. Section 5651(g) appears to be informational only, requiring that a Short-Doyle plan include a "description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services."

2. Section 5651 is Not Applicable to Santa Clara.

Moreover, Section 5651 is not applicable to the County of Santa Clara. In fiscal year 1986-87. Santa Clara entered into, a negotiated net amount contract with the State of California, in lieu of a Short-Doyle plan. Section 5705.2(c). Requisites of such a contract include assurance of adequate quality and quantity of services, provision for access to services by County residents, statistical and cost reporting requirements, a method for reimbursement of state hospital obligations, assurance that citizen participation through a mental health advisory board is in place, and assurance that all funds paid out by the state "under this subdivision" be used exclusively for providing mental health services. Compliance with Government Code sections 7571 and 7576 is not a requisite of Section 5705.2 negotiated net amount contracts, nor is it a service which the County provides pursuant to its negotiated net amount contract.

Section 5705.2(f) requires a county which proposes to enter into a negotiated net amount contract with the State to present the negotiated issues to its advisory board. Compliance with Government Code sections 7571 and 7576 was not a negotiated item.

The actual contract--a twenty page document with ten pages of exhibits which spells out in detail the services the County is obligated to offer and the priority populations it intends to serve--makes no reference to these Government Code sections. The only connection between this contract and newly mandated program is that the funding allocation for it (identified as funding for "S.E.P. Program") is included on Exhibit B. Even that is identified independently from "Regular Short-Doyle" expenditures. It is Chapters 1747 and 1274 which impose this mandate on the County, not the contract.

B. The Program Established by Chapters 1747 and 1274 and the Short-Doyle Proqram Are Different and Irreconcilable.

1. The Purposes of the Two Programs Are Different, and Federal Funding Was Intended to Enhance, Not Supplant, Resources for Handicapped Students.

There are fundamental differences between the purposes of the Short-Doyle program and the program established by Chapters 1747 and 1274.

Prior to 1976, local educational agencies were responsible for providing free special education and related services to handicapped students. Related services included mental health services, if required in order for the child to benefit from his or her special education. These mental health services were provided by, or funded through, the local educational agencies. The focus of any mental health services is on removing barriers to the child's educational progress. For offering these services, the State received federal educational grants, intended to augment, not supplant, existinq resources for handicapped children. Assurance of this fact is a requisite for approval of the State Plan and the receipt of federal funding. 20 U.S.C. Section 1413(a)(9).

The Short-Doyle program operated as a separate, existing resource for children--and all others--in need of mental health services. The Short-Doyle Act organized and financed community mental health services through locally administered and controlled programs, provided a means for allocating state mental health funding to meet the needs of the entire community. Section 56Q0. It clearly establishes its purpose and priorities, giving first priority to acutely ill or involuntary patients, some of whom are children. This is a population distinct from the population of students receiving mental health services pursuant to IEPs. Other priority populations include the chronically mentally ill, including the homeless; mentally ill children, including sex offenders and victims of sex crimes, mentally ill elderly; mentally ill inmates, wards and nuisance offenders; ethnic minorities, including refugees; and veterans and other victims of posttraumatic stress disorders. See Sections 5600, 5651.1 and 5651.3. Many of these priority populations include children who, for various reasons, do not receive mental health services pursuant to IEPs. Clearly, these populations, and the purposes of Short-Doyle in general, are different from the population and purposes of the EHA program.

In fiscal year 1986-87, Santa Clara County received $22.5 million in state uncategorical funds pursuant to its Short-Doyle

negotiated net amount contract. This amount represented a four percent increase from the prior year, without a decrease in required services. The unreimbursed cost of complying with Chapters 1747 and 1274, with its new requirement to provide free mental health services on an entitlement basis to certain students, was $1.9 million: 8.5 percent of the Short-Doyle state uncategorical funds. An impact of this magnitude cannot help but reduce state-funded mental health services, to non-IEP children. Funding IEP-related services with this Short-Doyle money, therefore, supplants existing resources for handicapped children, in violation of federal law.

2. The County is required to charge patients receiving Short-Doyle services based on their ability to pay, yet is precluded from charging patients receiving services pursuant to Chapters 1747 and 1274.

Short-Doyle services are those set forth in the Short-Doyle Act. Section 5600 et seq. The County is required to charge for services rendered to each person under a county Short-Doyle plan in accordance with Section 5718. Fees must be charged in accordance with the responsible party's ability to pay. Section 5717. Exhibit B of the 1986-87 Short-Doyle contract reflects patient fees, insurance, Medi-Cal, Medicare and other income as offsets to the gross cost of the regular Short-Doyle program.

Yet services provided pursuant to Chapters 1747 and 1274 must be provided free of charge--a revolutionary concept for the Short-Doyle program, which is designed to make maximum use of all available resources to meet the needs of the community. There is no exception in Short-Doyle stating that the required Short-Doyle fee based on ability to pay requirement is waived with respect to which covers IEP-related services. The reason is clear: these are not Short-Doyle services.

3. Contrary to the EHA requirement imposed on the County through Chapters 1747 and 1274, Short-Doyle does not establish an entitlement to mental health services, nor does it require that services be provided within a certain time frame.

The program mandated by Chapters 1747 and 1274 is new and fundamentally different from the Short-Doyle program because it is an entitlement program, unlike any of the other mental health programs operated by the County. Having to provide mental health services on an entitlement basis within stringent time guidelines is a revolutionary responsibility for the County. Under Short-Doyle, the county is not required to expend more than its Short-Doyle allocation and required overmatch. Section 5709. There are few statutory time limits for the provision of services. County clinics have long waiting lists **for** persons in need of mental health services. No one person has an entitlement

to receive mental health services, and the County cannot be required to expend more than its required overmatch. Board of Supervisors of the County of Los Angeles v. Superior Court (1989) 207 Cal.App.3d 521.

Santa Clara County has reason to believe that many children entitled to receive mental health services pursuant to IEPs still have not been identified as being in need by their school districts. Some of the school districts within the county with the poorest populations, with the greatest statistical indicators of need, have never identified a student as being seriously emotionally disturbed.

Yet even with this under-identification of students entitled to services, the unreimbursed cost of complying with Chapters 1747 and 1274 in 1986-87 was equal to 8.5 percent of the state uncategorical Short-Doyle funding. If all students entitled to services are identified, it is conceivable that the entire Short-Doyle budget could be depleted to provide for their treatment. Furthermore, individual students would have a legitimate demand, enforceable in court, that the County provide services, despite depletion of funding. This absurd situation highlights the incompatibility--and separateness--of the Short-Doyle and IEP programs.

C. The Leqislature Did Not Intend to Use Short-Doyle Funding to Finance Services Required by Chapters 1747 and 1274.

Chapters 1747 and 1274 did not include the IEP statutes within the Short-Doyle Act. They are placed instead in the Government Code. The clear inference from this is that the legislature did not intend either to include these services within the Short-Doyle Act.

Also, 'though the legislature did make one change in a Short-Doyle section, by requiring Short-Doyle plans to include a description of services required by Sections 7571 and 7576 of the Government Code, it made no other changes to the Short-Doyle provisions to incorporate the new mandate into Short-Doyle. It did not add handicapped children requiring IEP-related mental health services to the Short-Doyle priority populations even though, if this new population is required to be served through Short-Doyle on a free, entitlement basis, it becomes the highest priority population. The Legislature did not exempt this new population from the requirement that persons be charged for Short-Doyle services based on their ability to pay. The Legislature did not make these changes even though it had before them the subject matter. when enacting the IEP legislation. The clear implication is that it was not contemplated that these new responsibilities would become a part of the Short-Doyle program. Estate of McDill (1975) 14 Cal.3d 831, 837-38.

That IEP-related mental health services were never to be funded through the Short-Doyle program is clear. Section 16 of Chapter 1274 provided for a transfer of funds from the State Department of Education to the State Department of Mental Health, which was to allocate funds based on individual county needs. Section 3 of Chapter 1133 of the Statutes of 1986. Chapter 1133 of the Statutes of 1986 further provided for funding for mental health for this program, by providing for a transfer of $2,000,000 from the Department of Education to the Department of Mental Health to fund the IEP mental health program. Additional transfers were to be made from the Department of Education to the Department of Mental Health, based on a later audit. The Legislature intended to fund this program by these mechanisms, not through Short-Doyle.

Funding for this new mandate has not been provided through the Short-Doyle program. The State Short-Doyle responsibilities of the County and the Short-Doyle allocation scheme pre-existed this mandate. The Short-Doyle State funding which the County received in fiscal year 1986-87 was essentially the same as its allocation for the prior year, with a four percent increase. The Short-Doyle responsibilities of the County were not decreased for fiscal year 1986-87. The legislature did not intend that these monies be robbed to pay for IEP-required mental health services.

The funding mechanism established at the inception of the Short-Doyle Act gives light to the legislative intent regarding the Short-Doyle program:

> In order to maintain its effort in the mental health field the Legislature should appropriate a sum . . . which is at least equal to the appropriation for mental health services . . . reduced by an amount equal to the fees collected . . . . adjusted for price changes . . . ." Section 5706.

If the entire cost of providing IEP-required mental health services is to be borne by the Short-Doyle program, existing mental health efforts cannot be maintained. The demand of this mandated entitlement program is so great, that it cannot be filled without abandoning prior service commitments to the mentally ill.

II.

CHAPTERS 1747 AND 1274 IMPOSES A NEW MANDATE FOR WHICH ADDITIONAL STATE SUBVENTION IS REQUIRED IN THAT THEY PROHIBIT THE CHARGING OF FEES AND PROHIBIT THE COUNTY FROM REQUIRING INSURANCE UTILIZATION.

As previously described, counties are required to charge for services rendered to each person under a county Short-Doyle plan,

in accordance with the ability of the responsible party to pay for the mental health services rendered. Sections 5717 and 5718. Section 5707 provides the basis for the funding ratio of Short-Doyle programs : the net cost of most services specified in the approved county Short-Doyle plan is financed on a basis of 90 percent state funds and 10 percent county funds. It is only after all patient and third party revenues are estimated that the 90 percent/ten percent ratio is applied.

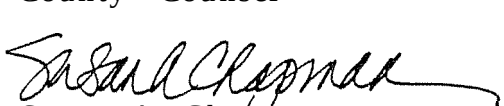
For example, on Exhibit B to the Short-Doyle contract for the year 1986-87, the total gross program cost for "regular Short-Doyle" prgrams is $38,938,893. From that is subtracted grants, patient foes and insurance, federal Medi-Cal, Medicare, other revenues and the voluntary county overmatch, to arrive at the net cost to which the sharing ratio is applied: $20,276,688. It is 90 percent of this figure which is funded through the state., This same schedule shows the $222,955 allocation for the "S.E.P. Program." No patient fees or insurance offset this amount.

Clearly, if services mandated by Chapters 1747 and 1274 are determined to be part of the Short-Doyle system, by depriving the County of the ability to charge for the services mandated by Government Code section 7571 and 7576 and their implementing regulations, the State has created a new mandate. This mandate is not offset by the State Short-Doyle contribution, because that amount assumes full collection of patient fees and insurance. Only amounts not covered by patient fees and insurance are subject to that sharing ratio. Accordingly, the County is entitled to receive 100 percent reimbursement of costs of services for which it otherwise would have been able to collect in fees or insurance.

Thank you for your consideration of these comments and your careful attention to this difficult claim through these long months. If you have any questions, do not hesitate. to call.

Very truly yours.

STEVEN M. WOODSIDE
County Counsel



Susan A. Chapman
Deputy County Counsel

cc: Harlan E. Van Wye

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of the TEST CLAIM OF THE COUNTY OF SANTA CLARA HANDICAPPED AND DISABLED STUDENTS Respondent.	)	OAH NO. N-30939

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 and marked as Exhibit D. The opening brief from the County of Santa Clara was received on January 30, 1989 and marked as Exhibit 8. Reply briefs were received from the State of California and the County of Santa Clara on Februarv 27, 1989 and marked as Exhibits E and 9 respectively. The matter was thereupon submitted.

I

The County of Santa Clara filed a Test Claim with the Commission on State Mandates under the provisions of Revenue and Taxation Code section 2231 and Government Code Division 4 Part 7. Santa Clara County alleges that Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes 1985 and their implementing regulations, relating to the provision of certain mental health services for handicapped and disabled students, impose a mandate on the County as defined by the California Constitution and Government Code section 17514(a).

II

On January 28, 1988, this matter was referred to the Office of Administrative Hearings by the Commission on State Mandates for a

hearing. The Commission requested that the following issues be addressed in the decision as well as any others deemed appropriate by the Administrative Law Judge:

A. Does Chapter 1747, Statutes 1984; Chapter 1274, Statutes 1985, and Division 9, of Title 22, of the California Administrative Code mandate counties to implement a new program or higher level of service in an existing program within the meaning of Government Code section 17514 and section 6 of Article XIII b of the California Constitution?

B. Do the statutes in question implement a federal mandate, specifically, section 504 of the Rehabilitation Act of 1973, and Public Law 94-142?

C. Has the claimant incurred unreimbursed costs, from state or federal funds, as a result of any activities mandated by these statutes and regulations?

D. If the statutes in question are found to require a new program or higher level service, do the affected local entities have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service as discussed in Government Code section 17556(d)?

E. Do any of the other provisions for denying a test claim, as set forth in Government Code section 17556, apply to this claim?

III

Following 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 findings'are 'based on that Joint Statement of Facts.

IV

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."

Congress soon recognized that this general protection was inadequate to address the special needs of handicapped school

children. 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's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. Part 104.33. The EHA and its implementing regulations, 34 C.F.R. sections 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).

V

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 is 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.

VI

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).

VII

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. 34 C.F.R. section 300.503.

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, 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.

VIII

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)(S); 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 extend 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, revise each handicapped child's IEP. More frequent meetings may take place if needed.

IX

California elected to participate in the EHA and adopted a state plan and enacted a series of statutes and regulations designed

to comply with federal requirements. Education Code sections 7570 et sea.; and section 56000 et seq.; Government Code section 7570 et seq.; Title 2 California Code of Regulations sections 60000 et seq.; and Title 5 California Code of Regulations section 3000 et seq.

The Legislature has established its intent to assure receipt of federal funding,, including the funds available for services to 'handicapped children. Government Code section 7560. A single line of responsibility with regard to the education of all handicapped children as required by the EEA was established. The responsibility for supervising education and related services for handicapped children specifically required pursuant to the federal requirements was delegated to the Superintendent of Public Instruction. Government Code section 7561; Education Code section 56135.

X

In California, public education services are directly delivered through school districts throughout the state. In addition, there are county offices of education and county superintendents of schools which have certain responsibilities for overseeing educational services within counties. The relationship of school districts and counties varies from county to county. In some counties, there is only one school district, covering residents of the county. In other counties, there are several school districts. Some school districts cross county lines.

The governing board of each school district must elect the organizational structure which will serve special education needs. One option is for a school district, in conjunction with one or more districts, to submit to the Superintendent a joint local plan which provides a governing structure and administrative support for a system for determining the responsibility for participating agencies for the education of each individual with exceptional needs residing within the special education local plan area. Special districts of this type are known as SELPA districts.

There are 33 school districts in the County of Santa Clara. All have elected under Education Code section 56170(c) to join with the county office of education to submit special 'education plans to the State Superintendent of Schools, forming seven SELPA districts in the County. Five of the SELPAs serve more than one school district. Two serve single school districts (San Jose Unified School District and Santa Clara Unified School District).

The Santa Clara County Office of Education was established as an entity separate from the County of Santa Clara by the Board of Supervisors in 1973, pursuant to the authority of Education Code section 1043 (formerly section 658). It is governed by the County Board of Education, and is fiscally independent from the County of Santa Clara. The County Office of Education is administered by the County Superintendent of Schools.

While the details of the seven SELPA plans vary, under the plans submitted to the State Superintendent, the County Office of

Education has some responsibility in each SELPA plan. The County Office of Education receives special education monies from the State. including regional service. funks and program specialist funds. After withholding an amount to' cover the administrative costs of SELPA administration, the monies are disbursed to the different SELPAs. Each SELPA has its own budge, which is managed either by the SELPA administrator at the County Office of Education or by the local education districts themselves. The County Office of Education is not responsible for the IEPs for any children, although it does operate some programs for severely handicapped children.

XI

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 implement the EHA. This legislation sets forth the basic California IEP process for identifying special education children and providing special education and related services necessary for a child with exceptional needs to benefit from a free appropriate public education.

'Before July 1, 1986, local educational agencies (schools districts and county offices of education) were responsible for the education of special education students, including the provision of related services necessary for the child to benefit from education. This included responsibilities for identifying and assessing children with suspected handicaps, as well as the responsibility for providing related services (including mental health services) required in individual IEPs. Local educational agencies were financially responsible for the provision of mental health services required in the IEP.

XII

Chapter 1747 of the Statutes of 1984 added Chapter 26 to Division 7 of Title 1 of the Government Code and amended section 11401 of the Welfare and Institutions Code. This legislation shifted some of the IEP responsibilities for related services which previously had been held by local educational agencies to local mental health programs.

This legislation requires psychotherapy and other mental health assessments for special education children with suspected mental health handicaps or mental health needs to be conducted by qualified mental health professionals, as specified in regulations developed by the State Department of Mental Health. Government Code section 7572(c). Mental health services may be added to a child's IEP only if a formal assessment is conducted and the qualified mental health professional conducting the assessment recommends the service in order for the child to benefit from special education., Government Code section 7572(d).

This legislation provides that the State Department of Mental Health, or designated community mental health service, is responsible for the provision of psychotherapy or other mental health services, if required in a handicapped child's IEP. Government code section 7576.

The child's family shall not be liable for the cost of such treatment services. Government Code section 7582.

This legislation requires the expansion of the IEP team to include a representative of the county mental health department and a representative of the county welfare department if the child is classified as seriously emotionally disturbed (SED) and any member of the IEP team recommends out-of-home placement based on relevant assessment information. Government Code section 7572.5(a). The expanded team must review the assessment to determine whether the child's needs can be met through a combination of nonresidential services, whether residential services will enable the child to benefit from educational services, and whether residential services are available which will address the child's needs and ameliorate the conditions leading to the SED designation. Government Code section 7572.5(b).

If the IEP requires residential placement, a case manager must be selected from the public agency representatives on the team. The IEP must include provisions for review of case progress, of the continuing need for residential placement, of the compliance with the IEP, and of the progress toward ameliorating the SED condition. There must be a review by the full IEP team every six month. Government Code section 7572.5(c). Aid in the form of AFDC (Aid to Families with Dependent Children) is provided for any child under the age of 18 who is placed out of home pursuant to an IEP. Welfare and Institutions Code section 11401(b)(l)(D).

This legislation required each local agency affected by the legislation to report to the Department of Finance through appropriate state agencies either an estimate of expenditures which previously were borne by it and which would be shifted to another agency as a result of this legislation or an identification of its responsibility for expenditures which would be acquired by the agency as a result of this legislation. Government Code section 7583. The original estimates were to be submitted no later than March 15, 1985 to the state agencies. Actual shifts in funding were to be reported annually by March 15 in subsequent years. Id. The Department of Finance was directed to recommend appropriate adjustments in the annual Budge Act to reflect shifts in expenditures. Id. The March 15, 1985 report was to include an estimate of the special education expendituresfor Fiscal Year 1984-85 for psychotherapy, the number of children receiving psychotherapy at the time of the April pupil count, the name, of the agency providing the psychotherapy, including the name of the agency paying for such services. Section 4 of Chapter 17'47 of the Statutes of 1984.

This legislation was originally scheduled to become operative July 1, 1985. Later legislation delayed the full implementation until July 1, '1986. During a "window period" from March 1, 1986 through June 30, 1986, local mental health agencies received referrals from local educational agencies, conducted assessments, participated in IEP meetings to develop IEPs for the 1986-87 school year, but were not responsible for providing the treatment services.

Chapter 1274 of the Statutes of 1985 amended Chapter 26 of Division 7 of Title 1 of the Government Code, and amended sections 5651, 10950, and 11401 and added Chapter 6 to Part 6 of Division 9 of the Welfare and Institutions Code. This legislation made certain technical changes and modified the responsibilities concerning IEP mental health services and made further changes to implement this program.

This legislation requires that the regulations be developed by Departments of Health Services and Mental Health in consultation with the Department of Education. Government Code section 7572(c).

This legislation requires the person who conducted the IEP mental health assessment to review and discuss his or her recommendations with the parent and appropriate IEP team members, and to attend the IEP team meeting if requested. Government Code section 7572(d)(l). If an independent assessment for the provision of related mental health services is submitted to the IEP team, that assessment must be reviewed by the mental health professional who conducted the assessment for the public agencies. Government Code section 7572(d)(2). Disputes between a parent and IEP team members regarding related services recommendations must be resolved pursuant to Education Code sections 56500 et seq. Government Code section 7572(d)(e).

This legislation eliminated the requirement of inclusion of a representative from the county department of social services on the expanded IEP team if the child is classified as seriously emotionally disturbed and any member of the IEP team recommends out-of-home placement. Government Code section 7572.5(a). The legislation clarified that., in order for a child to be placed out-of-home pursuant to an IEP, the expanded IEP team must determine whether residential care is necessary for the child to benefit from educational services. Government Code section 7572.5(b). This legislation specifies that the county mental health department is case manager for SED children for whom residential placement has been called for on' IEPs, and requires that an appropriate residential facility be identified on the IEP. Government Code 'section 7572.5(c). The county mental health agency may delegate this responsibility to the county welfare department, but the county mental health department remains financially responsible. Government Code section 7572.5(c)(1). Funding for out-of-home placement was shifted from the AFDC program to a special program. Welfare and Institutions Code sections 18350 et seq. Upon receipt of proper documentation from the State Department of Mental Health or the county mental health agency, the county welfare department is authorized to make payments to licensed residential care facilities for children placed pursuant to IEPs, based on the AFDC rate for the facility. Welfare and Institutions Code section 18351(a). These costs are reimbursed by the State Department of Social Services, and are funded from a separate appropriation in the budget. Welfare and Institutions Code sections 18351(b) and 18355. The child or his or her parent or parents is not liable for the cost of 24-hour out-of-home care for SED children. Welfare and Institutions Code 18350.

