III. FINDINGS

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

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

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

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

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

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

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

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

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

Government Code section 7571 requires the Secretary of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572.

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

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

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

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

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

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

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

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

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

Government Code section 17551, subdivision (a) provides:

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

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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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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

STEVEN M. WOODSIDE
County Counsel
County of Santa Clara
East Wing
San Jose, California
95110-1770

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

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ty Counsel
y of Santa Clara
East Wing
ose, California
110-1770

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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 now 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 DIRECTOR EICH: The next item would be
27 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 DIRECTOR 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 #at 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 reimburssment of mental health services t0 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.

I.7 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 EICH: May I address that?
6 VICE CHAIRPERSON BUENROSTRO: Certainly.
7 EXECUTIVE DIRECTOR EICH: Often when we get a
a 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
22 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

1 there might be a more appropriate way to do that in
2 executive session, and I think that proper notice could be
3 given to do that at the next meeting. Or the May meeting,
giving the Claimants time to respond to the late filing.

Members?

MEMBER SHUMAN: 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
function, that is to adopt the parameters and guidelines.

If 'a court were to enjoin us from doing so, I
think that's one thing, but just because somebody's
threatening to sue you, I don't see that that should stop
us from fulfilling our obligation.

If we're satisfied with these parameters and
guidelines then I think we ought to go ahead and adopt
them.

MEMBER CREIGHTON: I would agree with Mr. Shuman
on that score, however, I would be concerned about, our
taking action today in view of maybe the late filing.'

MEMBER SHUMAN: Well, the late filing, I would
suggest that, it looks to me like it's a very short letter.
I would suggest that we go ahead and accept it, and deal
With the matter before us. YOU know, I'm &raid to keep
putting things over and it's going to eventually catch up
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 of 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

a 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 EICH: 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.

a 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 then 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.

19 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 BUENROSTRO: 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 because 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: Okay. 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
2 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
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
16 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
8 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
26 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 the Commission asking the Commission to consider this claim.

At that time it was their decision to turn this claim over to an administrative law judge. It went through a very long, and it's been a very slow process to this point in time to where we're finally getting to the point of deciding whether or not the reimbursement *is* going to be provided or not, and I think that the Commission has spent an awful lot of time discussing this particular issue.

At this point I think what the county is asking and I think which all counties would ask is that you proceed with the process on this particular claim because we still have a way to go to get this through the legislative process.

The schedule that's going now, we're developing parameters and guidelines and a statewide cost estimate and

1 going to the Legislature. The funding of the bill is
2 probably not going to be approved until next calendar year.
3 This will be going in the second claims bill which will be
4 considered in the second legislative session, which then
5 means that the Controller, once that is approved and goes
6 to the Controller and they issue claiming instructions, it
7 goes out to the county sometime next year, that they
a actually won't get paid until 1993, will actually probably
9 receive a check for the costs that we're talking about, if
10 things proceed on schedule.
11 So during that process, as things move along, as
12 we develop a statewide cost estimate, as the bill goes
13 before the Legislature, if there was litigation and it was
14 concluded, you can deal with that at that point in time.
15 The Legislature can either direct the Commission to amend
16 the parameters and guidelines to include it, or you can
17 subsequently go back and amend the parameters and
18 guidelines to provide additional costs.
19 I think there are several remedies and
20 opportunities as this goes along to deal with issues if the
21 court should come back. And I think simply because
22 strictly the history of this claim and of many claims and
23 the amount of time it takes, that I would urge the
24 Commission to try to expedite the process to the extent
25 that it can. As I say, particularly on this claim in which

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 allocated 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 not 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 regarding the funding, that some fundages are to be provided.

DEPUTY EXECUTIVE DIRECTOR LEHMAN: I would like to sea written response from the county regarding this.

MEMBER SHUMAN: Well, let me ask the county representative. Have you had a chance to review the May 18th letter and the attachments?

MS. SINGH: Yes, I have.

MEMBER SHUMAN: Do yeu have any problem with them?

MS. SINGH: Well, I would like to point out step by step what the objections are and what my response is, if I may.

MEMBER SHUMAN: Well, Mr. Lehman wants it in writing. Do you feel comfortable in commenting at this 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
29 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

specifically, but I think it implied that that portion of the funding was received by the counties through the Short-Doyle program, and therefore it should be applied to the treatment costs.

And that's our position.

VICE CHAIRPERSON BUENROSTRO: Let me see if I understand what you're saying. The Department expects that the block grant money should be applied as against any reimbursement yau might receive and you're saying the opposite, is that correct?

MS. SIMGH: What I'm saying is the Commission's decision had two portions to it. One is that the counties weren't entitled to reimbursement for assessment, IEP team participation, and case management.

The second portion of the decision held that we were not entitled to treatment costs because we had received one funding from the state through the Short-Doyle program. And my position is that this categorical funding that the state has brought up today was received by the county through the Short-Doyle contract.

So therefore if it is to be applied, it's applied to the treatment portion of the decision. This funding should not be used to reduce the reimbursement that we received for case management and assessment and IEP team 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 heave 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

1 final paragraph I don't see how we can approve that today
2 if they're still disagreeing on that item.
3 And therefore I hate to see something laid over
4 again because we have such a backlog, but at the same time
5 I don't see how we can do that today.
6 DEPUTY EXECUTIVE DIRECTOR LEHMAN: There are two
7 ways to look at it, if I may. The parameters and
8 guidelines currently contain a generic statement that any
9 reimbursement or other offsetting savings that the claimant
10 receives has to be offset against this mandate.
11 You can take the position that that language
12 addresses this problem and then hope that the state
13 controller takes a long hard look at it with the issue of
14 the claiming instructions, or we can put the specific
15 categorical appropriations into the parameters and
16 guidelines and state that they must be offset for those
17 specific years.
18 If we do that I don't know what appropriations
19 we're talking about, or exactly what years we're talking
20 about and what amounts.
21 VICE CHAIRPERSON BUENROSTRO: How have we treated
22 categorical appropriations in the past? What precedent do
23 we have to rely on?
24 EXECUTIVE DIRECTOR EICH: In those rare instances
25 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 DIRECTOR 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: Mo.
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

1 be identified, and we have to amend the parameters and
2 guidelines again if the Legislature took some action?
3 It seems to me that a generic statement is all
4 you really need for something like this, then the
5 Controller is supposed to keep track of appropriations.
6 That's one of our primary functions and know what's
7 available for payment of what.
8 I think to the extent there's any confusion the
9 statement of decision could be looked to for guidance as
10 well as the parameters and guidelines.
11 MS. SINGH: The statement of decision does
12 mention that the budget act of 1986 allocated a certain
13 amount to the State Department of Mental Health.
14 EXECUTIVE DIRECTOR EICH: What page of the
15 statement of decision?
16 MS. SINGH: Page 9.
17 EXECUTIVE DIRECTOR EICH: Page 9? That would be
18 on page 44 of your agenda.
19 DEPUTY EXECUTIVE DIRECTOR LEHMAN: That is
20 correct, but the mention of the budget act was only in
21 relation to the fact that there was an appropriation at one
22 time for IEP costs in the Department of Education's budget
23 and that it was transferred to the Department of Mental
24 Health.
25 VICE CHAIRPERSON BUENROSTRO: I'm not convinced

that I have a cleared up understanding of how *we're* going to apply block grant funding to this claim that I'm willing 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 resolved, 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?

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

ORIGINAL

PUBLIC HEARING

STATE CAPITOL

ROOM 437

SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 22, 1991

10:00 a.m.

Reported by:

Peter Petty

PETERS SHORTHAND REPORTING CORPORATION
3336 BRADSHAW ROAD, SUITE 240, SACRAMENTO, CA 95827 / (916) 362-2345

COMMISSIONERS PRESENT

Susanne Burton, Chairperson

Fred Buenrostro, Jr., Vice Chairperson

Robert C. Creighton

Gregory R. Cox

D. Robert Shuman

STAFF PRESENT

Robert W. Eich, Executive Director

Stephen R. Lehman, Assistant Executive Director

Gary D. Hori, Legal Counsel

Michael Coleman, Program Analyst

Ellen O'Connor, Program Analyst

ALSO PRESENT

James M. Apps, Principal Program Budget Analyst, State Department of Finance

Brian L. Carr, Deputy County Counsel, County of Santa Clara, San Jose

Erick M. Lubich, Accountant, County of Santa Clara, San Jose

Cynthia A. Sevely, Deputy District Attorney, County of Santa Clara, San Jose

Rima H. Singh, Deputy County Counsel, County of Santa Clara, San Jose

Allan P. Burdick, Director of State Mandate Cost Consulting, David M. Griffith and Associates, Ltd., County Supervisors Association of California

Carol Miller, School Services of California, Education Mandated Cost Network

Keith Petersen, Legislative Financial Specialist, San Diego City Schools, San Diego

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(Laughter.)

EXECUTIVE DIRECTOR EICH: The next item is item 3.

MEMBER SHUMAN: We don't necessarily want you to leave.

MEMBER CREIGHTON: We don't want you to leave.

MEMBER SHUMAN: That's right. You want to leave--

CHAIRPERSON BURTON: I'll leave if you promise that under other business you will ask Bob to report on the Centennial.

(Laughter.)

MEMBER CREIGHTON: It's actually Operation Desert Salute. I've already passed the Centennial.

CHAIRPERSON BURTON: Then I give you the gavel.

VICE CHAIRPERSON BUENROSTRO: Let's go on to item 3.

DEPUTY EXECUTIVE DIRECTOR LEHMAN: Item 3 pertains to the proposed parameters and guidelines for the state mandated program for handicapped and disabled students.

The Department of Finance finds the proposed parameters and guidelines properly reflect the initial statement of decision, but Finance also recommends that the Commission may want to defer any action on the parameters and guidelines until current and anticipated litigation, is concluded.

The State Controller's Office and the Department

of Mental Health both find that the proposed parameters and guidelines to be a proper reflection on the Commission's decision.

The City and County of San Francisco has also stated that it objects to the proposed parameters and guidelines because they limit reimbursement for mental health services to the county's 10 percent share of its annual Short-Doyle program.

Staff finds that the proposed parameters and guidelines to be accurate, along with the Controller's technical changes, we recommend that you adopt the staff-proposed parameters and guidelines in attachment A.

Would you state your names?

MS. SINGH: Rima Singh for the County of Santa Clara.

MR. APPS: Jim Apps, Department of Finance.

VICE CHAIRPERSON BUENROSTRO: Do you have any comments about the claim that you'd like to make?

MS. SINGH: I believe everybody is in agreement on the parameters and guidelines, and I request that they be approved today.

VICE CHAIRPERSON BUENROSTRO: Mr. Apps?

MR. APPS: I'm just here to answer any questions you might have on our recommendation.

VICE CHAIRPERSON BUENROSTRO: All right.

1 MEMBER CREIGHTON: Is the City and County of San
2 Francisco, which objects to the proposed parameters and
3 guidelines, are they represented here today?
4 DEPUTY EXECUTIVE DIRECTOR LEHMAN: I don't believe
5 they are. I believe they'submitted the recommendation for
6 the record to note their objection to our statement of
7 decision.
8 MEMBER SHUMAN: Well, that objection is really to
9 a decision that's already been made and not to the --
10 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Exactly.
11 MEMBER SHUMAN: --parameters and guidelines,
12 correct?
13 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Correct.
14 MEMBER SHUMAN: Okay. So that's really out of
15 order to consider at this time, I would suggest.
16 DEPUTY EXECUTIVE DIRECTOR LEHMAN: It is re-
17 arguing the testimony.
18 MEMBER SHUMAN: Right.
19 MEMBER CREIGHTON: Well, in view of the fact that
20 any possible litigation instituted by the Department of
21 Finance could go on for an extremely long time, and leave
22 this thing pending for such a long time, my reaction is that
23 we approve the staff proposed parameters and guidelines.
24 The Department of Finance can always continue with
25 its proposed litigation separately. But I don't frankly see

1 any reason for us not to adopt the staff recommendations.
2 And I would make such a motion.
3 MEMBER SHUMAN: Before I -- 1 want to second that
4 motion, I think, but I want to ask counsel first, is there
5 any reason, from a litigation standpoint that you know of, I
6 mean has there been any stay ordered, or any preliminary
7 injunction or anything that would make it legally impossible
8 or otherwise complicated to go ahead and adopt these?
9 MR. HORI: At this staye, no. Unless Ms. Singh
10 knows of, I'm not aware of any type of stay order that would
11 preclude us from going forward today.
12 MS. SINGH: I could address that issue, if I may.
13 This contention was brought up by Mr. Apps in a
14 letter dated January 31st, that they had requested the State
15 Attorney General's Office to file court proceedings because
16 they were not pleased with this Commission's decision.
17 Since then nothing has been filed by the State
18 Attorney General. They have not even responded to the
19 County of Santa Clara's writ of mandate.
20 At the last hearing- that we had on March 28th
21 there was a contention ayain made by the Department of
22 Mental Health, and at that time this Commission rejected the
23 notion that the proceedings should be stayed pending the
24 resolution of any pending litigation.
25 The litigation itself has nothing to do with these

1 particular set of parameters and guidelines. The
2 Commission's decision addressed two issues. The first issue
3 was the issue of case evaluation and case management. The
4 second issue was the issue of treatment.
5 The Commission found that the county was entitled
6 to reimbursement for case management and evaluation. But
7 not for treatment.
8 These parameters and guidelines address the issue
9 of reimbursement for case management and evaluation.
10 In the pending litigation the county's position is
11 that it has no objection to the Commission's decision on
12 case management and evaluation.
13 So regardless of what happens in that litigation,
14 it's not going to change this particular set of parameters
15 and guidelines.
16 MEMBER SHUMAN: All right, well, with that I
17 second Mr. Creighton's motion.
18 VICE CHAIRPERSON BUENROSTRO: I have one question.
19 As a part of this, I assume that the Commission counsel has
20 appropriately included whatever advice to us that you would
21 make in the staff recommendation?
22 MR. HORI: Yes, that --
23 VICE CHAIRPERSON BUENROSTRO: So this is not just
24 a staff recommendation, but advice of counsel?
25 MR. HORI: That's correct, Mr. Buenrostro.

1 VICE CHAIRPERSON BUENROSTRO: Okay, we have a
2 motion and a second to adopt the staff recommendation.
3 All those in favor say aye.
4 (Ayes.)
5 VICE CHAIRPERSON BUENROSTRO: Okay, motion passes.
6 MS. SINGH: Thank you.
7 EXECUTIVE DIRECTOR EICH: That concludes all the
8 items on today's agenda.
9 VICE CHAIRPERSON BUENROSTRO: Okay. If there's no
10 other business to come before the Commission, we stand
11 adjourned.
12 (Whereupon, at 11:01 a.m., the hearing held before
13 the Commission on State Mandates was adjourned.)
14 --oOo--
15

REPORTER'S CERTIFICATE

ITLE: Public Hearing

ATE: August 22, 1991

OCATION: Sacramento, California

hereby certify that the proceedings and evidence herein re contained fully and accurately on the tapes and notes eported by me at the hearing held before the Commission on tate Mandates and that this is a true and correct ranscript of the same.

DATE: August 29, 1991

Peter Petty

Peter Petty

MINUTES

COMMISSION ON STATE MANDATES
August 22, 1991
10:00 a.m.
State Capitol, Room 437
Sacramento, California

Present: Chairperson Susanne Burton
Representative of the Department of Finance
Member Fred R. Buenrostro, Jr., Representative of the State Treasurer
Member Gregory R. Cox
Representative of the Office of Planning and Research
Member Robert C. Creighton
Public Member
Member D. Robert Shuman
Representative of the State Controller

There being a quorum present, Chairperson Burton called the meeting to order at 10:07 a.m.

Item 1 Minutes

Chairperson Burton noted that the first order of business is the Minutes of the Commission's hearing of July 25, 1991. There were no corrections or additions, Member Creighton made a motion that the Minutes be adopted; Member Cox 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:

Item 4 Statewide Cost Estimate
Chapter 498, Statutes of 1983
Chapter 1546, Statutes of 1985
CAP Examiner Manuals for
Grades 3, 6, 8, and 12
Exam Proctors

Item 7 Statement of Decision
Chapter 1462, Statutes of 1988
Budaetina Criteria and Standards

Item 8 Statement of Decision
Streets and Highway Code Sections 179.3 and 179.4
Chapter 18, Statutes of 1989-90, 1st Ex. Sess.
Chapter 1082, Statutes of 1990
Seismic Safety Retrofit Projects

Item 9 Statement of Decision
Chapter 955, Statutes of 1989
Sudden Infant Death Syndrome

Item 10 Statement of Decision
Chapter 961, Statutes of 1975
Collective Baraaininq

CONTINUED ITEM

Item 11 Test Claim
Chapter 797, Statutes of 1979
Education Code Section 1245
Annual Proaram Cost Data Report

Member Creighton moved that the consent calendar be adopted. Member Buenrostro seconded the motion. Without objection the motion carried and the consent items were adopted.'

Item 2 Proposed Parameters and Guidelines
Chapter 1088, Statutes of 1988
Search Warrant: AIDS

Ellen O'Connor, Program Analyst, summarized Item 2. Mr. Brian Carr, Deputy County Counsel: Ms. Cynthia A. Sevely, Deputy District Attorney; Mr. Erick Lubich, County Department of Finance; Mr. Allan Burdick, County Supervisors Association of California, introduced themselves on behalf of the County of' Santa Clara.

Discussion regarding the beginning period of reimbursement commenced with the claimant requesting reimbursement for fiscal year 1989-90. The claimant asserted that their proposed parameters and guidelines were first drafted as a test claim and, therefore, the December 31 deadline for submission of a test claim should be applicable. 'Further, they asserted that in a case where the parameters and guidelines 'are the initial action, such an item essentially serves as a test claim, so that the November deadline for parameters and guidelines should have been changed when the regulations were modified for test claim dates.

After discussion of the period of reimbursement, Member Shuman made a motion to approve staff's proposed parameters and guidelines and, second, to request the legislature to fund reimbursement beginning July 1, 1989, either through the claims bill or another appropriate legislative vehicle, or in some way assist the claimant to request an appropriation beginning July 1, 1989. Member Shuman stated that the legislature could clarify their intent in declaring this a reimbursable state mandated program by deciding when to begin the reimbursement period. Member Creighton seconded the motion. The vote was unanimous.

Member Shuman made a second motion to direct staff to study and report back to the Commission at the earliest opportunity with a recommendation as to amending the filing date for parameters and guidelines, set forth in Code of California Regulations, title 2, section 1184, from November 30 to December 31. Member Creighton seconded the motion. The vote was unanimous.

Item 5 Pursuant to Section 1189.1,
Title 2, California Code of Regulations
<u>Cost Accounting Standards</u>

Executive Director Eich summarized Item 5. Mr. Keith Petersen, Legislative Financial Specialist, San Diego City Schools, and Ms. Carol Miller, Consultant, Education Mandated Cost Network, introduced themselves and appeared on this item.

Mr. Petersen encouraged the Commission to adopt the petition without the proposed language to allow the staffs of the respective state agencies to begin work on the necessary language. Member Buenrostro noted that the petitioners are really requesting a reconsideration of the Commission's denial of the petition and noted that the issue in front of the Commission is limited to determining if the order accurately outlines the Commission's earlier decision.

Member Creighton moved to adopt the Order Denying the Petition Requesting Rulemaking. Member Cox seconded the motion. The vote on'the motion was unanimous. The motion carried.

Item 6 Discussion Item
<u>Revised 1991 and the 1992 Hearing Calendar</u>

Executive Director Eich outlined Item 6 and modified the, staff recommendation to cancel the September 26, 1991, hearing and leave the October 24, 1991, hearing scheduled. Ms. Carol Miller, Education Mandated Cost Network, appeared'on this item.

Chairperson Burton noted that the staff recommendation was to also cancel the March 1992 hearing. Member Cox moved to adopt the staff recommendation. Member Creighton 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 3 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 3. Ms. Rima Singh, Deputy County Counsel, County of Santa Clara, and Mr. James Apps, Principal Program Budget Analyst, State Department of Finance, introduced themselves and appeared in conjunction with this item.

The Commission first discussed whether it should take action on this item in light of litigation filed by the County of Santa Clara, and potential litigation by the State Department of Finance. Ms. Singh stated that the county was in agreement with the staff proposed parameters and guidelines. Ms. Singh went on to state 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 proppsed parameters and guidelines because of the county's litigation. In addition, the county stated that the Department of Finance has not taken any action in regards to filing a lawsuit of its own.

After further discussion, the Commission decided to proceed with considering the adoption of the parameters and guidelines.

Member Creighton moved to adopt the staff proposed parameters and guidelines. Member Shuman seconded the motion. The vote on the motion was unanimous.

Executive Director Eich advised that the agenda had been completed. There being no further business, Vice-Chair Buenrostro adjourned the meeting at 11:03 p.m.

ROBERT W. EICH
Executive Director

WP:0057R

Adopted: 8/22/91
WP 0769s

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 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.

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..

1x. REWIRED 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.

ITEM 2

STATEWIDE COST ESTIMATE
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 Date: 9/24/92
File Number: CSM-4282
Staff: Stephen Lehman
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STATEWIDE COST ESTIMATE
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Executive Summarv

This proposed statewide cost estimate is for the state mandated program contained in Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570. These statutes, as well as, Title 2, California Code of Regulations, sections 60000 et seq., require counties to provide, for the first time, 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."