This legislation provided that the State Department of Mental Health, or any community mental health service designated by the Department shall be responsible for the provision of psychotherapy or other mental health services, as defined by the regulations. Government Code section 7576.

This legislation clarified that assessments and therapy treatment services provided under programs of the State Departments of Health Services or Mental Health, or their designated local agencies, rendered to a child referred for IEP assessment, or a child with an IEP, are exempt from financial eligibility standards and family repayment requirements. Government Code section 7582. In no event should the inclusion of necessary related services on a child's IEP be contingent upon identifying the funding source. Government Code section 7572(d)..

This legislation eliminated the reporting of estimated expenditures to appropriate state agencies as of July 1, 1986. Government Code section 7583.

This legislation required the annual Short-Doyle plan for each county of include a description of the services required. by Government Code sections 7571 and 7576, as well as the cost of those services.' Welfare and Institutions Code section 5651(g).

XIV

No appropriation was included in Chapter 1747 of the Statutes of 1984, although there was provision that local agencies and school districts may pursue remedies available under Chapter 3 (commencing with section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code. Section 5 of Chapter 1747 of the Statutes of 1984.

Chapter 1274 of the Statutes of 1985 included some funding for mental health services pursuant to Government Code sections 7570 et sea. Funds reported by the Department of Education and verified by the Department of Finance pursuant to section 4 of Chapter 1747 of the Statutes of 1984 were to be transferred on July 1, 1986 to the appropriate state departments responsible for the services specified in Chapter 26 (commencing with section 7570) of Division 7 of Title 1 of the Government Code and designated in each child's IEP. Section 16, Chapter 1274 of the Statutes of 1985. The sum of $1,600,000 was appropriated from the General Fund to the Department of Mental Health for purposes of conducting assessments and participating in developing IEPs during the period of March 1, 1986 through June 30, 1986. Section 18 of Chapter 1274 of the Statutes of 1985. Notwithstanding the county Short-Doyle match requirement of the Welfare and Institutions Code section 5707, these expenditures were to be funded on a basis of.100 percent state funds during the period March 1, 1986 through June 30, 1986. Id. The legislation further stated that reimbursement to local agencies and school districts should be made pursuant to Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost does not exceed $500,000, shall be made from the State Mandates Claims Fund. Section 17 of Chapter 1275 of the Statutes of 1985.

Item 4440-131-001 of Section 2.00 of Chapter 186 of the Statutes of 1986 (1986 Budget Act) provided $2,000,000 to the Department of Mental Health in Fiscal Year 1986-87 for local assistance for assessments and case management relative to special education for special education children pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985. Section 3 of Chapter 1133 of the Statutes of 1986 amended this provision to allow for the use of these funds for all services local mental health agencies are required to provide pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985, including treatment services.

Item 6100-161-001 of Section 2.00 of Chapter 188 of the Statutes 1986 (1986 Budget Act) also provided for a transfer of up to $2,700,000 during Fiscal Year 1986-87 from the Department of Education to the Department of Mental Health for the purpose of conducting assessments pursuant to Government Code sections 7572 and 7572.5. Section 4 of Chapter 1133 of the statutes of 1986 amended this item to allow for transfer of these funds for mental health treatment services pursuant to Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985 as well. Item 6100-161-001 also made available for transfer from the Department of Education to the Department of Social Services $5,400,000 for the cost of out-of-home placement of IEP children pursuant to Welfare and Institutions Code section 18350 et seq.

Item 6100-161-001 of the 1986 Budget Act also required local education agencies to report to the Superintendent of Public Instruction the total costs'incurred providing noneducational services in the 1985-86 Fiscal Year to IEP children who received mental health services pursuant to IEPs or who were classified as seriously emotionally disturbed and placed out-of-home pursuant to IEPs. The Superintendent was directed to reduce funding to any education agency which he determines engaged'in willful failure to report accurate data by 150 percent of the amount reported in error. The Auditor General was directed to review the data reported by local education agencies to determine if the amounts reported were accurate. Based on the Auditor General's recommendations, the Superintendent was authorized to transfer. additional amounts to the State Departments of Mental Health and Social Services, provided that the total amount transferred did not exceed the amounts spent by local educational agencies in the 1985-86 Fiscal Year for residential care and mental health services for children pursuant to IEPs.

XV

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 prbgrams. Before that time, state hospitals played a large role in the provision of mental health ser-

vices. 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 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.

The Short-Doyle Act provides that a county must give priority to services required for acute patients and involuntary patients. Welfare and Institutions Code section 5651.3. Each county must consider and make provisions for certain other priority populations: the chronically mentally ill, including those who are homeless; mentally disturbed children and adolescents, including juvenile sex offenders and juvenile victims of sex offenses; mentally ill elderly, including those who are isolated; mentally ill inmates and, mentally ill wards of juvenile detention facilities, and mentally ill nuisance offenders to prevent inappropriate placement in the justice system; and underserved populations, including ethnic minorities, refugees, veterans, and other victims of posttraumatic stress disorders, and individuals diagnosed as both mentally ill and developmentally disabled. Welfare and Institutions Code section 5651.1.

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. This is true in the County of Santa Clara.

Generally, each county is required under the 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.

The annual Short-Doyle plan must include a detailed presentation of expected expenditures and revenues. Chapter 1274 of the Statutes of 1985 also required that the plan include a description of services required by Government Code sections 7571 and 7576 (which is the subject of this Test Claim).

Two alternative Short-Doyle planning and reimbursement methods exist: the county Short-Doyle plan and the negotiated net amount contract. 'Unless a county is selected by the Department of Mental Health and elects to enter into a negotiated net amount contract with the State, the Board of Supervisors must adopt and submit to the Department of Mental Health an annual county plan ("Short-Doyle plan") for mental health services to the 'county. Welfare and Institutions Code section 5650. The Department reviews and approves the Short-Doyle plan. The county Short-Doyle plan is deemed a contractual arrangement between the state and the county. Welfare and Institutions Code section 5707.

Community mental health services are funded from a combination of sources: fee revenue from patients and third parties (such as insurance companies), grants from non-profit organizations, Medicare and federal Medi-Cal benefits from the federal government, Short-Doyle allocations and Short-Doyle Medi-Cal from the State, and required Short-Doyle "match" and voluntary "overmatch" though the county.

Among the major features of the Short-Doyle Act are provisions relating to the allocation of state funds to community mental health services. Through the Short-Doyle Act, state general funds are distributed to counties to provide partial funding for community mental health services. In theory, and with a few exceptions, the net cost (cost less revenues such as grants, patient fees, third party reimbursement, Medicare, and federal portion of Medi-Cal) of all services specified in approved county Short-Doyle plans or covered under the negotiated net amount contract is financed on a basis of 90 percent state funds (the "Short-Doyle allocation" and the state portion of Medi-Cal) and 10 percent county funds (the "required county match"). Welfare and Institutions Code section 5705.

Alternatively, subject to State approval, a 'county may elect to use the negotiated net amount (NNA) contract method in lieu of the annual Short-Doyle plan and budget. Welfare and Institutions Code section 5705.2. The NNA is a contract between the Department of Mental Health and the electing county.' The NNA concept differs from the cost reimbursement concept of the Short-Doyle plan. Through the NNA, a county contractually agrees to make certain mental health services available, and the state agrees to allocate to the county a fixed Short-Doyle amount. The NNA contract contains a statement of units of certain modes of service which the county agrees to make available (the "dedicated capacity"). The county bears the financial risk in providing any and all mental health services to the population described and enumerated in the contract to the dedicated capacity limit. The State bears the risk that fewer units of service will need to be provided, and bears the risk that the county can provide'the services at a cost saving.. Any savings may be retained by the county as long as such funds are used for mental health services, including the defraying of operating and capital costs.

XVI

In the County of Santa Clara, community mental health services are provided through the Mental Health Bureau of the Department

of Health, which is the local mental health agency for the County of Santa Clara. Under direction from the Board of Supervisors for the County, the Mental Health Bureau administers the Short-Doyle funds, provides mental health services, and monitors contracts with Short-Doyle contract providers of mental health services.

Except for services provided under the legislation that is the subject of this Test Claim, families or patients are charged for assessment and treatment services provided by the County, based on the family's liability as determined by the Uniform Method for Determining Ability to Pay (UMDAP). Insurance, Medi-Cal and Medicare are billed to the maximum extent possible.

XVII

Prior to the legislation that is the subject of this Test Claim, none of the services to be provided under the Short-Doyle contracts were specifically referenced to serving IEP needs. With two exceptions, the Fiscal Year 1985-86 Short-Doyle contract agencies rendered services independent of the IEP process or requirements, charged parents based on UMDAP liability, and collected insurance, Medi-Cal and Medicare. The exceptions were two Short-Doyle agencies which also had contracts with local educational agencies to provide IEP-related services. These two agencies rendered-IEP-related assessment and treatment services for the local educational agencies with which they had contracts, and received partial funding for these services from the local educational agencies instead of through parent fees, Medi-Cal and insurance.

XVIII

The County negotiated net amount (NNA) contracts with the State of California for both Fiscal Year 1985-86 and 1986-87.

During the Fiscal Year 1985-86, the year prior to the year that is the subject of this Test Claim, .the County Mental Health Bureau submitted a mental health budget (excluding state hospital services) of $35,552,792. The non-categorical Short-Doyle allocation (including the state portion of federal Medi-Cal) received from the state general funds'was $21,640,430. The County provided $6,431,014 ($2,018,400 in required match and $4,412,614 in "overmatch", general County funds committed to mental health programs at the.discretion of the Board of Supervisors). The remaining amount, $5,977,481, was from non-County, non-State sources such as grants, patient fees and insurance, federal Medi-Cal and Medicare.

During the Fiscal Year 1986-87, the year that is the subject of this Test Claim, the County Mental Health Bureau submitted a mental health budget (excluding state hospital services) of $43,215,710. The state's non-categorical Short-Doyle allocation to the County was $22,515,326, which represented an increase from Fiscal 'Year 1985-86 of 4% (1% cost of living increase and 3% for program expansion). State funding for categorical funding was $3,682,166, including $222,955 to fund the program subject to this Test Claim. The County provided

$7,481,097 ($2,547,225 in required match and $4,933,872 in "overmatch"). The estimated revenue from non-County, non-State sources was $9,537,122.

XIX

The Budaet 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 children. Item 4440-131-001, Chapter 186, section 2.00, Statutes of 1986; Chapter 1133, section 3, Statutes 1986. Of these amounts, $222,955 was allocated to the County of Santa Clara for Fiscal Year 1986-87. There was no required County match for this amount.

Additional amounts were to be transferred from the State Department of Education to the State Department of Mental Health if reports of local educational agencies indicated higher costs during Fiscal Year 1985-86 for services that are the subject to 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. An additional audit was to be conducted. Counties did not receive additional allocations for Fiscal Year 1986-87 as a result of these audits.

XX

Prior to the passage of Chapter i747 of the Statutes of 1984, the County of Santa Clara, and local mental health programs generally, were not required to provide IEP assessments for local educational agencies, and were not required to participate in IEP meetings. Local educational agencies had these responsibilities. The County of Santa Clara is neither a local educational agency nor special education localplan area (SELPA), and has a fiscally independent Office of Education which is not involved in this Test Claim,. The county mental health program and county welfare department had no statutory roles in the IEP process'prior to this legislation.

XXI

Prior to the implementation of the legislation that is the subject of this Test Claim, County mental health clinicians did not participate in the IEP process in a formal manner. Frequently, if a child in therapy had an IEP, and the therapist was an employee of the County, the child's therapist voluntarily participated in the IEP process to a limited extent. 'Neither the therapist nor the County was required to' participate. In each case, the'therapist became involved at the invitation of the parent or the educational agency, after parental consent had been obtained, Depending upon insurance coverage, eligibility and ability to pay, parents, insurance, Medi-Cal and Medicare were billed for the services. The therapist did not sub-

mit an IEP assessment to the team and was not an IEP decision maker. The therapist may have discussed the case with the person conducting the assessment for the IEP team, or may have attended the IEP meeting. However, the therapist's presence at the IEP meeting was not required.

XXII

Prior to the implementation of legislation that is the subject of this Test Claim, representatives from the local mental health program did not have case management responsibilities for children placed out-of-home pursuant to IEPs. In Fiscal Year 1985-86, the County of Santa Clara did not have a responsibility to provide case management services.

Prior to the legislation that is the subject of this Test Claim, the Mental Health Bureau provided some case management services for the most severely mentally disturbed children: those placed in Napa State Hospital or receiving inpatient services at Don Lowe Pavilion, the County's acute psychiatric hospital. Generally, these children were dangerous to themselves or others and/or met the criteria of gravely disabled as a result of a mental disorder. All of the Santa Clara County children at state hospitals were in LPS conservatorships. These case management services did not overlap with IEP case management services, as the acute hospital and state hospital placements were not placements pursuant to IEPs.

Prior to the full implementation of the legislation that is the subject of this Test Claim, in Santa Clara County, the departments of social services and probation also provided some case management services unrelated to IEP case management services for children who were wards or dependents of the court, Counties were not required to provide these services. In Santa Clara County, parents were billed for these services, based on ability to pay. Not all children receiving these case management services were in IEPs, and few were in out-of-home placement pursuant to IEPs. Case management responsibilities did not include IEP case management responsibilities, even for children who had IEPs.

XXIII

Generally/patients or other responsible parties are charged fees for mental health services, determined by their ability to pay. Welfare and Institutions Code section 571.6. If a patient is covered by insurance, insurance companies are billed for any covered services, subject to the patient's consent.

Medi-Cal and Medicare are billed for covered services to Medi-Cal and Medicare patients. Cost recovery from the Medi-Cal program is limited to the federal portion of Medi-Cal for the year that is the subject of this Test Claim, as the County in that year had a NNA contract with the State. Under this contract, the amount of Short-Doyle allocation includes the state portion of Medi-Cal for Short-Doyle services.

XXIV

The Fiscal Year 1986-87 cost to the County for providing mental health assessments, case management, and treatment required by the legislation that is the subject of this Test Claim exceed the $222,955 specifically allocated to the County by the State for this program. The excess' costs place this Test Claim within the jurisdiction of the Commission on State Mandates.

XXV

Handicapped children needing mental health treatment to take advantage of a free, appropriate education under the EHA and the State's implementation of the EHA have an entitlement to receive those services. No other persons served by local mental health programs have an entitlement to mental health services.

The effect of Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985, and Title 2 California Code of Regulations Division 9 is to give the highest priority to individualized education program treatment. If mental health resources are insufficient to meet the entire mental health needs of the community, treatment required by individualized education programs must continue to be provided. patients with more'acute illnesses, but without IEPs--including children--may be placed on waiting lists.

With respect to non-IEP mental health services, counties have flexibility to determine treatment priorities in terms of who is served, what kind of treatment they receive, and how often they receive those services.

XXVI

As the assessments and treatment services are specifically required to be provided at no cost to the handicapped child or the child's families, affected local entities do not have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Some services rendered pursuant to these statutes for Medi-Cal eligible children are covered under Medi-Cal. The legislation dpes not-impact the ability of the County to bill Medi-Cal, and this revenue is included as an off-set to expenses on this Test Claim.

XXVII

The following findings are not based on the "Joint Statements of Fact".

XXVIII

The Fiscal Year 1986-87 cost to Santa Clara County of providing IEP-related mental health services was $2,387,835. The breakdown of these expenses is as follows: $168,146 for IEP assessment and case management services; $11784,076 for day treatment services; $419,349 for individual therapy services; and $16,264 for group

therapy services. Fiscal year 1986-87 revenues relative to these services is estimated to be $235,869 in federal Medi-Cal revenue. In addition, an insignificant amount of revenue from third party insurance payments was received. State funding of this IEP program in Fiscal Year 1986-87 was $222,955. The net unreimbursed cost of the program is therefore estimated to be $1,929.001.

XXIX

There were some children referred through the IEP process in Fiscal Year 1986-87 who previously had been known to the county mental health system (251 out of 568). Although some of these children previously had been identified as IEP children, it is not clear the extent to which they had IEPs requiring the mental health services they in fact were receiving. To the County's knowledge, none of these children seen by the County were receiving mental health services pursuant to IEPs: the services were rendered by the County independent of the IEP process, and parents and third parties were charged for the services under the County's standard Short-Doyle process. Many of these children may have had IFP-related mental health needs which had not been identified by the local educational agencies prior to the transfer of responsibility to local mental health agencies, and which should have been the responsibility of the local educational agencies, with no contribution required from family or third party insurance. Prior to Fiscal Year 1986-87, the needs of these 251 children may have been partially or fully met through the County in an informal manner, even though they should have been entitled to receive free services through IEPs, as a matter of right.

The 251 children previously known to the mental health system were not individual children the County was mandated to serve prior to Fiscal Year 1986-87.

XXX

The effect of shifting the responsibility for assessing and funding IEP mental health needs away from the agency responsible for identifying those in need of services has been formidable. According to the California State Auditor General, by December 31, 1986 (the end of the first ten months of local mental health agencies' involvement in this process), the number of students referred for noneducational services was more than double the number of special education students who received services during the 1985-86 Fiscal Year.

For Santa Clara County SELPA Area I, which was included in the Auditor General's audit, the escalation in referrals was even more striking: during the period March 1, 1986 to June 30, 1986, more than twice the number of children who received noneducational services during that fiscal year were referred for mental health evaluation. By December 31, 1986, the number of children so referred was nearly triple the number of special education students receiving noneducational services during the immediately preceding fiscal year (1985-86).

Children in need of IEP-related mental health services were under-identified prior to the implementation of Chapter 1747 of the

Statutes of 1984. Generally, children who were referred through this process were in need of mental health services and received IEP recommendations for such services as a result of the referrals. In Santa Clara County during Fiscal Year 1986-87, 494 of the 568 children referred for mental health IEP assessments subsequently received mental health services pursuant to IEPs.

DETERMINATION OF ISSUES

I

Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985 and their implementing regulations mandate a new program or higher level of service on the Mental Health Bureau of the County of Santa Clara as defined in the California Constitution Article XIII B, Section 6.

Article XIII B §6 requires state subvention of funds "[w]henever 'the Legislature or any state agency mandates a new program or higher level of service on any local government . ..." Chapter 1747 of the Statutes of 1984 and Chapter 1274 of the Statutes of 1985, and their implementing regulations, impose on county local mental health agencies "a new program or higher level of service" subject to the constitutional imperative of subvention under Section 6 Article XIII B of the California Constitution.

The Supreme Court of California has determined that "program" has two alternate meanings: "[1] programs that carry out the governmental function of providing services to the public or [2] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.

The legislation that is the subject of this Test Claim is a "program" under either definition. The state chose to carry out a. governmental function of providing mental health assessments, treatment, and case management of handicapped children who need supportive services in order to benefit from their education by delegating the responsibility to local mental health agencies. The legislation requires local mental health agencies to provide certain specific services to the public. The responsibilities imposed on local mental health agencies pursuant to this legislation are not imposed upon all residents and entities of the state, only on local mental health agencies.

This is a new program in several ways. Before this legislation, counties in general and local mental health agencies in particular had no formal responsibilities in the IEP process. The legislation requires the local mental health agencies to provide services not hitherto required. This legislation involves the local mental health agencies in the IEP process, with its full panoply of federal and state time lines, rights, and procedures. Prior to this

legislation, educational agencies had the responsibility for providing free, appropriate public education to each handicapped child, including whatever supportive services were necessary in order for that child to benefit from special education. Chapters 1747 and 1274 and their implementing regulations shifted from educational agencies to local mental health agencies substantial financial and program responsibilities for mental health services provided to handicapped children pursuant to the IEP process. The service mandated by this legislation had not previously been mandated by the general state mental health program, the Short-Doyle program.

II

The state argues that Chapters 1747 and 1274 and their implementing regulations do not impose a new program on local mental health agencies because "[c]ommunity mental health programs were already providing assessments and mental health treatment for many handicapped children under the Short-Doyle Act." The argument is unconvincing. It ignores fundamental differences between IEP-related services and Short-Doyle services which existed prior to this legislation:

1. Local 'educational agencies were responsible for providing IEP-related mental health assessments and treatments. Community mental health programs were not providing IEP-related mental health assessments, and were not formally participating in the IEP process. No community mental health representative was an IEP team member, regardless of the placement possibilities. Community mental health had no IEP team responsibilities, was not responsible for locating out-of-home placement pursuant to IEPs and was not responsible for case management for children placed out-of-home pursuant to IEPs. To the knowledge of the County, the County was not providing any mental health treatment required by individual IEPs prior to this legislation.

2. The IEP program, based on the federal EHA requirements, provides for very specific evaluations and services, to be delivered within certain time limits and with due process safeguards. There is no similar process for Short-Doyle services, no similar time lines for evaluations or reevaluations or delivery of services, no similar definition of what must be included in an evaluation, no mandatory process similar to the IEP meeting process, no similar due process procedure.