The Department of Finance states that because of workload resulting from the state budget negotiations, it has not been able to develop a recommendation as of August 20, 1992.

The Department of Mental Health states that it believes that the statewide cost estimate should take into account the categorical funding allocated to counties and the match requirements or exemptions with regard to Short-Doyle services.

Staff believes that the costs reported in this statewide cost estimate survey already have taken into account the categorical funds received, as well as the counties required Short-Doyle match. Thus, staff recommends the Commission adopt the statewide cost estimate in the amount of $75,659,000 (Attachment A) for compliance with the provisions of Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570, and Title 2, California Code of Regulations, sections 60000 et seq., for fiscal years 1986-87 through 1992-93.

Claimant

County of Santa Clara

Chronoloav

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.
4/26/90	Commission adopts statement of decision. (Attachment E)
10/9/90	Commission receives claimant's proposed parameters and guidelines.
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.
8/22/91	Commission adopts parameters and guidelines. (Attachment D)
10/30/91	Staff mails statewide cost estimate surveys to all counties.

Summary of Mandate

Chapter 1747, Statutes of 1984 (Chapter 1747/84) and Chapter 1274, Statutes of 1985 (Chapter 1274/85), added and amended Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570. These 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."

Current Litisation

On February 4, 1991, the County of Santa Clara filed a lawsuit with the superior court regarding the Commission's decision. In its suit, Santa Clara asked the court to vacate and overrule only that portion of the Commission's decision which determined that certain mental health services were a part of the county's Short-Doyle program.

At the Commission's hearing of August 22, 1991, the Commission decided to proceed with the adoption of the parameters and guidelines, as well as the statewide cost estimate, because the legal action does not affect the Commission's proceedings. The Commission noted that the litigation only affects that portion of its 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 such a request.

On January 8, 1992, the superior court affirmed the Commission's decision. Thereafter, Santa Clara appealed the matter to the appellate court, where the case is now pending.

Recommendations

The Department of Finance (DOF) stated that because of workload resulting from the state budget negotiations, it has not been able to develop a recommendation as of August 20, 1992. (Attachment B)

The Department of Mental Health (DMH) states that it believes that the staff's statewide cost estimate calculations do not appear to take into account the fact that categorical funds were appropriated each fiscal year from 1986-87 through 1991-92, and are proposed for the 1992-93 fiscal year. Consequently, the DMH believes that the statewide cost estimate should take into

account the categorical funding allocated to counties and the match requirements or exemptions with regard to Short-Doyle services. (Attachment C)

Staff Analvsis

This state mandated program is comprised of two parts, a Short-Doyle treatment portion, and an IEP participation portion. All counties are subject to the IEP participation requirements of the mandate. Instructions for submitting information for this estimate, as well as the adopted parameters and guidelines were sent to all 58 counties in California. The statewide cost estimate calculations (Attachment A) are based on cost information submitted by 19 counties, which reported the following costs:

Fiscal Year	Amount
1986-87	$ 2,807,238
1987-88	5,439,153
1988-89	6,707,768
1989-90	9,648,626
1990-91	13,456,986
1991-92	14,504,142
1992-93	15,590,183
TOTAL	$68,154,096

In addition to the 19 counties that are represented in the statewide cost estimate, 4 other counties responded to the cost estimate survey. However, those counties were not used in the cost estimate calculation because their reported costs appeared to be excessive or erroneous when compared to the majority of the respondents. Also, 28 counties do not have a ten percent match in their Short-Doyle program. Therefore, the Short-Doyle portion of the cost estimate is factored by only those counties who are required to contribute a ten percent match in their Short-Doyle program, and the IEP portion is factored by all 58 counties in the state.

As noted earlier, the DMH has expressed concerns regarding the statewide cost estimate (Attachment C). Specifically, the DMH believes that the statewide cost estimate should take into account the categorical funding allocated to counties and the match requirements or exemptions with regard to Short-Doyle services.

In response to the DMH's concerns, staff notes that when responding to the statewide cost estimate survey, counties were instructed to use the parameters and guidelines (Attachment D) adopted by the Commission as the basis for their reported costs.

In addition, the parameters and guidelines restrict the Short-Doyle portion of the mandate to the cost sharing requirements of the Short-Doyle Act, and also require that other reimbursements received as a result of this state mandated program be offset from any costs claimed. Specifically, Section VII of the parameters and guidelines provides:

> "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.." (Attachment D)

Based on the above, barring evidence to the contrary, staff has reason to believe that the costs reported in the statewide cost estimate survey take into account all monies already received from the state. In other words, if the survey forms were completed as instructed, then the costs reported by counties are the actual costs incurred that are in excess of the current state funding for this program.

In addition, the DMH is also *concerned that the reimbursement claims submitted as a result of this program sufficiently account for all state monies already received. Specifically, the DMH states:

> ". . Furthermore, when claims are submitted, the claims must clearly account for the categorical funds and whether the county had a required match." (Attachment C)

In this case, staff notes that Section VII of the parameters and guidelines provides the following:

> "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." (Attachment D)

It is staff's understanding that the State Controller's Office vigorously enforces this section of the parameters and guidelines, and would require that any county claiming costs to account for all other monies received prior to being reimbursed for its state mandated costs.

In sum, barring the submittal of an alternative statewide cost estimate by the administering agency, in this case DMH, staff has to assume that the costs reported in this statewide cost estimate survey already have taken into account the categorical funds received, as well as, the county's required Short-Doyle match. Consequently, if the Commission is not inclined to adopt the staff prepared statewide cost estimate, it may wish to request that the DMH develop, from its records, an alternative statewide cost estimate.

Staff Recommendation

Staff recommends the Commission adopt the statewide cost estimate in the amount of $75,659,000 (Attachment A) for compliance with the provisions of Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570, and Title 2, California Code of Regulations, sections 60000 et seq., for fiscal years 1986-87 through 1992-93. The Commission will request funding for this reimbursable state mandated program in a subsequent claims bill.

WP0899s

STATEWIDE COST ESTIMATE CALCULATIONS
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Summary of Mandate

Chapter 174 Statutes of 1984 and Chapter 1274, Statutes of 1985, added and amended Chapter 26, Division 7, Title 1 of the Government Code (Gov. Code), commencing with section 7570.

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."

Reimbursable Costs

For each eligible county, the following activities are 100% reimbursable:

1. Whenever a local educational agency (LEA) refers an individual suspected of being an "individual with exceptional needs" to the local mental health department, a mental health assessment and recommendation by qualified mental health professionals shall be performed in conformance with assessment procedures set forth in the Education Code, and regulations developed by the State Department of Mental Health. This assessment shall be done in consultation with the State Department of Education, and include, but not be limited to the following mandated services:

   a. interview with the child and family,

   b. collateral interviews, as necessary,

   c. review of the records,

   d. observation of the child at school, and

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

2. Review and discussion of mental health assessment and recommendation with parents and appropriate IEP team members.

3. Attendance by the.mental health professional who conducted the assessment at IEP meetings, when requested.

4. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team.

5. Inclusion of the county mental health professional on the individual's expanded IEP team 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.

6. County mental health personnel identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities when the IEP prescribes residential placement for an "individual with exceptional needs" who is "seriously emotionally disturbed".

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

The following reimbursable activities are subject to the Short-Doyle Act and are subject to a 90 percent/l0 percent cost sharing formula. Therefore, reimbursement for the mandated activities will be limited to 10 percent.

1. For each eligible county, the following cost items, for the provision of mental health services when required by a child's individualized education program, are reimbursable:

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.

Methodolosv

Instructions for submitting information for this estimate, as well as the adopted parameters and guidelines were sent to all 58 counties in California. The data presented here was submitted by 20 counties.

The 20 counties, upon which this estimate is based, reported the following fiscal year cost estimate:

Fiscal Year	Amount
1986-87	$ 2,807,238
1987-88	5,439,153
1988-89	6,707,768
1989-90	9,648,626
1990-91	13,456,986
1991-92	14,504,142
1992-93	15,590,183
TOTAL	$68,154,096

Assumptions and Calculations

1. It is assumed that all costs reported by the responding counties are indicative of reimbursable activities under the parameters and guidelines.

2. The assumption is made that the costs experienced in providing the mandated activities is similar for all counties in the state.

3. This statewide cost estimate was calculated solely upon the data reported by the surveyed countiesbecause it was determined that this was the most practical method of determining the estimated statewide cost of the state mandated program.

4. Four counties that responded to the cost estimate survey were not included in these calculations as their reported costs were either excessive or obviously erroneous.

5. Based upon population figures contained in the Department of Finance's "Population Estimates of California Cities and Counties", the 19 counties upon which this statewide cost estimate is based, represent approximately 75 percent of the population of California.

6. The state mandated program is comprised of two parts, a Short-Doyle treatmentportion, and an IEP participation portion. All counties are subject to the IEP participation requirements of the mandate. However, 28 counties do not have a ten percent match in their Short-Doyle program. Therefore, the Short-Doyle portion of the cost estimate is factored by only those counties who are required to contribute a ten percent match in their Short-Doyle program, and the IEP portion is factored by all 58 counties in the state.

7. Of the 19 counties upon which this statewide cost estimate is based, 3 do not have a ten percent Short-Doyle match.

Based upon population figures contained in the Department of Finance's "Population Estimates of California Cities and Counties", the 16 counties that responded to the survey and that have a ten percent Short-Doyle match, represent 78 percent of the statewide population of counties that are subject to a Short-Doyle match.

8. The 16 counties that responded to the survey, and that have a ten percent Short-Doyle match, reported total Short-Doyle program costs of $27,832,733. Therefore, it is assumed that $27,832,733 represents 78 percent of the statewide cost impact on those counties that are required to contribute ten percent of the costs of their Short-Doyle program, and are impacted by the Short-Doyle portion of this state mandated program.

9. Based on the above, it is assumed that if the total reported Short-Doyle costs are increased an additional 22 percent, that figure will be indicative of 100 percent of the estimated statewide Short-Doyle cost for this mandate. Therefore, 100 percent of the statewide estimated costs for the Short-Doyle portion of the mandate would total $35,682,990 for the fiscal years 1986-87 through 1992-93.

10. The fiscal year breakdown of the total Short-Doyle statewide cost estimate for all eligible counties based on the information stated above is as follows:

Fiscal Year	Amount
1986-87	$ 1,325,363
1987-88	2,904,106
1988-89	3,249,673
1989-90	4,101,618
1990-91	4,810,151
1991-92	9,271,935
1992-93	10,020,144
TOTAL	$35,682,990

11. Based upon population figures contained in the Department of Finance's "Population Estimates of California Cities and Counties", the population of the 19 counties upon which this statewide cost estimate is based, represent 75 percent of the statewide population of all 58 counties that are subject to the IEP requirements of the mandated program.

12. It is assumed that $40,321,363 represents 75 percent of the statewide cost impact on all counties in the state. Consequently, the total reported costs are increased an additional 25 percent, that figure will be indicative of 100 percent of the estimated statewide cost for this mandate. Therefore, 100 percent of the statewide estimated costs would total $53,761,817 for the fiscal years 1986-87 through 1992-93.

13. The fiscal year breakdown of the total statewide cost estimate for all eligible counties based on the information stated above is as follows:

Fiscal Year	Amount
1986-87	$ 2,364,607
1987-88	4,231,933
1988-89	5,564,031
1989-90	8,599,152
1990-91	12,940,090
1991-92	9,696,044
1992-93	10,365,960
TOTAL	$53,761,817

14. Three of the counties responding to the statewide cost estimate survey reported offsetting savings in the amount of $13,785,570, for all seven years. These savings were averaged over the seven years of the statewide cost estimate, and deducted from each fiscal year total.

15. Based on the above assumptions and calculations, the combined total statewide cost estimate for the entire state mandated program is as follows:

Fiscal Year	Amount
1986-87	$ 1,720,603
1987-88	5,166,672
1988-89	6,844,337
1989-90	10,731,403
1990-91	15,780,874
1991-92	16,998,612
1992-93	18,416,737
TOTAL	$75,659,238

16. Because the reported costs are prior to audit and based on estimates, the actual statewide cost estimate of $75,659,238 has been rounded to $75,659,000.

17. Costs for future years wili be budgeted in the annual budget process.

Statewide Cost Estimate Survey
Handicapped and Disabled Students

Total Survey Costs

County	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	Total
Alaseda	$89,377	$216,185	$600,428	$591,247	$622,881	$617,578	$598,456	$3,336,152
E l Dorado	$26,530	$26 530,[illegible]	[illegible]	$11,931	$14,416	$74,416	$74,416	400,848
Fresno	$1611928	$145,805	$187,307	$229,034	$209,464	$209,464	$209,464	1,352,466
Husbolt	$0	$938	$14,136	$11,420	$21,021	$18,300	$21,100	92,915
Kern	$1,987	$16,024	$16,014	$38,926	$66,340	$66,485	$66,640	212,426
Los Angeles	$876,386	$1,575,778	$1,730,425	$3,625,964	$6,712,026	$7,383,228	$8,121,550	30,025,357
Merced	$34,654	$101,121	$101,101	$101,107	$107,101	$108,082	$108,082	613,266
Nevada	$0	$0	$0	$0	$0	$0	$0	0
Orange	$262,753	$502,198	$938,416	$1,549,713	$1,402,772	$1,588,889	$1,733,333	7,978,074
Placer	$0	$0	$0	$0	$0	$0	$0	0
Sacramento	$84,542	$412,192	$435,498	$341,061	$435,498	$439,593	0439,593	2,587,983
San Bernardino	$350,000	$1,075,000	$1,093,298	$1,581,168	$1,794,240	$1,883,952	$1,978,149	9,755,807
San Diego	$41,600	$71,115	$125,541	$148,463	$162,878	$162,818	$162,878	881,413
San Joaquin	$5,232	$21,339	$39,860	$31,823	$43,162	$45,000	$45,000	238,016
Hate0	$376,509	$919,332	$910,185	$864,240	$931,911	$1,000,700	$1,080,800	6,089,683
Santa Clara	$357,151	$238,718	$321,312	$330,068	$733,144	$770,500	$809,000	3,566,553
Santa Cruz	$128,089	$92,114	$116,003	$96,525	$111,313	$111,313	$111,631	185,054
Shasta	$4,500	$7,305	$4,348	$1,681	$1,681	$1,764	$1,164	41,043
Tuolumne	$0	$11,333	$9,211	$10,249	$1,926	$10,000	$16,321	71,040
	$2,801,238	$5,439,153	$6,707,768	$9,648,626	$13,456,986	$14,504,142	$15,590,183	$68,154,096

Statewide Cost Estimate Survey
Handicapped and Disabled Students

Short-Doyle Ten Percent Treatment Costs

County	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	Total
Alameda	to	$47,200	$153,033	$167,788	$176,979	$164,568	$172,796	$802,364
El Dorado	2,412	2,412	4,783	6,539	6,765	6,765	6,763	36,441
Fresno	66,525	59,898	81,606	104,814	92,865	92,865	92,865	591,498
Humbolt	0	0	0	0	0	0	0	0
Kern	1,987	10,901	10,901	26,441	44,997	44,979	44,969	185,175
Los Angeles	07,639	147,179	165,771	333,308	656,106	3,981,780	4,379,958	9,751,741
Merced	3,465	10,113	10,711	10,711	10,711	10,808	10,808	67,327
Nevada	0	0	0	0	0	0	0	0
Orange	37,642	115,641	156,210	191,764	336,959	366,667	400,000	1,604,883
Placer	0	0	0	0	0	0	0	0
Sacramento	8,454	41,219	43,550	34,107	43,550	43,939	43,939	258,798
San Bernardino	263,963	810,743	824,537	1,197,578	1,244,784	1,307,023	1,372,374	7,021,002
San Diego	0	0	12,837	45,099	61,018	61,018	61,018	240,990
San Joaquin	5,232	21,339	39,860	37,823	43,762	45,000	45,000	238,016
San Mate0	340,491	799,298	757,237	770,310	757,605	818,600	884,100	5,127,641
Santa Clara	200,726	176,719	244,282	236,328	241,823	254,000	266,700	1,620,578
Santa Cruz	10,747	15,236	25,079	28,911	26,313	26,313	26,637,	159,236
Shasta	4,500	7,305	4,348	7,681	7,681	7,764	1,764	47,043
Tuolumne	0	0	0	0	0	0	0	0
	$1,033,783	$2,265,203	$2,534,745	$3,199,262	$3,751,918	$7,232,109	$7,815,713	$27,832,733

Statewide Cost Estiwate Survey
Handicapped and Disabled Students

IEP Participation Costs

County	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	Total
Alameda	$89,377	$168,985	$447,395	$423,459	$445,902	$453,010	$425,660	$2,453,788
El Dorado	24,118	24,118	47,826	65,392	67,651	67,651	67,651	364,407
Fresno	95,403	85,907	105,701	124,160	116,599	116,599	116,599	760,968
Humbolt	0	938	14,136	17,420	21,021	18,300	21,100	92,915
Kern	0	5,123	5,123	12,485	21,343	21,506	21,671	87,251
Los Angeles	788,747	1,428,599	1,564,654	3,292,656	6,055,920	3,401,448	3,741,592	20,273,616
Herced	31,189	91,014	96,396	96,396	96,396	97,174	97,274	605,939
Nevada	0	0	0	0	0	0	0	0
Orange	225,111	386,557	782,206	1,357,949	1,065,813	1,222,222	1,333,333	6,373,191
Placer	0	0	0	0	0	0	0	0
Sacramento	76,088	310,973	391,948	306,960	391,940	395,634	393,634	2,329,185
San Bernardino	86,037	264,257	268,761	383,590	549,456	576,929	605,775	2,734,805
San Diego	47,600	71,175	112,704	103,364	101,860	101,860	101,860	640,423
San Joaquin	0	0	0	0	0	0	0	0
San Mate0	36,018	120,034	152,948	93,930	180,312	182,100	196,700	962,042
Santa Clara	156,425	61,999	83,090	93,740	491,921	516,500	542,300	1,945,975
Santa Cruz	117,342	76,938	90,924	67,614	91,000	91,000	91,000	625,818
Shasta	0	0	0	0	0	0	0	0
Tuolumne	0	17,333	9,211	10,249	7,926	10,000	16,321	11,040
	$1,773,455	$3,173,950	$4,173,023	$6,449,364	$9,705,068	$7,272,033	$7,774,470	$40,321,363

State of California

CSM 'ATTACHMENT B

MEMORANDUM

Date : August 20, 1992

RECEIVED
AUG 24 1992
COMMISSION ON
STATE MANDATES

To Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates

From : Department of Finance

Subject: Claim No. CSM-4282 based on Chapter 1747/84, "Handicapped and Disabled Students"

This is to advise you that, because of our workload resulting from the state budget negotiations, our recommendation on the proposed statewide cost estimate for this claim will not be available by the requested due date of August 20 and instead will be forwarded as soon as possible, hopefully within the next few weeks. We apologize for any inconvenience that this may cause you or the claimant and hope that this delay will not necessitate a rescheduling of the item from the September 24 agenda.

Please contact James Apps of my staff at 324-0043 if you have any questions or concerns.

Sincerely,

Fred Klass
Program Budget Manager

cc: Ms. Rima H. Singh, County of Santa Clara

STATE OF CALIFORNIA-HEALTH AND WELFARE AGENCY

PETE WILSON. Governor

DEPARTMENT OF MENTAL HEALTH
1600 - 9TH STREET
SACRAMENTO, CA 95814

RECEIVED
AUG 25 1992
COMMISSION ON
STATE MANDATES

August 21, 1992

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

Re: CSM - 4282
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

This is to transmit the response and comments of the Department of Mental Health regarding the Statewide Cost Estimate for the above referenced matter. We understand from your July 16, 1992 letter that the Commission on State Mandates will consider the adoption of a statewide cost estimate for this matter at its hearing on September 24, 1992.

The main concern of the Department of Mental Health is that the draft Statewide Cost Estimate neither mentions nor seems to take into account the fact that categorical funds were appropriated each fiscal year from 1986-87 through 1991-92 and are proposed for 1992-93, specifically for the purpose of funding programs and services related to this matter. Enclosed is a table prepared by the Department of Mental Health which sets forth the exact amounts allocated and made available to each county, each year, from those categorical appropriations.

The amount reimbursable to each county, for each fiscal year, through the state mandates process must be calculated by deducting the amount of categorical funds allocated to the county for that fiscal year. The Statewide Cost Estimate must reflect this and any and all claims submitted must clearly account for the categorical funding in each fiscal year.

Some services are reimbursable 100% and some are reimbursable only for the required county match under Short-Doyle. In this vein, it should be noted (as is pointed out in the draft Statewide Cost Estimate) that 28 counties did not have a match requirement during these years. In addition, in fiscal year 1986-87, no counties were required to pay a county match. Finally, the amount each county can be reimbursed through the mandates process for services which have been determined to be Short-Doyle reimbursable is limited by the fact that no county was required to expend more than the match amount under former Section 5709 of the Welfare and Institutions Code.

In light of all of the above, the Statewide Cost Estimate should take into account the categorical funding allocated to the counties, the match requirements or exemptions with regard to Short-Doyle services, and the fact that there was no match requirement in fiscal year 1986-87. Furthermore, when claims are submitted, the claims must clearly account for the categorical funds and whether the county had a required match.