3. The Short-Doyie program is not an entitlement program. It is a broad mental health program that grants great discretion to the community mental health system to determine what ser-

vices are to be provided, and to whom. The County determines its service priorities based on program principles and clinical needs. It is the policy of the County that if resources are inadequate to meet demands on a particular mental health center, needs are triaged. Those in most urgent need of treatment are seen; others are placed on waiting lists. Although the Short-Doyle Act sets forth certain priority populations, it does not grant to any individual an entitlement to services. The IEP program, 'on the other hand, is an entitlement program. If an individual child meets certain criteria, he or she is entitled to services, a right that is enforceable through administrative and judicial remedies. There is no such thing as a waiting list for IEP services. Those services simply must be delivered.

4. Patients receiving Short-Doyle services are charged for the services, based on their UMDAP ability to pay. If the services are covered by insurance or some other third party, collection is made from that source. 'Families of children receiving IEP-related services are entitled to receive those services free of charge. The parents or child cannot be charged for the services. If the IEP-related services are covered by insurance, any submission of insurance claims to providers must be voluntary, unless such claims would result in neither an increase in premiums, nor a decrease of annual or lifetime insurance benefits, nor a cancellation of the insurance policy.

5. Since the IEP program is an individual entitlement program, the responsibility for providing IEP -related mental health services represents an open-ended financial demand on the County. Each individual child who qualifies for IEP-related services is entitled to receive them. Receipt of the services cannot be-contingent on identifying a funding source. Government Code section 7572(d). Through the Short-Doyle program, on the other hand, a community mental health agency cannot be required to expend more for mental health programs than it receives in its state Short-Doyle allocation plus the required county match. Welfare and Institutions Code section 5709.

6. The Short-Doyle Act is designed to organize and finance community mental health services

in every county through locally administered and locally controlled programs, and to provide a means for allocating state mental health funding according to community needs. Welfare and Institutions Code 5600. The goals of the Act are to assist persons who are institutionalized, or at a high risk of becoming so, because of a mental disorder, lead lives as normal and independent as possible; to assist persons experiencing temporary mental health problems to return to a functioning level; and to prevent serious mental disorders and psychological problems. First priority must be given to services required for acute patients and involuntary patients. Welfare and Institutions Code section 5651.3. Other priority populations do include, mentally disturbed children and adolescents, including juvenile sex offenders and juvenile sex offense victims. 'Welfare and Institutions Code section 5651.1. However, this population is not synonymous with children entitled to IEP-related mental health services. The most severely mentally ill children, those in acute hospitals, state hospitals, or state hospital alternative programs did not receive their mental health services pursuant to IEPs. Hospital care is deemed "medical services" which is not the kind of supportive service required to be provided under the EHA. 20 U.S.C. section 1401(a)(17). Those mentally disturbed children and adolescents who are to be given first priority -- those in need of acute care and those involuntarily detained -- do not receive their mental health services pursuant to IEPs. Presumably, most juvenile sex offenders, juvenile victims of sex offenses, and wards of juvenile detention facilities -- . all of whom are specifically targeted as priority populations -- also do not qualify for IEP-related mental health services.

The Short-Doyle Act is designed to give community control and direction to the complex mental health needs of a county's population. The legislation requiring local mental health agency involvement in the IEP process (Government Code section 7570 et. seq.) is not part of the Short-Doyle Act (Welfare and Institutions Code section 5600 et seq.), and is in fact contrary to it. There is little local control over services'to be offered, as the services to be provided are dictated by the specific criteria contained in federal and state law and regulation. The IEP program singles out a narrow population for separate, special treatment, as an entitlement program, outside the priorities of the Short-Doyle Act.

That the IEP program is separate from the Short-Doyle program is evident from the Short-Doyle contract itself. The County's negotiated net amount contract is authorized by, and subject to the provisions of, Welfare and Institutions Code section 5705.2. The Short-Doyle contract between the state and the County of Santa Clara for Fiscal Year 1986-87 is replete with references to the Short-Doyle Act. The introductory provisions of the contract refer to the Short-Doyle Act as the enabling legislation. Exhibit 4, Santa Clara County Negotiated Net Amount Short-Doyle Fiscal Year 1986-87 Contract. The contract defines "client" or "patient" as a person who receives services pursuant to the Short-Doyle Act. Paragraph 27(a).

The body of the Short-Doyle contract makes no references to Government Code section 7572 et seq., nor to any IEP responsibilities, The only specific mention of this program is the reference to the state's $222,955 allocation for the "S.E.P. [IEP] Program" on the tables of Exhibits B and F of the contract.

The increase in the basic Short-Doyle state allocation (excluding allocations for categorically funded programs) from Fiscal Year 1985-86 to 1986-87 was less than four percent ($22,515,326 compared to $21,640,430). If the net unreimbursed cost of the IEP program is to be absorbed by the Short-Doyle program, it would consume over eight-and-a-half percent of the county's general state Short-Doyle allocation for Fiscal Year 1986-87 ($1,929,011 out of $22,515,326).

The Legislature did not intend that the services mandated by Chapters 1747 and 1274 would be part of, and funded through, the Short-Doyle program. The IEP-related mental health services were never to be funded through the Short-Doyle program. Section 16 of Chapter 1274 provided for a transfer of funds from the State Department of Education to the State Department of Mental Health. Section 17 of Chapter 1274 recognized that the Chapter imposed a mandate and directed that 'reimbursement to local agencies be made through to State Mandates Claim Process. Chapter 1133 of the Statutes of 1986 further provided for funding for mental health for this program, by providing for a transfer of $2,000,000 from the Department of Education to the Department of Mental Health, to fund the IEP mental health program. This statute also provided that counties were not required to provide county match for this program, unlike the Short-Doyle program, and that the Department of Mental Health was to allocate funds based on individual county needs, in lieu of the Short-Doyle Act allocation, Section 3 of Chapter 1133 of the Statutes of 1986. It also provided for additional transfers from the Department of Education to the Department of Mental Health, based on the Auditor General's report. Id.

Even if it is determined that the services mandated by' Chapters 1747 and 1274 are included in the Short-Doyle program, the services are mandated services for which subvention is required.

III

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.

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. Section 504 does not require counties to give mental health services on a priority basis to handicapped students who receive services pursuant to their IEPs. If anything, Chapters 1947 and 1274 require countries to discriminate against handicapped individuals who are not entitled to mental health services pursuant to IEPs, in violation of Section 504.

The burden of providing public education and related services is on educational agencies, not counties. 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. In Santa Clara County, local education agencies provide these services, even to children in the custody of the County, in the Juvenile Hall, Shelter, or Ranches.

IV

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.

The Education for All Handicapped Children Act is not a mandated program. A state may elect or decline to participate. Acceptance of federal funding for education is a state option. But once the option is accepted, its terms and conditions must be met by the recipient. The state, by accepting the federal monies, has agreed to abide by the terms and conditions of the ERA. It now seeks to impose the financial burden of this decision on counties, who do not even receive the federal monies which fund this program.

Section 6 of Article XIIIB of the California Constitution provides:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service....

In defining reimbursable mandates, Section 9, subdivision (b), of Article B of the California Constitution excludes "[a]ppropriations required for purposes of complying with mandates of the....federal government which, without discretion, require an expenditure" by the governmental entity.

If the state is to receive certain federal grants, the EHA requires that the state participate in the IEP program. Nevertheless,, a financially induced choice is not the same as a statutory require-

ment. In City of Sacramento v. State of California, the appellate court twice determined that state legislation requiring local government employers to pav into the state unemployment insurance on behalf of their public employees was not a federal mandate exempt from reimbursement, but a financially induced choice, even though failure to impose such a requirement'on local government employers would have resulted in federal de-certification of the State's unemployment insurance program, with a concomitant loss of federal tax credit for the State's private employers; City of Sacramento v. State of California (1980) 156 Cal. App. 3d 182, 196 (Sacramento I); disapproved of on other grounds, to the extent it conflicts, in County of Los Angeles v. State of California (1987) 43 Cal. 3d 46, 58; City of Sacramento v. State California (1988) 201 Cal. App. 3d 409.

Similarly,' acceptance of federal education monies, which only then requires the state to implement the IEP program, is a financially induced choice, not a federal mandate. In fact, the State is going one step farther than they attempted to go in the City of Sacramento cases. At least in the City of Sacramento cases, federal law did require contribution into the state unemployment insurance fund from all local government employers, if the State program was to be certified. In the present case, nothing in the federal EHA law requires county mental health or county government involvement in the IEP process. Federal law requires states which receives federal funding to have in place a program applying to the state as a whole. See 34 Code of Federal Regulations 5300.1 et seq. It is the State that has the responsibility to design such a program. Federal regulations generally do not dictate 'which state or local agency will be responsible for program execution. The state could impose the responsibilities on local school districts, as it did before the passage of Chapter 1747. Alternatively, the state could provide the services directly.

Citing the Government Code section 17513 definition of "costs mandated by the federal government," the state asserts that the cost of complying with Chapters 1747 and 1274 are federally mandated because failure to opt into Public Law 94-142 (the EHA) would result in "a substantial monetary loss" in the form of loss of federal education funding. The State asserts that the amount of this loss would be $100,000,000. There is no evidence in the record to support that assertion.

Even assuming that failure to opt into the EHA would result in a loss of a substantial sum of federal monies to the state, there is no evidence that this would result in a substantial net monetary loss. The net costs of complying with the IEP requirements to the mental health agency of the County of Santa Clara alone is $2,151,966 ($2,387,835 less $235,869 federal Medi-Cal). There are fifty-seven other countries in the state. There are also costs of the Department of Social Services, for out-of-home placement, and costs of state and local educational agencies, for special education and. other supportive or related services. It may well be that the cost of compliance exceeds the funding received.

Even if failure to opt into Public Law 94-142 were to result in substantial monetary loss, Chapters 1747 and 1274 and their imple-

menting regulations are not federally mandated costs as defined by Government Code section 17513, which provides:

> Any increased costs incurred by a local agency... in order to comply with the requirements of a federal statute or regulation...[including] costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds-to public or private persons in the state.

Failure to impose on counties -- which do not provide primary or secondary education -- a requirement that counties provide IEP-related mental health services does not result in substantial monetary penalties-or loss of funds. It is the failure of state or local educational agencies to do so that would result in the loss of funds. When it opts into the EHA program, the State itself, as well as educational agencies, incur certain obligations. Nothing in the federal law requires involvement of counties in the IEP process. What the state is attempting to do is take the federal monies;'and pass along the responsibility to the counties, without the monies. This is precisely the kind of delegation of responsibility which, under the California Constitution, the state must provide subvention funds.

V

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.

Court decisions at the federal and state level heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973, which establishes the rights of handicapped individuals, were decided under due process and equal protection theories. Mills v. Board of Education of the District of Columbia (1972) 348 F. Supp. 866 held that the Board of Education, by failing to provide special education to certain disturbed children,' denied due process to the children and the class they represented. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1971) 334 F. Supp. 1257 involved the equal access to educational services for retarded children. Neither case involved the imposition on local mental health agencies of responsibilities to provide services supportive to the educational requirements of handicapped children.

VI

The County of Santa Clara and other affected local entities do not have the authority to levy services charges, fees, or assessments sufficient to pay for the mandated program or increased level of services. Both federal and state law provide that services that are the subject of the Test Claim must be provided at no cost to

parent or child, and federal law prohibits affected local entities from requiring that parents use insurance benefits to pay for the services provided if using such benefits would result in a decrease in coverage or an increase in the cost, of coverage.

ORDER

The Test Claim, filed by the County 'of Santa Clara, is granted. The County'of Santa Clara shall submit parameters and guidelines to the Commission for its consideration.

Dated: March 28, 1989

KEITH A. LEVY
Administrative Law Judge
Office of Administrative Hearings

CSM Late Filing
Item No. 9

MONTEREY COUNTY

DEPARTMENT OF HEALTH ROBERT J. MELTON, M.D., MPH Director

PREVENTIVE MEDICINE ENVIRONMENTAL HEALTH
MENTAL HEALTH ALCOHOL AND DRUG PROGRAMS

☐ 1270 NATIVIDAD ROAD. SALINAS, CALIFORNIA 93906-3198 (408) 755-4500
☐ 1200 AGUAJITO ROAD. MONTEREY. CALIFORNIA 93940-4898 (408) 647-7650
☐ 1180 BROADWAY. KING CITY, CALIFORNIA 93930 (408) 385-8350
☐ 1292 OLYMPIA AVENUE. SEASIDE, CALIFORNIA 93955 (408) 899-8100

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COMMISSION ON
STATE MANDATES

PLEASE REPLY TO ADDRESS CHECKED

April 6, 1990

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, Ca. 95814

Dear Mr. Lehman,

This letter is in support of Santa Clara Counties SB 90 claim for unreimbursed costs for the implementation of mental health programs as mandated by AB 3632/882. In Monterey County, we received, for FY 89-90, $158,231 in State General Fund dollars which requires a County match of $17,581 for this program. The program for severely emotionally disturbed children will however cost $709,879 for FY 89-90. We have thus had to reallocated $534,067 in existing Short-Doyle funds to meet this new demand for services.

In order to reallocate funds, Monterey County has had to close all of its outpatient clinics that historically served adults and children who were not labeled severely emotionally disturbed. This has had a major impact on mental health care with in the county and is a direct result of the mandate for services found in AB 3632/882.

In addition, because we are prohibited from billing for AB 3632 services, the mental health program lost a significant amount of third party revenue which we would normally receive for these services if they were delivered under the conditions that govern regular Short-Doyle services. Clearly the Monterey County should be entitled to claim both the 10% County match that is required for AB 3632/882 services and an amount equal to the revenue we have prohibited from collecting.

If you have any questions regarding the impact of the mandate to provide mental health services pursuant to AB 3632/882 have had on Monterey County please contact me. Your cooperation is appreciated.

Sincerely,

Robert C. Egnew, M.S.W., M.P.H.
Mental Health Director

CSM Late Filing
Item No. 9

County of Mat-in
Department of Health and Human Services
Community Mental Health Services

P. 0. BOX 2728 SAN RAFAEL, CALIFORNIA 94912 PHONE :
OFFICE LOCATION AT: 250 BON AIR ROAD, GREENBRAE, CALIFORNIA 94904

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COMMISSION ON
STATE MANDATES

April 10, 1990

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Mr. Lehman:

Marin County Community Mental Health Services urges the Commission on State Mandates to make a positive decision for Santa Clara County's SB 90 claim for unreimbursed cost of AB 3632/882 for FY 1986-87.

Established as fact is the categorical funding for AB 3632 assessment, treatment and case management, which distinguishes as a separate type of service, Since AB 3632 is insufficiently funded, Short-Doyle funds are forced by the AB 3632 mandate to supplement the very large funding shortfall, Consequently, the Short-Doyle Act obligations are substantially displaced by default. Services to be provided under Short-Doyle have reduced steadily as AB 3632 services have expanded under its mandate,

Additionally, the AB 3632 exception to State fee for services policy surely defines it as a new program, The services are the only services not charged to clients with the ability to pay in the State mental health system, Other services must be billed to clients with the means to pay, as defined by the State Uniform Method to Determine Ability to Pay, Furthermore, the State has informed the counties that Short-Doyle funds shall be the last expended for client services after third party, Medi-Cal or the client has been charged. If the Commission sees AB 3632 as a mandate only under Short-Doyle, then it should decide that the loss of revenue under the AB 3632 exception should be included with the required ten percent county match as part of the claim.

A sound interpretation of the AB 3632 mandate and a positive decision by the Commission on Santa Clara County's claim will help remedy the funding problems now disrupting the public mental health services in California. Such positive action by the Commission would establish the need to sufficiently fund AB 3632 and remove that burden from the insufficiently funded Short-Doyle system for the seriously mentally ill of California.

Sincerely,

Edward P. Walker

Edward P. Walker
Mental Health Director

cc: County Counsel

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

PUBLIC HEARING

Thursday, April 26, 1990
10:00 A.M.

Room 437
State Capitol Building
Sacramento, California

K&T RECORDING

77 12 GARDEN GATE DR. CITRUS HEIGHTS, CA 95621 . (916) 969-4182

1 APPEARANCES

2 COMMISSIONERS PRESENT

3 Linda Frick, Chairperson

4 Fred R. Buenrostro

5 Robert Creighton

6 Robert P. Martinez

7 D. Robert Shuman

8

9 STAFF PRESENT

10 Robert Eich, Executive Director

11 Stephen Lehman, Assistant Executive Director

12 Gary Hori, Legal Counsel

13 Michael Coleman

14 Jan DeValk

15

16 ALSO PRESENT

17 Jim Apps, Department of Finance

18 Glen A. Beatie, State Controller's Office

19 Susan Ann Chapman, County of Santa Clara

20 Howard Kaplowitz, Los Angeles Unified School District

21 Rama Khalsa, Santa Cruz County

22 Richard J. Knott, San Diego City Schools

23 Carol Miller, Education Mandated Cost Network

24 Keith Petersen, San Diego City Schools

25 Harlan E. Van Wye, Attorney General's Office

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1 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: The next
2 item in front of the Commission is Item Number 9. Item 9
3 is a proposed statement of decision for an adopted mandate
4 on the handicap and disabled students' test claim.
5 At a previous hearing, the Commission directed
6 staff to revise the Administrative Law Judge's decision to
7 reflect the Commission's determination that these laws and
8 regulations constitute a reimbursable state mandate by
9 requiring for first-time county participation in the
10 Individualized Education Program process. And, furthermore,
11 that any mental health services provided are currently
12 provided under the Short-Doyle Act.
13 Both the Attorney General's Office and the
14 County take issue with the proposed decision for several
15 reasons.
16 However, staff recommends that the Commission
17 adopt the proposed statement of decision because we believe
18 that it accurately reflects what the Commission moved at
19 its previous hearing.
20 Would you please state your names for the
21 record.
22 MS. KHALSA: Rama Khalsa, County Mental Health
23 Director, Santa Cruz County.
24 MS. CHAPMAN: Susan Chapman, Deputy County
25 Counsel, County of Santa Clara.

1 MR. VAN WYE: And Harlan E. Van Wye, Deputy
2 Attorney General, on behalf of the State of California.
3 CHAIRPERSON FRICK: Do any one of you wish to
4 make a statement? Do all of you wish to make a statement?
5 Okay.
6 MR. VAN WYE: Let me lead off, Madam Chairman.
7 I presume that the Commission has a copy of the letter that
8 we sent concerning this to -- it's addressed to Mr. Lehman,
9 in his capacity as the Assistant Executive Director, dated
10 March 12th, 1990.
11 That essentially reflects the State's position
12 as to what we understood the Commission decided at its
13 November 30th meeting. And that is, as you notice from the
14 letter, based upon a review of the transcript of that
15 meeting and with specific references to the transcript.
16 The dispute, as I understand at this point, and
17 this is, I believe, confirmed in my earlier discussions
18 this morning with Messrs. Lehman and Hori, that the dispute
19 essentially extends to the -- we're talking about 10
20 percent of the amount of cost of the actual provision of
21 services. Once you get past the participation in the
22 mental health assessment, participation on the IEP team,
23 and the case management services, which, for the purposes
24 of this proceeding, we're prepared to concede that that's
25 what the Commission earlier decided.

1 So what we're really talking about here in terms
2 of the State's position is for the Commission to decide
3 whether it intended for -- given that this is a program
4 with a 90 percent State participation, 10 percent County
5 participation under the required match, whether or not that
6 10 percent, and that's all we're really talking about
7 today, at least from the State's standpoint -- whether or
8 not the 10 percent of County participation in providing
9 services for -- mental health services for handicapped
10 children is intended to be within the mandate. We argued
11 back in November, and I think that the Commission adopted
12 the position that we were arguing, that the entire matter
13 of the actual provision of services by the County Mental
14 Health Department is a matter that's strictly within the
15 pre-existing Short-Doyle obligation.
16 The staff recommendation, I think, essentially,
17 deviates from that insofar as it says that the Commission
18 found that this was a new service. In fact, we don't
19 believe that it is a new service. That's the distinction.
20 That's what we're asking for, really a clarification. We
21 think that'the issue was decided earlier,. We've made, in
22 our letter, specific references to the record as to what
23 motion was made and how it was dealt with. And it's simply
24 a matter of clarification. And we just don't think that
25 the staff recommendation, with all due respect to the fine

staff work‘that we've encountered here, we don't think that the staff has quite caught the flavor of what the Commission had intended in adopting, essentially, the State's fall-back position.

I have nothing else unless there's some questions. And, naturally, we oppose the County's attempt to reopen this matter at this late date. And, in fact, it would be a matter frought with peril because if the County seeks to reopen it, we would certainly be inclined to discuss City of Sacramento v. State of California, the California Supreme Court decision that came two months after the Commission's decision in this regard, which, basically, I think, breathes vital new life into our federal mandate argument; that none of this is a mandate anymore because, for all practical purposes, you cannot get rid of 94.142.

CHAIRPERSON FRICK: Ms. Chapman?