Representatives of the Department of Mental Health will attend the hearing and will be prepared to discuss this matter. If you have any questions, please call me.

Sincerely,

NORMAN L. BLACK
Senior Staff Counsel

Enclosure

cc: Lynn Whetstone
Department of Mental Health

James Apps
Department of Finance

DEPARTMENT OF MENTAL HEALTH
SUMMARY OF AB 3632 ALLOCATIONS BY COUNTY
FOR FY 1986-87 THROUGH FY 1992-93

COUNTY	FY 1986-87	FY 1987-88	FY 1988-89	FY 1989-90	FY 1990-91	FY 1991-92	PROPOSED FY 1992-93	TOTALS ALL FISCAL YEARS	
Alameda	189,795	430,171	437,087	437,087	437,087	997,037	997,037	$3,925,301	
Alpine	119	15,065	0	15,000	15,000	15,000	15.000	$75,184	
Amador	2,764	17,392	15,000	15,000	15,000	15,000	15:000	$95,156	
Butte	17,371	92,985	90,854	90,854	90,854	92,057	92,057	567,032	
Calaveras	3,627	29,847	27,703	27,703	27,703	27,979	27,979	I172.541,	
Colusa	1,649	15,000	5,000	15,000	15,000	15,000	15,000	$81,649	
Contra Costa	173,293	541,226	552,838	552,838	552,838	555,814	555,814	$3,484,661	
Del Norte	2,125	15.170	15) 000	15,000	15,000	15,000	15,000	$92,295	
El Dorado	11,248	25: 560	25,874	24,118	24,118	24,357	24,357	$159,632	
Fresno	104,883	447,126	489,143	444,899	444,899	450,558	450,558	$2'832,066	
Glenn	2,921	15,170	15,000	15,000	15,000	15,000	15,000	$93,091	
Humboldt	16,749	51,426	53,457	53,457	53,457	54,345	54,345	$337,236	
Imperial	12,679	77.573	76,275	71.991	71.991	73.180	73,180	$456,869	
Inyo	1,967	15: 000	0	15: 000	15:ooo	15: 000	15,000	$76,967	
Kern	64,506	232,370	49,204	249,204	249,204	251,270	251,270	$1,347,028	
King	13,290	45,431	48,051	44,961	44,961	46,049	46,049	$288,792	
Lake	4,821	18,423	4,694	19,694	19,694	19,884	19,884	$107,094	
Lassen	3,438	15,795	15,000	15,000	15,000	15,000	15,000	$94,233	
Los Angeles	1,305,153	3,082,162	3,193,626	3,193,626	3,193,626	3,235,383	3,235,383	$20,438,959	
Madera	9,049	33,496	940	35,940	35,940	36,262	36,262	$187,889	
Marin	29,942	200,516	171,713	171,713	171,713	175,877			
Mariposa	1,084	15,000	15,000	15,000	15,000	15,000	175,877	$1,097,351	$91,084
Mendocino	14,168	42,785	44,647	44,647	44,647	45,394	15,000	$281,682	
Merced	31,189	91,014	96,396	96,396	96,396	97,274	97,274	$605,939	
Modoc	2,449	15,310	15,000	15,000	15.000	15,000	15.000	$92,759	
Mono	1,115	15,596	15,000	15,000	15,000	15,000	15,000	$91,711	
Monterey	35,922	161,063	232,744	158,231	158,231	160,906			
Napa	15,324	102,646	93.836	93,836	93,836	95,110	160,906	$1 ($8,003 589,698	
Nevada	9,127	33.126	31: 785	31,785	31,785	32,062	95,110	$ 201,732	
Orange	283,544	780: 709	1,104,507	802,030	802,030	813,876	813,876	$5,400,572	
Placer	22,635	114,087	141,327	106,153	106,153	108,244	108,244	$706,843	
Plumas	2,536	17.797	18,333	17,490	17,490	17,528	17,528	$108,702	
Riverside	179,370	573: 164	766,058	568,397	968,397	177,914	177,914	$3,411,214	
Sacramento	145,099	370,973	391,948	391,948	391,948	395,634	395,634	$2,483,184	
San Benito	15,239	37,112	40,565	36,701	36,701	36.921	36,921	$240,160	

San Bernardino	209,251	847,718	828,072	828,072	828,072	840,269	840,269	$5.221.723
San Diego	435,927	907.448	1,014,333	934,272	934,272	946,932	946,932	$6,120,116
San Francisco	127,501	472; 757	440,095	440,095	440.095	450,872		$
San Joaquin	59,300	301,240	298,834	298,834	298: 834	303,527	450,872	$2,822,287 864,086
San Luis Obispo	22,883	115,698	126,083	109,790	109,790	112,205	303,527	5708,654
San Mateo	252,239	712,865	652,745	652,745	652,745	662,434	662,434	$4.248.207
Santa Barbara	39,263	172,124	178,673	178,673	178,673	180,428	180,428	$1,108,262
Santa Clara	222,955	1,100,241	1,102,839	1,102,839	1,102,839	1,117,302		$
Santa Cruz	177,405	350,949	356,828	327,814	327,814	330,737	1,117,302	6,866,317 202,284
Shasta	40,500	65,748	39,132	69,132	69,132	69,879	330,737	$423,402
Sierra	827	16,969	16,107	16,107	16,107	16,116	16,116	$98,349
Siskiyou	5,095	21,106	21,355	21,355	21,355	21,650	21,650	$133,566
Solano	40, I51	133,195	137,405	137 ; 405	137,405	139,235	139,235	$864,031
Sonoma	73,717	254,021	243,454	243,454	243; 454	247,912	247,912	$1,553,924
Stanislaus	73,711	248,834	262,842	239,526	239,526	242,467	242,467	$1,549,373
Sutter/Yuba	15,641	72,913	92,184	76,242	76,242	77,211	77,211	$487,644
Tehama	4,772	20,000	20,518	20,518	20,518	20,792	20,792	$127,910
Trinity	1,752	15,000	0	15,000	15 , 000	15,000	15,000	$76,752
Tulare	33,554	130,685	139,899	139,899	139,899	141,092	141,092	$866,120
Tuolumne	4,899	15,000	11,298	16,298	16,298	16,321	16,321	$96,435
Ventura	78,518	275,796	271,074	271,074	271,074	275,000	275,000	$1,717,536
Yolo	49,949	117,828	111.157	111,157	111,157	112,704	112,704	$726,656
TOTALS	$4,700,000	$14,155,421	$14,658,532	$14,166,000	$14,566,000	$14,511,000	$14,511,000	$91,267,953
Budget Act Appropriation								
(Item 4440-131-001)	$4,700,000	$8,200,000	$15,116,000	$15,116,000	$15,116,000	$14,511,000	$14,511,000	$87,270,000
(Item 4440-491)	-0-	$6,000,000	-0-	-0-	-0-	-0-	-0-	$6,000,000

Budget Branch
FLC
8- 18-92

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

DECISION

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

This Decision shall become effective on April 26, 1990.

IT IS SO ORDERED April 26, 1990.

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

WP0363h

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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. Backaround

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 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 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 tha-t 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)(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 reguires 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 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 a programmatic description of each of the services to be provided in a county's Short-Doyle annual plan. Welfare and Institutions" Code section 5651, subdivision (g), requires, for the first time, the county Short-Doyle annual plan to include a description of the county mental health services required by Government Code sections 7571 and 7576, including the cost of those services. It was found that the provisions of Government Code sections 7571 and 7576 and their implementing regulations are mental health services provided pursuant to the county's Short-Doyle annual plan.

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

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

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

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

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

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

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

Government Code section 17551, subdivision (a) provides:

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

///
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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 tiinely-filed claim for reimbursement; and subsequent review of the'claim by the State Controller's Office.

WP0258h

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

PUBLIC HEARING

ORIGINAL

STATE CAPITOL

ROOM 444

SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 24, 1992

10:00 a.m.

Reported by:

Peter Petty

COMMISSIONERS PRESENT

Susanne Burton, Chairperson

Robert C. Creighton

William Sherwood

Gregory R. Cox

STAFF PRESENT

Robert W. Eich, Executive Director

Stephen R. Lehman, Assistant Executive Director

Gary D. Hori, Legal Counsel

Michael Coleman, Program Analyst

Ellen O'Connor, Program Analyst

ALSO PRESENT

James Apps, State Department of Finance

Torman L. Black, Office of Legal Services, State Department of Mental Health

Bob Porter, Community Mental Health Division, County of Santa Clara

Lima H. Singh, Counsel, County of Santa Clara

Marcia C. Faulkner, San Bernardino County Office of Auditor/Controller-Recorder

Allan P. Burdick, Director, California Cities SB90 Service

Arb Campbell, Chief, Police Department, City of Newport Beach

Jim Newman, Lieutenant, Police Department, City of Newport Beach

Shirley A. Houser, Prevention and Community Corrections Branch, State Department of the Youth Authority

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1 CHAIRPERSON BURTON: Okay.
2 EXECUTIVE DIRECTOR EICH: On the consent calendar
3 we have items 3 and 4, the two statements of decision. We
4 also notify everyone that item 6 is being continued.
5 At this point in time staff is unaware of any
6 controversy on any of those items and recommend the
7 Commission adopt the consent calendar.
8 CHAIRPERSON BURTON: Okay, does anyone wish to
9 have item 3 or.4 discussed separately? Otherwise we'll act
10 on them as a consent calendar.
11 MEMBER COX: Motion to approve the consent
12 calendar.
13 CHAIRPERSON BURTON: Motion to approve the consent
14 calendar.
15 MEMBER SHERWOOD: Second.
16 CHAIRPERSON BURTON: Those in favor signify by
17 saying aye.
18 (Ayes...)
19 CHAIRPERSON BURTON: Opposed? So ordered. And
20 item 6 is continued.
21 Okay, now where? Shall we go to item 2?
22 EXECUTIVE DIRECTOR EICH: Item 2, yes.
23 CHAIRPERSON BURTON: Okay.
24 EXECUTIVE DIRECTOR EICH: Thank you, Madam Chair.
25 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Item 2 is a

1 proposed statewide cost estimate for the state mandated
2 program contained in the government code commencing with
3 section 7570.
4 These statutes, as well as some title 2
5 regulations require counties to provide assessments and
6 treatment to handicapped children who are in need of such
7 services in order to benefit from their individualized
8 education program.
9 The Department of Finance, I'll note, submitted a
10 late filing regarding the statewide cost estimate. In
11 addition, the Department of Mental Health also takes issue
12 with certain provisions of the cost estimate.
13 Staff is recommending that the Commission adopt
14 the statewide cost estimate in the amount of $75,659,000 for
15 the fiscal years of 1986/87 through 1992/93.
16 In addition, it's my understanding that the County
17 of Santa Clara has brought a submittal that they would like
18 to 'submit today, as well, regarding the cost estimate, or
19 better yet, regarding the Department of Mental Health's
20 recommendation.
21 CHAIRPERSON BURTON: Okay. Would you like to
22 identify yourselves, please,
23 Jim, go first.
24 MR. APPS: Jim Apps for the Department of Finance.
25 MR. BLACK: Norman Black, representing the

Department of Mental Health, State Department of Mental Health.

MR. PORTER: Bob Porter, Santa Clara County.

MS. SINGH: Rima Singh, Santa Clara County.

CHAIRPERSON BURTON: I'm sorry, what was your last--

MS. SINGH: Rima Singh, S-i-n-g-h, Santa Clara County.

CHAIRPERSON BURTON: Thank you. Okay. Who wants to go first?

MR. BLACK: I guess I will on behalf of the State Department of Mental Health. I don't really want to repeat what was in the written submittal. I think we expressed our concerns.

The Department doesn't see it as a real crucial issue because I think as the Commission staff points out, any sort of discrepancies or variations can be sorted out later.

I did want to offer just two additional comments, though. One is that the Department did have staff look back at some of the old cost reports and even upon doing that we can't match up some of the numbers that were reported as part of the survey.

And so we still can't tell at this point, you know, whether -- how much of the funding was deducted before

1 reporting the costs. But I guess that can be sorted out
2 later.
3 The only other thing I was going to say is that
4 the Department's experience in going back and auditing after
5 the fact and collecting money from the counties is that it's
6 certainly not a pleasant experience for either side, and
7 sometimes, especially with the smaller counties, we run into
8 situations where the county, even when admitting that they
9 owed the money, said, well, we just can't pay it back now,
10 you know, it's going to be disastrous for our program.
11 And we often have had to work out, you know, an
12 extended payment plan or some such thing. So, I think
13 that's all the Department had to offer.
14 CHAIRPERSON BURTON: Okay. My understanding is
15 that the staff is advising us to proceed with the results of
16 the survey even though the technical people in the
17 Department and apparently the Department of Finance staff,
18 now with the letter that they've provided, have some
19 reservations about the number.
20 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Barring the
21 submittal of a better number, we have no other estimate to
22 rely upon at this point and the way in which we conduct our
23 surveys we are somewhat reliant, or we are reliant on the
24 information submitted by the counties. And we acknowledge
25 there may be a dispute between what they believe their costs

are and what the Department of Mental Health believes,

CHAIRPERSON BURTON: Okay. Mr. Porter or Ms. Singh, do either one wish to comment on what's being recommended?

MS. SINGH: Well, perhaps Mr. Black can clarify why he's talking about collecting from the counties when I believe the Commission's, decision provides for the counties to collect from the Department? Perhaps Mr. Black can clarify that?

CHAIRPERSON BURTON: Did the Commission Members have a question about that? I mean my understanding was he was talking about in audits it's difficult to identify when you might owe him money, which has little or nothing to do with the claim before us.

MR. BLACK: Yes, that was the last comment I had. But when I was talking about paying back, the scenario that I envision is that the counties submit their claims under this mandate and get, after the legislative process, get the money for their claims, and then as is described in the staff report, auditors, I guess perhaps from the Controller's Office, may come in and audit. And if they indeed identify money that they think the counties shouldn't have, then is when you'd be in a position of having the county having to reimburse or pay back or deduct something from future claims. That's all I was referring to.

1 CHAIRPERSON BURTON: But of course, we always
2 assume that the counties are only going to claim the proper
3 costs and if there's an issue as a result of an audit that
4 the governmental entities involved will be able to work out
5 what the proper claiming should have been to resolve that.
6 The issue before us is whether to approve the
7 results of the survey so that the staff will then report the
8 $75 million amount as part of the claims bill to the
9 legislature. And as it's going through the process,
10 hopefully we can all become more comfortable with the number
11 to the extent that number may need to be adjusted.
12 MR. BLACK: Just one more clarification. I don't
13 think that the Department is trying to say that we oppose or
14 have any problem with approving the estimate. We just
15 wanted to point out those concerns. And hopefully they will
16 be addressed at some point.
17 CHAIRPERSON BURTON: Okay.
18 MS. SINGH: Mr. Black brings up a point which is
19 there is a need for clarification of the parameters and
20 guidelines insofar as the deduction is concerned. And Santa
21 Clara County has submitted a written statement that we
22 believe that the deduction must be applied to the entire
23 cost of operating the program.
24 And I need to know at this time as to what is the
25 proper time for resolution of that dispute between the

1 Department of Mental Health and the counties.
2 CHAIRPERSON BURTON: Steve?
3 DEPUTY EXECUTIVE DIRECTOR LEHMAN: It sounds as
4 though you want to submit a request to amend the parameters
5 and guidelines, which is a different process. We would
6 schedule a subsequent hearing to do that.
7 CHAIRPERSON BURTON: Have the parameters and
8 guidelines been adopted already?
9 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Yes.
10 CHAIRPERSON BURTON: Okay.
11 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Quite some time
12 ago, I believe.
13 CHAIRPERSON BURTON: Okay.
14 MS. SINGH: I don't believe --
15 CHAIRPERSON BURTON: What the process then is for
16 the county to submit a request to amend them?
17 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Urn-hum.
18 CHAIRPERSON BURTON: Okay. Is that what that
19 letter is?
20 MS. SINGH: Well, we do not believe that the
21 parameters and guidelines require amendment, although they
22 do speak about deduction of categorical funding. You cannot
23 deduct something if it is not applicable to the claim, and
24 we did apply the deduction, but we applied it to the entire
25 cost of operating the program, because it was our

1 understanding that the state was contributing 90 percent of
2 the cost of that program, and that the funding was given in
3 the form of categorical funding for the SEP program, was to
4 be applied to the 90 percent Short-Doyle funding from the
5 state, as well as the funding that was incurred by the
6 counties in running the program.
7 DEPUTY EXECUTIVE DIRECTOR LEHMAN: What Ms.
8 Singh's referring to is on the bottom of page 33 of your
9 agendas, and I believe that does address her concerns. It
10 is the last page of the parameters and guidelines.
11 In fact, I think that language was submitted by
12 the county during the adoption of the parameters and
13 guidelines.
14 MS. SINGH: Well, our interpretation of this is
15 that the categorical funding has to be deducted, but it has
16 to be deducted from the entire cost of operating the
17 program.
18 Does the Commission still believe that an
19 amendment is required in order to make that clear?
20 DEPUTY EXECUTIVE DIRECTOR LEHMAN: I don't believe
21 so, but, Norm?
22 MR. BLACK: I'm not sure I quite understand.
23 DEPUTY EXECUTIVE DIRECTOR LEHMAN: We're getting
24 beyond the cost estimate at this point, and we're going back
25 to some of the merits of the claim that were argued in front

1 of both the Administrative Law Judge here, as well.

2 CHAIRPERSON BURTON: Well, I have no history with

3 the arguments, and it seems to me to be off the point of the

4 $75 million. I'm happy to allow, you know, the discussion

5 to go on for awhile, but it doesn't seem to be advancing our

6 purpose, which is to come up with a cost estimate.

7 MR. BLACK: Well, I would be happy, you know, to

8 say on behalf of the Department that the Department is

9 certainly willing to look at this issue and to let Ms. Singh

10 know whether we agree or disagree, and if we disagree then

11 we can bring it back before the Commission, I guess.

12 CHAIRPERSON BURTON: Okay. So is the letter

13 addressed to the Commission, that raises this question?

14 MR. BLACK: To Mr. Lehman.

15 DEPUTY EXECUTIVE DIRECTOR LEHMAN: With copies--

16 CHAIRPERSON BURTON: Okay. So, we'll take the

17 letter. Thank you. And we'll ask the Department to give us

18 some advice on how to respond.

19 Did you have anything you wished to say about the

20 cost estimate? Any Members?

21 MS. SINGH: We are in agreement with the cost

22 estimate.

23 CHAIRPERSON BURTON Okay. Thanks.

24 MEMBER CREIGHTON: I will make a motion to adopt

25 the staff recommendation.

1 MEMBER SHERWOOD: I'll second it.

2 CHAIRPERSON BURTON: Okay. Discussion on that?

3 Those in favor signify by saying aye.

4 (Ayes.)

5 CHAIRPERSON BURTON: opposed? Motion carries.

6 Thank you.

7 MS. SINGH: Thank you.

8 CHAIRPERSON BURTON: I note that this letter is

9 unsigned. You might want to sign it. Thanks.

10 EXECUTIVE DIRECTOR EICH: The next item on the

11 agenda would be item 5.

12 CHAIRPERSON BURTON: Item 5 dealing with stolen

13 vehicles.

14 DEPUTY EXECUTIVE DIRECTOR LEHMAN: Yes, this test

15 claim is from the County of San Bernardino which alleges

16 that chapter 337, statutes of 1990 has imposed a higher

17 Level of service upon the county by requiring that within 48

18 hours of being notified of the recovery of a stolen vehicle

19 that the original law enforcement agency notify the

20 reporting party of the location and condition of the

21 recovered vehicle.

22 Both the Department of Finance and Department of

23 Justice find that the statute in question does impose a

24 higher level of service upon the county. Staff also agrees

25 that the code section imposes a higher level of service with

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing COMMISSION ON STATE MANDATES, PUBLIC HEARING, was recorded by me and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties in this hearing, nor in any way interested in the outcome of this hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of October, 1992.

Peter Petty

PETER PETTY
Official Reporter

MINUTES

COMMISSION ON STATE MANDATES
September 24, 1992
10:00 a.m.
State Capitol, Room 444
Sacramento, California

Present: Chairperson Susanne Burton
Representative of the Department of Finance
Member Gregory Cox
Representative of the Office of Planning and Research
Member William Sherwood
Representative of the State Treasurer
Member Robert C. Creighton
Public Member

Member D. Robert Shuman, Representative of the State Controller was absent.

There being a quorum present, Chairperson Burton called the meeting to order at 10:15 a.m.

Item 1 Minutes

Chairperson Burton noted that the first order of business is the Minutes of the Commission's hearing of August 24, 1992. There were no corrections or additions. Member Creighton moved adoption of the Minutes. Without objection the motion carried.

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

Item 3 Statement of Decision
Chapter 252, Statutes of 1990
<u>County Agricultural Reports</u>

Item 4 Statement of Decision
Chapter 1188, Statutes of 1990
<u>Defense of Indigents in Capital Cases</u>

The following item was continued.

Item 6 Test Claim
Chapter 1111, Statutes of 1990
<u>Sudden Infant Death Syndrome: Firefighters</u>

Member Cox moved that the consent calendar be adopted. Member Creighton seconded the motion. Without objection the motion carried.