MS. CHAPMAN: First, in response to Mr. Van Wye's statement, I would like to say that the decision, if you assume that the treatment services are to be provided through the Short-Doyle Program, certainly are a new mandate within the Short-Doyle Program. They have to be provided free; they have to be provided within certain timeframes; there's an entitlement. It is certainly different from the rest of the Short-Doyle Program and has

1 always traditionally been the rule when there is a new
2 mandate within Short-Doyle, the Commission's decision
3 always has been that the responsibility of the State is to
4 reimburse the County for the County's 10 percent required
5 match. So I believe in response to the State, that the
6 Commission decision is correct if it is within the Short-
7 Doyle Program.
8 I know we've talked about the Short-Doyle
9 Program a lot. And we -- and I've -- I think made all my
10 arguments. I know you've read all the papers. And I would
11 like to just make two points with respect to appealing to,
12 once again, to see this as a program not part of Short-
13 Doyle.
14 The first is that this is a very big burden on
15 the Short-Doyle Program. And you're hanging this burden on
16 a very thin thread, which is Welfare and Institutions Code
17 Section 5651. And that burden unbalances the entire system
18 in such a way that it has devastating impacts on the Short-
19 Doyle delivery system.
20 So I just wanted to make that -- we've talked
21 about it a lot, and I don't want to belabor the point.
22 The next point I want to make is that the County
23 of Santa Clara is in a different position. We do not have
24 a Short-Doyle plan. Welfare and Institutions Code Section
25 5651 does not apply to us. We have, instead, a negotiated

1 net amount contract. That contract is part of the
2 evidence. You can review the contract. It says absolutely
3 nothing about these responsibilities. And it is through
4 that contract that we agreed what mental health services we
5 would provide. And it does not address this substantial
6 new responsibility.
7 So that's the second comment I make on the
8 Short-Doyle Program.
9 What I really would like to focus on today is
10 something that I think the Commission didn't think about
11 when it made its decision last time they met in rejecting
12 the Administrative Law Judge's decision. And that is the
13 fact that we cannot charge based on ability to pay, and we
14 cannot collect -- we cannot require there to be collections
15 from insurance companies for children who are being served
16 through this program.
17 And, for that reason, we should -- to the extent
18 we would otherwise be able to collect reimbursement or
19 collect third-party payments, we should receive 100 percent
20 reimbursement. The 10-90 split on Short-Doyle reimbursement
21 is a reimbursement of the net Short-Doyle cost. The Short-
22 Doyle Program contemplates that there will be -- there must
23 be a charge for services provided. And so the net charge
24 is the net charge after you've collected patients' fees,
25 after you've collected third-party insurance payments.

1 We cannot do that under this program.
2 And I think that that's probably one of the
3 things that's most upsetting about this program. And let
4 me tell you about what's happening in Santa Clara and why
5 it's so upsetting. We have a very diverse county. We're
6 very rich in the north, very poor in the south. The effect
7 of this legislation has been the wealthier school districts
8 like Palo Alto Unified, Los Altos, where the parents are
9 sophisticated, the school districts are sophisticated, they
10 are identifying a lot of children as in need of mental
11 health services. And these are children whose parents have
12 good jobs with good insurance, who otherwise would be able
13 to go to a private provider and obtain services, who, if
14 they went to the County, would come to the County at no
15 cost at all because we would charge them 100 percent of our
16 cost. So they would not -- it would not increase -- if
17 they all came to us, it wouldn't increase the net Short-
18 Doyle cost to the County because they would be paying us
19 for those services.
20 Another interesting thing that's happened with
21 this is that we have not gotten referrals from the poor
22 areas of our county. And extraordinarily enough from the
23 south parts of our county, we have school districts who,
24 from all indicators, would have a high need of mental
25 health services for their students based on the fact that

they are poverty areas, high single-family parents, high drug use, a lot of migrant people, a lot of people impacted by severe events in their life that would -- you would typically expect to see a high use of mental health services. Yet the school districts have identified no one, I believe, in fear that they may someday ultimately end up with a responsibility for those children once again.

So the poor students who probably are entitled to these services and entitled to receiving them free are not -- and -- or who would be -- receive them free if they came from the County because their parents don't have any money, they are not getting the services. The money is being taken away from the Short-Doyle Plan to pay for children who otherwise do have resources. And that's what's really so upsetting about this program.

MEMBER MARTINEZ: Madam Chair, can I interject at this point?

CHAIRPERSON FRICK: Well, I think, why don't we hear our third --

MEMBER MARTINEZ: Fine.

CHAIRPERSON FRICK: -- commentor, if that's all right.

MEMBER MARTINEZ: Sure.

CHAIRPERSON FRICK: Unless you have specific questions of Ms. Chapman?

MEMBER MARTINEZ: Well, actually I do have one question, and I guess I would like a clarification of the point you made relative to the fact that you don't have a Short-Doyle Program, per se, in your county -- in Santa Clara County.

Could -- Bob, could you comment on that? The fact that the Short-Doyle services are dealt with through an agreement, a contractual agreement. I mean does that --

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Maybe I could do that for you.

MEMBER MARTINEZ: Sure.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Under the Short-Doyle Program, there are two ways of getting reimbursed.

MEMBER MARTINEZ: Right.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: You have your actual cost, 90-10 split. And you also have what, I believe, the County of Santa Clara has, I'm hearing, is a negotiated net amount contract.

MEMBER MARTINEZ: Right.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: In past discussions with staff and the Department of Mental Health on other Short-Doyle claims, it was our understanding that the negotiated net amount contract, while it may have some differences in the financial accounting of how the money

goes, is basically the same thing as a Short-Doyle Plan.

MEMBER MARTINEZ: That was my understanding.

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Yeah.

MEMBER MARTINEZ: And so I --

ASSISTANT EXECUTIVE DIRECTOR LEHMAN: That's our understanding, as well, the staff.

MR. VAN WYE: Madam Chairman, may I respectfully add just one thing -- or two things, actually? And I do this with some deference to my friend and colleague, Ms. Chapman.

I'm referring to a transcript of the proceedings of November 30th, 1989. The first point -- one of the first points that Ms. Chapman made about the --

CHAIRPERSON FRICK: What page are you on in the transcript?

MR. VAN WYE: On -- I'm starting on Page 42 of the transcript. The comment about the fact that they -- the fact that they're on a net contract rather than a 90-10 split in Santa Clara County was specifically mentioned or the aspect, and she says, "However, there's nothing in our Short-Doyle contract that requires we provide these services we're talking about." That's at Page 42, Lines approximately 8 through 11, or 8 through 12.

And the second point about not being able to charge, which was -- it said that, I believe, if I heard

1 right, that it wasn't discussed earlier. I believe that a
2 review of the transcript from Page 20, Line 25 through
3 Page 21, Line 14 that this matter has already been
4 discussed. It was raised before the Commission at that
5 point.
6 So what we're hearing is not stuff that's new.
7 We are replowing the field that's already been rather
8 thoroughly plowed.
9 MEMBER CREIGHTON: Could I just make a statement,
10 please?
11 CHAIRPERSON FRICK: Well --
12 MEMBER CREIGHTON: Oh, I'm sorry.
13 CHAIRPERSON FRICK: -- I'd like to --
14 MEMBER CREIGHTON: Oh, I'm sorry.
15 CHAIRPERSON FRICK: -- get all the input from --
16 MEMBER CREIGHTON: Okay. That's fine. Fine.
17 CHAIRPERSON FRICK: Why don't you go ahead and
18 give your presentation, and then we can go ahead with our
19 questions.
20 MS. KHALSA: I wanted to give you a little bit
21 of a view of what we've experienced in Santa Cruz County.
22 We are also a negotiated net amount contract county where
23 this wasn't really explicitly included in our contract.
24 But the cost to the County, in terms of providing the
25 services, has been more than double what the allocation the

1 State has given'us. In fact, it's concerned us so much
2 that there's children in in-patient units who normally
3 would be able to leave the in-patient unit and go to a
4 clinic, who happen not to be educationally handicapped, who
5 cannot get into a clinic because the therapists have all
6 been redirected to school-based services for special
7 education.
8 Now, I don't know the -- all the legal processes
9 of your group. But I did bring a State Department of
10 Mental Health memo that I'd like to introduce as evidence
11 on the impact of this program over the last three years on
12 the counties, both in terms of gross costs and on net state
13 general fund costs.
14 My County has had to increase its County general
15 fund contribution to mental health by over $300,000 a year
16 to avoid the penalties involved in this law without cutting
17 not only deeply into children's services but adult services
18 as well. And we have also experienced what Ms. Chapman
19 pointed out, the rich parents who normally would pay us
20 full fare for their services are paying nothing and are
21 quite sophisticated about how to use us for the mental
22 health needs of their children. Also, they can object and
23 refuse to allow us even to bill their insurance.
24 On the other hand, our poorer area of the
25 community, Watsonville, has the lowest referral rate of any

1 in our community. And so we're really not seeing an
2 equitable distribution of the mandate reflected in AB 3632
3 and AB 882 related to children.
4 And we have experienced serious problems, both
5 with the application of this law and the impact on the
6 entire Short-Doyle system.
7 So with that, I'd just like to say I don't know
8 what your evidence rules are, but this is a State
9 Department of Mental Health memo to my mental health
10 administrator regarding the impact statewide on this
11 mandate on costs.
12 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: If I could
13 just add something here. What I'm hearing is basically a
14 rearguing of the extent and the existence of a mandate.
15 And this hearing is to determine whether or not the
16 proposed decision before you accurately reflects the motion
17 made by Mr. Martinez at our last -- at our November
18 hearing.
19 While not unsympathetic to your position, I
20 think we're getting off the track here.
21 CHAIRPERSON FRICK: Uh-huh. I think it would be
22 -- do you have any other comments that don't go to the
23 hearing itself? I think that's true. We're just deciding
24 whether or not we're going to adopt the statement of
25 decision that's been proposed to us. The hearing has been

1 held. The evidence is in. We really can't consider
2 anything further.
3 MS. KHALSA: I see.
4 CHAIRPERSON FRICK: So if you have any other
5 comments, I'd be happy to receive them, but not on any
6 testimony related to the hearing.
7 MEMBER SHUMAN: Well, one thing I would like to
8 hear something about, and this is something new that's
9 occurred, apparently, since November 30th of '89.
10 Mr. Van Wye referred to the County of Sacramento
11 decision. And I'd like to hear briefly from him and from
12 Ms. Chapman on that point.
13 MR. VAN WYE: Well, Member Shuman, you may
14 recall that -- that one of the issues that was raised by the
15 State, essentially, was that what we're dealing with here
16 is a federal mandate, and the State's response to a federal
17 mandate. And that was objected to, and it was -- it was
18 determined under the rules that existed at that time that
19 what we did not have a federal mandate because it was not
20 something that was absolutely compelled. And that was
21 based upon what, at that point, was probably the best
22 authority, which was the -- it's called the Sacramento One
23 case.
24 Sacramento Two ultimately came forward and went
25 up to the California Supreme Court. And on January 29th,

1990, approximately two months after that time, the California Supreme Court took what the State -- essentially adopted the State's position as to what a State mandate -- you know, what this federal mandate language meant and that -- essentially saying that -- and I use this term advisedly -- but if you've got -- well, I won't even use it advisedly. It's too strong. But if the State -- if the federal government says, "You don't have to do this. But if you don't do this, you're going to lose a couple billion dollars in your program." You know, how free is the State to decide whether to do this or not.

And we argued beyond that, that we were effectively, for all practical purposes, that there is no conceivable way that the State of California can get out of the 94.142 scheme, wherein the federal government participates in the Education For All Handicapped Program. So that, in fact, the State of California and its legislative actions that are ultimately questioned here was responding to a federal mandate: and, therefore, that the -- that this was not subject to Article 13(b) of the Constitution and that, in fact, it would appear under the Revenue and Taxation Code that possibly the County could increase its local property taxes to -- although we didn't get specifically into that much detail. But if the County thinks that this is a wise and valid program, then perhaps they could

raise taxes locally to undertake this.

That -- the City of Sacramento versus State of California case has adopted a much more loose position, and I think that if we were rearguing this today, we could come forward and look at it in a slightly different -- in a slightly different vein. It was not my understanding that the Commission was about to reargue this, but I think, frankly, if the County wants to reopen it, I would be delighted to reopen this whole thing, and we'll talk about the City of Sacramento and that this is a whole federal mandate, and that the County doesn't get any subvention.

CHAIRPERSON FRICK: Mr. Creighton, you had a statement you wanted to make?

MEMBER CREIGHTON: Yeah. I -- 1 fail to understand the relevancy of your statement about the children in the poorer sections of Santa Clara County not having access to as many mental health services, or that they might need them even more than the parents of affluent children.

MS. CHAPMAN: Well --

MEMBER CREIGHTON: May I finish, please. I don't necessarily buy that argument. It seems to me that poor families that have stable, good familial relationships -- their children might not necessarily need as many mental health facilities as the children of affluent families that don't have good, stable familial relationships. So I don't

1 understand the relevancy of your statement to what we're
2 considering today. Poverty doesn't necessarily mean that
3 you have to have mental health.
4 MS. CHAPMAN: Commissioner, certain not --
5 although that is one of the factors I think that
6 epidemiologically speaking people in mental health will
7 tell you that when you add up factors like poverty and
8 single-family and a number of factors like that, that
9 you're more likely to find a need for a mental illness.
10 The point -- or a need for mental health services.
11 The point that I was trying to make was that
12 what has happened for this program is that because the
13 wealthier areas are taking advantage of the program,
14 there's a diversion of Short-Doyle dollars, our net Short-
15 Doyle dollars, to the wealthy areas, which means that there
16 are less net Short-Doyle available for all other services
17 that the County offers, including those to the poor. So
18 there's -- so there ends up being an adverse impact on the
19 poor and on the County, in general, in their ability to
20 provide services.
21 MEMBER CREIGHTON: Well, how does that relate to
22 our decision today? I don't understand how that relates to
23 our decision today.
24 MS. CHAPMAN: Well if --
25 CHAIRPERSON FRICK: I think that --

1 MS. CHAPMAN: -- it relates to this decision in
2 this respect, and I'd like to go back and comment on one
3 thing. Last time we were here, there was sort of a
4 revolutionary change. We came into the Commission with a
5 proposal from the staff saying to adopt the Administrative
6 Law Judge's decision. And there was a long discussion.
7 Commissioner Creighton, I believe you had to leave before
8 the end of it. And it's a very complicated area, which is
9 why I bring up the issue today of the fact that we are not
10 allowed to collect fees and that that really represents a
11 different kind of mandate.
12 Yes, I did bring it up before. But there was so
13 much that was brought up before, that I'm not sure that the
14 Commission gave it careful thought to think whether or not
15 that represented a mandate that had to be looked at
16 differently than simply the .0 percent match for the mental
17 health services.
18 CHAIRPERSON FRICK: Are you requesting that we
19 reopen the hearing then? You know, the parties --
20 requesting that?
21 MEMBER CREIGHTON: Yeah. I don't understand
22 that.
23 CHAIRPERSON FRICK: Is that what you're saying?
24 MS. CHAPMAN: I don't know that there would be a
25 point in reopening the hearing because I think all the

points have been -- all the points have been made. My concern was that the --

CHAIRPERSON FRICK: Okay. Well, that's --

MS. CHAPMAN: -- that the --

CHAIRPERSON FRICK: Thank you for answering my question.

MS. CHAPMAN: -- that the Commission hadn't seriously considered that,

CHAIRPERSON FRICK: I think it's on the record from the last hearing in November. And I thought all we were deciding today was whether or not the proposed statement of decision reflects the motions that were made to change staff's proposal on the November 30th, 1989, date.

MEMBER MARTINEZ: Madam Chair, if I might speak.

CHAIRPERSON FRICK: Yes.

MEMBER MARTINEZ: Yes. And I guess I would like to reiterate the staff's understanding of what we have before us. I mean, I appreciate the comments that were made by the affected and interested parties, and I guess I would just like to echo a comment made by Mr. Van Wye that the staff work is superlative or is -- perhaps he didn't use those words; I'm paraphrasing and perhaps putting words in his mouth. But I think the staff work does accurately reflect the complexity of the kind of issue we have before

us, the distinctions as to what is the higher level of service and, therefore, the mandate. And as far as I'm concerned, it does accurately reflect my intent.

And so, therefore, what I would like to do, Madam Chair, is that I would like to move the staff recommendation relative to the proposed decision.

CHAIRPERSON FRICK: Is there a second?

MEMBER BUENROSTRO: For purposes of the discussion, I'll second that. And to go on, I think that I was unclear on the point that's raised by the Attorney General's Office including the additional, what, in the staff proposed decision, are additional services. I think --

MEMBER MARTINEZ: Under the Short-Doyle.

MEMBER BUENROSTRO: Under the Short-Doyle. I think it's clear -- well, my view of this is that the IEP program is a reimbursable mandate.

MEMBER MARTINEZ: In the case law, right.

MEMBER BUENROSTRO: Right. And the case management.

MEMBER MARTINEZ: Uh-huh.

MEMBER BUENROSTRO: It was -- 1 thought it was clear to me that this was just a reprioritization of services within Short-Doyle --

MEMBER MARTINEZ: Uh-huh.

1 MEMBER BUENROSTRO: -- and there really weren't
2 additional services being rendered. And so as it relates
3 to that part of the proposed decision, I think I have more
4 of an agreement with the Attorney General's interpretation
5 of our action. And I guess you would see that there are
6 some additional services being rendered through the IEP
7 case management.
8 MEMBER MARTINEZ: Yeah, and I don't -- yes, I
9 do, Mr. Buenrostro. In addition, I guess I see a
10 consistency, too, in terms of that staff recommendation
11 relative to other kinds of mandates that have been found
12 in the past relative to increased level of service. I just
13 -- I did not see anything before us that, to me, made it
14 clear that, in fact, it was a matter of redirection of
15 existing services. I truly did see a consistency as to a
16 distinct increase in services.
17 MEMBER CREIGHTON: Does your motion adopt the
18 staff recommendation --
19 MEMBER MARTINEZ: Yes, it does.
20 MEMBER CREIGHTON: -- as we have it --
21 MEMBER MARTINEZ: As we have it.
22 MEMBER CREIGHTON: -- because Mr. Van Wye made a
23 statement that the large, middle paragraph on Page 14 of
24 the proposed decision misstates the intent of the
25 Commission, and he suggests that such a paragraph be

deleted. Now, are we still including this large paragraph in our decision? We are?

CHAIRPERSON FRICK: The way the motion stands now, yes.

MEMBER CREIGHTON: Okay. Fine. I just wanted to clarify.

CHAIRPERSON FRICK: Uh-huh. Okay. Then from our understanding here, the way the proposed decision is written right now, then, it would include not only the cost for the participation of the County and the IEP team and case management, but it also includes a mandate for additional services up to 10 percent reimbursement.

EXECUTIVE DIRECTOR EICH: For mental health services.

CHAIRPERSON FRICK: But it does find new, additional services.

MEMBER MARTINEZ: For mental health as related to mental health services -- increased level of services.

CHAIRPERSON FRICK: Okay. All right.

In reviewing the transcript from the November 30th --

MEMBER MARTINEZ: Uh-huh.

CHAIRPERSON FRICK: -- I don't find that teeth in the motion.

MEMBER MARTINEZ: Right.

1 CHAIRPERSON FRICK: And I -- 1 just think that
2 needs to be on the record, that it does not appear that the
3 motion made on November 30th included anything more of a
4 mandate than -- well, what it reads is, that there is a
5 mandate finding on Page 23 -- that there is a mandate
6 finding relative to the activities of the IEP and case
7 management process that have been put upon the counties
8 relative to this population, special education of
9 handicapped pupils, period.
10 MEMBER: What page?
11 CHAIRPERSON FRICK: It's Page 63.
12 MEMBER SHUMAN: Well, correct me if I'm wrong,
13 though, but doesn't that be -- isn't the essence of the
14 motion that the substantive services, that is the mental
15 health services, are covered under the Short-Doyle Plan
16 and, therefore, subject to the 90-10 split. And I think
17 we've already had some decisions where we've allowed the 10
18 percent reimbursement for the County share of Short-Doyle.
19 So I don't know that it's necessary to specifically include
20 that as part of the motion. Anybody --
21 MEMBER BUENROSTRO: Well, I think that's --
22 MEMBER SHUMAN: -- have any comment on that?
23 MEMBER BUENROSTRO: -- that's a good question.
24 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: It was our
25 position that during the discussion and the motions that

1 were made, the Commission found that the mental health
2 treatment services were a part of Short-Doyle. We don't
3 dispute that. And as a part of Short-Doyle under 5700 and
4 so on in the Welfare and Institutions Code, as Mr. Shuman
5 just stated, we saw them as being subject to the 90-10
6 Short-Doyle cost allocation formula.
7 In support of that, a new requirement within the
8 Short-Doyle Program was Welfare and Institutions Code
9 Section 5651(g), which required that the Short-Doyle Plan
10 included description of all the services to be provided
11 under, I think it was, 7571 or 7576 of the Government Code.
12 So it was our interpretation of the motion that
13 mental health services were under the Short-Doyle Plan and
14 subject to a 10 percent reimbursement by the Commission.
15 MR. HORI: And I might just add that those code
16 sections that Mr. Lehman just read speak particularly to
17 mental health services, 7571 and 7576.
18 MR. VAN WYE: I think -- let me just add a
19 comment because I think Mr. Buenrostro has, essentially,
20 stated what our position is, that the legislation, in fact,
21 didn't impose any new requirements on the County. It
22 simply reprioritized within Short-Doyle.
23 And the difference between our position, the
24 position of the State, and the position that's being
25 advocated by the staff or being brought forward to the

1 Commission by the staff essentially says that the counties
2 will have a claim for the 10 percent required match for
3 these identified services; and the State Controller's
4 Office is going to have to come up with claiming
5 instructions for that. The State's position is basically
6 no, that wasn't what you decided back in November, that the
7 10 percent required match -- that the whole program is
8 within the classic historic Short-Doyle obligation of the
9 county, and that there will be no claiming instruction for
10 that extra 10 percent;, that that's simply a normal County
11 10 percent match just like everything else within Short-
12 Doyle.
13 So that, in a nutshell -- I think that's about
14 as clear as I can get the distinction between the parties
15 and what the issue is before the Commission right now.
16 CHAIRPERSON FRICK: And as I understand the
17 proposal, however, it does not talk about reprioritizing,
18 right?
19 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: That's
20 correct.
21 CHAIRPERSON FRICK: Okay.
22 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: Priority
23 populations in Short-Doyle are set under a different
24 Welfare and Institutions Code section. 5651(g) is in a --
25 5651 of the Welfare and Institutions Code specifically

1 requires the counties to identify what will be provided in
2 the plan. So that's where we differ, basically. And
3 that's why you have a proposed decision in front of you.
4 MEMBER SHUMAN: Before a vote'is taken,. I 'just want
5 to state for the record I think the Administrative Law
6 Judge decision, or proposed decision, was correct. I
7 appreciate Mr. Martinez's motion. I think it's -- if this
8 Commission is going to reject the Administrative Law Judge's
9 proposed decision, that it's at least good that we're going
10 to recognize the 10 percent share and also the
11 individualized education assessments, whatever the
12 terminology is, as being eligible for reimbursement.
13 But I don't think that goes far enough.
14 CHAIRPERSON FRICK: Any other discussion? Any
15 other comments?
16 All right. All in favor of --
17 MEMBER: We probably have to take a roll.
18 EXECUTIVE DIRECTOR EICH: Madam Chair, if I may,
19 generally on this kind of an item, we would take a roll
20 call just for clarification.
21 CHAIRPERSON FRICK: Okay.
22 EXECUTIVE DIRECTOR EICH: Member Buenrostro?
23 MEMBER BUENROSTRO: Aye.
24 EXECUTIVE DIRECTOR EICH: Member Creighton?
25 MEMBER CREIGHTON: Aye.