Item 2 Statewide Cost Estimate
Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, California Code of Regulations, Division 9
<u>Handicapped and Disabled Students</u>

'Mr. Stephen Lehman, Assistant Executive Director, Commission on State Mandates summarized Item 2. Ms. Rima Singh, representing the County of Santa Clara, Mr. Norman Black, representing the State Department of Mental Health, and Mr. Jim Apps, representing the State Department of Finance, introduced themselves and appeared in conjunction with this item.

Mr. Black stated that the Department of Mental Health is concerned that the statewide cost estimate may be overstated in light of the categorical monies received by the counties from'the state. Thus, the department was concerned that the parameters and guidelines, as well as the statewide cost estimate, account for all other monies received by the counties.

Ms. Singh, stated that the County of Santa Clara, in its response to the statewide cost estimate, had accounted for all monies received, as required by the parameters and guidelines. Moreover, Ms. Singh questioned the Department of Mental Health's concerns.

Staff informed the Commission that its statewide cost estimate was based on the data submitted by the counties, and required counties to offset any categorical monies received for these state mandated costs.

Member Creighton moved to adopt the staff recommendation. Member Sherwood seconded the motion. The vote on the motion was unanimous. The motion carried.

Item 5 Test Claim
Chapter 337, Statutes of 1990
<u>Stolen Vehicle Notification</u>

Mr. Stephen Lehman summarized Item 5. Ms. Marcia Faulkner, representing the County of San Bernardino, and Mr. Jim Apps, representing the State' Department of Finance, introduced themselves and appeared in conjunction with this item.

Ms. Faulkner stated that the County of San Bernardino disagreed with several areas of the staff analysis, however, she stated that these differences could be addressed during the development of the parameters and guidelines. Thus, Ms. Faulkner stated that the County of San Bernardino concurred with the staff recommendation to find a reimbursable state mandated program.

Mr. Apps stated that the Department of Finance agreed with the staff recommendation.

Member Cox moved to adopt the staff recommendation. Member Sherwood seconded the motion. The vote on the motion was unanimous. The motion carried.

Item 7 Test Claim
Chapter 1271, Statutes of 1986
Confinement of Minors

Ms. Ellen O'Connor, Program Analyst, summarized Item 7. Mr. Allan Burdick, California State Association of Counties, Lt. Tim Newman and Chief Arb Campbell, City of Newport Beach, Ms. Shirley Houser, California Youth Authority (CYA), and Mr. Jim Apps, Department of Finance, introduced themselves and appeared in conjunction with this item.

Mr. Burdick stated that the City of Newport Beach disagreed with the staff recommendation to deny the test claim. Mr. Burdick stated that the issue seems to be whether the City had another option regarding the confinement of minors. Mr. Burdick stated that this option was chosen based on clear direction from the state through the CYA that the city had to increase its level of service to minors and had to change its prior practices. Chief Campbell discussed the unique responsibilities of a beach city in handling minors and noted that the County of Orange would no longer accept misdemeanants.

Ms. Houser stated that the intent of the legislation was to remove all juveniles from adult facilities, but, recognizing the difficulties of reaching that goal, the legislation required certain protections for minors. The separation of minors from adults, and between certain classifications of minors, and the prohibition against minors being held in jail (as distinct from a lock-up), were continuations of prior law. Ms. Houser indicated, in conjunction with the Department of Finance finding, that the choice to continue to detain minors in law enforcement facilities with adult offenders was the choice of the city and not the result of a requirement from the state.

Member Creighton moved to grant only the claim of the City of Newport Beach. Discussion continued. Member Creighton withdrew his motion and offerred a substitute motion to continue the matter to the Commission's November 19, 1992, hearing in order to obtain further information on alternatives available to local government and to clarify any issues that might be unique to Newport Beach. Member Cox seconded the motion. Without objection, the motion carried.

Executive Director Eich advised that the agenda had been completed. There being no further business, Chairperson Burton adjourned the meeting at 11:50 a.m.

ROBERT W. EICH
Executive Director
g:\minute\092492

STATE OF CALIFORNIA'

COMMISSION ON STATE MANDATES
1414 K Street, Suite 315
SACRAMENTO, CA 95814
6) 323-3662

FILE COPY

PETE WILSON, Governor

September 25, 1992

Ms. Rima H. Singh
Deputy County Counsel
County of Santa Ciara
70 West Hedding Street,
9th Floor, East Wing
San Jose, CA 95110-1770

RE: CSM-4282
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CCR, Division 9
Handicapped and Disabled Students

Dear Ms. Singh:

At its hearing of September 24, 1992, the Commission on State Mandates adopted a statewide cost estimate for the above-entitled state mandated program.

The Commission approved the total amount of the statewide cost estimate according to the following schedule:

Fiscal Year	Amount
1986-87	$ 1,720,603
1987-88	5,166,672
1988-89	6,844,337
1989-90	10,731,403
1990-91	15,780,874
1991-92	16,998,612
1992-93	18,416,737
TOTAL	$75,659,000 (R)

This statewide cost estimate will be included in the Commission's next local government claims bill. If you have any questions or concerns, please feel free to contact me.

Sincere&y,

STEPHEN R. LEHMAN
Assistant Executive Director

SRL:do:G:\SRL\Handisce.ltr

cc: Mr. Jim Apps, Department of Finance
Ms. Gaye Welch-Brown, State Controller's Office
Mr. Richard Thomson, Attorney General's Office
Ms. Marianne O'Malley, Legisiative Analyst's Office
Mr. Norman Black, Department of Mental Health
Mr. Allan Burdick, David M. Griffith & Associates

EXHIBIT B

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

COPY

COUNTY OF SANTA CLARA,

Plaintiff and Appellant,

v.

COMMISSION ON STATE MANDATES OF THE STATE OF CALIFORNIA,

Defendant and Respondent;

STATE OF CALIFORNIA,

Real Party in Interest and Respondent.

No. H009520

(Santa Clara Co. Super.Ct.No.702212).

FILED

JAN 11 1993

Court of Appeal — Sixth App. Dist.

BY _____ DEPUTY

Petitioner County of Santa Clara appeals from a judgment sustaining the decision by the Commission on State Mandates '(Commission} as to the. amount of state reimbursement for County's mental health services provided to, special education' students. We affirm.

Statement of Facts'

In 1976, Congress enacted the Education for All Handicapped Act (EHA)/1 which guarantees handicapped children the right to

/1 20 U.S.C. § 1400 et seq.

receive a free appropriate public education which. emphasizes special education and related services designed to meet their unique educational needs. (20 U.S.C. § 1401, subd. (a) (16).) Handicapped children include children 'who are seriously emotionally disturbed. (20 U.S.C. § 1401, subd. (a) (1).) The mechanism for providing special education services under the EHA is the individualized education program (IEP) , , (34 C.F.R. §§ 300.340, 300.346 (1992) .) An IEP may provide for " 'related services ' " in&riding psychological services. (20 U.S. C. § 1401, subd. ('a) (17).)

In. order to comply with the EHA, California adopted a state plan and enacted appropriate legislation; (Ed,. Code, § 56000 et seq.'; Gov. Code, § 7.570 et seq.) The responsibility for supervising, special education and related services was delegated to the 'Superintendent of Public Instruction. (Ed. Code, § 56135; Gov. Code, § 7561.) Local educational agencies (LEAS) throughout the state delivered the, requisite services, Prior to July 1, 1986, LEAS were financially responsible for the provision of mental health services required 'by an IEP. (CT 514)

However, subsequent legislation shifted some 'of the IEP responsibilities from LEAS to county mental health programs. (Stats, 1984, ch. 1747, § 2, pp. 6370-6377; Stats. 1985, ch. 1274, § 5, p. 4363.) A county mental health service designated by the state department of mental health shall be responsible for the provision of psychotherapy or other mental health services when required by an IEP. (Gov. Code, § 7576.) The

child's family is' not responsible for the cost of treatment. (GoCode, § 7582.)

The Short-Doyle Act 'which was enacted in 1979 outlines the funding, organization, and operation of local mental health, services in California. (Welf. & Inst. Code, § 5600 et seq.) Pursuant to, the Short-Doyle Act each county must adopt an annual mental health plan describing the services to be provided. (Welf. & Inst. Code, § 5650.) The, plan must also include a description of the services required by, Government Code sections, 7571 and 7576 and their cost. (Welf. & inst. 'Code', § 5651, subd. (g).) The state shall, pay 90% of the net cost of services described in the county mental health plan and the county shall pay the remaining 10%. (Welf. & Inst. Code, § 5705, subd. (b).)

The Budget '"Act of 1986 allocated funding for special education assessments, treatment and case, management 'services, (Stats. 1906, ch, 186, item 4440-131-001, pp. 799-801; Item 6100-161-001, subd. 13, p'. , 891.) County opted, to. receive mental health funding pursuant to a negotiated net amount (NNA) contract rather than through a Short-Doyle plan. The NNA contract included state funding of $222,955 for the special education program' (SEP) for the fiscal year of 1986-1987./2 County's costs for providing special education services exceeded its allocation by $1,929,011.

/2 SEP is a designation by the Department of Finance for the program enacted in Government Code section 7570 et seq.

On July 30, 1987, County filed a test claim with the Commission seeking reimbursement from the state for state-mandated costs pursuant to section 6, article XIIIB of the California Constitution./3 On January 28, 1988, the Commission referred the matter to an administrative law judge (ALJ) for a hearing on the merits. The Commission did not accept the ALJ's proposed decision and issued its own decision on April 26, 1990. In its decision, the Commission found that the following costs of implementing the new legislation were fully reimbursable state mandated costs: participation in mental health assessments; participation on the IEP team; and case management services. However, the Commission also found that psychotherapy and other mental health services were subject to the cost-sharing formula of the Short-Doyle Act. Since the new legislation mandated a higher level of service, County was entitled to reimbursement for its payment of 10% of the program costs.

On June 25, 1990, County filed a petition for writ of mandate. The trial court denied the petition, thereby sustaining the Commission's decision.

Discussion

County contends that the mental health services provided

/3 Section 6 of article XIIIB of the California Constitution requires the state to reimburse local governments for the cost of complying with legislation which imposes a new program or a higher level of service.

pursuant to Government Code section 7570 et seq. were not to be funded through and subject 'to the cost-sharing provisions of the Short-Doyle Act.' We disagree.

'The legislative history of Government Code section 7570 et. seq. demonstrates that the legislature intended to fund the mental health services authorized by these provisions through the Short-Doyle Act. 'In 1984, the legislature enacted chapter 1747 which added chapter. 26 (commencing with § 7570) of the Government Code. Government, Code section 75'88 provided, that it was to become' 'operative on July 1, 1985. The operative date was subsequently postponed until July 1, 1886. (Stats. 1985, ch. 107, § 2, p. 348.)

In 1985, the legislature enacted chapter 1274 which amended Government Code section 7570 'et seq. The same 'bill added, subdivision (g) to Welfare and Institutions Code section 5651 and it" required that the annual Short-Doyle' plan '-for- each county include "(a) description of the services' required by sections 7571 and 7576 of the Government Code, including the 'cost. 'of' these services." Section 18 of the same bill, appropriated $1,600,000 "for". purposes of conducting 'assessments and developing IEPs as, required, by Government Code section 7570 et seq. Section 18 states in relevant part: "Notwithstanding Section 5705 of the Welfare 'and Institutions Code, expenditures. made by a community mental health service . . . shall be financed on a basis of.' 100 per cent state funds' during the period from March 1, 1986 to June 30, 1986, inclusive." This reference to Welfare and Institutions Code section 5705

indicates that the legislature intended that the program be funded under Short-Doyle. Moreover, in providing that the financing should be "100 per cent state funds" during the period from March 1, 1986, to June 30, 1986, the implication is that the county would begin to provide matching funds after June 30, 1986. Thus, the legislature made Clear to the counties that their Short-Doyle plans we're to include services required by Government Code section 7570 et seq.

County contends, however, that, Welfare and (Institutions Code section 5651, subdivision (g) is not applicable because County provides mental health services through an NNA contract and that its NNA contract for fiscal year 1986-1987 did not provide adequate funding for the mental health services required by Government Code section 7570 et seq. County also notes that Welfare and Institutions Code section 5705.2 which provides for NNA contracts does not contain language comparable to Welfare and Institutions Code section 5651, subdivision (g).

County entered into an NNA contract/4 with the state in lieu of the Short-Doyle plan and budget. (Welf. & Inst. Code, § 5705.2.) The NNA contract covers mental health services in the contracting county. The amount of money the state provides is the same whether the county signs an NNA contract or adopts

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/4 By proceeding pursuant to an NNA contract, "[t]he county bears the financial risk in providing any and all mental health services to the population described and enumerated in the contract . . . . The state . . . bears the risk that the county can provide the services at a cost savings. Any savings may be retained by the county as long as such funds are used for mental health services . . . ."

a Short-Doyle plan. County's NNA contract for 1986-1987 included a commitment by the state to pay $222,955 for the SEP. As previously noted, the SEP is the program specified in Government Code sections, 7570 et seq. Thus, County's NNA contract required it to perform $222,955 of the SEP services. By adding subdivision (g) to Welfare and Institutions Code section 5651, the legislature designated that the mental health services provided pursuant to Government Code section 7570 et seq. were to be funded as part of the Short-Doyle program, County's BNA contract was consistent with this intent, Accordingly, the fact that County entered into an NNA contract rather than a Short-Doyle plan and budget is not relevant,.

County's argument as'to the adequacy of the state funds, provided also has no merit. The first appropriation for the Government Code section, 7570 et seq. program 'was made in'the budget for fiscal year 1986-1987. In this budget $2,000,000 was appropriated to the Department of Mental Health and an additional $2,700,000 was 'transferred from the Department of Education for the program. The appropriation also required the Director of the Department of Mental 'Health to report to the legislature by January 1, 1957, on the funding of the program, including *'whether more funds will be needed later for treatment services." Provision 2 of the appropriation excused counties 'for the 1986-1987 fiscal year from providing matching funds for the Government Code section 7570 et seq. program. However, the fact that the appropriation did not meet County's needs does not mean the state must fully reimburse County. As

previously noted, County was bound by the terms of 'its contract.

County also contends the state has not satisfied its constitutional obligation to fully reimburse County for state-mandated services,

Section 6 of article XIIIB of the' California Constitution provides in relevant part: "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 . . . ." The intent of 'section 6 'was to preclude the state 'from shifting to local government the financial responsibility for providing services 'in light of the restrictions imposed by Proposition 13 'on the taxing and spending powers of local governments: (Lucia Mar Unified School Dist. v. Honis (1988) 44 Cal.3d 830, 835-836.) Here it is undisputed' that the provision'of psychotherapy and other 'mental health service to special education students resulted' in a higher level 'of service' within 'County's Short-Doyle program,

By placing these services within Short-Doyie, however, the 'legislature limited' the extent of 'its mandate for' these' services to the funds provided through the Short-Doyle program. A Short-Doyle agreement or NNA contract sets the maximum obligation' incurred by a county for providing. the services listed in the agreement or contract. "Counties "may elect to appropriate more than their 10 per cent share,' but in no event can they be required to do so." (Gbuntv of Sacramento

v. Loeb (1984) 160 Cal.App.3d 446, 450.) Since the services were subject to the Short-Doyle formula under which the state provided 90 per cent of the funds and the county 10 per cent, that 10 per cent was reimbursable under section 6, article XIIIB of the California Constitution.

Disposition

The judgment is affirmed.

Cottle, Acting P.J.

WE CONCUR:

Capaccioli, J.*

Elia, J

County Of Santa Clara v. Commission an State Mandate etc.; State of California
No. H009520

* Retired Associate Justice, Under Assignment by the Chairperson of the Judicial Council.

COMMISSION ON STATE MANDATES
Public Hearing

June 27, 1996
10:00 a.m.
State Capitol
Room 444
Sacramento, California

I ROLL CALL

II APPROVAL OF MINUTES

Item 1 MINUTES
Hearing of March 29, 1996
Hearing of May 6, 1996
Hearing of May 30, 1996
Hearing of May 31, 1996
Hearing of June 4, 1996

III APPLICATIONS FOR A FINDING OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO CCR, TITLE 2, CHAPTER 2.5, ARTICLE 6.5 WELFARE AND INSTITUTIONS CODE SECTION 17000.6 (SB 1033)

ACTION ON SB 1033 APPLICATIONS

Item 2 **FINAL STATEMENT OF DECISION**
County **of Solano** Filing of April 8, 1996 and Preliminary Decision of June 4, 1996.

IV ADOPTION OF PROPOSED REGULATIONS

Item 3 Action item to adopt Proposed Amendments, as modified, to California Code of Regulations, Title 2, Chapter 2.5, to incorporate changes required by Chapter 945, Statutes of 1995 (SB 11)

V ACTION ON MANDATE CLAIMS

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

A. TEST CLAIMS

Item 4 CSM-3986
Riverside Unified School District, et al.
Special Education (Introduction and Initial 2 of 19 subject areas)
Maximum Age Limit for Special Education
Enrollment Caseloads for Special Education Services
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1989, et al.

mote: This *Special Education* test clair 1425 be taken up at the end of the agenda.]

B. STATEMENTS OF DECISION

Item 5 CSM-4460
City of Long Beach
Safety Administrative Hearings
Government Code Section 21025
Chapter 1159, Statutes of 1991

Item 6 CSM-4483
Carmel Valley Fire Protection District, *et al.*
Mammoth Lakes Fire Protection District
Identified Mandate: Structural and Wildland Firefighters' Safety Clothing and Equipment (8 Cal. Code Regs. Sections 3401-3410)
Government Code Section 17581
Chapter 459, Statutes of 1990
Chapter 587, Statutes of 1992 (Budget Act of 1992)
Chapter 55, Statutes of 1993 (Budget Act of 1993)
Chapter 139, Statutes of 1994 (Budget Act of 1994)

C. PARAMETERS AND GUIDELINES

Item 7 CSM-4282 (also cited as CSM-4496)
County of San Bernardino
Handicapped and Disabled Students (Amendment to P&Gs)
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200

Item 8 CSM-4474.
Education Code Section 48900.1
Chapter 1284, Statutes of 1988
Pupil Suspension: Parent Classroom Visits

D. STATEWIDE COST ESTIMATES

None

E. PROCEDURAL ISSUE ON INCORRECT REDUCTION CLAIMS

Item 9 CSM-4435
San Diego Unified School District
Graduation Requirements
Education Code Section 51225.3
Chapter 498, Statues of 1983

Item 10 cm-4479
San Jose Unified School District
Graduation Requirements
Education Code Section 5 1225.3
Chapter 498, Statues of 1983

VI APPLICATIONS FOR A FINDING OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 6.5

WELFARE AND INSTITUTIONS CODE SECTION 17000.6 (SB 1033)

PROCEDURAL ISSUES

Item 11 Discussion/action item on SB 1033 workload and processes, including any applications received

Item 12 Assignment of hearing panel or hearing officer pursuant to California Code of Regulations, Title 2, regulation section 1186.62 for applicant counties

Item 13 Determination of vote requirement for hearing panels

VII OTHER BUSINESS

Item 14 Executive Director's report on Commission staff activities, budget and legislation

VIII CLOSED EXECUTIVE SESSION

Personnel matters pursuant to Government Code section 11126, subdivision (a), and Government Code section 17526

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, Executive Director, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

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

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Item # 7

Proposed Amendment to Parameters and Guidelines

Section 60000-60200
Title 2, CCR, Division 9,
Chapter 1747/84
Chapter 1274/85
Handicapped and Disabled Students

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Hearing Date: June 27, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
LL\4282\pg-anl.rpt

Proposed Amendment Of Parameters and Guidelines

Section 60000-60200
Title 2, California Code of Regulations, Division 9,
Chapter 1747/84
Chapter 1274/85

***Handicapped and Disabled** Students*

Executive Summary

San Bernardino County has filed claims with the State Controller's Office for reimbursement under the original parameters and guidelines (Attachment H) for the, mandate found in Chapter 1747/84; Chapter 1274/85; Title 2, CCR, Div. 9, Sections 60000-60200. The State Controller's Office will not reimburse San Bernardino County or any other claimants for administrative expenses not included in the unit cost rates. The State Controller's refusal is based on a lack of ~~understanding as to which types of administrative expenses would be included and in what amounts~~ clarity in the original parameters and guidelines. Claimant has requested that the, Commission clarify that any administrative costs associated with the mandated program are reimbursable.

A review of Chapters 1747/84 and 1274/85 and related regulations established, that the Department of Mental Health has statutory authority, to define allowable expenses through, the regulations it is authorized to promulgate. However;, no regulations have been promulgated which define -allowable administrative costs.. In the absence of statutory or regulatory definition, a review of the Commission's conclusion in the original test claim reveals a mandate fmding which defined any expense related to participation on the expanded Individualized Education Program team and case management services for specified individuals as being fully reimbursable, and any expenses related to treatment as being ten percent reimbursable.

Once the allowable administrative expenses 'were, defined, it became apparent that the language of the original parameters and guidelines was inadequate to 'explain how reimbursable administrative expenses are to be claimed. The parameters and guidelines were; amended to clarify them sufficiently for the State Controller's personnel to be able to determine the validity: of each claim. The amended parameters and guidelines are: Attachment A;

Claimant
San Bernardino County

Chronology

11/30/95	Request to amend. Parameters and Guidelines filed with the Commission on State Mandates (CSM) by claimant (Attachment B).
02/29/96	Department of Mental Health's (DMH) Position Statement received at CSM (Attachment C).
04/04/96	Department of Finance's (DOF) Position Statement received at CSM (Attachment D).
04/04/96	State Controller's Office's (SCO) Position Statement received at CSM (Attachment E).
O5/22/96	Staff mailed proposed Amended Parameters and Guidelines to all parties with a response deadline date of June 10, 1996.
06/10/96	No responses to proposed Amended Parameters and Guidelines were received by staff.

Summary of Test Claim

San Bernardino County' (not the original test claimant) 'has filed claims with the SCO for reimbursement under the mandate found by the Commission in Chapter 1747/84; Chapter 1274/85 ; Title 2, CCR, Div. 9, Sec. 60000-60200. The SCO will not reimburse claimants for administrative expenses not included in the unit cost rates. Claimant has requested that the Commission clarify that any administrative costs assoc iated with the mandated program are reimbursable.

Claimant asserts that administrative costs are reimbursable because they are included on the annual cost reports. Additionally , Claimant relies on the wording of the Commission's Statement of Decision for the original mandate finding. (Attachment F) which refers to costs related% county participation on the expanded IEP team and case management services as costs mandated by the state and as fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

State Controller's Office Position Statement

The State Controller's Office claiming instructions for this mandate (Attachment G) allow for claiming under either of two methods - those two claiming methods are: a.) Actual Increased Costs or b.) Cost Report. Both methods are described in the original Parameters and Guidelines! (Attachment. H, page 5). The Claimant allegedly claimed under alternative B , the Cost Report method. SCO's staff concluded that they were unable to determine. which administrative expenses above those claimed in the unit rates as computed on the Cost Report should be allowed under the Cost Report claiming method. SCO did not allow any administrative expenses beyond those built in to the unit rates.

Department of Mental Health's Position Statement

Department of Mental Health believes that some administrative costs should be allowed for reimbursement as expenditures necessarily incurred in the provision of the direct services. DMH had historically allowed a portion of the administrative costs to be included in the calculations of the unit rates for reimbursement prior to fiscal year 1993-94. Although the calculation of the unit rates changed with the 1993-94 fiscal year by the removal of all administrative expenses from the unit rates calculation, this was done only to comply with federal requirements and did not reflect a policy change on the part of DMH. Since fiscal year 1993-94, to compensate for the change in the unit rates calculations, DMH has permitted counties to claim administrative costs up to 15 percent of the service costs.

Department of Finance's Position Statement

Department of Finance essentially agrees with DMH. Specifically DOF recommends that the county's request to amend the parameters and guidelines to include the two items of administrative overhead which were in the service unit costs in the cost reports until 1993-94 (administrative support and research and evaluation) be approved. While the county's request to add additional administrative cost items (formal training, contract administration, and utilization review) as allowable reimbursement items be denied.

Staff Analysis

Issue #1: Do the statute (Chapter 1747/84) or 'applicable regulations define which, if any, administrative expenses are allowable under the Special Education Pupils Program?

Chapter 1747/84 (Attachment I), while a rather lengthy chapter, has three brief portions which are relevant to this inquiry. Those portions are all found in Section 2 where Chapter 26 (commencing with Section 75670) of Division 7 of Title. 1 is added to the Government Code. The first relevant new Government Code section is 7570 which states in pertinent part:

> "Ensuring maximum utilization of all state and federal resources available to provide handicapped children, . . .with a free appropriate public education.. .related services.. .and designated instruction and services. . .shall be the joint responsibility of the Superintendent of Public Instruction 'and the Secretary of Health and Welfare.. , ."

This section is the foundation for the chain of authority for implementation of this statute. That chain of authority continues to be identified at new Government Code section 7571 which states in pertinent part:

> "The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570.. . . "

According to page 2 of DMH letter Number 86-12 (Attachment J), DMH was designated by the Secretary of Health and Welfare to assume the responsibilities described in Section 7570. Those responsibilities included compliance with the new Government Code section 7587 which states in pertinent part:

> "By July 1, 1985, each state department named in this chapter shall develop regulations, as necessary, for. the department or designated local agency to implement this act...."

To comply with this requirement DMH participated in the promulgation of the Joint Regulations For Handicapped Children which were codified as sections'60000 et seq. of Division 9 of Title 2 of The California Administrative Code (now known as the California Code of Regulations).

In an effort to identify administrative expenses that are allowable under the regulations implementing the statute in question, staff searched for any relevant statutory or regulation definitions that encompassed administrative expenses. Section 300.16(b)(8)(v) of Title 34 of the Code of Federal Regulations turned out to be the only reference to administrative expenses that staff found in the regulations. And that reference was to administrative expenses related to the provision of psychological services only. Staff concludes that the regulations do not define allowable administrative expenses.

In its capacity as the Secretary of Health and Welfare's designated department, DMH also became responsible for compliance with new Government code section 7583(d) which states in its entirety:

> "(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section, "

To comply with this responsibility, DMH published the Cost Reporting / Data Collection Manual (CR/DC) and related cost report forms. However, the manual states in its introduction that it was designed to provide a guide to counties and providers for the cost reporting/data collection system and contains pertinent fiscal policy and procedures. By including fiscal policy, the manual appears to exceed the requirements of Government code section 7583(d). The CR/DC manual (1989 edition is the most recent available and excerpts from it are Attaclunent K) at section 102 states:

> " 102 PURPOSE
>
> This manual specifies fiscal and administrative policies and procedures to be followed by provider, local program, and state personnel concerning fiscal activities of community mental health services. The primary objectives of this manual are to:
>
> - Provide uniform procedures, forms, and instructions for budgeting, claiming, and cost reporting.
> - Establish basic cost and revenue accounting guidelines.
> - Identify basic requirements which must be included in provider contracts."

Among the policy statements that DMH made through the CR/DC Manual was the section 205 discussion of direct and indirect costs. It reads in its entirety:

> "205 DIRECT AND INDIRECT COSTS
>
> Direct costs are those that are incurred for a specific service. An example of direct costs are salaries and employee benefits, supplies, and travel identifiable to a specific service.
>
> Indirect costs are incurred for the common benefit of an organization or facility and are not readily assignable to a specific service. Some examples are general administration,

accounting and auditing, data processing, personnel and legal services. The method of allocation of indirect. costs should be consistent from year to year. The following two categories of providers will use different methods of allocation:

1. Hospital Providers use the California Hospital Facilities Commission Manual, American Hospital Association, or California Hospital Association guidelines for Cost Finding and Rate Setting for Hospitals. **Indirect costs allocated to mental health services must be directly related to services provided. Indirect costs may not be allocated to mental health services, regardless of general cost finding principles, if the allocated amount is not representative of actual services.** (Bolding added for emphasis.)
2. Non-hospital Providers **use a suitable and reasonable allocation method which corresponds closely to benefits received.** (Bolding added for emphasis.) Indirect costs which are applicable to a provider's total operation are allocated to specific reporting levels."

In accordance with its policy statement regarding indirect costs in the CR/DC manual DMH has traditionally permitted mental health services providers to claim closely related overhead costs on the cost report. DMH has interpreted that to include the categories of "administrative support" and "research & evaluation" only. For that reason, DMH has allowed these two categories of administrative expenses to be allocated through the cost report and become part of the reimbursable unit rates for services.

With that background information, let us return to the original question: Do the statute (Chapter 1747/84) or applicable regulations (sections 60000 et seq. of Division 9 of Title 2 of The California Administrative Code) define which, if any, administrative expenses are allowable under the Special Education Pupils Program? The statute does not provide the requisite definition. Of the regulations, only Section 300.16(b)(8)(v) of Title 34 of the Code of Federal Regulations as cited in Section 60010(d) includes "planning and managing a program of psychological services.. . ". However, the statute at Governrnent Code section 7587 authorizes each department named in the chapter (this includes DMH) to develop regulations, as necessary, for the department or designated local agency to implement this act. And Government Code section 7583(d) authorizes the Secretary of Health and Welfare (and DMH as the Secretary's designee) to develop uniform data collection forms to be used by local agencies in reporting. It appears to staff that while DMH has authority originating directly in Chapter 1747/84 to define through regulations, reimbursable costs for the Special Education Pupils Program; DMH has not done so. Instead of defining "indirect costs" and which of them would be allowable in the regulations that were promulgated, DMH put those definitions in its CR/DC manual. The CR/DC manual was not promulgated as a regulation in accordance with the California Administrative Procedure Act (Government Code section 11340 et seq.). The staff cannot comfortably stretch the statutory authority to "develop uniform data collection forms" to include the CR/DC manual's setting of policy which defines reimbursable expenses.

Issue #2: Which, if any, of the administrative expenses related to the Special Education Pupil Program are reimbursable under the mandate found in Chapter 1747/84; Chapter 1274/85; and Title 2, CCR, Div. 9, Sec. 60000-60200?

Since the statute does not define this, and the regulations are vague, Where is there an authoritative definition? For the purposes of this Commission, the Statement of Decision (SOD) for Chapter 1747/84; Chapter 1274/85; and Title 2, CCR, Div. 9, Sec. 60000-60200 (Attachment I) is worthy of review. The SOD states in relevant part:

> "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 fullv 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 565 1, subdivision (g), result in a higher level of service within the dqunty 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.. .the . county is required to provide the remaining ten (10) percent of the funds. Accordingly, onlv ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated bv the state,. ."

All that this passage appears to require is for the costs to be related to the activities which are mandated; and in the case of the costs related to activities which form part of the county's Short-Doyle plan, only 10 percent of. those are reimbursable under the mandate. There" are no restrictions on the types of costs which are 'reimbursable. Consequently, related administrative costs of any variety appear to be reimbursable.

Issue #3: Do the existing Parameters and Guidelines (Ps & Gs) for this mandate (Attachment F) provide a clear description'of which costs are reimbursable under the mandate?

After reviewing the Ps & Gs, staff conclude that they do not. Ps & Gs section V - Reimbursable Costs, 'subdivision A states:

> "Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Assessment, and Case Management):. . . "

To more accurately reflect the conclusions of the SOD, staff recommends Ps & Gs section V - Reimbursable Costs, subdivision A should be redrafted to state:

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

Ps & Gs section V- Reimbursable Costs, subdivision B states:

> "Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):. . . "

Staff recommend that Ps & Gs section V- Reimbursable Costs, Subdivision B be redrafted to read:

> "Ten (10) percent of any costs related to mental health treatment services:. . ."

Attachment A is the proposed revised parameters and guidelines and incorporates all the changes discussed in this analysis.

Issue #4: Do the existing Parameters and Guidelines for CSM-4282 (Attachment H) provide a clear description of how reimbursable costs may be claimed?

It might be helpful at this point to provide some background into the reimbursement process for this program which was in place before the mandate was recognized, because that is the process which the Ps & Gs were designed to modify. The Legislature had authorized some categorical funding which was placed in the DMH budget for this program since the inception of the program. DMH had developed a cost report form through which the counties could claim reimbursements for the program from the categorical funds. DMH had built a computation into the cost report forms for determining which costs were reimbursed and in what amounts. That computation was based on the CR/DC manual policy statement of allowable costs. While this policy was not established through regulations, it had been used for years to disburse the categorical funds without being challenged by the counties. Historically, the budgeted amount was substantially less than the counties expended for this program, Consequently, a test claim was brought forward to identify and seek reimbursement for aspects of the program which were new. It was in this environment that the Ps & Gs were developed, Staff therefore believes that the parties involved in drafting the Ps & Gs did so with the inherent understanding that the allowable costs would continue to be defined by the DMH CR/DC manual and continue to be computed as calculated in the DMH cost report forms, (This belief is based only on analysis of the existing environment and historical behavior of the parties. The official record does not reflect any discussions of this matter during the course of development of the original Ps & Gs.) The only difference being that when DMH exhausted the categorical funds, counties could then seek further reimbursements by filing claims with SCO under the recognized mandate.

This request to amend the Ps & Gs, however, changes all of those premises., In this request, the claimant county has challenged DMH's authority to define allowable costs under the mandate through the cost report forms. A staff evaluation of the statutory authority reveals that DMH cannot properly establish policy through the CR/DC manual and has not defined allowable costs through its regulations. In the original test claim the Commission found that all of any costs related to certain new activities are reimbursable, and ten percent of any costs related to new treatment are reimbursable under the mandate. Staff no longer believe the cost report format to be effective to compute the reimbursable costs since the counties are not bound by DMH's definitions of allowable costs. Staff therefore recommends the cost report method of claiming reimbursement for mandated costs be modified.

How should the cost report method of claiming reimbursement for mandated costs be modified? A substantial clue may be taken from the original Ps & Gs claiming Method A - The Actual Increased Costs Method. Since the Commission findings in the original test claim establish that all (or ten percent for treatment costs) related costs are

reimbursable, this is essentially a finding that the actual costs are to be reimbursed. However, if the computation methodologies of the Actual Increased Costs Method are utilized. as the parameters for claiming actual costs, then the cost report can continue to play essentially the same role that it has historically. The difference would be that indirect costs would be reimbursable beyond the limit established by the cost report up to the limit established by the Indirect Cost Rate Proposal(s). To implement this modification'the following revisions are needed in the "wording of the amended Ps & Gs.

Staff concludes that Ps & Gs section VI - Claim Preparation needs clarification. The heading for Ps & Gs section VI, subdivision A currently reads:

> "A. Attach a statement showing the actual increased costs incurred:"

Staff proposes the heading for Ps & Gs section VI, subdivision A be clarified to read:

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

Additionally, in Ps & Gs section VI, subdivision A, item 3 currently reads :

> "Allo le Overhead Costs, Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions."

Ps & Gs section VI, subdivision A, item 3 would be clarified if it read:

> "3. Allowable Overhead Costs, To the extent that reimbursable indirect costs have not already been reimbursed by DMH from'categorical funding sources, they -may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
>
> '1. Ten (10) percent of related direct labor, excluding fringe benefits and the cost of supervision above the first level.. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits and the cost of supervision above the, first level.
>
> OR if an indirect cost rate greater than 10% is being claimed,
>
> 2. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of-Management and Budget Circular No. A-87, Note that OMB A-87 was revised as of May, 17, 1995, and that while OMB A-87 is based on the concept of full, allocation of indirect costs, 'it recognizes that in addition to its restrictions, there may be state laws or 'properly promulgated regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program, each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s)."

Ps & Gs section VI, subdivision B describes the 'Cost Report Method for claiming and currently reads:

> "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."

Ps & Gs section VI, subdivision B would be clarified if it read:

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

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

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

OR if an indirect cost rate greater than 10% is being claimed,

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

Conclusion

Staff concludes that while the Department of Mental Health appears to have statutory authority to define allowable expenses, it has not done so through its regulations. Further, that the Commission in its original test claim defined any expense related to participation on the expanded Individualized Education Program team and case management services for specified individuals' being fully reimbursable and expenses related to treatment as being ten percent reimbursable. The existing parameters and guidelines require the various modifications to sections V and VI described above to reflect the Commission's description of reimbursable expenses and to explain proper reimbursement claiming methods.

Recommendation

Staff recommends that the Ps & Gs be amended to read as proposed in Attachment A.

Hearing Date: June 27, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
LL\4282\P&GAmend.TXT

Original Adopted: 8/22/91
Revised: 6/27/96

PROPOSEDAMENDED

PARAMETERS AND GUIDELINES

Section 60000-60200
Title 2, California Code of Regulations, Division 9,
Chapter 1747/84
Chapter 1274/85
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 extend that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs, " such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any'related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

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

The provisions of Welfare and Institutions Code section 565 1, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally 'disturbed," and required in such individual's IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and 'described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISION

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

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

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

Actual costs for one fiscal year should be included in each claim. 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):~~ One Hundred (100) percent of any costs related to IEP Participation, 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~~ of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary.

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

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

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

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

information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.

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

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

B. ~~Reimbursable Activities subject to the Short Doyle Act (Mental Health Treatment Services):~~ Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Dovle Act;

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 State Department of Social Services payment for the residential placement.

VI. CLAIM PREPARATION

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

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

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

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

3. Allowable Overhead Costs: ~~Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.~~ To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources. they may be claimed under this method in either of the two following ways nrescribed in the State Controller's claiming instructions;

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

OR if an indirect cost rate greater than 10% is being claimed,

b. By nreparation of an "Indirect Cost Rate Proposa 1" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17. 1995. and that while OMB A-87 is based on the [redacted] allocation of indirect costs. it recognizes that in addition to its restrictions. there may be state laws or state regulations which further restrict allowability of costs. Additionally. if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method. total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

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

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

   OR if an indirect cost rate greater than 10% is being claimed,

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

V I I . SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable 'to source documents -and/or worksheets that showkvidence 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 that 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 t&claimant experiences as a direct result of this statute must be deducted from the costs claimed.

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

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

2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

IX. REQUIRED CERTIFICATION

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

ATTACHMENT B

AUDITOR/CONTROLLER-RECORDER

'COUNTY OF SAN BERNARDIN

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
ın Bernardino, CA 92415-0018 • (909) 387-8322

ıECORDER • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306

ERROL J. MACKZUM, CPA
Auditor/Controller-Recorder

ROBERT L. CALDERON. CIA. C
Assistant Auditor/Controller-Reco

November 30, 1995

NOV 30 1995

KIRK G. STEWART, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA '95814

RE: CSM-4282
Ch. 1747/84; Ch. 1274/85; Title 2, CCR, Div 9, Sec 60000-60200
Handicapped and Disabled Students

This is a request to amend the Parameters & Guidelines for the above referenced mandate. Although Santa Clara County was the lead test claimant in this matter, Steve Conrad has suggested that San Bernardino County proceed with this request since we have already identified the problem and developed proposed language. However, please include Santa Clara County as an interested party for distribution of any materials or notices.

Specifically, we are requesting that the Commission on State Mandates clarify that administrative costs associated with this mandated program are reimbursable. According to Controller staff, the existing' Parameters & 'Guidelines do not specifically allow reimbursement of administrative costs when the Cost Report method is used to prepare the reimbursement claim. They believe that amended Parameters & Guidelines is the only solution.

San Bernardino County asserts that Section VI, Part B of the Parameters & Guidelines currently allows for the reimbursement of administrative costs when using the annual Cost Report method. This section states:

> 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.

We assert that our administrative costs are reimbursable because they are included in our annual cost reports. We believe that the appropriate remedy with the Commission is an Incorrect Reduction Claim. But in order to protect our interests, we are willing to initiate this as a Parameters & Guidelines amendment.

This problem was identified earlier this year when Controller staff reviewed the reimbursement claims we submitted for 1986/87 through 1993/94. Using our annual Mental Health Cost Reports as support, we identified the "units of service" along with the "unit cost rates". Until 1992/93 the procedures in the Department of Mental Health CR/DC Manual (and the Medi-Cal regulations) allowed only certain categories of administrative costs to be included in the computation of the "unit cost rates." We listed the remaining admistrative cost categories as separate line items on our claims. These separate line items are the amounts the Coritroller staff has disallowed on our claims; while the administrative costs included in the "unit cost rates" have been allowed.

In 1993/94 the problem becomes worse. The Department of Mental Health CR/DC Manual (and the Medi-Cal regulations) no longer allow <u>any</u> administrative costs to be included in the "unit cost rates." Our $35,000 annual problem now becomes a $400,000 annual problem.

Although the cost report is a valuable tool for documentation, I am concerned that the cost report (and the Medi-Cal regulations) are determining which components are reimbursable for this mandate.

Going back' to 'the. Statement of Decision and the scope of the mandate as defined in Sections I and' II of the existing Parameters & Guidelines, "any costs" relative to the mandate are reimbursable. I fail to see "where Section VI, Part B excludes administrative costs, especially since administrative costs are reported on the annual cost reports.

However, if you determine that an amendment to the Parameters & Guidelines is required, we request that the following language be added to Section VI, Part B. <u>Cost Report</u>:

> As reported on the cost report, administrative costs may be included in the claim. Examples of administrative costs include administrative support, research and evaluation, formal training, contract administration, and 'utilization review.

Should you determine that an Incorrect Reduction Claim (or another remedy) is the solution, please advise me at your earliest convenience.

Sincerely,

Marcia C. Faulkner

Marcia C. Faulkner
Deputy Auditor/Controller

cc: Jeff Yee, Controller's Office
Members,, CSAC/League SB-90 Committee
Allan Burdick, CSAC SB-90 Service

ATTACHMENT C

STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF MENTAL HEALTH
1600 - 9TH STREET
'RAMENTO, CA 95814

MAR 29 1996

March 29, 1996

Kirk G. Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 3 15
Sacramento, CA 95814

RE: CAM-4496 - Amendment Request for Parameters & Guidelines
Title 2, CCR, Division 9, Sections 60000-60200
Chapter 1747, Statutes 1984
Chapter 1274, Statutes 1985
Handicapped and Disabled Students

Dear Mr. Stewart:

This constitutes the response and recommendations of the Department of Mental Health (DMH) regarding the above referenced Request to Amend Parameters & Guidelines. In summary, the DMH believes that some administrative costs should be allowed for reimbursement as expenditures necessarily incurred in the provision of the direct services. In addition, a portion of the administrative costs were historically included in the calculations of the unit rates before 1993-94.

The analysis and recommendations of the DMH are set forth in 'greater detail in the attached memorandum. Ms. Carol Bingham will be available for questions and consultation and will attend the hearing in this matter, as well as myself.