1 EXECUTIVE DIRECTOR EICH: Member Martinez?
2 MEMBER MARTINEZ: Aye.
3 EXECUTIVE DIRECTOR EICH: Member Shuman?
4 MEMBER SHUMAN: No.
5 EXECUTIVE DIRECTOR EICH: Chairperson Frick?
6 CHAIRPERSON FRICK: Abstain.
7 EXECUTIVE DIRECTOR EICH: The motion carries.
8 CHAIRPERSON FRICK: Next item?
9 ASSISTANT EXECUTIVE DIRECTOR LEHMAN: The next
10 item before the Commission is Item Number 10, a test claim
11 dealing with school crimes reporting.
12 Item 10 is a test claim that alleges Chapter
13 1607, Statutes of 1982 (sic) and Chapter 78, Statutes of
14 1988 and the "Standard School Crime Reporting Form" have
15 imposed a state mandated program upon school districts by
16 requiring them for the first time to collect data and
17 submit biannual reports to the Department of Education on
18 crimes committed on school grounds.
19 The Department of Finance and the Department of
20 Education both recommend the Commission find that these two
21 statutes are state -- do impose a state mandated program.
22 However, the Department of Education does not believe that
23 the "Standard School Crime Reporting Form" and its
24 instructions related thereto constitute a mandate or an
25 executive order.

C E R T I F I C A T E

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THIS IS TO CERTIFY that I, Madonna M. Kushen, Reporter, have duly reported the foregoing proceedings which were held and taken in Sacramento, California, on Thursday, the 26th day of April, 1990, and that the foregoing pages constitute a true, complete and accurate transcription of the aforementioned proceedings.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

Madonna M. Kushen

MINUTES

COMMISSION ON STATE MANDATES
April 26, 1990
10:00 a.m.
State Capitol, Room 437
Sacramento, California

Present: Chairperson Linda A. Frick, Deputy Director, Department of Finance: Member Fred R. Buenrostro, Representative of the State Treasurer; Member Robert C. Creighton, Public Member; Member Robert P. Martinez, Director, Office of Planning and Research; Member D. Robert Shuman, Representative of the State Controller,

There being a quorum present, Chairperson Frick called the meeting to order at 10:02 a.m.

Item 1 Minutes.

Chairperson Frick asked if there were any corrections or additions to the Minutes of the Commission's hearing of March 27, 1990. There were no corrections or additions.

Member Creighton made a motion that the Minutes be adopted; Member Buenrostro seconded the motion. The vote on the motion was unanimous. The motion carried and the Minutes were adopted.

Consent Calendar:

The following items were on the Commission's consent calendar:

A. Parameters and Guidelines

Item 3 Chapter 1327, Statutes of 1984
Chapter 1286, Statutes of 1985
Short-Doyle Supplemental Fund

Item 4 Chapter 1393, Statutes of 1978
Chapter 328, Statutes of-1982
Chapter 1594, Statutes of-1982
Chapter 1327, Statutes of 1984
Mental Health Quality Assurance

B. Parameters and Guidelines Amendments

Item 5 Chapter 1502, Statutes of 1982
Chapter 49, Statutes of 1984
Civic Center Act

C. Statements of Decision

Item 7 Health and Safety Code Sections 25150.1, and 25280 through 25289
Chapter 1046, Statutes of 1983
Title 23, CCR, Ch. 3, Sub. 16
Underground Storase Tanks

Item 8 Penal Code Sections 14205, 14206, 14207, 14209, 14210, and 14213
Chapter 1456, Statutes of 1988
Missing Person Reports III

'Robert W. Eich, Executive Director of the Commission on State Mandates, advised the Commission of the five items on the consent calendar. Member Buenrostro moved to adopt the consent calendar as set forth; Member Creighton seconded the motion. The vote on the motion was unanimous. The motion carried.

Item 6 Parameters and Guidelines Amendments
Chapter 1659, Statutes of 1984
Emersencv Procedures, Earthauakes and Disasters

Robert W. Eich, Executive Director, Commission on State Mandates, summarized Item 6. Ms. Carol Miller, Education Mandated Cost Network, Mr. Richard Knott, San Diego Unified School District, and Mr. Howard Kaplowitz, Los Angeles Unified School District introduced themselves and appeared in conjunction with this item. Mr. Knott outlined reasons for allowing reimbursement of in-classroom teacher time for the instruction of students in emergency procedures. Executive Director Eich noted that the parameters and guidelines do not provide for the reimbursement of outside consultants in the instruction of students in emergency procedures. Member Buenrostro stated that he would not support reimbursement for in-classroom teacher time or for outside consultants to instruct students in emergency procedures. Member Shuman noted that the parameters, and guidelines were unclear on the items that are to be reimbursable. After considerable discussion, Member Buenrostro moved to adopt the parameters and guidelines with an amendment to include the language "and others" where reimbursement for teacher time is prohibited from reimbursement. Member Martinez seconded the motion.

After discussion on the language to be amended, Member Creighton made a substitute motion to refer this item back to staff for clarification. Member Shuman seconded the substitute motion. The members discussed clarifying the motion and decided to let the motion stay a generalized motion with instructions to staff to provide the rationale for amending the parameters and guidelines to exclude reimbursement for teachers and others in instructing students in emergency procedures. The vote on the substitute motion was unanimous. The motion carried.

Item 9 Statement of Decision
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Mr. Stephen Lehman, Assistant Executive Director, Commission on State Mandates, summarized Item 9. Ms. Susan Chapman, Deputy County Counsel for Santa Clara County, and Mr. Harlan E. Van Wye, Attorney General's Office, San Francisco, introduced themselves and appeared in conjunction with this item. Ms. Chapman and Mr. Van Wye presented their respective office's concerns regarding the proposed decision, as well as the Commission's earlier mandate finding. Extensive discussion followed. Ms. Rama Khalsa, County Mental Health Director, County of Santa Cruz, introduced herself and presented the county's concerns regarding the Commission's decision to find that mental treatment for Individual's with Exceptional Needs is part of a county's preexisting Short-Doyle plan. Further discussion followed.

Member Martinez made a motion to adopt the proposed statement of decision. Member Buenrostro seconded the motion. The roll call vote on the motion was: Member Buenrostro, aye; Member Martinez, aye; Member Creighton, aye: Member Shuman, no; Chairperson Frick, abstain. Motion carried.

Item 10 Test Claim
Chapter 1607, Statutes of 1984
Chapter 78, Statutes of 1988
"Standard School Crime
Reporting Forms;'
School Crimes Reporting

Mr. Stephen Lehman, Assistant Executive Director, Commission on State Mandates, summarized Item 10. Mr. Keith Petersen, Legislative Financial Specialist, San Diego Unified School

District, and Ms. Carol Miller, 'Education mandated Cost Network, introduced themselves and appeared in conjunction with this item. Mr. Petersen'stated that he agreed with the staff recommendation to find a state mandated program.

Member Creighton made a motion to adopt the staff recommendation; Member Shuman seconded the motion. The roll call vote on the motion was unanimous. The motion carried,

Item 11 Review Pursuant to Attorney General's Opinion
No. 88-702
Vehicle Code Section 27465
Chapter 1567, Statutes of 1984
Minimum Tire Tread

Mr. Gary D. Hori, Legal Counsel, Commission on State Mandates, summarized Item 11. Mr. Keith Petersen, Legislative Financial Specialist, San Diego Unified School District, and Ms. Carol Miller, Education Mandated Cost Network, introduced themselves and appeared on this item. A short discussion followed.

Member Shuman made a motion to adopt the staff recommendation; Member Creighton seconded the motion. The roll call vote on the motion was unanimous. The motion carried.

Executive Director Eich advised that the agenda had been completed, and then stated it was an appropriate time to move into closed executive session to discuss litigation as permitted by Government Code section 11126, subdivision (q)(l). Chairperson Frick recessed into executive session at 11:32 a.m.

Regular session reconvened at 11:40 a.m. Chairperson Frick stated that the only items discussed in closed executive. session were those litigation matters that were set forth in the agenda. There being no further business, Chairperson Frick adjourned the meeting at 11:41 a.m.

Robert W. Eich

ROBERT W. EICH, Executive Director

RWE/WP0377h

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

'Claim of: County of Santa Clara, Claimant	No. CSM-4282 Chapter 1747, Statutes of 1984 Title Chapter 2, 1274, Div. Statutes of 1985 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

COURT PAPER
STATE OF CALIFORNIA
STD. 113 IRE". 8-721

85 34789

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

1. 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. Backsround

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's 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's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. Part 104.33. The ERA and its implementing regulations, 34 C.F.R. section 300.1 et seq., establish procedural and substantive standards for educating handicapped students. The ERA 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 resourdes 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.

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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)(l), 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.

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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 programmatic description of each of the services to be provide: 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 197.5 (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."

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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.

WP0258h

DECLARATION OF SERVICE BY MAIL

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 and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On May 8, 1990, I served the attached Statement of Decision regarding Handicapped and Disabled Students by placing a true copy thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid*

Ms. Susan A. Chapman
County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Fl., East Wing
San Jose, CA 95110

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 8, 1990, at Sacramento, California.

Sharyn Slivkov

Sharyn Slivkov, Office Technician

0375h

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
Thursday, March 28, 1991
10:00 a.m.
State Capitol, Room 437
Sacramento, California

A. ROLL CALL

RULEMAKING AND INFORMATIONAL HEARINGS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

B. MINUTES

Item 1 Hearing of February 28, 1991

C. PARAMETERS AND GUIDELINES

Item 2 Chapter 1747 Statutes of 1984
Chapter 1274 Statutes of 1985
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

D. STATEWIDE COST ESTIMATE

Item 3 Chapter 1422, Statutes of 1982
Elections Code Sections 1450-1456
Permanent Absent Voters

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

E. STATEMENTS OF DECISION

Item 4 Chapter 268, Statutes of 1984 .
Chapter 917, Statutes of 1987
Proposed Financial Reporting System (K-12)
Pilot Project Manual
California School Accounting Manual, 1988 Edition
California School Accountins Reauirements

Item 5 California Regional Water Quality Control Board
Order Nos. 85-71, 88-46, 88-86, 89-114, 90-16, and 90-55
Treatment Plant

F. TEST CLAIM

Item 6 Chapter 797, Statutes of 1979
Education Code Section 1245
State Department of Education Form J-380
Annual Program Cost Data Report

G. INCORRECT REDUCTION CLAIMS

Item 7 Chapter 1347, Statutes of 1980
Scoliosis Screening

Item 8 Chapter 894, Statutes of 1977
Chapter 496, Statutes of 1979
Chapter 1333, Statutes of 1980
Proficiency in Basic Skills

CLOSED EXECUTIVE SESSION

Discussionof litigation matters pursuant to Government Code section 11126, subdivision (q)(1)

Long Beach Unified School District v. State of California (1990) 225 Cal.App.3d 155

Note : All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Robert W. Eich, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP2223A(3)

ITEM 2

PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

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WP1564A(2)

Hearing: 3/28/91
File: CSM-4282
Staff: Stephen R. Lehman
WP 0768s

PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students .

Executive Summarv

These proposed parameters and guidelines are for the mandate found in Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Code of Regulations, Division 9.

The Department of Finance finds that the claimant's proposed parameters and guidelines properly reflect the Commission's statement of decision, but recommends the Commission defer any action on the parameters and guidelines until anticipated litigation is concluded.

The State Controller's Office finds the claimant's proposed parameters and guidelines to be a proper reflection of the Commission's decision, and recommends two technical changes.

The City and County of San Francisco states that it objects to the proposed parameters and guidelines, because the parameters and guidelines limit reimbursement for mental health services to a county's ten percent share of its annual Short-Doyle program.

Staff finds the claimant's proposed parameters and guidelines to be accurate and along with the Controller's technical changes, recommends the adoption of the staff proposed parameters and guidelines in Attachment A.

Claimant

County of Santa Clara

Chronolosv

8/17/87 Test Claim filed with the Commission on State Mandates (Commission).

1/28/88	Commission hearing on options for adjudicating the test claim. Commission refers claim to Office of Administrative Hearings.
12/1/88	Test claim hearing before an Administrative Law Judge (AU).
4/25/89	Staff receives proposed decision from AU.
5/31/89	Attorney General's Office requests continuance from July 27, 1989 hearing. Claim set for September 21, 1989.
9/21/89	Commission hearing. The attorney representing the state was unable to attend the Commission hearing. Commission continues the proposed ALJ decision to its November 30, 1989 hearing.
11/30/90	Commission hearing. Commission directs staff to amend the proposed decision to acknowledge a mandate relative to the activities'of the Individualized Education Program (IEP) and case management process put upon the counties relative to the population of special education students, and present its decision and its recommendation.
4/26/90	Commission adopts statement of decision.
10/9/90	Commission receives claimant's proposed parameters and guidelines. (Attachment E)

Summarv 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 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).

Recommendations

The Department of Finance (DOF) has reviewed the claimant's proposed parameters and guidelines and finds that the proposal is a "fair reflection" of the Commission's statement of decision. However, the DOF states that it has formally requested the Attorney general to initiate the appropriate legal action necessary to set aside the Commission's statement of decision. Consequently, the DOF recommends the Commission defer any action on the proposed parameters and guidelines until a court has rendered a decision in this matter. (Attachment B)

The State Controller's Office (SCO) states that the claimant's proposed parameters and guidelines properly reflect the Commission's mandate finding. In addition, the SCO also provided technical comments. (Attachment C)

The City and County of San Francisco has submitted comments on the claimant's proposed parameters and guidelines.

Specifically, the City and County of San Francisco objects to the parameters and guidelines limiting reimbursement of psychotherapy or other mental health services to the county's share of its Short-Doyle program (i.e., ten percent). (Attachment D)

Staff Note

Staff agrees with the SCO's recommendation in its entirety. Therefore, the recommended technical changes by the SCO have been included in the staff's proposed parameters and guidelines (Attachment A). In addition, because the changes recommended by the SCO are noncontroversial, they will not be discussed further.

Staff Analysis

Issue: Are the claimants' proposed parameters and guidelines an accurate reflection of the Commission's statement of decision? Is so, should the Commission adopt parameters and guidelines for this mandate?

Staff has reviewed the claimant's proposed parameters and guidelines, and like the DOF, finds that the proposal is an accurate reflection of the Commission's statement of decision.

Specifically, the statement of decision adopted by the Commission (Attachment F), concludes that county participation in the mental health assessment for "individuals with exceptional needs," and participation on the expanded IEP team, and providing case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," is a new program or higher level of service. 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 statement of decision also concludes that the providing of 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 are a part of the county's annual Short Doyle plan. Thus, any costs related thereto are subject to the current cost sharing formula of the Short-Doyle Act. Under this formula, 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. Therefore, only ten (10) percent of such program costs are costs mandated by the state and reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

As stated earlier, the City and County of San Francisco objects to the proposed parameters and guidelines limiting reimbursement of mental health services to the county's the ten (10) percent Short-Doyle share. Staff finds that the City and County are continuing to argue the issues in the test claim file by the claimant. Based upon the Commission's adoption of the statement of decision, the issue of whether mental health services are provided under a county's Short-Doyle program has already been addressed, and thus are not relevant to the Commission's adoption of the claimant's proposed parameters and guidelines.

Staff would note that based on the arguments presented in its test claim, the claimant shares the City and County of San Francisco's view on the application of the Short-Doyle cost sharing formula to the mental health services provided in this mandate. Furthermore, the claimant has filed a petition for a writ of mandamus on the Commission's decision (Attachment G). In its petition, the claimant is asking the superior court to vacate and overrule only that portion of the Commission's decision which determined that certain mental health services, pertaining to the legislation and regulations in question, are a part of the county's Short Doyle program.

The claimant's proposed parameters and guidelines are limited to the reimbursement of "costs mandated by the state" related to the state mandated program set forth in the Commission's statement of decision.

In addition, the DOF states that it too will be initiating legal proceedings to overturn the Commission's decision. Consequently, the DOF recommends the Commission defer any further action until a court has rendered a decision on whether the Commission's decision is proper. Staff disagrees with the DOF on this matter.

At the present time, the claimant's petition does not request that a court order be issued to stay or stop the Commission's procedures nor has any other party filed for such a request. Thus, until a court order directs the Commission to vacate its decision, or to cease any further action on the claim, the Commission's statement of decision is considered to be correct. Consequently, staff does not find any legal basis to delay consideration of the adoption of the proposed parameters and guidelines. Accordingly, staff recommends that the commission proceed with its consideration of the proposed parameters and guidelines, as well as the subsequent development of a statewide cost estimate and request for an appropriation from the Legislature in a Commission claims bill.

Staff Recommendation

Staff recommends the Commission adopt the staff proposed parameters and guidelines contained in Attachment A. Staff proposal contains the technical *changes* recommended by the SCO., Additions and deletions are shown with underlining and strikeouts, respectively.

STAFF PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274; Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 through 60200
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 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 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).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April ~~27~~ 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 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, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated dosts for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3) of the Gov. Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

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. Reimbursable Activities Not Subject to the Short-Doyle

Act (IEP Participation Costs, Including Assessment and Case Management):

1. The scope of the mandate is 100% reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are 100% reimbursable:

   a. Mental Health assessment and recommendation (Gov. Code, section 7572, subd. (c).)

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

   c. Attendances at IEP meetings when requested. (Gov. Code, section 7572, subd. (d) (1).)

   d. Review of independent assessment submitted by IEP team. (Gov. Code, section 7572, subd. (d) (2).)

   e. Interview with child and family.

   f. Collateral interviews as necessary.

   g. Review of Records.

   h. Psychological testing as necessary.

   i. Psychiatric assessment as necessary.

   j. Observation of child at school.

   k. Residential placement (Gov. Code, section 7572.5.)

      1) Expanded IEP team review.

      2) Identification of out of home placement.

      3) Case management

      4) Six month review.

B. Reimbursable Activities Subject to the Short-Doyle Act (Mental Health Treatment Services):

1. The scope of the mandate is 10% reimbursement.

2. For each eligible claimant, mental health treatment services pursuant to an IEP are 10% reimbursable. These services can include, but are not limited to, the following:

   a. Outpatient.

   b. Collateral,

   c. Individual.

   d. Group therapy

   e. Day treatment.

VI CLAIM PREPARATION

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

A. Attach a statement showing the actual increased costs incurred:

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. Allowable Overhead Costs. Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

4. Supporting Data. For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence and the validity of the costs. These documents must be kept on file and made available at the request of the State Controller.

B. Cost Report. The claim may be prepared based on the agency's annual cost report and supporting documents for the period of time beginning July 1, 1986. The cost report is prepared based on regulations and format specified in the State of California Department of Mental Health Cost Reporting/Data Collection (CR/DC) Manual.

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. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

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.

State of California

CSM Attachment B

MEMORANDUM

RECEIVED
JAN 31 1991
COMMISSION ON
STATE MANDATES

January 31, 1991

To : Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates

From : Department of Finance

Subject: Proposed Parameters and Guidelines for Claim No. CSM-4282, Based on Chapter 1747/84, Chapter 1274/85 and Title 2, Division 9, CCR, "Handicapped and Disabled Students"

We have reviewed the proposed parameters and guidelines for the statutes and regulations upon which this test claim is based which were prepared by the County of Santa Clara and transmitted in your October 24, 1990 memorandum. The Commission determined that the program shifted certain responsibilities for Individualized Education Programs (IEPs) for handicapped students from local educational agencies to local mental health programs. While we would agree that the proposal generally is a fair reflection of the Commission's "Statement of Decision", we would like to advise you that the Department of Finance has formally requested the Attorney General to initiate the appropriate legal action to set aside that decision. Accordingly, we recommend that the Commission defer my further action on the issue until the court renders its decision in the matter.

If you have any questions regarding this memorandum, please contact James Apps at (916) 324-0043.