Thank you for your patience in this matter. If you have any questions, please contact me.

Sincerely,

Norman L. Black
Senior Staff Counsel

Memorandum

DATE: March 22, 1996

TO: Norman L. Black
Senior Staff Counsel

FROM: Carol Bingham, Systems of Care, 4-2629

VIA: Gary Pettigrew
Deputy Director
Systems of Care

RE: Parameters and Guidelines for Mandate Claims for AB 3632 Costs

cc:

You requested comments on a request by San Bernardino County to the Commission on State Mandates to amend the pammeters and guidelines for AB 3632 costs, The request was to allow claiming of administrative costs as shown on cost reports submitted to the Department of Mental Health.

Background

AB 3632, enacted in 1984, requires local mental health departments to provide mental health services to special education children needing the services to enable them to benefit from their education. In 1990, the commission found that the statute resulted in a reimbursable mandate. In 199 1, the commission adopted parameters and guidelines governing claiming for reimbursement, Based on the specific requirements of the statute and Short-Doyle sharing ratios, the parameters and guidelines allow claiming of (1) 100 percent of local costs for assessments, case management, participation in development of individual education plans, and due process procedures and (2) 10 percent of local costs for treatment.

The Legislature appropriated funds in 1993 to cover the initial set of claims for services provided in fiscal years 1986-87 through 1993-94. Subsequent years have been funded with an annual appropriation in the Budget Act.

The claiming instructions allow counties to report costs using a cost report method. Specifically, the counties identify the number of units of service provided, then multiply the number of units by the unit rate, to determine the claimable amount. The unit rates are developed using the Department of Mental Health's standard cost allocation methodology.

San Bernardino County's Request

San Bernardino County believes that the unit rates do not include adminstrative costs that are appropriately allocated to the program. Accordingly, the county separately identified such costs on its claim. The Controller's Office, which performs a desk audit before paying the claims, denied payment for these costs.

San Bernardino County is requesting that the Commission amend its parameters and guidelines to expressly allow payment of administrative costs not included in the cost methodology.

The issue is different for two different time periods. Before 1993-94, a portion (but not all) of administrative costs were included in the calculation of unit rates. Beginning in 1993-94, most administrative costs were removed from the unit rate calculation. Consequently, the unfunded adminstrative costs are significantly higher beginning in 1993-94.

Comments and Recommendations

As a general rule, administrative costs are a part of program operations and should be funded. In this case, the difficult issues are (1) precisely which administrative costs should be funded and (2) how the claiming process should be administered.

With respect to the first issue, we do not believe it would be appropriate to reimburse counties for a level of administrative costs above the Level included in the unit rate calculations before 1993-94. The administrative costs included in the calculation represented the department's position on the types of costs that should be allocated to programs. The cost allocation methodology was accepted and had been in use for years.

We do believe that some additional allowance should be made for administrative costs beginning in 1993-94. The 1993-94 change--in which the administrative costs were pulled out of the unit rate calculation--was made to satisfy federal Medicaid requirements, In fact, to compensate for the change, counties were allowed to make additional claims under Medi-Cal for administrative costs for up to 15 percent of the service costs. (At the time, a cost study showed that statewide average administrative costs were 10 percent of statewide average service costs.)

One way to determine the level of the additional allowance would be'to allow counties to claim reimbursement based on costs for the types of administrative costs funded prior to 1993-94. This presents some policy problems, however; counties would have no incentive to minimize administrative costs, counties would have to track administrative expenditures in greater detail to document that the expenditures were associated with the program, and there would be no way for the Controller's Office to verify that counties were spending the amount they claim on the program. An alternative approach, which we believe would be preferable, is to set a standard administrative overhead percent--we believe 10 percent is reasonable based on statewide administrative costs--and allow claiming of this amount on top of the service costs.

Currently, approved claims total around $30 million annually. The gross costs (before accounting for revenues available to support the program) are around $60 million annually. The amount necessary to fund an additional 10 percent for administration would be $6 million.

We note that the counties are currently required to reduce their claims by the amount of federal funds (FFP) received from Medi-Cal for services provided to eligible recipients. If our suggested approach is adopted, counties should be required to identify and offset Medi-Cal FFP they are receiving for administration of these services, These additional reimbursements would total around $1 million to $2 million, based on current FFP of around $ I2 million annually. Thus the net costs of reimbursing administrative costs would be around $4 million to $5 million.

STATE OF CALIFORNIA

DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

ATTACHMENT D

PETE WILSON, Governor

APR 04 1996

April 2, 1996

Mr. Kirk G. Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 958 14

Dear Mr. Stewart:

As requested in your January 23, 1996 letter, the Department of Finance (DOF) has reviewed the request from San Bernardino County to amend the parameters and guidelines for the Handicapped and Disabled Students mandate in Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 198.5. The county proposes to add the following amendment to Section IV, Part B Cost Report, of the parameters and guidelines:

> *As reported on the cost report, administrative costs may be included in the claim. Examples of administrative costs include administrative support, research and evaluation, formal training, contract administration, and utilization review.*

The parameters and guidelines adopted by the Commission on State Mandates (COSM) on August 22, 1991 specified that the county claims for reimbursement would be based on the agency's annual cost report which is prepared based on the Department of Mental Health (DMH) regulations and cost reporting manual. At that time, the service unit costs included in the cost reports included two items of administrative overhead: administrative support and research and evaluation. In 1993-94, DMH revised its cost reporting methodology in accordance with federal Medicaid requirements and unbundled the administrative costs from the service unit costs in the cost report. Although administrative costs were no longer included in the cost report, Medicaid allowed county claims for administrative overhead up to 15 percent of the service costs. However, the Office of the State Controller stopped paying San Bernardino's claims for administrative overhead in 1993-94 because the parameters and guidelines did not specifically allow reimbursement of administrative costs when the cost report methodology is used to claim mandate reimbursement.

DOF recommends that the county's request to amend the parameters and guidelines to include the two items of administrative overhead which were in the service unit costs in the cost reports until 1993-94 administrative support and research and evaluation be approved. This is consistent with the original agreement between COSM, DMH and the counties.

DOF also recommends that the county's request to add additional administrative cost items as allowable reimbursement items be denied. The additional administrative cost items were not part of the service unit costs included in the cost reports prior to 1993-94. It is not reasonable to reimburse counties above the level included in the initial cost report rate calculations.

It is our understanding that DMH may recommend a 10 percent cap on allowable administrative costs based on a percentage of service unit costs. DOF staff concurs with the 10 percent cap recommendation and estimates that $11.6 million would be necessary to reimburse county allowable administrative costs for 1994-95, 1995-96 and 1996-97. The cost breakdown is as follows:

1994-95	$2.6 million
1995-96	4.5 million
1996-97	4.5 million
Total	$11.6 million

A copy of our fiscal estimate is attached for your information. If you have any questions, please contact Julie Saylor or Laura Anderson at 445-6423.

Sincerely,

STAN CUBANSKI
Program Budget Manager

Attachment

March 28, 1996

Fiscal Estimate: Handicapped and Disabled Student Mandate--Administrative Costs

1994-95	Gross Service Cost	$4 1 million
	Administrative Costs (10 percent)	4.1 million
	Minus Medi-Cal FFP*	1.5 million
	Allowable Administrative Costs	$2.6 million
1995-96	Gross Service Cost	$60 million
	Administrative Cost (10 percent)	6 million
	Minus Medi-Cal FFP*	1.5 million
	Allowable Administrative Costs-	$4.5 million
1996-97	Allowable Administrative Costs (same as 1995-96)	$4.5 million

*DMH estimate of $1-2 million averaged to $1.5 million

ATTACHMENT E

KATHLEEN CONNELL
Controller of the State of California
P.O. Box 942850
Sacramento, CA 94250-5875

April 4, 1996

Kirk Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: CSM-4496 Proposed Amendment to Parameters and Guidelines
Title 2, CCR, Division 9, Sections 60000 - 60200
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Handicapped and Disabled Students

Dear Mr. Stewart:

This is in response to your request for recommendations and comments regarding the proposed amendment to the Parameters and Guidelines in the referenced matter.

We have reviewed the County of San Bernardino's proposed amendment to the Parameters and Guidelines for Chapters 1747/84 and 1274/85, Handicapped and Disabled Students, as well as the March 29, 1996 response and recommendation of the Department of Mental Health.

Because of the disparity between the county's proposal and the Department of Mental Health's recommendation, we recommend that a prehearing conference be scheduled to discuss the issue of, and methodology for administrative cost reimbursement.

If you have any questions regarding this matter, please let me know.

Sincerely,

John Korach
Acting Assistant Chief
Division Of Accounting and Reporting

cc: Helen Shepherd,
Chief Deputy Controller, Finance

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 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)

85 34759

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

PROPOSED DECISION

On December 1, 1388, 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. Background

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

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

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

The following facts are based upon the "Joint Statement of Facts" to extent that they are pertinent in the Commission'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 include5 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 5'6000) 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 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 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 a programmatic description of each of the services to be provided in a county's Short-Doyle annual plan. Welfare and Institutions Code section 5651, subdivision (g), requires, for the first time, the county Short-Doyle annual plan to include a description of the county mental health services required by Government Code sections 7571 and 7576, including the cost of those services. It was found that the provisions of Government Code sections 7571 and 7576 and their implementing regulations are mental health services provided pursuant to the county's Short-Doyle annual plan.

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

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

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

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

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

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

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

Government Code section 17551, subdivision (a) provides:

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

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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 t o 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

ATTACHMENT G

HANDICAPPED AND DISABLED STUDENTS

1. Summary of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Code of Regulations, Division 9, Section 60000 through 60200

Chapter 1747, Statutes of 1984, added Chapter 26, commencing with Section 7570, to Division 7 of Title 1 of the Government Code. Further, Chapter 1274, Statutes of 1985, amended Sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed Section 7583 of, added Sections 7586.5 and 7586.7 to, and repealed Section 7474 of, the Government Code, and amended Section 5651 of the Welfare and Institutions Code.

Government 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." In addition, any related county participation on the expanded management services for "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 Government 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 Government 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 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).

On April 27, 1990, the Commission On State Mandates determined that Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, resulted in the state-mandated costs which are reimbursable pursuant to Government Code Section 17561.

2. Eligible Claimants

Any county incurring increased cost as a result of this mandate is eligible to claim reimbursement of those costs.

3. Appropriations

Claims may only be filed with the State Controller's Office for mandates that have been funded in the State Budget Act or in special legislation. To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" presented in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September for each year to the county auditor's office.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for the previous fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year. A claim for reimbursement or an estimate must exceed $200 per fiscal year.

B. Filing Deadline

(1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available an estimated claim may be filed.

An estimated claim must be filed with the State Controller's Office and postmarked by **November 30** of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

(2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by **November 30** following the fiscal year in which costs were incurred. If the claim is filed after the deadline, but by November 30 of the succeeding fiscal year, the approved claim will be reduced by a late penalty of 10% but not to exceed $1,000. If the claim is filed more than one year after the deadline, the claim cannot be accepted.

If a local agency received payment for an estimated claim, a reimbursement claim must be filed by November 30 regardless if the amount received was more or less than the actual costs. If the agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim by November 30 detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. See item 3 above.

5. Reimbursable Components

Eligible claimants will be reimbursed for increased costs incurred in performing of mandated activities as follows:

A. Activities mandated by Government Code Section 7572(d)(1), and Section 60040 of Title 2, California Code of Regulations, are reimbursable at one-hundred percent (100%). Such activities include, but are not limited to, the following:

(1) Assessment to determine the child's need, which may include, interview with child and family, collateral interviews, review of the records, observation of the child at school, and psychological and/or psychiatric assessment if necessary.

(2) Case management, six month review of IEP, and expanded IEP responsibilities related to residential placement for an individual with exceptional needs.

(3) Other related activities, such as, attendance at IEP meetings, meetings with IEP members and parents, and review of independent assessment.

(4) Participation in due process procedures, including but not limited to due process hearings.

B. Mental health services required by the child's IEP are reimbursable. Such services may include individual therapy, collateral therapy and contacts, group therapy, day treatment, and the mental health portion of residential treatment in excess of the Department of Social Services payment for the residential placement. Reimbursement to counties is limited to ten percent (10%) because ninety percent (90%) of the costs are paid by the State Department of Mental Health under Short-Doyle program.

6. Reimbursement Limitations

A. Any reimbursement for this mandate [e.g. Short-Doyle funding, private insurance payments, and Medi-Cal payments] received from any non-local source [e.g., federal, state grant, foundation, etc.] shall be identified and deducted so only net local costs are claimed.

B. Any offsetting savings the claimant experienced as a direct result of this mandate must be deducted for the costs claimed.

7. Claim Forms and Instructions

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

A. **Form HDS-2.1, Component/Activity Cost Detail**

This form is used to detail costs for Due Process Proceedings. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related fringe benefits.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records, etc., which show the employee's actual time spent on the mandate.

(2) Material and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents evidencing the validity of the expenditures.

Indirect costs may be computed as 10% of direct labor, excluding fringe benefits and the cost of supervision above the first level. If an indirect cost rate of greater than 10% is used, include the department's Indirect Cost Rate Proposal (ICRP) for the program with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP.

B. **Form HDS-2, Component/Activity Cost Detail**

This form is used to segregate the detail costs by claim component. A separate Form HDS-2 must be completed for each component being claimed. Information required to complete this form are: (a) Names of Provider, (b) Provider I.D. Numbers, (c) Service Function Codes, (d) Units of Service, and (e) Rate Per Unit. The total cost on this form must be forwarded to Form HDS-1.

C. **Form HDS-1, Claim Summary**

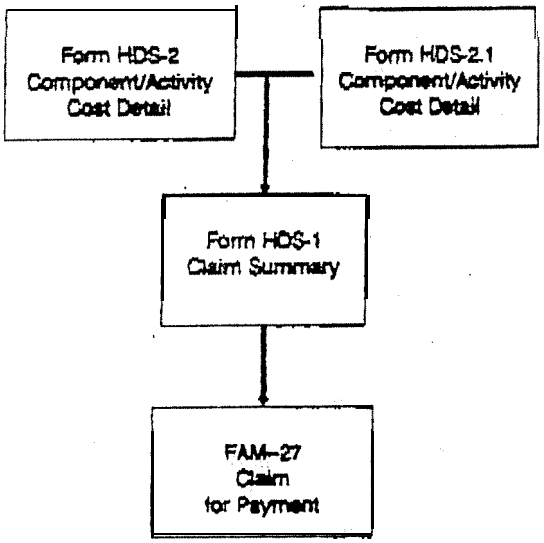
This form is used to summarized direct costs from Forms HDS-2 and HDS-2.1. The amount of direct costs must be reduced by the amount of funds received which reimburse any portion of the mandate. The total cost on this form are carried forward to Form FAM-27.

D. **Form FAM-27, Claim for Payment**

This form contains a certification that must be signed by an authorized representative of the county. All applicable information from Form HDS-1 must be carried forward to this form in order for the State Controller's Office to process the claim for payment.

For audit purposes, all support documents for actual costs must be retained for a period of four years after the end of the calendar year in which the reimbursement claim is filed or last amended. Such documents shall be made available to the State Controller's Office upon request.

Illustration of Claim Forms



Form HDS-2 Component/Activity Cost Detail

Complete a Form HDS-2 cm Form HDS-2.1, as applicable, far each component for which expenses are claimed.

1. Assessment
2. Residential Placement
3. Due Process Proceedings
4. Treatment Services
5. Others

State of California

County Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HANDICAPPED AND DISABLED STUDENTS

For State Controller Use only

(19) Program Number 00111
(20) Date Filed ____/____/____
(21) Signature Present ☐

LABEL HERE

(01) Claimant Identification Number:

(02) Mailing Address

Claimant Name

County of Location

Street Address or P. O. Box

City State Zip Code

Reimbursement Claim Data	
(22) HDS -1, (03)(a)	
(23) HDS-1, (03)(b)	
(24) HDS-1, (03)(c)	
(25) HDS-1, (03)(d)	
(26) HDS-1, (03)(e)	
(27) HDS-1, (05)	
(28) HDS-1, (06)	
(29) HDS-1, (07)	
(30) HDS-1, (10)	
(31) HDS-1, (11)	
(32) HDS-1, (12)	
(33) HDS-1, (13)	
(34)	
(35))	
(36)	
(37)	

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 19____/____	(12) 19____/____
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, but not to exceed $1000 (if applicable)		(14)
Less: Estimate Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there were no applications for not any grant or payments received, other than from the claimant, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200 set forth on the attached statements.

Signature of Authorized Representative ____ Date ____

Type or Print Name ____ Title ____

(39) Name of Contact Person for Claim ____ Ext. ____

HANDICAPPED AND DISABLED STUDENTS Certification Claim Form Pursuant to Government Code Section 17561	FORM FAM-27

(01) Leave blank

(02) A set of mailing labels with the claimant's I.D. number and address have been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label at the place shown on Form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you didn't receive labels, print or type your agency's mailing address.

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

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

(05) If filing an amended claim to an original estimated or combined, enter an " X " in the box on line (05) Amended. Leave boxes (03) and (04) blank.

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

(07) Enter the amount of estimated claim. If estimate exceeds the previous fiscal year's actual by more than 10%, enter the amount from Form HDS-1, line (15).

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

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

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

(11) If filing an amended claim to an original reimbursement claim or a combined claim on behalf of districts within the county, enter an " X " in the box on line (11) Amended. Leave boxes (09) and (10) blank.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year is being claimed, complete a separate Form FAM-27 for each fiscal year.

(13) Enter the amount of reimbursement claim from Form HDS-1, line (15).

(14) If the reimbursement claim is filed after November 30 following the fiscal year in which costs were incurred, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 [10% penalty] or $1,000, whichever is less.

(15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim, otherwise enter a zero.

(16) Enter the result of subtracting the sum of line (14) and line (15) from line (13).

(17) If line (16) Net Claimed Amount is positive, enter that amount in line (17) Due from State.

(18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.

(22) through (37) for the Reimbursement Claim

Bring forward cost information as specified on the left-hand column of lines (22) through (33) for the reimbursement claim [e.g., HDS-1, (03)(a) means the information is located on Form HDS-1, line (03)(a)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this data block is correct and complete.

(38) Read the statement "Certification of Claim." If the statement is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the name of the person and telephone number that this office should contact if additional information is required.

SUBMIT TWO COPIES OF THE CLAIM FORMS AND ONE COPY OF THE SUPPORTING SCHEDULES AND DOCUMENTATION TO:

Address, if delivery by:
U.S. Postal Service

State Controller
Division of Accounting
P.O. Box 942850
Sacramento, Ca. 94250-5875

Address, if delivery by:
Other delivery service

State Controller
Division of Accounting
3301 c Street, Suite 500
Sacramento, Ca 95816

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

For State Controller Use only

(19) Program Number 00111
(20) Date Filed ____/____/____
(21) Signature Present ☐

LABEL HERE

(01) Claimant Identification Number:

(02) Mailing Address

Claimant Name

County of Location

Street Address or P.O. Box

City State Zip Code

Reimbursement Claim Data	
(22) HDS -1, (03)(a)	
(23) HDS-1, (03)(b)	
(24) HDS-1, (03)(c)	
(25) HDS-1, (03)(d)	
(26) HDS-1, (03)(e)	
(27) HDS-1, (05)	
(28) HDS-1, (06)	
(29) HDS-1, (07)	
(30) HDS-1, (10)	
(31) HDS-1, (11)	
(32) HDS-1, (12)	
(33) HDS-1, (13)	
(34)	
(35))	
(36)	
(37)	

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐

Fiscal Year of Cost	(06) 19_ / _	(12) 19_ / _
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, but not to exceed $1000 (if applicable)		(14)
Less: Estimate Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

(38) CERTIFICATION OF CLAIM

In accordance with the provisions Of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200; and certify under penalty of perjury that I have nor violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there were no applications for nor any grant or payments received, other than from the claimant, for reimbursement of costs claimed herein: and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Code of Regulations, Division 9, Sections 60000 through 60200 set forth on the attached statements.

Signature of Authorized Representative Date

Type or Print Name

(39) Name of Contact Person for Claim Number

( ) Ext.

SERVICES TO HANDICAPPED STUDENTS

Certification Claim Form

Pursuant to Government Code Section 17561

FORM FAM-27

(01) Leave blank

(02) A set of mailing labels with the claimant's I.D. number and address have been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label at the place shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you didn't receive labels, print or type your agency's mailing address.

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

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

(05) If filing an amended claim to an original estimated or combined, enter an " X " in the box on line (05) Amended. Leave boxes (03) and (04) blank.

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

(07) Enter the amount of estimated claim. If estimate exceeds the previous fiscal year's actual by more than 10%, enter the amount from form HDS-1, line (15).

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

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

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

(11) If filing an amended claim to an original reimbursement claim or a combined claim tin behalf of districts within the county, enter an " X " in rhe box on line (11) Amended. Leave boxes (09) and (10) blank.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal par is being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of reimbursement claim from form HDS-1, line (15).

(14) If the reimbursement claim is filed after November 30 following the fiscal year in which costs were incurred, the claim must bc reduced late penalty. Enter either the product of multiplying line (13) by the factor 0.10 [10% penalty] or $1,000 whichever is less.

(15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim, otherwise enter a zero.

(16) Enter rhc result of subtracting the sum of line (14) and line (15) from line (13).