Fred Klass
Assistant Program Budget Manager

cc: Mr. Charlton Holland, Attorney General's Office
Mr. N. Eugene Hill, Attorney General's Office
Ms. Marcia Bedwell, Attorney General's Office
Mr. Harlan Van Wye, Attorney General's Office
Mr. Carl Elder, Department of Mental Health
Mr. Norman Black, Department of Mental Health
Ms. Lynn Whetstone, Department of Mental Health
Mr. Robert Agee, Department of Education
Ms. Sandra Shewrey, Health and Welfare Agency
Ms. Rima H. Singh, County of Santa Clara

LR:CORR/C000019.620

GRAY DAVIS

Controller of the State of California

P.O. BOX 942850

SACRAMENTO, CA 94250-0001

REC..
JAN 17 1991
COMMISSION ON
STATE MANDATES

January 15, 1991

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

We have reviewed the above subject proposal and, except for the following two comments, believe that the mandated activities are properly reflected.

Comments: 1. Section "II. COMMISSION ON STATE MANDATES' DECISION" reflects the hearing date of "April 27, 1990". We believe the hearing date was April 26, 1990.

2. Section "VI. CLAIM PREPARATION", "A." "4. Supporting Data". This language does not appear to be needed as Section "VII. SUPPORTING DATA" address the subject in greater detail.

If you have any questions, please call Glen Beatie at (916) 323-8137.

Sincerely,

Glenn Haas

Glenn Haas, Assistant Chief
Division of Accounting

GH/GB:jam
SC01089

City and County of San Francisco:

Office of City **Attorney**

Louise H. Renne,
City Attorney

Paula Jesson
Deputy City Attorney
(415) 554-4232

January 30, 1991

RECEIVED
JAN 30 1991
COMMISSION ON
STATE MANDATES

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Proposed Parameters and Guidelines
CSM-4282
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

I am writing on behalf of the City and County of San Francisco in response to the Proposed Parameter and Guidelines in this matter,

We object to that portion of the Proposed Parameters and Guidelines which states that services provided by counties pursuant to Welfare and Institutions Code Section 5651(g) are not fully reimbursable.

Welfare and Institutions Code Section 5651(g) requires counties to include in their annual Short Doyle Plan a "description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services." The services required by Government Code Section 7576 are "psychotherapy or other mental health services . . . when required in the child's individualized education program . . . ."

Mental health services provided by counties under the Short Doyle Act are subject to a cost sharing formula, with the State paying 90% and the county 10% of the cost of the services identified in the county's approved Plan (the county's 10% payment requirement being generally referred to as the county's "match"). Apparently because of the 90%-10% State-County cost sharing formula, the Proposed Parameters and Guidelines limit counties' reimbursement to their 10% match requirement.

This limitation on reimbursement would make sense if the amount that the State allocated to the county plus 10% equalled the amount needed to provide psychotherapy and mental health services to eligible children. In fact, this is not the case. The cost of providing services to eligible children far exceeds the amount that the State pays to the county for these services.

For example, the State allocated $440,000 to San Francisco for these services in Fiscal Year 1990-91. This is far short of the amount necessary to provide services to eligiblechildren. San Francisco spent over $2 million in providing such services last fiscal year.

For these reasons, San Francisco objects to that portion of the Proposed Parameters and Guidelines that limits counties' reimbursement for services provided under Government Code Section 7571 and 7576 to its 10% match requirement.

Very truly yours,

LOUISE H. RENNE
City Attorney

Paula Jesson

PAULA JESSON
Deputy City Attorney

cc: Rima H. Singh
Santa Clara County Counsel

Monique Zmuda
San Francisco Department of Public Health

1204H

County of Santa Clara
Office of the County Counsel

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-2111
(408) 292-7240 (FAX)

OCT 0 9 1990

Steven hf. Woodside
County Counsel

October 4, 1990

Mr. Stephen Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street
Sacramento, CA 95814

Re: Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 through 60200
Handicapped and Disabled Students

Dear Mr. Lehman:

Enclosed please find the Proposed Parameters and Guidelines in the above-referenced matter.

Thank you for your patience.

STEVEN M. WOODSIDE
County Counsel

RIMA H. SINGH
Deputy County Counsel

RHS:cc
Enclosures

cc: Dave Wytock
Bob Martinez

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chief Assistant County Counsel: Ann Miller Ravel
Chief Deputies: Robert J. Menifee, Susan G. Levenberg, William L. Anderson

PROPOSED PARAMETERS AND GUIDELINES

Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 through 60200
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, California Code of 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.

In accordance with the decision of the Commission on State Mandates, the provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service wthin 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 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).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April 27, 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 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, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3) of the Gov. Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

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. Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Including Assessment and Case Management):

1. The scope of the mandate is 100% reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are 100% reimbursable:

a. Mental Health assessment and recommendation (Gov. Code, § 7572, subd. (c).)

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

c. Attendances at IEP meetings when requested. (Gov. Code, § 7572, subd. (d) (l).)

d. Review of independent assessment submitted by IEP team. (Gov. Code, § 7572, subd. (d) (2).)

e. Interview with child and family.

f. Collateral interviews as necessary.

g. Review of Records,

h. Psychological testing as necessary.

i. Psychiatric assessment as necessary

j. Observation of child at school.

k. Residential placement (Gov. Code, § 7572.5.)

1). Expanded IEP team review.

2) Identification of out of home placement.

3) Case management.

4) Six month review.

B. Reimbursable Activities Subject to the Short-Doyle Act (Mental Health Treatment Services):

1. The scope of the mandate is 10% reimbursement.

2. For each eligible claimant, mental health treatment services pursuant to an IEP are 10% reimburseable. These services can include, but are not limited to, the following:

a Outpatient.

b. Collateral.

c. Individual.

d. Group therapy,

e. Day treatment.

VI. CLAIM PREPARATION

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

A. Attach a statement showing the actual increased costs incurred:

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. Allowable Overhead Costs. Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

4. Supporting Data. For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence and the validity of the costs, These documents must be kept on file and made available at the request of the State Controller.

B. Cost Report. The claim may be prepared based on the agency's annual cost report and supporting documents for the period of time beginning July 1, 1986. The cost report is prepared based on regulations and format specified in the State of California Department of Mental Health Cost Reporting/Data Collection (CR/DC) Manual.

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. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

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.

RHS:cc
cc-#2

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 6000C 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

T PAPER
OF CALIFORNIA
13 (REV 8-72)

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. Backsround

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's 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's jurisdiction, regardless of the nature or severity of the person's 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 ERA, 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.

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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)(l), 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)(l), 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 programmatic description of each of the services to be provide: 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 desdription 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 1.133, 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.

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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 programmatic description of each of the services to be provide: 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."

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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.

WP0258h

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San Jose, California 95110
Telephone: (408) 299-4819

Attorneys for Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

COUNTY OF SANTA CLARA Petitioner, vs. STATE OF CALIFORNIA, COMMISSION ON STATE MANDATES OF THE STATE OF CALIFORNIA, and GRAY DAVIS, in his official capacity as Controller of the State of California, DOES 1 through 100, inclusive. Respondents.	Case No, 702212 NOTICE OF MOTION AND MOTION OF PEREMPTORY WRIT OF MANDATE; (C.C.P. § 1094.5)
STATE OF CALIFORNIA and the Directors of the State Departments of Finance, Education, Health, and Mental Health in their official capacities, Real Parties in Interest.	Date: APRIL 30, 1991 Time: 9:00 a.m. Dept: 2 Judge Read Ambler

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on APRIL 30, 1991, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 2 of the above-entitled court located at 191 North First Street, San Jose, California 95113, Petitioner County of Santa Clara, will

move the Court pursuant to California Court of Civil Procedure section 1094.5 for a Peremptory Writ of Mandate:

1. Compelling the respondents, State of California, Commission on State Mandates and Gray Davis, to vacate the decision denying, in part, that Chapter 1747 Statutes of 1984, Chapter 1274 Statutes of 1985, and the implementing regulations, mandated a new program or a higher level of service of an existing program, for which the state must reimburse local agencies;

2. Finding that Chapter 1747 Statutes of 1984, Chapter 1274 Statutes of 1985, and the implementing regulations, do mandate a new program or a higher level of service of an existing program, for which the state must reimburse local agencies;

3. Ordering respondents to process Petitioner's claim in accordance with that determination,

This motion is based upon this notice, the Petition, the attached Memorandum of Points and Authorities, and portions of the administrative record of the Commission on State Mandates, and all other pleadings and papers on file, deemed to be on file, or of which notice may be taken at the time this motion is heard, and all arguments made at the hearing.

Dated: 2 4 91.

Respectfully submitted

STEVEN M. WOODSIDE
County Counsel

RIMA H. SINGH
Deputy County Counsel

Attorneys for Petitioner

Late Filing- Item 2

State of California

Department of Mental Health

Memorandum

To : Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates

Date: March 18, 1991

RECEIVED
MAR 19 1991
COMMISSION ON
STATE MANDATES

From : Office of Legal Services

Telephone : 3-8193

Subject : Claim No. CSM-4282'
Proposed. Parameters and Guidelines,
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations,
Division 9, Sections 60000 through 60200
"Handicapped and Disabled Students"

Please find attached comments of this Department concerning the Proposed Parameters and Guidelines for the above-entitled claim submitted by the County of Santa Clara. These comments were not previously submitted due to an apparent misunderstanding by the Department that further Commission action would be deferred as a result of litigation concerning this matter,

If you have any questions concerning the above, please contact Norman Black with the Office of Legal Services at 3-8193.

Carl Ade for

Norman Black
Senior Staff Counsel

Attachment

Department of Mental Health Comments
Claim No. CSM-4282
Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2,. California Code of Regulations,
Division 9, Sections 60000 through 60200
"Handicapped and Disabled Students"

The Proposed Parameters and Guidelines (PPG's) submitted by Santa Clara County are not consistent with the decision adopted by the Commission on State Mandates on April 26, 1990.

The PPG's are too broad and include a number of activities as reimbursable mandates which are not reimbursable as mandates under the language of the adopteddecision. This overbroad inclusion of activities is largely the result of the PPG's failure to specify conditions and requirements attached to the activities as set forth in the underlying statutes and referenced in the Adopted Decision (AD). The following examples are illustrative:

1. On page 3 of the PPG's, item 2.a. lists simply "mental health assessment and recommendation." However, as noted in the specific findings on page 10 of the (AD), a written mental health assessment report is required "whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department" (emphasis added; third paragraph of the AD).

2. On page 3 of the PPG's, item 2.k.1. lists "Expanded IEP team review.!' However, the second sentence of the. fourth paragraph on page 10 of the AD reads "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." (emphasis added),.

3. On page 3 of the PPG's, item 2.k.3. lists "Case management." However, this does not accurately reflect the required role of the local mental health program, nor when that role is mandated. The fifth paragraph on page 10 of the AD clearly states that the "local mental 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." (emphasis added)

Further, the PPG's should be reorganized so as to more clearly coincide with the underlying statutes and the AD. For example, on page 3 of the PPG's, items 2.e. through 2.j. are listed as if they are independent activities and independently reimbursable. These activities should be listed as sub-items under mental health assessment.

Finally, the PPG's appear to ignore the categorical funding which has been available in the Budget Act since the inception of the program. These separate, categorical funds are dedicated for the purpose of paying the costs of activities and services which are the subject of this claim. The counties received allocations of this funding to pay for these activities and services. Matching requirements were waived during fiscal years 1986-87 and 1987-88 (see item 4440-131-001 of the Budget Acts of 1986 and 1987). Accordingly, there should be no reimbursement up to the amount of the allocation for these years and reimbursement only for the county match thereafter. The PPG's should address this ongoing funding. There should be documentation required that the County has exhausted its allocation of categorical funding prior to claiming reimbursement from the state mandate process.

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

ORIGINAL

PUBLIC HEARING

STATE CAPITOL BUILDING

ROOM 437

SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 28, 1991

10:00 a.m.

Reported by:

Peter Petty

COMMISSIONERS PRESENT

Susanne Burton, Chairperson

Fred R. Buenrostro, Jr., Vice Chairperson

Robert C. Creighton

D. Robert Shuman

Richard P. Sybert

STAFF PRESENT

Robert W. Eich, Executive Director

Stephen R. Lehman, Deputy Executive Director

Gary D. Hori, Legal Counsel

Michael Coleman, Program Analyst

Ellen O'Connor, Program Analyst

ALSO PRESENT

Carol A.Miller, School Services of California, Education Mandated Cost Network, Sacramento

Keith Petersen, Legislative Financial Specialist, San Diego City Schools

Lawrence E. Gercovich, Deputy Controller, State Controller's Office

Rima Singh, Deputy County Counsel, Santa Clara County Counsel's Office, San Jose

Allan P. Burdick, David M. Griffith and Associates, Ltd., Carmichael

Carl Elder, Chief Counsel, State Department of Mental Health

Thomas M. Griffin, Girard & Griffin, Sacramento

I N D E X

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Title 2, California Code of Regulations
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Reporter's Certificate 74

1 EXECUTIVE DIRECTOR EICH: We have a transcript of
2 that hearing; we'll be more than happy to include that
3 portion in our, in the agenda when this comes back.
4 MEMBER CREIGHTON: Good.
5 CHAIRPERSON BURTON: okay. I think we need to
6 recognize that we're at the point where we are now. The
7 issues have been raised, the staff has been willing to Look
8 into the past years claims at the request of the district,
9 and naw I think we have to deal with them on the merits.
10 And, you know, just from a practical and a legal
11 point of view, as well, to see what substance there is and
12 request that the district makes for a claim that goes back
13 further than you may have expected it to.
14 Okay, thank you.
15 The next item will be?
16 EXECUTIVE DIREGTOR EICH; The next item would be
17 item No, 2.
18 CHAIRPERSON BURTON: Number 2, okay. I will
19 excuse myself and I'm not sure who to turn the gavel to,
20 EXECUTIVE RIRECTOR EICH: Mr. Buenrostro is our
21 Vice Chair.
22 CHAIRPERSON BURTON: Okay. Thank you.
23 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Item 2, our
24 proposed parameters and guidelines for a mandate finding by
25 the Commission dealing with handicapped and disabled

1 students.

2 The claimant, the County of Santa Clara, has
3 submitted the proposed parameters and guidelines: the
4 Department of Finance and the State Controller both find
5 that the proposed parameters and guidelines appear to
6 properly reflect the Commission's decision on this mandate.

7 The City and County of San Francisco has
8 submitted a statement stating that it objects to the
9 proposed parameters and guidelines because they limit
10 reimbursement of mental health services to a county's 10
11 percent share of its Short-Doyle program.

12 We also, the staff finds that the proposed
13 parameter and guidelines are accurate along with, and
14 therefore along with the Controller's technical changes, we
15 recommend the adoption of the staff-proposed parameters and
16 guidelines bound in attachment A.

17 And I would also note that there is a late filing
18 before you, submitted by the Department of Mental Health,
19 and they have taken issue with certain-provisions of the
20 proposal.

21 And I believe there is a representative here from
22 the Department of Mental Health. Would you please come up.

23 VICE CHAIRPERSON BUENROSTRO: Before we get too
24 far along, the issue of the late filing is something that
25 I'd like to get the Commission Members' feeling on. I

1 think that's the initial threshold issue that we should
2 either take action on the claim to continue it, or agree
3 that it's been submitted with no time for parties to
4 respond,
5 EXECUTIVE DIRECTOR EECH: May I address that?
6 VICE CHAIRPERSON BUENROSTRQ: Certainly,
7 EXECUTIVE DIRECTOR EICH: Often when we get a
8 late filing that appears substantive like this, we will
9 continue the item. I didn't here because we have a
10 threshold issue before we get to the merits of the
11 parameters and guidelines, that being whether or not in
12 light of the litigation the Commission wishes to pursue
13 with the parameters and guidelines and the subsequent
14 statement of cost estimate.
15 And I'm hoping that we can get that issue behind
16 us and then look at the merits of the parameters and
17 guidelines.
18 And on the merits, staff would recommend it would
19 not adopt the parameters and guidelines until the claimant
20 and staff had a chance to examine in more detail the late
21 filing from the Department of Mental Health.
22 VICE CHAIRPERSON BUENROSTRO: I would be willing
23 to listen to Members' thoughts on it, but my thought is to
24 do it in reverse. I would like to discuss the issue of the
25 litigation that's currently been filed, But I think that

there might be a more appropriate way to do that in executive session, and I think that proper notice could be given to do that at the next meeting. Or the May meeting, giving the claimants time to respond to the late filing.

Members?

MEMBER SHTJMAN: Well, I personally, because of the litigation and the threat of litigation, I don't know that that should stop the Commission from carrying out its funotion, that is to adopt the parameters and guidelines.

10 If a court were to enjoin us from doing so, I
11 think that's one thing, but just because somebody's
12 threatening to sue you, I don't see that that should stop
13 us from fulfilling our obligation,
14 If we're satisfied with these parameters and
15 guidelines then I think we ought to go ahead and adopt
16 them.
17 MEMBER CREIGHTCJN: I would agree with Mr. Shuman
18 on that score, however, I would be concerned about our
19 taking action today in view of maybe the late filing.
20 MEMBER SHUMAN: Well, the late filing, I would
21 suggest that, it looks to me like it's a very short letter.
22 I would suggest that we go ahead and accept it, and deal
23 with the matter before us. You know, I'm afraid to keep
24 putting things over and it's going to eventually catch up
25 to us.

1 If anybody hasn't had a chance to read it, we
2 could quickly read over this. It doesn't look like there's
3 a lot of complicated information here.
4 The fact that these -- this I would say I have
5 seen a couple days ago, so I don't know about the rest of
6 the Commissioners, but I have seen this.
7 That's just my opinion.
8 VICE CHAIRPERSON BUENROSTRO: Mr. Sybert.
9 MEMBER SYBERT: I'd like to ask the staff, do we
10 have the legal discretion to defer, or are we under
11 statutory mandate that we must adopt parameters and
12 guidelines within an "x" period of time?
13 MR. HORI: We are not under an obligation to
14 follow within, or to adopt parameters and guidelines within
15 a specific period of time.
16 MEMBER SYBERT: So we do have the legal authority
17 to make a decision to defer on policy grounds?
18 MR. HORI: Policy being that the late filing--
19 MEMBER SYBERT: No, policy being that there's a
20 lawsuit pending, that may make this a lot af wasted motion.
21 MR. HORI: We could. That would be a basis. on
22 the other hand, Mr. Shuman brings up the other side of the
23 argument, as well.
24 MEMBER SYBERT: Sure. And is there a date
25 certain by which we know the superior court is going to say

1 yea or nay? Is there a hearing date set?

2 MR. HORI: There is a hearing date set, but I

3 believe in discussing the matter with counsel from Santa

4 Clara, I've requested a continuance on that and she has

5 acquiesced over the phone.

6 So I would say that there is no definite date.

7 There's a preliminary date of April 30th. It's my

8 understanding that the Attorney General's Office may also

9 request a continuance of that.

10 MEMBER SYBERT: And if we adopt these parameters

11 and guidelines, is that going to be followed by a whole

12 bunch of claims before the court has a chance to make its

13 ruling?

14 EXECUTIVE DIRECTOR EICH: Upon adoption of the

15 parameters and guidelines, we will then develop a statewide

16 cost estimate, bring that back to the Commission for

17 approval.

18 That estimate would then go into a Commission-

19 sponsored claims bill and we would request an appropriation

20 from the Legislature at that point in time.

21 MEMBER SYBERT: And all of that activity could be

22 rendered moot if the court subsequently says this was an

23 incorrect decision?

24 EXECUTIVE DIRECTOR ETCH: That's correct. That

25 would be the result.

1 MS. SINGH: May I address this issue?
2 VICE CHAIRPERSON BUENROSTRO: Please.
3 MS. SINGH: The legal action that's pending does
4 not affect the current proceedings, because the legal
5 action that's pending is only on the portion of the
6 Commission's decision which held that we're not entitled to
7 reimbursement for treatment costs.
8 So whatever happens in court on April 30th or
9 beyond that does not affect the parameters and guidelines
10 on the issue of assessments and IEP participation, which is
11 what the parameters and guidelines are concerned with.
12 So if the Commission is going to defer this
13 matter just because of pending litigation, I do not believe
14 that that's good cause for a deferral. And that's the
15 standard, I believe, that the Commission has to have good
16 cause in exercising its discretion.
17 The Commission cannot exercise its discretion in
18 an arbitrary and capricious fashion.
29 So I'm requesting the Commission to take into
20 account the fact that the pending litigation does not
21 affect the current decision in the current parameters and
22 guidelines,
23 VICE CHAIRPERSON BUENROSTRO: Could we get your
24 name for the record, please?
25 MS. SINGH: Rima Singh from the County Counsel's

1 Office. Santa Clara County,

2 VICE CHAIRPERSON BWENROSTRO: Counsel, in the
3 materials we have there is a threat of litigation by the
4 Department of Finance. I assume that's the intervention
5 that might occur by the Attorney General's Office.

6 And I also would assume that that would go to the
7 issue that you say is not affected by the current
8 litigation?

9 MS, SINGH: Well, I can't say what the effect of
10 litigation is aimed at, because nothing has been filed.
11 And if something is filed then it would be appropriate for
12 the Department of Finance to then get a stay order or some
13 kind of order from the court. And since there's nothing on
14 file, I do not believe that this Commission should exercise
15 its discretion in this fashion.

16 MEMBER SYBERT: What's the April 30th hearing
17 date for then if there's nothing on file?

18 MS. SINGH: Well, that's the writ that has been
19 filed by the County of Santa Clara. If you look at your
20 decision there are two parts to it. One portion of the
21 decision states that the County of Santa Clara is entitled
22 to reimbursement for costs of mental health assessments and
23 IEP participation in case management services.