(17) If line (16) Net Claimed Amount is positive, enter that amount in line (17) Due from State.

(18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.

(22) through (37) for rhc Reimbursement Claim

Bring forward cost information as specified on the left-hand column of lines (22) through (33) for the reimbursement claim [e.g., HDS-1, (03)(a) means the information is located on form HDS-1, line (03)(a)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this data block is correct and complete.

(38) Read the statement "Certification of Claim." If the statement is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the aamt of the person and telephone number that this office should contact if additional information is required.

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

Address, if delivery by:
vs. Postal Service

KATHLEEN CONNELL
CONTROLLER OF CALIFORNIA
DIVISION OF ACCOUNTING AND REPORTING
P.O. BOX 942850
SACRAMENTO, CA 94250-5875

Address, if delivery by:
Other delivery service

KATHLEEN CONNELL
CONTROLLER OF CALIFORNIA
DMSION OF ACCOUNTING AND REPORT
3301 c STREET, SUITE 500
SACRAMENTO, C A 95816

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
CLAIM SUMMARY

FORM **HDS-1**

(01) Claimant:

(02) Type of Claim:
Reimbursement ☐
Estimated ☐

Fiscal Year:
19 . / .

(03) Reimbursable Components

Assessment of Individuals With Exceptional Needs

(a) Assessment: Includes Interviews, Review of Records, Observations, Testing, etc.	
(b) Residential Placement: Includes IEP Reviews, Case Management and Expanded IEP Responsibilities.	
(c) Other: Includes Attendance at IEP Meetings, Meetings with IEP Members and Parents and Review of Independent Assessement.	
(d) Due Process Proceedings.	

Mental Health Treatment

(e) Treatment Services: Short-Doyle Program.	
(04) Sub-total for Assessment of Individual With Exceptional Needs (block (03) add lines (a), (b), (c) and (d).	
(05) Less: Amount Received From Short-Doyle/Medi-Cal (FFP only).	
(06) Less: Amount Received From State Categorical Funding.	
(07) Less: Amount Received From Other (Identify).	
(08) Total for Assessment of Individual With Exceptional Needs (line (04) minus the sum of lines (05), (06), (07).	
(09) Sub-total for Mental Health Treatment (block (03) line (e)).	
(10) Less: Non-categorical State General/Realignment Funds.	
(11) Less: Amount Received From State Categorical Funds.	
(12) Less: Amount Received From Short-Doyle/Medi-Cal (FFP only).	
(13) Less: Amount Received From Other (Identify).	
(14) Total Mental Health Treatment (line (09) minus the sum of lines (10), (11), (12), and (13).	
(15) Total Claimed Amount (sum of line (08) and line (14)).	

HANDICAPPED AND DISABLED STUDENTS CLAIM SUMMARY Instructions	FORM HDS-1

(01) Enter the name of the claimant.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.

Form HDS-1 must be filed for a reimbursement claim. If you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on Form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, Form HDS-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) Reimbursable Components. For each of the reimbursable component under block (03), lines (a), (b), (c), and (e) enter the cost from Form HDS-2, line (05) column (f), as applicable. Also, for block (03), line (d), enter the cost from Form HDS-2.1, line (08), if applicable.

(04) Sub-total for Assessment of Individual With Exceptional Needs. Enter the sum of the amounts on block (03), lines (a), (b), (c) and (d).

(05) Less: Amount Received From Short-Doyle/Medi-Cal (Federal Financial Participation only). From line 72 "Medi-Cal Federal," the Department of Mental Health Cost Reporting/Data Collection System, "Local Services Cost Report," Form MH 1943, enter the sum of amounts shown for providers listed on Form HDS-2, block (04)(a).

(06) Less: Amount Received From State Categorical Funding. Enter the total amount received from the State General Fund for special education.

(07) Less: Amount Received From Other (identify). Enter the total amount received from sources which reimbursed the costs of this mandate (e.g., Patient health insurance, etc.). Attach a separate schedule identifying those funding sources.

(08) Total for Assessment of Individual With Exceptional Needs. Enter the result of subtracting the sum of lines (05), (06) and (07) from line (04).

(09) Subtotal for Mental Health Treatment. Enter the amount from block (03), line (e).

(10) Less: Non-categorical State General/Realignment Funds.

(11) Less: Amount Received From Short-Doyle/Medi-Cal (Federal Financial Participation only). From line 72 "Medi-Cal Federal," the Department of Mental Health Cost Reporting/Data Collection System, "Local Services Cost Report," Form MH 1944, enter the sum of amounts shown for providers listed on Form HDS-2, block (04)(a). 5

(12) Less: Amount Received From State Categorical Funds. Enter the total amount received from the State General Fund for special education.

(13) Less: Amount Received From Other (identify). Enter the total amount received from sources which reimbursed the costs of this mandate (e.g., Patient health insurance). Attach a separate schedule identifying those funding sources.

(14) Total Mental Health Treatment. Enter the result of subtracting tk sum of lines (10), (11), (12) and (13) from line (09).

(15) Total Claimed Amount. Enter the sum of line (08) and line (14).

MANDATED COSTS
HANDICAPPED AND DISABLED STUDENTS
COMPONENT/ACTIVITY COST DETAIL

FORM HDS-2

(01) Claimant:

(02) Fiscal Year costs were incurred:

(03) Reimbursable Components: *Check a box to identify the cost being claimed.* Check **ONLY one** box per form.

- ☐ Assessment
- ☐ Treatment Services
- ☐ Residential Placement
- ☐ Other (Identify)

(04) Description of Expenses: Complete columns (a) through (f).

(a) Name of Provider	(b) Provider I.D. Numbers	(c) S.F. Codes	(d) Units of Service	(e) Rate Per Unit	(f) Total

(05) Total Subtotal Page: of

HANDICAPPED AND DISABLED STUDENTS COMPONENT/ACTIVITY COST DETAIL Instructions	FORM HDS-2

(01) Enter the name of claimant.

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

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate Form HDS-2 shall be completed for each component which applies.

(04) Description of expenses. F w each "checked" component/activity box In block (03) enter the detailed costs for each case claimed.

(a) Name of Provider
(b) Provider I.D. Numbers
(c) S.F. Code (service function codes)
(d) Units of Service
(e) Rate Per Unit
(f) Total (multiply column (d) times column (e)

A copy of that portion of the county's Short-Doyle fiscal year end report relating to the amounts claimed must be submitted with the claim.

For audit purposes, all supporting documents must be retained for a period of four years after the end of the calendar year in which the reimbursement claim is filed or amended.

(05) Total line (04) column (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If mare than one form k needed to detail the component/activity costs, number each page. Carry forward the total from line (05) column (f) to Form HDS-1, block (03) In the appropriate line.

MAN DATED COSTS HANDICAPPED AND DISABLED STUDENTS COMPONENT/ACTIVITY COST DETAIL	FORM HDS-2.1

(01) Claimant:	(02) Fiscal Year costs were incurred:

(03) Reimbursable Component: Due Process Proceedings

(04) Description of Expenses: Complete columns (a) through (g).			Object Accounts			
(a) Employee Names, Job Classifications, Activities Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Total
(05) Total Direct Costs						

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x line (05)(d) or line (06) x [(05)(d) + line (05)(e)]]	
(08) Total Direct and Indirect Costs:	[Line (05)(g) + line (07)]	

HANDICAPPED AND DISABLED STUDENTS COMPONENT/ACTIVITY COST DETAIL Instructions	FORM HDS-2.1

(01) Enter the name of claimant.

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

(03) Reimbursable Components. Cue Process Proceedings.

(04) Description of Expenses. The following tables identifies the type Qf information required to support reimbursable costs. To detail costs for due process proceedings, enter the employee names or position titles, a brief description of their activities performed, productive hourly rate, fringe benefits, supplies used, etc. For audit purposes, all support documents fur actual costs must be retained by the claimant for a period of four years after the end of the calendar year in which the reimbursement claim was Wed or amended. Such documents shall be made available to the State Controller's office upon request.

Object/ Subobject Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries and Benefits Salaries	Employee Name Title	Hourly Rate	Hours Worked	(b) x (c) Hourly Rate x Hours Worked			
Benefits	Activities Performed	Benefit Rate		Salaries	(b) x (d) Benefit Rate x Salaries		
Services and Supplies Office Expenses	Description of Supplies Used	Unit Cost	Quantity Used			(b) x (c) Unit Cost x Quantity Consumed	

(05) Total Direct Costs. Total columns (d), (e) and (f). Enter the sum of columns (d), (e) and (f) in column (g).

(06) indirect Cost Rate. Enter the indirect cost rate. Indirect costs may be computed as 10% of direct labor costs; excluding fringe benefits and the cost of supervision above the first level. If an indirect cost rate of greater than 10% is used, include the department's Indirect Cost Rate Proposal (ICRP) for the program with the claim. if more than one department is reporting costs, each must have their own ICRP for the program.

(07) Indirect Costs. Multiply Total Salaries, line (05),(d), by the Indirect Cost Rate, line (06). If bath salaries and benefits art! used in the distribution base for the computation of the indirect cost rate, then multiply Total Salaries and Benefits, line (05)(d) and line (05)(e), by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of line (05)(g) and line (07). forward the amount to From HDS-1, line (03)(d).

HANDICAPPED AND DISABLED STUDENTS
COMPONENT/ACTIVITY COST DETAIL
Instructions

FORM HDS-2.1

(01) Enter the name of claimant.

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

(03) Reimbursable Components. Due Process Proceedings.

(04) Description of Expenses. The following tables identifies the type of information required to support reimbursable costs. To detail costs for due process proceedings, enter the employee names or position titles, a brief description of their activities performed, productive hourly rate, fringe benefits, supplies used, etc. For audit purposes, all support documents for actual costs must be retained by the claimant for a period of four years after the end of the calendar year in which the reimbursement claim was filed or amended. Such documents shall be made available to the State Controller's office upon request.

Object/ Subobject Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries and Benefits Salaries Benefits	Employee Name Title Activities Performed	Hourly Rate	Hours Worked	(b) x (c) Hourly Rate x Hours Worked			
		Benefit Rate		Salaries	(b) x (d) Benefit Rate x Salaries		
Services and Supplies Office Expenses	Description of Supplies Used	Unit Cost	Quantity Used			(b) x (c) Unit Cost x Quantity Consumed	

(05) Total Direct Costs. Total columns (d), (e) and (f). Enter the sum of columns (d), (e) and (f) in column (g).

(06) Indirect Cost Rate. Enter the indirect cost rate. Indirect costs may be computed as 10% of direct labor costs; excluding fringe benefits and the cost of supervision above the first level. If an indirect cost rate of greater than 10% is' used, include the department's Indirect Cost Rate Proposal (ICRP) for the program with the claim. If more than one department is reporting costs, each must have their own ICRP for the program.

(07) Indirect Costs. Multiply Total Salaries, line (05),(d), by the Indirect Cost Rate, line (06). If both salaries and benefits are used in the distribution base for the computation of the indirect cost rate, then multiply Total Salaries and Benefits, line (05)(d) and line (Or;)(e), by the indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of line (05)(g) and line (07). Forward the amount to From HDS-1, line (03)(d).

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, 7576, 7582, 7586.5 and 7586.7, and repealed 7583 of, added section 7587 and amended section 7572, 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 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.

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. 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.

HANDICAPPED AND DISABLED CHILDREN—SPECIAL EDUCATION AND RELATED SERVICES-IX-TERAGENCY RESPONSIBILITIES

Assembly Bill No. 3632

CHAPTER 1747

An act to add Chapter 26 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code, and to amend Section 11401 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3632, W. Brown. Disabled minors.

Existing law provides for various programs which provide social services, mental health services, and educational services to disabled children.

Existing law also provides that every child has a right to a free appropriate public education.

This bill would provide that it shall be the joint responsibility of the Superintendent of Public Instruction and the Secretarv of Health and Welfare to ensure maximum utilization of all state 'and federal resources available to provide handicapped children with a free appropriate public education,. the provision of related services, as defined, and designated instruction and services, as defined.

The bill would provide that the State Department of Health Services or any designated local public health agency shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

The bill would provide that parents shall not be liable for the costs of therapy treatment services provided by the State Department of Health Services or the State Department of Mental Health, when provided to a child in the public schools, if the services are necessary for the child to benefit from special education.

The bill also provides that the, Superintendent of Public Instruction shall ensure that local education agencies provide special education and' those related services and designated instruction and services contained in a child's individualized education program that tie necessary for the child to benefit educationally from his or her instructional program.

The bill provides that the State Department of Health Services shall be responsible for the provision of occupation and physical therapy, and that the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services, if

these services are deemed necessary in a child's individualized educational program.

Existing law provides that the provision 'of special education 'programs and related services for children residing in state hospitals shall be the joint responsibility of the State Department of Developmental Services and the State Department of Mental Health.

This bill would also make the Superintendent of Public Instruction responsible for providing educational programs and related services to these persons.

The bill would provide that the State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools.

This bill would provide that prior 'to placing a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center, or public agency other than an educational agency, shall notify the administrator if the special education local plan area, where the residential facility is located, to determine if an appropriate educational program is available in the special education local plan area.

The bill would provide for meetings between a department or agency and the Superintendent of Public Instruction when a department or a designated local agency does not provide a related service or designated instruction to a child and the service is to be provided pursuant to the child's individualized education 'program.

The bill would also provide that, whenever a community care facility may be used for placement of a handicapped child, the State Department of Social Services shall, prior to licensing, or-modifying a facility's license in order to permit expansion, consult with the administrator of the special education local plan area in order to consider the impact of lieensure upon local education agencies.

The bill would require local agencies to submit to the Department of Finance an estimate of any expenditure responsibilities which are, or will be, acquired by, or shifted from, the agency due, to the foregoing provisions of the bill. The Department of Finance would be required to recommend in the annual Budget Act any adjustments necessary to implement these changes in responsibility for expenditures.

The bill would require each state agency referred-to in the bill to develop, where necessary, regulations implementing the foregoing provisions of the bill. Each department would be required to obtain approval of its regulations from the Superintendent of Public Instruction prior to -filing them with the Office of Administrative Law.

The bill would provide that its provisions would become operative on July 1, 1985.

Under existing law, a child may be eligible to receive assistance under the county-administered Aid to Families with Dependent

Children Foster Care (AFDC-FC) program if the child has been' deprived of parental support or care, and if specified conditions are met.

This bill would create a state-mandated local program by providing that one of these conditions is that the individual must have been placed out of home pursuant to an individualized education program.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the 'state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would create a state-mandated local program by imposing various requirements upon educational agencies.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

The people of thk State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age. The Legislature further finds and declares that California has not maximized, or sufficiently coordinated existing state programs, in providing supportive services which are necessary to assist a handicapped child to benefit from special education.

It is the intent of the Legislature that existing services rendered by state and local government agencies serving handicapped children be maximized and coordinated. It is the further intent of the Legislature that specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children.

SEC. 2. Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 is added to the Government Code, to read:

CHAPTER 26. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO HANDICAPPED CHILDREN

7570. Ensuring maximum utilization of all state and federal resources available to provide handicapped children, as defined in

subsection (1) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in subsection (17) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of, the Education Code, to handicapped children, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

7571. The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, by individuals whose employment standards are not covered by the Education Code. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental-Health pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special-education. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with. the individualized education program team, then the representative shall provide

written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

7572.5. '(a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized, education program team shall be expanded to include:

(I) A representative of the county mental health department.

(2) A representative of the **county welfare department. .**

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care will enable the child to benefit from educational services.

(3) Residential services are available whidh address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education **program which** calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Specification of a lead case manager from among the public agency representatives on the team.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months,

(3) Specific plans for reunification services pursuant to Section 16507.4 of the Welfare and Institutions Code to the parents, so that the child's return home may be appropriately planned for at the earliest time consistent with the child's best interests.

(d) The individualized education program process, with its procedural safeguards and access to appeal procedures, is deemed to meet requirements of an administrative review hearing as called for in Section 475 of the federal Social Security Act (42 U.S.C. Sec. 675), as amended by P.L. 96-272, for purposes of establishing eligibility for foster care maintenance payments.

(e) The superintendent shall enter into an agreement with the Director of the State Department of Social Services which permits

the supervision of placement and care of a child placed out of home pursuant to an individualized education program to be done by the individualized education program team established above. The agreement shall specify how case supervision responsibilities shall be assigned to assure compliance with Chapter 5 {commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code, P.L. 96-272 and Part 30 (commencing with Section 56000) of Division 4 of the Education Code.

7573. The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

7574. Notwithstanding any other provision of law, the State Department of Health Services, or any designated local public health agencies, shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and refated services.

7575. (a) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(bj The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral is within the scope of its statutory responsibilities. A private medical referral shall be based on a written report indicating the disability from a licensed physician and surgeon who has examined the pupil.

(c) When the California Children's Services panel physician disagrees with the private referral, the referral shall be treated by the individualized education program team as an educational recommendation only. The individualized education program team shall have the responsibility to determine if the services recommended are necessary for the pupil to benefit from special education. Upon this determination, and notwithstanding Section 7573, the provision of these services shall be the responsibility of the local educational agency.

(d) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(e) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner,

(f) The department shall also be responsible for providing the services of an aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom the California Medical Assistance Program provides a life-maintaining medical service during the time in which the pupil would be in, school.

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

7,577. (a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be 'distributed to local education agencies.

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds which may become available.

7578. The provision of special education programs and related senices for handicapped children residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Heaith and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56850) of Part 30 of Division 4 of Title 2 of the Education Code.

7579. (a) Prior to placing a child suspected of being handicapped in a residential facility, outside the child's home, a' court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notiiy the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of the section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

7580. Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a handicapped child may be placed, or prior to a modification of such a facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

7581. The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

7582. Therapy treatment services provided under programs of the State Department of Health Services or State Department of Mental Health, or their, designated local agencies, rendered in the public schools, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered to any handicapped child when the services are necessary for the child to benefit from special education.

7583. Each local agency affected by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1985, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shifts in expenditures caused by this chapter.

(c) Any reductions in state allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

7584. As used in this chapter, "handicapped children", "child." or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification: A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Adminstrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent' of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7566.

(h) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall submit to the Legislature on July 1 of each year a joint report on the written notifications received pursuant to subdivision (a) on the failure of departments or their designated local agencies to provide occupational therapy, physical therapy, or psychotherapy. This joint report shall include, but not be limited to, a description of the nature of these disputes, a summary of the

outcomes of these disputes, and any recommendations for changes to the procedure set forth in subdivision (a) or with regard to any Interagency agreement and regulations which might exist as a result of the implementation of this chapter.

(i) Thecontract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

7586. (a) All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title.20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with' the Superintendent of Public instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed, by this chapter.

(b) Upori receipt of a request for a due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

(d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

7587. By July 1, 1985, each state department named in this chapter shall develop regulations, as necessary,, for the department or designated local agency to implement this act. All regulations shall be reviewed and approved by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children.

7588. This chapter shall become operative on July 1, 1985, except Section 7583 which shall become operative on January 1, 1985.

SEC. 3. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter *on* behalf of any child under the age of 18, except as provided in Section 11403, who *meets* the conditions of subdivision (a)! (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care,

provides to such children all services as required by the department to children in foster care.

(b) The child has been deprived of parental support or care due to any of the reasons set out under Section 11250, provided:

(1) The child has been removed from the physical custody of his or her parent or guardian, and

(A) Has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300, or

(B) Has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and- 602, or

(C) Has been detained under a court order pursuant to Section 320 or 636 which remains in effect; or

(D) Has been placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code.

(2) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1 or in a demonstration county, pursuant to Section 16550, et seq.; or

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the provisions of the federal Indian Child Welfare Act. The provisions of Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with such act.

,SEC. 4. As part of the March 1.5, 1985, report which is required to be submitted by local education agencies to the Superintendent of Public Instruction under Section 7583 of the Government Code, a school district or county office of education shall report all of the following:

(a) The estimated expenditures of state local assistance funds for special education and federal funds for special education for the 1984-85 fiscal year used for the provision of occupational therapy, physical therapy, and psychotherapy.

(b) The number of handicapped pupils receiving occupational theiapy, physical therapy, and psychotherapy at the time of the April pupil count.

(c) The name of the agency providing the occupational therapy, physical therapy, or psychotherapy, including the name of the agency paying for the service.

SEC. 5. Notwithstanding Section 6 of Article XIII 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 (commencing with Section 2201) of Part'4 of Division 1 of that code.

SEC. 6. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provision.; of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

ATTACHMENT J

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF MENTAL HEALTH
1600 – 9th STREET
SACRAMENTO, CA 95814

(916) 323-8173

April 30, 1986

RECEIVED
MAY 09 1986
MENTAL HEALTH
Program Support Branch

DMH LETTER NO.: 86-12

TO: LOCAL MENTAL HEALTH DIRECTOR
LOCAL MENTAL HFALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS

SUBJECT: IMPLEMENTATION OF MENTAL HEALTH SERVICES FOR SPECIAL EDUCATION STUDENTS, FFFECTIVE MARCH 1, 1986 (Sec. 7570, et seq., Chapter 26, Div. 7, Title 1 of the Government Code)

EXPIRES: Retain until rescinded

REFERENCE: Sections 60000-60610, Chapter 1, Division 9, Title 2, California Administrative Code

Under Public Law 94-142, The Education for All Handicapped Children Act of 1975 (20 U.S.C. Sec. 1401 et seq.), each participating state must make available to all handicapped children, as defined, within the specified age ranges and time1 ines, a free appropriate public education. Title 34, Code of Federal Regulations, defines "free appropriate public education" as "special education under public supervision and direction, and without charge...". An Individualized Education Program, must be developed for eaoh eligible handicapped child which includes specific special education and related services needed by the child as determined by the individualized education program team,

In Chapter 26 (commencing with Section 7570) of, Division 7 of Title I of the Government Code (as added by Chapter 1747, Statutes of 1984 (AB 3632) and amended by Chapter 1274, Statutes of 3985 (AF! 882)), the State of California has delineated the administrative manner in which this state is to provide related services to handicapped children. Included. among the services to be provided are mental health services as specified in the Individualized Education Program.