24 There's anther portion of the decision which
25 states that the County of Santa Clara is not entitled to

1 treatment costs beeause they are encompassed in the
2 existing Short-Doyle program.
3 We have no quarrel with the first portion of the
4 decision. We are only appealing that portion of the
5 decision which states that the County of Santa Clara is not
6 entitled to reimbursement of treatment costs.
7 The parameters and guidelines before this
8 Commission address the portion of the decision with which
9 we have no quarrel.
10 MEMBER SYBERT: Does anybody else have any
11 quarrel with it?
12 MS. SINGH: The Department of Finance has
13 submitted a letter to the effect that they don't like this
14 decision. And they have directed somebody to file court
15 proceedings to have it overturned. But there has been no
16 court proceedings filed by them.
17 MEMBER SYBERT: The April 30th date is your
18 unhappiness with the second half?
19 MS, SINGH: Yes.
20 MEMBER SYBERT: Ok&y. Staff, do you concur with
21 that assessment?
22 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Yes. That's
23 correct. To just to simplify it, treatment costs in these
24 parameters and guidelines are limited to 90 percent of
25 their costs -- excuse me, 10 percent of their costs,

1 because it's presumed that the other 90 percent comes from
a Short-Doyle program funding.
3 They are appealing to get the other 90 percent.
4 or -- yes,, the 10 percent share back, excuse me.
5 MEMBER SYBERT: Do you concur with the claim that
6 the legal action is actually pending, that there's at
7 least, right now, a drop-dead date on, does not affect that
8 portion of the earlier parameters and guidelines that are
9 really at issue here?
10 EXECUTIVE DIRECTOR EICH: May I respond to that?
11 My thinking is that if the county prevails in their action
12 it will impact the parameters and guidelines and it will
13 impact the cost estimate. The parameters and guidelines,
14 the Commission's statement of decision would have to be
15 modified to reflect the court decision, which would be to
26 provide full reimbursement for the treatment costs. Which
17 would impact the P&Gs and that would impact the cost
18 estimate,
19 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Either the
20 county's litigation or the threat of Finance's litigation,
21 either one of them will have an impact on these parameters
22 and guidelines as well as the decision,
23 MEMBER SHUMAN: Well, on that point, one other
24 thing. My experience of this kind of litigation is it can
25 drag on for quite awhile. We're not just talking about a

1 preliminary determination by a trial court, we're talking
2 about probably something that's going to go on up through
3 the appellate courts, and meanwhile the county is being
4 denied that portion of the reimbursements that the
5 Commission has determined they're entitled to.
6 Right or wrong, that's what we determined, and I
7 don't know why their recovery of that should be stayed
a simply because there's some threat of litigation.
9 If it's stayed because the court says so, then
10 that's one. But for us to presume that that's what a court
11 is going to do, or that it might do, then I think that's
12 unfair to the counties.
13 VICE CHAIRPERSON BUENROSTRO: I have to agree,
14 I'm sympathetic that the counties get the money we told
15 them they are entitled to. ,I do agree also that this case
16 is not going to stop at the superior court.
17 The Short-Doyle funding limitations we've placed
18 on every claim that has been affected by that could
19 potentially be affected by the outcome of this decision,
20 so it's not going to stop just at the superior court.
21 We have someone else who'd like to talk?
22 MR. BURDICK: Mr. Chairman and Members, Allan
23 Burdick representing the County Supervisors Association of
24 California on this issue. and since it's kind of a, I
25 think, a precedent setting issue in a sense of talking

about whether or not parameters and guidelines in the process should be stopped by the threat of potential litigation, I thought maybe I would just refresh the Commission Members and some of those who weren't here at the time of the history of a little of this and the process on this.

I don't know if Mr. Shuman remembers, but I think this was at his first hearing that Susan Chapman of Santa Clara County Counsel's Office and myself appeared before
10 the Commission asking the Commission to consider this claim.

12 At that time it was their decision to turn this
13 claim over to an administrative law judge. It went through
14 a very long, and it's been a very slow process to this
15 point in time to where we're finally getting to the point
16 of deciding whether or not the reimbursement is going to be provided or not, and I think that the Commission has spent
18 an awful lot of time discussing this particular issue.

19 At this point I think what the county is asking
20 and I think which all counties would ask is that you
21 proceed with the process on this particular claim because
22 we still have a way to go to get this through the
23 legislative process.

24 The schedule that's going now, we're developing
25 parameters and guidelines and a statewide cost estimate and

1 we requested several years ago, I don't remember how long
2 it's been, at Bob's first meeting, he probably remembers
3 better than I do, --
4 MEMBER SHUMAN: December of 87.
5 MR. BURDICK: ---that this claim be heard by the
6 Commission and moved forward and here we are, several years
7 later, finally it's still in only really the second step in
8 this particular process,
9 Thank you very much.
10 VICE CHAIRPERSON BUENROSTRO: Was it your feeling
11 that we should proceed then, Mr. Shuman?
12 MEMBER SHUMAN: Yes, I definitely feel we should.
13 I understand Mr. Sybert's comment suggesting that possibly
14 this might be a moot action, and then we'll take the next
15 step of preparing the cost estimate and that might prove to
16 be wasted effort, as well.
17 But like Mr. Burdick points out, this is a long
18 process anyway, So, I think we ought to get going with it,
19 assume what we did was correct, at this point, and go ahead
20 and adopt the parameters and guidelines.
21 As far as the late filing is concerned, I don't
22 think it's any big deal either way from what I can tell
23 from reading it.
24 MEMBER CREIGHTON: I would concur with your
25 position.

1 VICE CHAIRPERSON BUENROSTRO: We have another
2 speaker. Did you want to --
3 MR. ELDER: Yes. I'm Carl Elder with the
4 Department of Mental Health Legal Office, and I tend to
5 agree generally where the Department is not that concerned
6 overall with the parameters and guidelines except we do
7 feel they lack a certain amount of specificity.
8 Particularly with respect to, in our opinion,
9 they fail to recognize specific categorical appropriations
10 that have been made outside of the Short-Doyle funding for
11 these services and the Department, through its process, has
12 alloaated these out to the counties, and in fact, for two
13 fiscal years there was no match requirements.
14 So what we would encourage and recommend is
15 whether it's done in the parameters or guidelines, and this
16 shows my ignorance of this process, or whether it's in
17 claiming instructions, that great care be made to take into
18 account those reimbursements and staff recommendations
19 cover the area generically in their recommendations under
20 offsetting savings and other reimbursements.
21 So again, our concern is not so much with the
22 overall substance, it's just in our opinion the parameters
23 and guidelines, themselves, lack a certain amount of
24 specificity and whether or nut it would be appropriate to
25 revise them, to add a little more or whether there's

another process to insure that offsetting reimbursements are taking into account,

That would be our concern.

MEMBER CREIGHTON: Do you have any comment, Mr. Eich, about the specificity of this issue?

EXECUTIVE DIRECTOR EICH: I believe the Department of Mental Health has a good point and I agree with them, and believe we should amend into the parameters and guidelines the information that he's put forth
10 regarding the funding, that some fundages are to be
11 provided.
12 DEPUTY EXECUTIVE DIRECTOR LEHMAN: I would like
13 to see written response from the county regarding this.
14 MEMBER SHUMAN: Well, let me ask the county
15 representative, Have you had a chance to review the May
16 18th letter and the attachments?
17 MS. SINGH: Yes, I have.
18 MEMBER SHUMAN: Do you have any problem with
19 them?
20 MS. SINGH: Well, I would like to point out step
21 by step what the objections are and what my response is, if
22 I may,
23 MEMBER SHUMAN: Well, Mr. Lehman wants it in
24 writing, Do you feel comfortable in commenting at this
25 point in time?

1 MS. SINGH: I feel comfortable in commenting
2 because there is no point of disagreement here,
3 I think it's pretty clear that on item number
4 one, we're not going to be performing assessments on any
5 students other than those referred to us by the local
6 education entity, We're not drumming up business here, so
7 we have no quarrel with that.
8 On the second item, if you look at the parameters
9 and guidelines, item K talks about residential placements
10 and K1 talks about expanded IEP team review. That is in
11 the context of residential placement. So we have no
12 problem with that.
13 And the third objection on item 2K3, case
14 management again, is for persons who have been recommended
15 for residential placement. So we have no problem with
16 that.
17 And then there's another comment made on the next
18 page about reorganizing these. Items E through J, it
19 doesn't make any difference whether they're reorganized or
20 not. The fact that they are reimbursable.
21 Now there's a very important point brought up in
22 the last paragraph and I think the Commission should
23 address that. We need some clarification on what happens
24 on the categorical funding.
25 The Commission's decision did not address that

1 specifically, but I think it implied that that portion of
2 the funding was received by the counties through the Short-
3 Doyle program, and therefore it should be applied to the
4 treatment costs.
5 And that's our position.
6 VICE CHAIRPERSON BUENROSTRO: Let me see if I
7 understand what you're saying. The Department expects that
8 the block grant money should be applied as against any
9 reimbursement you might receive and you're saying the
10 opposite, is that correct?
11 MS. SINGH: What I'm saying is the Commission's
12 decision had two portions to it. One is that the counties
13 weren't entitled to reimbursement for assessment, TEP team
14 participation, and case management.
15 The second portionof the decision held that we
16 were not entitled to treatment costs because we had
17 received one funding from the state through the Short-Doyle
18 program. And my position is that this categorical funding
19 that the state has brought up today was received by the
20 county through the Short-Doyle contract.
21 So therefore if it is to be applied, it's applied
22 to the treatment portion of the decision. This funding
23 should not be used to reduce the reimbursement that we
24 received for Case management and assessment and IEP team
25 participation.

1 MR. ELDER: We would disagree with that, the
2 specific language in the budget act did not limit its
3 expenditure for that,
4 I would agree that what has to be done, it's a
5 rather complicated issue because, as I say, allocations
6 were made to each county., It may well be when one looks at
7 their allocation their costs under your decision might
8 require additional funding, depending on whether they fall
9 into the 100 percent or the 90/10 thing.
10 But what we're saying is one does have to look at
11 the moneys they receive. One does have to consider that
12 the special categorical funding for two years at least was
13 100 percent to be expended on all of these services, It
14 wasn't just limited to the treatment services.
15 And so that either the parameters and guidelines,
16 or if there is another vehicle should very carefully lay
17 out this reimbursement so that that is offset against the
18 amounts that you have determined that are owed to the
19 counties.
20 MEMBER CREIGHTON: Well, Mr. Chair, if it were
21 merely a case of the first three items here, even E through
22 J at the top of the second page, there would be no problem
23 because the counsel for the county says that she's in
24 agreement.
25 But the fact that there is a disagreement on the

final paragraph I don't see how we can approve that today if they're still disagreeing on that item.

And therefore I hate to see something laid over again because we have such a backlog, but at the same time I don't see how we can do that today.

DEPUTY EXECUTIVE DIRECTOR LEHMAN: There are two ways to look at it, if I may. The parameters and guidelines currently contain a generic statement that any reimbursement or other offsetting savings that the claimant receives has to be offset against this mandate.

You can take the position that that language addresses this problem and then hope that the state controller takes a long hard look at it with the issue of the claiming instructions, or we can put the specific categorical appropriations into the parameters and guidelines and state that they must be offset for those specific years.

If we do that I don't know what appropriations we're talking about, or exactly what years we're talking about and what amounts.

VICE CHAIRPERSON BUEWROSTRO: How have we treated categorical appropriations in the past? What precedent do we have to rely on?

EXECUTIVE DIRECTOR EICH: In those rare instances where it may have come up we would have deducted any

1 reimbursement the county would have received for--
2 VICE CHAIRPERSON BUENROSTRO: How have we treated
3 it in the P&Gs?
4 EXECUTIVE DIRECTOR EICH: Currently it's not
5 mentioned in the P&Gs.
6 VICE CHAIRPERSON BUENROSTRO: This one, but in
7 others?
8 EXECUTIVE DIRECTOR EICH: --parameters and
9 guidelines, required that reimbursables from any other
10 Source be deducted.
11 VICE CHAIRPERSON BUENROSTRO: So it's been
12 covered by the generic language that we have in these?
13 That's the question.
14 EXECUTIVE DIRECTOR EICH: Well, that's where Mr.
15 Lehman was addressing that you can argue that it's covered
16 in the generic language. I would recommend that we
17 specifically identify the appropriations that have to be
18 deducted from claimant costs.
19 DEPUTY EXECUTIVE DIRECTOR LEHMAN: I was just
20 going to add that when we do know of a specific offset, we
21 do like to mention it in the P&Gs.
22 VICE CHAIRPERSON BUENROSTRO: So we agree on
23 everything except the money?
24 EXECUTIVE DIRECTOR EICH: Actually agree that--
25 (Parties speaking simultaneously.)

1 VICE CHAIRPERSON BUENROSTRO: I'm sorry, the
2 parties, the parties.
3 EXECUTIVE DIRECTQR EICH: The parties, yes.
4 VICE CHAIRPERSON BUENROSTRO: Yes, everything but
5 the money, yes.
6 EXECUTIVE DIRECTOR EICH: Yes. The parameters
7 and guidelines should be amended to identify the
8 appropriations and make sure those costs are deducted.
9 DEPUTY EXECUTIVE DIRECTOR LEHMAN: And it sounds
10 like the claimant has a concern that these not be applied
11 to the case management costs as well as the IEP procedure,
12 and it sounds like Mental Health believes that they ought
13 to be applied against those costs, so you've got a dispute
14 there.
15 MEMBER SHUMAN: Well, was that something that the
16 Commission specifically addressed in its decision?
17 DEPUTY EXECUTIVE DIRECTOR LEHMAN: The
18 appropriations?
19 MEMBER SHUMAN: Right.
20 DEPUTY EXECUTIVE DIRECTOR LEHMAN: No.
21 MEMBER SHUMAN: Is it customary to -- I think
22 maybe Mr. Buenrostro already asked that, it's not really
23 customary, is it, to make reference to various
24 appropriations. In fact, might it not be somewhat
25 misleading if additional appropriations are made that could

be identified, and we have to amend the parameters and guidelines again if the Legislature took some action?

It seems to me that a generic statement is all you really need for something like this, then the controller is supposed to keep track of appropriations. That's one of our primary functions and know what's available for payment of what,

I think to the extent there's any confusion the statement of decision could be looked to for guidance as well as the parameters and guidelines.

MS. SINGH: The statement of decision does mention that the budget act of 1986 allocated a certain amount to the State Department of Mental Health.

EXECUTIVE DIRECTOR EICH: What page of the statement of decision?

MS. SINGH: Page 9.

EXECUTIVE DIRECTOR EICH: Page 9? That would be on page 44 of your agenda.

DEPUTY EXECUTIVE DIRECTOR LEHMAN; That is correct, but the mention of the budget act was only in relation to the fact that there was an appropriation at one time for IEP costs in the Department of Education's budget and that it was transferred to the Department of Mental Health.

VICE CHAIRPERSON BUENROSTRO: I'm not convinced

1 that I have a cleared up understanding of how we're going
2 to apply block grant funding to this claim that I'm willing
3 to vote on these P&Gs today, personally.
4 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Beyond the
5 existence, of the appropriation I think we have a dispute on
6 how the appropriation is to be applied,
7 MEMBER CREIGHTON: I would make a motion to lay
8 this item over until these matters are clarified, and if at
9 all possible, to bring it back to us at the next meeting,
10 if possible.
11 I would mean a month's delay, but I agree with
12 our Chairman, I don't feel comfortable about approving this
13 today unless we clarify it.
14 VICE CHAIRPERSON BUENROSTRO: Do we have a motion
15 or--
16 MEMBER SHUMAN: Yes, I -- well, in view of the
17 confusion on that issue, it's too bad that that couldn't
18 have been resalved, but I'll second the motion.
19 VICE CHAIRPERSON BUENROSTRO: All right, we have
20 a motion and second.
21 All those in favor say aye.
22 (Ayes.)
23 VICE CHAIRPERSON BUENROSTRO: Motion passes.
24 That'll be the order.
25 Is there any other business?

CERTIFICATE OF REPORTER

TITLE: Public Hearing

DATE: March 28, 1991

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing held before the Commission on State Mandates, and that this is a true and correct transcript of the same.'

DATE: April 4, 1991

PETER PETTY
'Reporter-

MINUTES

COMMISSION ON STATE MANDATES
March 28, 1991
10:00 a.m.
State Capitol, Room 437
Sacramento, California

Present: Chairperson Susanne Burton
Chief Deputy Director, Department of Finance:
Member Fred R. Buenrostro, Jr., Representative of the State Treasurer;
Member Robert C. Creighton
Public Member;
Member D. Robert Shuman
Representative of the State Controller;
Member Richard P. Sybert
Director, Office of Planning and Research

There being a quorum present, Chairperson Burton called the meeting to order at 10:09 a.m.

Item 1 Minutes

Chairperson Burton noted that the first order of business is the Minutes of the Commission's hearing of February 28, 1991. There were no corrections or additions.

Member Creighton made a motion that the Minutes be adopted; Member Buenrostro seconded the motion. Without objection the motion carried and the Minutes were adopted.

Consent Calendar:

The following items were on the Commission's consent calendar:

A. STATEWIDE COST ESTIMATE

Item 3 Chapter 1422, Statutes of 1982
Elections Code Sections 1450-1456
Permanent Absent Voters

B. STATEMENTS OF DECISION

Item 5 California Regional Water Quality Control Board
Order Nos. 85-71, 88-46, 88-86, 89-114, 90-16, and 90-55
Treatment Plant

CONTINUED ITEM

C. TEST CLAIM

Item 6 Chapter 797, Statutes of 1979
Education Code Section 1245
State Department of Education Form J-380
Annual Proaram Cost Data Report

Member Sybert made a motion that the consent calendar be adopted; Member Buenrostro seconded the motion,, Without objection the motion carried.

Item 7 Incorrect Reduction Claim
Chapter 1347, Statutes of 1980
Scoliosis Screening

Mr. Stephen Lehman, Assistant Executive Director, summarized Item 7. Mr. Lawrence E. Gercovich, Deputy Controller, State Controller's Office (SCO); Ms. Carol Miller, representing the Education Mandated Cost Network, and Mr. Keith Petersen, Legislative Financial Specialist, San Diego Unified School District (claimant), introduced themselves and appeared in conjunction with this item.

Mr. Gercovich stated that the SCO disagreed with the staff recommendation to find that the SCO incorrectly reduced the claimant's reimbursement claims for costs incurred as a result of conducting scoliosis screenings, as required by Chapter 1347, Statutes of 1980. Mr. Gercovich stated that the SCO's disagreement with the staff recommendation is based upon two points. First, the claimant was notified of the SCO reductions in the 1985-86 fiscal year, thus, the reimbursement claims for the 1983-84 and 1984-85 fiscal years are barred from Commission consideration by a three year statute of limitations.

Second, the SCO did not incorrectly reduce the claimant's reimbursement claims. Mr. Gercovich stated that the SCO has constitutional authority to reduce claims that it considers unreasonable or excessive. Mr. Gercovich stated that the SCO conducted a survey of comparable school districts and based on that survey, the SCO developed its uniform time standard for scoliosis screenings, which the SCO believed was reasonable.

Mr. Petersen stated that he did not believe that the reimbursement claims for the 1983-84 and 1984-85 fiscal years were barred by a three year statute of limitations. Mr. Petersen stated that because the SCO never issued a notice of final payment on the reimbursement claims, the three year

statute of limitations could not elapse. The claimant also discussed the inapplicability of Remittance Advices as constituting a final notice of payment. Further discussion followed regarding when the claimant initially inquired about the reductions to its reimbursement claims, and whether it had received some form of final notice of payment.

Staff informed the Commission that it was hearing testimony that was not provided to staff prior to the hearing. Further discussion followed regarding the new factual disputes between the SCO and the claimant.

Member Creighton moved to continue this item and refer the claim back to staff for further review. Member Buenrostro seconded the motion. The vote on the motion was unanimous. The motion carried.

Item 8 Incorrect Reduction Claim
Chapter 894, Statutes of 1977
Chapter 496, Statutes of 1979
Chapter 1333, Statutes of 1980
Proficiency in Basic Skills

The discussion and issues involved in Item 7 were directly related to this item. Thus, based on the discussion on Item 7, Member Creighton moved to continue this item and refer the claim back to staff for further review. Member Buenrostro seconded the motion. The vote on the motion was unanimous. The motion carried.

Chairperson Burton left the hearing and turned the gavel over to Vice-Chair Buenrostro.

Item 2 Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Mr. Stephen Lehman, Assistant Executive Director, summarized Item 2. Ms. Rima Singh, Deputy County Counsel, County of Santa Clara, and Mr. Carl Elder, Chief Counsel, State Department of Mental Health, introduced themselves and appeared in conjunction with this item.

The members of the Commission first discussed whether it should take action on this item in light of litigation filed by the County of Santa Clara, and the threat of litigation by the State Department of Finance. Ms. Singh stated that the county has filed litigation on those portions of the test claim that the Commission found were subject to the provisions of the Short-Doyle Act. Consequently, the county did not believe the Commission should postpone any hearing on the proposed

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
Thursday, August 22, 1991
10:00 a.m.
State Capitol, Room 437
Sacramento, California

A. ROLL CALL

RULEMAKING AND INFORMATIONAL HEARINGS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

B. MINUTES

Item 1 Hearing of July 25, 1991

C. PARAMETERS AND GUIDELINES

ITEM 2 Chapter 1088, Statutes of 1988
Search Warrant: AIDS

ITEM 3 Chapter 1747, Statutes of 1984 and
Chapter 1274, Statutes of 1985
Handicapped and Disabled Students

D. STATEWIDE COST ESTIMATE

Item 4 Chapter 498, Statutes of 1983
Chapter 1546, Statutes of 1985
CAP Examiner Manuals for
Grades 3, 6, 8, and 12
Exam Proctors

E. ORDER DENYING PETITION REQUESTING RULEMAKING

Item 5 Pursuant to Section 1189.1,
Title 2, California Code of Regulations
Cost Accountins Standards

F. DISCUSSION ITEM

Item 6 Revised 1991 and the 1992 Hearing Calendar

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

G. STATEMENTS OF DECISION

Item 7 Chapter 1462, Statutes of 1988
Budcretins Criteria and Standards

Item 8 Chapter 18, Statutes of 1989-90, 1st Ex. Sess.
Chapter 1082, Statutes of 1990
Seismic Safety Retrofit Program

Item 9 Chapter 955, Statutes 1989
Sudden Infant Death Syndrome

Item 10 Chapter 961, Statutes 1975
Collective Baraaining

H. TEST CLAIM

Item 11 Chapter 797, Statutes'of 1979
Education Code Section 1245
Annual Proaram Cost Data Report

Note : All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Robert W. Eich, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP2223A(3)

ITEM 3

PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

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Hearing: 8/22/91
File: CSM-4282
Staff: Stephen R. Lehman
WP 0838s

PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Executive Summary

These proposed parameters and guidelines are for the state mandated program in Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Code of Regulations, Division 9.

The Department of Finance finds that the proposed parameters and guidelines properly reflect the Commission's statement of decision, but recommends the Commission defer any action on the parameters and guidelines until anticipated litigation is concluded.

The State Controller's Office finds the proposed parameters and guidelines to be a proper reflection of the Commission's decision, and recommends two technical changes.

The Department of Mental Health finds that the proposed parameters and guidelines are sufficiently specific and are consistent with the Commission's statement of decision on the test claim.

The City and County of San Francisco states'that it objects to the proposed parameters and guidelines, beoause the parameters and guidelines limit reimbursement for mental health services to a county's ten percent share of its annual Short-Doyle program.

Staff finds the proposed parameters and guidelines to be--- accurate and along with the Controller's technical changes, recommends the adoption of the staff proposed parameters and guidelines: in Attachment A.

Claimant

County of Santa Clara

Chronolocrv

8/17/87 Test Claim filed with the Commission on State Mandates (Commission).

1/28/88	Commission hearing on options for adjudicating the test claim. Commission refers claim to Office of Administrative Hearings.
12/1/88	Test claim hearing before an Administrative Law Judge (AU).
4/25/89	Staff receives proposed decision from ALJ.
5/31/89	Attorney General's Office requests continuance from July 27, 1989 hearing. Claim set for September 21, 1989.
9/21/89	Commission hearing. The'attorney representing the state was unable to attend the Commission hearing. Commission continues the proposed ALJ decision to its November 30, 1989 hearing.
11/30/90	'Commission hearing'; Commission directs staff to amend the proposed decision to acknowledge a 'mandate relative to the activities of the Individualized Education Program (IEP) and case management process put upon the counties relative to the population of special education'ktudents, and present its decision and its recommendation.
4/26/90	Commission adopts statement of decision.
10/9/90	Commission receives claimant's proposed parameters and guidelines. (Attachment F)
3/28/91	Commission hearing on the claimant's proposed, parameters and guidelines. The proposed parameters and guidelines are continued to a future 'hearing because "of' a late filing from the 'Department of Mental Health.

Summary of Mandate

Chapter 1747 of the Statutes of 1984 (Chapter 1747/84) added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government Code (Gov. Code).

Chapters 1274 of the Statutes of 1985 (Chapter 1274/85) amended and repealed 7572.5, 7583 of, 7576, 7579, 7582, and 7587 of, to, and repealed 7574 of, the Code and added section 7586.6 and 7586.7 of the Government Code, section 5651 of the Welfare and Institutions Code.

The above cited statutes, as well as, Title 2, California Code of Regulations, sections 60000 et seq., mandated counties to provide mental health assessments, treatment, and case management to handicapped children who are in need of such

supportive services in order to benefit from their "Individualized Education Program."

Recommendations

The Department of Finance (DOF) has reviewed the proposed parameters and guidelines and finds that the proposal is a "fair reflection" of the Commission's statement of decision. However, the DOF states that it has formally requested the Attorney General to initiate the appropriate legal action necessary to set aside the Commission's statement of decision. Consequently, the DOF recommends the Commission defer any action on the proposed parameters and guidelines until a court has rendered a decision in this matter. (Attachment B)

The State Controller's Office (SCO) states that the proposed parameters and guidelines properly reflect the Commission's mandate determination. In addition, the SCO recommendation from the Commission's March 28, 1991, hearing also provided technical comments. (Attachment C)

The Department of Mental Health (DMH) finds the proposed parameters and guidelines are sufficiently specific and consistent with the Commission's statement of decision. (Attachment D)

The City and County of San Francisco (San Francisco) has submitted comments on the proposed parameters and guidelines submitted by the County of Santa Clara (Santa Clara). Specifically, San Francisco objects to the parameters and guidelines limiting reimbursement of psychotherapy or other mental health services to the county's share of its Short-Doyle program (i.e., ten percent). (Attachment E)

Staff Note

The Commission previously heard these proposed parameters and guidelines at its hearing of March.28, 1991. (Attachment I) At that hearing, the DMH submitted a late filing on the proposed parameters and guidelines that identified several areas of concern. As a result of'the late filing, the Commission continued action on the proposed parameters and guidelines, so that Santa Clara could address the concerns expressed by the DMH. In response to the DMH's concerns, Santa Clara amended its proposed parameters and guidelines, with which the DMH is now in agreement. In addition to the DMH late filing, the Commission discussed whether to continue action on the parameters and guidelines until pending litigation has been resolved.

Finally, staff has modified the parameters and guidelines (Attachment A) to reflect the technical changes recommended by the SCO at the Commission's March 28, 1991 hearing. Since the

changes recommended by the SCO are noncontroversial, they will not be discussed further.

Staff Analvsis

Issue: Are'the proposed parameters and guidelines an accurate reflection of the Commission's statement of decision? Is so, should the Commission adopt the parameters and guidelines in light of current litigation?

Staff has reviewed Santa Clara's proposed parameters and guidelines, and like the DOF and DMH, finds that the proposal is an accurate reflection of the Commission's statement of decision.

The statement of decision adopted by the Commission (Attachment G) concludes that county participation in the mental health assessment for "individuals with exceptional needs," and participation on the expanded IEP team, and providing case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," is a new program or higher level of service. Accordingly, such costs related thereto are costs mandated by the state and are reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

The statement of decision also concludes that the providing of 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 are a part of the county's annual Short Doyle plan. Thus, any costs related thereto are subject to, the current cost sharing formula of the Short-Doyle Act. Under this formula, 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. Therefore, only ten (10) percent of such program costs are costs mandated by the state and reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

However., San Francisco objects to the proposed parameters and guidelines limiting reimbursement of mental health services to a county's ten (10) percent Short-Doyle share (Attachment E). Based upon the Commission's adopted statement of decision, staff would-note that the issue of whether mental health services are provided under a county's Short-Doyle program-has already been addressed, and thus recommends the Commission adopt staff's proposed parameters and guidelines.

Current Litisation

Staff would note that Santa Clara has filed a petition for a writ of mandamus on the Commission's decision. (Attachment H)

In its petition, Santa Clara is asking the superior court to vacate and overrule only that portion of the Commission's decision which determined that certain mental health services, pertaining to the legislation and regulations in question are a part of the county's Short-Doyle program.

In addition, the DOF states that it 'will be initiating legal proceedings to overturn the Commission's decision. Consequently, the DOF recommends the Commission defer any further action until a court has rendered a decision on whether the Commission's decision is proper.

At the Commission's hearing of March 28, 1991, Santa Clara argued that the Commission should proceed with its process of adopting parameters and guidelines and a statewide cost estimate. Santa Clara statesthat its legal action does not affect the current Commission proceedings, because its litigation only affects that portion of the Commission's decision which concludes that treatment costs are not fully reimbursable as "costs mandated by the state", but are subject to the Short-Doyle Act cost sharing formula. Furthermore, the petition does not request that a court order be issued to stay or stop the Commission's procedures, nor has any other party filed for such a request. (Attachment H)

Staff recommends the Commission adopt these parameters and guidelines, as well as proceed with the development of a statewide cost estimate and a request for an appropriation from the Legislature in a Commission sponsored claims bill. This recommendation is based primarily on the fact that the Commission's statement of decision is considered to be correct. Therefore, until a court directs the Commissionto vacate, modify,' or cease further action- on the claim, the Commission should proceed with its duty to finalize the claim. However, the Commission should also note that should a court modify or overturn the Commission decision, then the Commission action taken on this matter would be moot.

Staff Recommendation

Staff recommends the Commission adopt the staff proposed parameters and guidelines contained in Attachment A, which includes the technical changes recommended by the SCO. Additions and deletions are shown with underlining and strikeouts, respectively.

STAFF PROPOSED PARAMETERS AND GUIDELINES
Chapter 1747, Statutes of 1984;
Chapter 1274; Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 through 60200
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 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 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).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April ~~27~~ 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 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, are reimbursable.

Actual costs for one fiscal year should be included in each. claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3) of the Gov. Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

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. Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Assessment, and Case Management):

1. The scope of the mandate is 100% 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 100% reimbursable (Gov. Code, section 7572, subd. (d)(l):

a. Whenever an LEA refers an individual suspected for 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)(l).)

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

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 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.

B. Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):

1. The scope of the mandate is 10% 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 10% 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 Department of Social Services payment for the residential placement.

VI CLAIM PREPARATION

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

A. Attach a statement showing the actual increased costs incurred:

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. Allowable Overhead Costs. Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

A. Supporting Data. For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence and the validity of the costs. These documents must be kept on file and made available at the request of the State Controller.

B. Cost Report. The claim may be prepared based on the agency's annual cost report and supporting documents for the period of time beginning July 1, 1986'. The cost report is prepared based on regulations and format specified in the State of California Department of Mental Health Cost Reporting/Data Collection (CR/DC) Manual.

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. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

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. REOUIRED 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.

State of California

CSM Attachment B

MEMORANDUM

RECEIVED
JUN 27 1991
COMMISSION ON STATE MANDATES

Date : June 26, 1991

To : Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates

From : Department of Finance

Subject: Proposed Parameters and Guidelines for Claim No. CSM-4282, Based on Chapter 1747/84, Chapter 1274/85 and Title 2, Division 9, CCR, "Handicapped and Disabled Students"

We have reviewed the proposed parameters and guidelines for the statutes and regulations upon which this test claim is based which were prepared by the test claimant, the County of Santa Clara and transmitted in your October 2.4, 1990 memorandum, as well as the revisions to that proposal in the County's May 22, 1991 letter to you transmitted in your June 4, 1991 memorandum. The Commission determined that the statutes and regulations shifted certain responsibilities for Individualized Education Programs (IEPs) for handicapped students from local educational agencies to local mental health programs. While we would agree that the County's revised proposal generally is a fair reflection of the Commission's "Statement of Decision", we would like to again advise you that the Department of Finance has requested the Attorney General to take the appropriate legal action to set aside that decision. Subsequent to our request, the County filed an action in Santa Clara County Superior Court seeking a writ of mandate to have portions of the Commission's decision vacated. Accordingly, we recommend that the Commission consider deferring any further action on the issue until the court renders its decision in the matter.

If you have any questions regarding this memorandum, please contact James Apps at (916) 324-0043.

Fred Klass
Assistant Program Budget Manager

cc: Mr. Charlton Holland, Attorney General's Office
Mr. N. Eugene Hill, Attorney General's Office
Ms. Marsha Bedwell, Attorney General's Office
Mr. Harlan Van Wye, Attorney General's Office
Mr. Carl Elder, Department of Mental Health
Mr. Norman Black, Department of Mental Health
Ms. Lynn Whetstone, Department of Mental Health
Mr. Robert Agee, Department of Education
Ms. Susan Komisaruk, County of Santa Clara

LR:CORR/C000019.620

JUN 26 1991
COMMISSION ON STATE MANDATES

GRAY DAVIS

Controller of the State of California

P.O. BOX 942850

SACRAMENTO, CA 94250-0001

June 25, 1991

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 "K" Street, Suite 315
Sacramento, CA 95814

RE: CSM-4282
Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9

Dear Mr. Lehman:

'This office has reviewed the above proposal and believe the proposed sections properly reflects the decision of the Commission concerning "Part V. and Part VIII".

As to "pending litigation", this office reserves comment until any court and/or Commission decision is rendered.

If you have any questions, please call Glen Beatie at, (916) 323-8137.

Sincerely,

John A. Korach, Assistant Chief
Division of Accounting

JK/GB:jam

SC02412

GRAY DAVIS
Controller of the State of California
P.O. BOX 942850
SACRAMENTO, CA 94250-0001

RECEIVED
JAN 17 1991
COMMISSION ON
STATE MANDATES

January 15, 1991

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Proposed Parameters and Guidelines
Chapter 1747, Statutes of 2984
Chapter 1274, Statutes of 2985
Title 2, CCR, Division 9
Handicamed and Disabled Students

Dear Mr. Lehman:

We have reviewed the above subject proposal and, except for the following two comments, believe that the mandated activities are properly reflected.

Comments: 1. Section "II. COMMISSION ON STATEMANDATES' DECISION" reflects the hearing date of "April 27, 1990". We believe the hearing date was April 26, 1990.

2. Section "VI. CLAIM PREPARATION", "A.", "4. Supportins Data". This language does not appear to be needed as Section "VII. SUPPORTING DATA" address the subject in greater detail.

If you have any questions, please call Glen Beatie at (916) 323-8137.

Sincerely,

Glenn Haas

Glenn Haas, Assistant Chief
Division of Accounting

GH/GB:jam
SC01089

CSM Attachment D

STATE OF CALIFORNIA-HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF MENTAL HEALTH
1600 - 9TH STREET
CRAMENTO, CA 95814

(916) 323-8173

June 26, 1991

RECEIVED
JUN 28 1991
COMMISSION ON
STATE MANDATES

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Mr. Lehman:

The Department of Mental Health has reviewed the revisions to the Parameters and Guidelines which were submitted by Santa Clara County in response to our comments and concerns when the Commission last addressed this claim, Based on that review, the Department feels that the Draft Parameters and Guidelines (as revised) are sufficiently specific and are consistent with the decision issued by the Commission.

Please contact Norman Black in our Office of Legal Services or myself if any additional information is desired.

Sincerely,

Lynn E. Whetstone

LYNN E. WHETSTONE
Acting Chief Deputy Director

Enclosure

City and County of San Francisco:

Office of City Attorney

ATTACHMENT E

Louise H. Renne,
City Attorney

Paula Jesson
Deputy City Attorney
(415) 554-4232

January 30, 1991

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Proposed Parameters and Guidelines
CSM-4282
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

I am writing on behalf of the City and County of San Francisco in response to the Proposed Parameter and Guidelines in this matter.

We object to that portion of the Proposed Parameters and Guidelines which states that services provided by counties pursuant to Welfare and Institutions Code Section 5651(g) are not fully reimbursable.

Welfare and Institutions Code Section 5651(g) requires counties to include in their annual Short Doyle Plan a "description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services." The services required by Government Code Section 7576 are "psychotherapy or other mental health services . . . when required in the child's individualized education program . . . ."

Mental health services provided by counties under the Short Doyle Act are subject to a cost sharing formula, with the State paying 90% and the county 10% of the cost of the services identified in the county's approved Plan (the county's 10% payment requirement being generally referred to as the county's "match"). Apparently because of the 90%-10% State-County cost sharing formula, the Proposed Parameters and Guidelines limit counties' reimbursement to their 10% match requirement.

This limitation on reimbursement would make sense if the amount that the State allocated to the county plus 10% equalled the amount needed to provide psychotherapy and mental health services to eligible children. In fact, this is not the case, The cost of providing services to eligible children far exceeds the amount that the State pays to the county for these services.

For example, the State allocated $440,000 to San Francisco for these services in Fiscal Year 1990-91. This is far short of the amount necessary to provide services to eligible children. San Francisco spent over $2 million in providing such services last fiscal year,

For these reasons, San Francisco objects to that portion of the Proposed Parameters and Guidelines that limits counties' reimbursement for services provided under Government Code Section 7571 and 7576 to its 10% match requirement,

Very truly yours,

LOUISE H. RENNE
City Attorney

PAULA JESSON
Deputy City Attorney

cc: Rima H. Singh
Santa Clara County Counsel

Monique Zmuda
San Francisco Department of Public Health

1204H

County of Santa Clara
Office of the County Counsel

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-2111
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MAY 28 1991
COMMISSION ON STATE MANDATES

Steven M. Woodside
County Counsel

May 22, 1991

Stephan R. Lehman
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Claim No. CSM-4282
Proposed Parameters and Guidelines,
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations,
Division 9, Sections 60000 through 60200
"Handicapped and Disabled Students"

Dear Mr. Lehman:

Please find attached comments of the County of Santa Clara concerning the Proposed Parameters and guidelines for the above-entitled claim previously submitted by this County. Please note for the Commission that Santa Clara County still believes that the Short-Doyle funding, excluding the categorical funding received by the County for this program, is not compensation for the mental health treatment required by this mandate regardless of whether or not the services are Short-Doyle services. This is the subject of the pending litigation and County reserves all rights to assert its claim. Nevertheless, we believe the proposed Parameters and Guidelines reflect the decision of the Commission.

Respectfully submitted3

STEVEN M. WOODSIDE
County Counsel

SUSAN A. KOMISARUK
Deputy County Counsel

Chief Assistant County Counsel: Ann Miller Ravel
Chief Deputies: Robert J. Menifee, Susan G. Levenberg, William L. A

County of Santa Clara Comments
Claim No. CSM-4282
Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984
Chapter 1274, Statues of 1985
Title 2, California Code of Regulations
Division 9, Sections 60000 through 60200
"Handicapped and Disabled Students"

In response to issues raised by the State Department of Mental Health, Santa Clara County proposes the following changes in Part V. and Part VIII.:

V. REIMBURSABLE COSTS

A. Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Assessment, and Case Management):

1. The scope of the mandate is 100% 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 100% reimbursable (Gov, Code, section 7572, subd. (d)(1):

a. Whenever an LEA refers an individual suspected of being an 'individual with exeptional 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 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.

B. Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):

1. The scope of the mandate is 10% 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 10% 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 Department of Social Services payment for the residential placement.

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..

County of Santa Clara

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STATE MANDATES

Steven M. Woodside
County Counsel

October 4, 1990

Mr. Stephen Lehman
Assistant Executive Director
Commission on State Mandates
1414 K Street
Sacramento, CA 95814

R e Proposed Parameters and Guidelines
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 thraugh 60200
Handicapped and Disabled Students

Dear Mr. Lehman:

Enclosed please find the Proposed' Parameters and Guidelines in the above-referenced matter.

Thank you for your patience.

STEVEN M. WOODSIDE
County Counsel

RHSingh

RIMA'H. SINGH
Deputy County Counsel

RHS:cc
Enclosures

cc: Dave Wytock
Bob Martinez

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chief Assistant County Counsel: Ann Miller Ravel
Chief Deputies: Robert J. Menifee, Susan G. Levenberg, William I. Anderso

PROPOSED PARAMETERS AND GUIDELINES

Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Sections 60000 through 60200
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 of, added 7575, 7576, 7577, 7586, 7587 of, amended and repealed 7582 and 7587 of, amended 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, California Code of 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.

In accordance with the decision of the Commission on State Mandates, the provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service wthin 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 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).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April 27, 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 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, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable, Pursuant to section 17561, subdivision (d)(3) of the Gov. Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

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. Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Including Assessment and Case Management):

1. The scope of the mandate is 100% reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For' each eligible claimant, the following cost items are 100% reimbursable:

a. Mental Health assessment and recommendation (Gov. Code, § 7572, subd. (c).)

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

c. Attendances at IEP meetings when requested. (Gov. Code, § 7572, subd. (d) (1).)

d. Review of independent assessment submitted by IEP team. (Gov. Code, § 7572, subd. (d) (2).)

e. Interview with child and family.

f. Collateral interviews as necessary.

g. Review of Records.

h. Psychological testing as necessary.

i. Psychiatric assessment as necessary

j. Observation of child at school.

k. Residential placement (Gov. Code, § 7572.5.)

1) Expanded IEP team review.

2) Identification of out of home placement.

3) Case management.

4) Six month review.

B. Reimbursable Activities Subject to the Short-Doyle Act (Mental Health Treatment Services):

1. The scope of the mandate is 10% reimbursement.

2. For each eligible claimant, mental health treatment services pursuant to an IEP are 10% reimburseable. These services can include, but are not limited to, the following:

a. Outpatient,

b. Collateral.

c. Individual.

d. Group therapy.

e. Day treatment.

VI, CLAIM PREPARATION

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

A. Attach a statement showing the actual increased costs incurred:

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. Allowable Overhead Costs. Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

4. Supporting Data. For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence and the validity of the costs, These documents must be kept on file and made available at the request of the State Controller.

B. Cost Report. The claim may be prepared based on the agency's annual cost report and supporting documents for the period of time beginning July 1, 1986. The cost report is prepared based on regulations and format specified in the State of California Department of Mental Health Cost Reporting/Data Collection (CR/DC) Manual.

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. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

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.

RHS:cc
cc-#2

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Santa Clara, Claimant	No. cm-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

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

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.

1. 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. Backsround

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's 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's jurisdiction, regardless of the nature or severity of the person's 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 Fart 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.

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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)I 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.

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