I. LEGAL REQUIREMENTS

Statutes require each affected agency to adopt regulations and to consult with the State Superintendent of Public Instruction prior to submission to the Office of Administrative Law. Emergency regulations implementing Chapter 26 of the Government Code including the requirements placed upon the state mental health system became effective on January 1, 1986, and can be found in Title 2, Division 9, of the California Administrative Code, The statutes require that state and federal funds be maximize3 for providing special education and related services to handicapped children, as necessary for them to benefit from their special education. It is the joint responsibility of the Superintendent of Public Instruction and the Secretary of the Health and Welfare Agency to assure that such services are provided. section 7571 of the Welfare and Institutions Code allows the Secretary of the Health and Welfare Agency to designate a department to assume the Health and Welfare portion of the joint responsibilities. The Department of Mental Health has been designated as that department.

As authorized by Government Code Section.7571, the Department of Mental Health as the Health and Welfare Agency designee has designated county mental health programs to serve as the single agency in each county for coordination of county health and welfare service responsibilities as defined in Government Code Section 7572,

Parents or legal, guardians of pupils referred for assessment or other services are not liable for any costs of assessment services or services which are designated as part of a pupil's Individualized Education Plan. "Parents" means those persons described in Section 56028 of the Education Code, If the pupil is a dependent or ward af the court, the agency vested with care, custody, and control of the pupil shall function as the legally responsible agent and shall perform those tasks required by the parent, Children and their parents or legal guardians have due process rights as specified in the Education Code which includes a procedure to appeal identification, assessment, IEP recommendation, and educational placement,

11, SUMMARY DESCRIPTION OF PROGRAM

Regulations place upon each county mental health program the responsibility to provide mental health assessment services to pupils referred for assessment by the local education agency. A referral *for* mental health assessment services may originate in the Individualized Education Program team meeting, Personnel charged with developing the Individualized Educational Program (IEP) are known collectively as the IEP Team. The IEP Team includes the school administrator or designee, the teacher, the pupil, the pupil's parents or legal guardian, and assessment team representative5 as appropriate. When a pupil's handicapping condition is identified by the IEP Team as "seriously emotionally disturbed" (SED) and there is no public education or mental health program immediately available to implement the IEP, the IEP team may consider out-of-home placement. In this case, the IEP Team must include a mental health program representative and the team is then referred to a6 an "Fxpanded IEP Team". The Fxpanded IEP Team cannot *meet* unless the mental health representative *is* present.

Upon referral of a pupil from an IEP Team, the county mental health program is required to develop an assessment plan, obtain the parent's written consent to the plan, develop a mental health services plan when appropriate, and *continue* to provide *services as long* as such services remain a part of the IEP. The parents or legal guardian of the pupil must consent to the IEP, including the mental health component of the program, before the services *may* be provided. Educationally related mental health services which are to be made available within this program are those' within the Day Services and Outpatient categories as described in Sections 542 and 543, Article 4, Title IX, of the California Administrative Code. Because statute requires that the least restrictive method of providing special educational services be utilized, out-of-home placement is therefore to become a part of the IEP only after all, other nonresidential services have been considered. This requires documentation in the IEP. Regulations specify agency responsibilities for implementing and funding out-of-home placements. County mental health program responsibilities for out-of-home placement include case management and provision of mental health services as specified in the IEP.

III. PROGRAM IMPLEMENTATION

Responsibility for delivering mental health services, as specified in the IEP, lies with the county mental health program and the following implementation guidelines cover the essential. requirements.

A. Local Interagency Agreements

The county mental health director is required to appoint a liaison person to work with the liaison of the County Superintentent of Schools or the Special Education Local Plan Area (SELPA) to develop an interagency agreement by July 1, 1986. In those few instances where the boundaries of a SELPA overlap the geographic boundaries of two or more counties, the directors of the affected county mental health programs should negotiate a single interagency agreement with the SELPA. A standard agreement with provisions addressing *items* unique to a specific county may be incorporated into the agreement, Each of those provisions should, clearly identify how the county mental health program will fulfill responsibility for assessments, participation in the IEP process, and the provision of related mental health services to those pupils residing within that particular county.

The interagency agreement must include the following:

1. A method for interagency referrals which minimizes delays.

2. Procedures for timely exchange of pupil information which ensures confidentiality+

3. Procedures to allow participation of mental health professionals in IEP Team meetings where appropriate.

4. A method to develop and amend IEP educationally related mental health goals, objectives, and the frequency, intensity, and duration of services.

5. Provision for transportation of students to the site of mental health services during school hours.

6. The provision by school of space for mental health services, where appropriate.

7. Delineation of agency responsibility to provide services during school vacations where appropriate.

8. An identification of public and nonpublic resources.

9. Specification of the responsibilities and procedures to be followed by the education and mental health agencies, when a recommendation is made by the Expanded TEP Team to place an SED pupil out-of-home.

B. Referral and Assessment

The IEP team may prepare a referral to the county mental health program to determine the need for mental health services. The pupil who is, ox is suspected of being, an individual with exceptional needs, may be referred when all of the following conditions are present:

1. The behavioral characteristics of the pupil adversely affect the pupil's educational performance as determined hy various observable measures or other measures determined to be appropriate by the' IEP team,

2. The pupil has been determined by the education agency as having behavioral characteristics which cannot be resolved with short term counseling.

3. The age of onset was between 30 months and 21 years and has been observed for six months.

4. The behavioral characteristics of the pupil are present in several settings.

5. The adverse behavioral characteristics of the pupil are severe as indicated by the rate of occurrence and the intensity.

Referral can only occur if the education agency has received parental consent to refer the pupil and to release educational information to the county mental health program. Transferred information must include educational assessment reports completed by the school, current behavioral observations in a variety of educational and natural settings, and a report prepared

by the educational personnel who specialize in counseling and guidance which explains why their services are insufficient to meet the needs of the pupil,

The county mental health program is responsible for reviewing the assessment data, the educational information, and observing, as necessary, the pupil in the school environment to determine if mental health assessments are necessary.

Upon determination that further assessments are necessary, a mental health assessment plan shall be developed within 15 calendar days of receipt of the referral from the educational agency. The parents shall review the proposed assessment plan developed by the county mental health program representative and give written informed consent: prior to the conduct of a mental health assessment, The county mental health program must complete the assessment within 50 calendar days'of the date the parents gave their written consent. An additional extension may be granted with the written permission of the parents. The county mental health program shall provide the IEP team a written assessment report, including recommendations, which becomes a part of the educational record, This assessment: report and recommendations is open to review by the IEP team and the parents.

If after conducting a mental health assessment, there is a disagreement between the parent and the county mental health program concerning the proposed recommendation, the parent may require that the person who conducted the assessment be present at the IEP Team meeting to discuss the proposed recommendation. If there is agreement between the parent and the county. mental health program concerning the proposed recommendation, the county mental health program representative is not required to attend the IEP Team meeting, but participation through a combination of a written report and telephone conference call will suffice.

C. Individualized Education Program

When mental health services are to be provided, the following written information is to be included in the IEP:

1. A description of the services to be provided.

2. The goals and objectives and the evaluation procedures to determine whether objectives are being achieved,

3. Initiation, frequency, and projected duration of the identified mental health services.

Any change in the above information requires an amendment to the IEP.

IV. OUT-OF-HOME PLACEMENT FOR SED PUPILS

If an IEP team determines that alternative approaches are inadequate and is considering a recommendation of out-of-home placement for a "seriously emotionally disturbed" pupil, then an Expanded IEP Team must be established. The Fxpanded IEP Team includes a county mental health program representative. If the pupil being considered for placement is a dependent or ward of the court, the assigned social worker or prohation officer functions as the pupil's legally responsible agent. Following a determination that placement is necessary, the Expanded IEP Team shall document, in writing, the pupil's educational and treatment needs that support the recommendation for placement, The educational component of the program may be in any of the existing public and state certified nonpublic, nonsectarian, educational programs.

The Expanded IFP Team is required to recommend one or more appropriate, least restrictive and least costly out-of-home placement alternatives. Only facilities which have an Aid to Families with Dependent Children - Foster care (AFDC-FC) group home rate set by the Department of Social Services may be considered.

The choice of facilities is confined to those licensed by the Department of Social Services that fall into one of the following categories:

1. A facility which is a privately operated residential facility with either on-grounds or off-grounds public school programs available.

2. A facility which is a privately operated residential facility where a nonpublic, nonsectarian school program is certified by the State Department of Education and is available to students;

The county mental health program member of the Expanded IEP Team is responsible far notifying, within one working day, the county mental health director of the team's decision to place the child in 24 hour out-of-home care.

A, Case Management for SED Pupils

The county mental health program must assign a lead case manager to finalize the SED pupil's out-of-home placement plan with the approval of the parent and the Expanded IEP Team as soon as possible after the decision to place the pupil in a residential facility.

Functions of the mental health case manager include, but are not limited to:

1. Convening parents and representatives of public and private agencies in order to identify the appropriate out-of-home placement.

2. Verifying that all appropriate approvals of the placement have been made according to the guidelines of the Education Code,

3. Completing the program payment authorization request for forwarding to the county welfare department in order to initiate out-of-home care payments. In addition, the case manager is responsible for verifying that the rate for the out-of-home placement is the rate approved by the Department of Social Services for that facility.

4. Coordinating the completion of the necessary. county welfare department, county mental health program, and responsible local education agency financial paperwork or contracts, including coordinating the application for Medi-Cal benefits.

5. Coordinating the completion of the out-of-home placement as soon as possible.

6. Developing the plan for and assisting the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to home.

7. Facilitating the enrollment of the pupil in the residential care facility.

a. Conducting quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the educationally related mental health services and the IEP program.

9. Notifying the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of educationally related mental health services, and the requirements of the IEP.

10. Coordinating the six-month expanded IEP team meeting with the IEP local education agency administrator or designee.

11. Coordinating of the pupil's transportation needs.

B. Placements Not Made Through An Expanded IEP Team

There are now, and will continue to be, many children in out-of-home placement who are not placed through an Expand& IEP process, but through an individual agency, such as county welfare or probation. 'After the placement is completed, a referral may be made to the school to determine whether the pupil is an individual with exceptional needs, The IEP assessment may or may not include a mental health component depending on the pupil's needs. Because the placement was not made by an Expanded IEP Team and is not indicated on the IEP, no mental health case manager would be assigned, The pupil's social worker or probation officer will continue to function as case manager for child welfare or juvenile court services. However, educationally related mental health services may be a part of the IEP plan developed subsequent to the placement.

The same set of circumstances would also occur for any child in out-of-home placement as a result of other handicapping conditions (e.g., developmentally disabled, physically handicapped). An Expanded IEP Team would not be involved in the placement, so the agency (e.g., Regional Center) responsible for placing the child would continue to be responsible for case management services. Upon referral from the local educational agency, the county mental health program is responsible, for conducting a mental health assessment and subsequently to provide any educationally related mental health. services specified in the pupil's IEP.

C. Funding

Responsibility for funding education, mental health, and the support and maintenance components of out-of-home placement for SED pupils placed by an Expanded IPP Team is divided among various agencies.

Responsibilities of local agencies are as follows:

1. Mental Health

Educationally related mental health services delivered out of the county of origin remain the fiscal responsibility of the county mental health program in the county of origin.

The county of origin is where the parent or legal guardian resides or where legal dependency is established. Mental health services in the county of placement may, be funded through a negotiated net amount, negotiated rate, the provider's actual reasonable cost, or the schedule of maximum allowances for Short-Doyle/M&i-Cal services. The lead case manager in the county of origin remains the case manager regardless of where the pupil. is receiving mental health services or where the pupil is placed.

Fiscal responsibility of the county of origin also applies for placements by other agencies in which the IEP process is conducted after the placement occurs (see Placements not made through an IEP above). If the county mental health program providing the IEP driven mental, health services is not the county 1522 In of the pupil, the program

providing the services shall duly notify the county of origin no later that 30 days after the IEP has been approved, The county mental health program from the county of origin is fiscally responsible far any IEP related mental health services received by the pupil in the county of placement. The county of origin **also** has fiscal responsibility for all pupils currently in placement who have existing IEP 's which designate that mental health services be provided. Fiscal responsibility for educationally related mental health services would not include any *services covered* in the facility's AFDC-FC rate.

2. Local Education Agency

The local education agency is responsible for transportation during school hours to and from a mental health treatment center as specified in the pupil's IEP. The local education agency is also responsible for special education and related services required by the pupil, excluding mental health services. If mental health services are delivered in a setting which is outside the state of California, the State Department of Education and the local education agency are responsible for payment for those services.

3. Local, Welfare Department

The county welfare department is responsible for the support and maintenance component costs of an Expanded IEP out-of-home placement. This responsibility includes issuing payments to providers upon receipt of an authorization document provided by the county mental health program for 24 hour out-of-home care. The State Department of Mental Health, in consultation with the Department of Social Services, will issue a form to county mental health programs to be used for making such authorizations.

In this regard, it should be noted that the State Department of Social Services is responsible for determining the facility rate for 24 hour out-of-home care. This rate will be determined in accordance with the methodology utilized in the AFDC-FC program. An AFDC-FC group home rate notification listing will be sent to the county. mental health program on a regular basis,

V. FISCAL AND DATA REQUIREMENTS

Pursuant to Section 16 of Chapter 1274 of the Statutes of 1985, funds previously expended for educationally related mental health services not to exceed the total-amount reported by the State Department of Education, as verified by the Department of Finance, shall be transferred to the State Department of Mental Health. Such funds will be allocated by the Department to the counties.'

Beginning with Fiscal Year 1986-87, the Short-Doyle Plan, Part B, shall include a description of services to be provided to this target population. Reimbursable services may be delivered by the county or by contract with a private provider in accordance with the provisions of the CR/DC manual. Short-Doyle funded services under this program gay not be delivered outside the, State of California. Mental health services provided by county mental health programs will be in the Case Management, Outpatient and Day Treatment categories and will be reported in the regular Short-Doyle Program Type #01. Services to Medi-Cal eligibles may be hilled through the Short-Doyle/Medi-Cal program; An application for Medi-Cal benefits should be filed as soon as possible when it is determined that a pupil, who is not otherwise eligible for Medi-Cal is to be placed out-of-home.

Parents of special education pupils receiving mental. health services pursuant to an IEP are not liable for the costs of those services. The client information data on the front side of the Payor Financial Information (PFI) form, (DS 1233, 3/83), or the county equivalent, should be completed and filed in the client record. If the pupil's parents have insurance, Items 2-14 should also be completed. Each PFI form should have written or stamped on it the following notation which describes the parent's exempt status:

> "Pursuant to Public Law 94-142, services are provided at no charge to the parent or adult pupil, and in accordance with Section 7582 of the Government Code, are exempt from financial eligibility requirements."

Insurance, Short-Doyle/Medi-Cal, or other third-party payors may only be billed in the usual manner with the parents consent.

Because of the potential financial impact of this program, the Department will need to collect data to measure the quantity, type, and cost of services delivered. The Department is *in* the process of determining the method far collecting this data. When

data collection requirements are finalized, they will be forwarded to the counties.

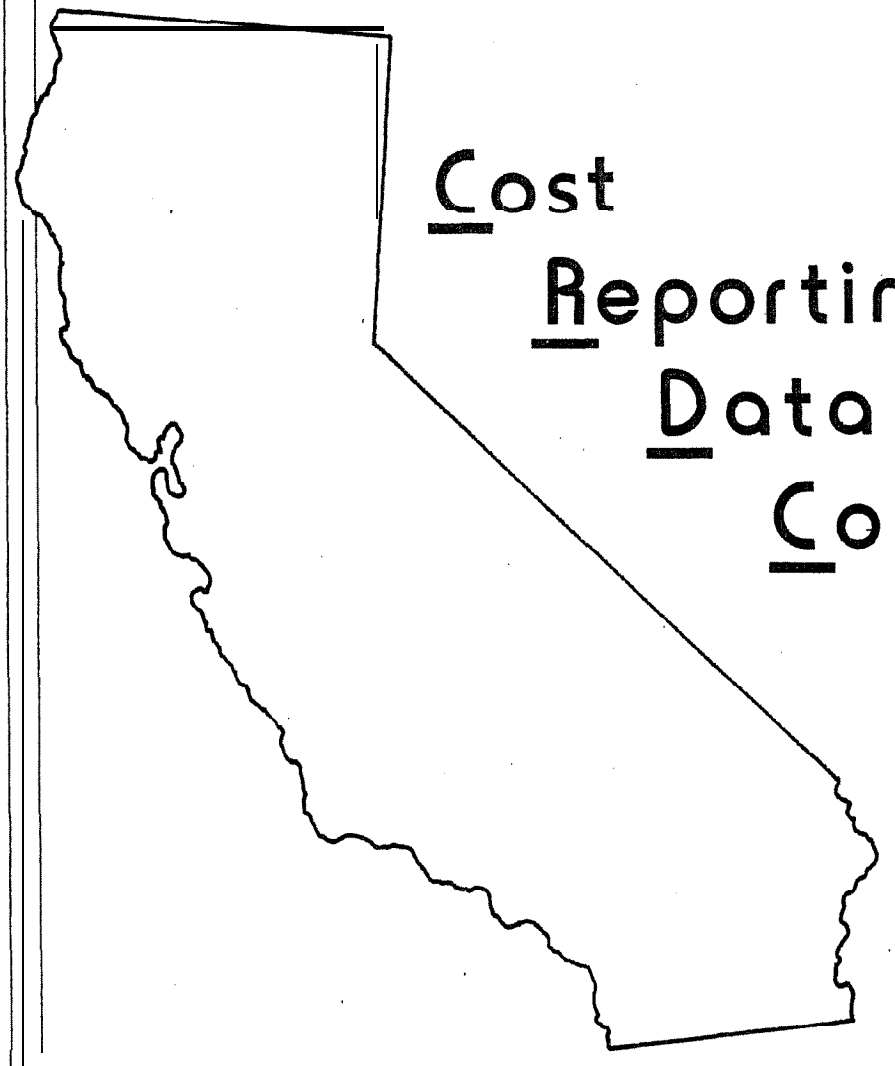
Sincerely,

D. MICHAEL O'CONNOR, M.D.
Director

cc: County Operations Chiefs

STATE OF CALIFORNIA

DEPARTMENT OF MENTAL HEALTH



Cost Reporting/ Data Collection Manual

COUNTY ALLOCATION/CR/DC SECTION
JULY 1989

COST REPORTING/DATA COLLECTION MANUAL

FISCAL YEAR 1989-90

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1. Abbreviations
2. Provider File Update Form
3. a. Budget Forms
   b. Claim Forms
   c. Cost Report Forms
4. CCR, Title 22, s. 51516
5. Disk, Tape, or Cartridge SD/MC Claiming

This manual contains policies and procedures in effect as of July 1, 1989. The Cost Report material pertains to preparation of the F.Y. 1988-89 Cost Report.

CALIFORNIA DEPARTMENT OF MENTAL HEALTH
1600 NINTH STREET
SACRAMEN 1529 CA 95814

CHAPTER I

INTRODUCTION

100 GENERAL

The Cost Reporting/Data Collection Manual is a publication of the State Department of Mental Health (DMH). The Manual is designed to provide a guide to counties and providers for the Cost Reporting/Data Collection (CR/DC) System and contains pertinent fiscal policies and procedures.

101 STATUTORY AUTHORITY

1. Statutes -- Welfare and Institutions Code (WIC), Division 5, Community Mental Health Services under the Short-Doyle Act.

2. Regulations -- California Code of Regulations (CCR) Title 9, Community Mental Health Services under the Short-Doyle Act.

102 PURPOSE

This manual specifies fiscal and administrative policies and procedures to be followed by provider, local program, and state personnel concerning fiscal activities of community mental health services. The primary objectives of this manual are to:

- Provide uniform procedures, forms, and instructions for budgeting, claiming, and cost reporting.

- Establish basic cost and revenue accounting guidelines.

- Identify basic requirements which must be included in provider contracts.

103 NEGOTIATED NET AMOUNT/NEGOTIATED RATE CONTRACTS

Cost reporting and data collection procedures may differ for providers and local programs operating under an NNA or NR contract. Please refer to Chapter IV or Policy Letter DMH 84-10 and the current SB 900 Contract Manual for discussions on negotiated contracts.

104 MANUAL USE,' MAINTENANCE, AND DISTRIBUTION

All providers participating in.community mental health programs under the Short-Doyle Act must adhere to the instructions provided in this manual.

The County Allocation/CR/DC (Cost Reporting/Data Collection) Section, Department of Mental Health, is responsible for the maintenance, revision, and distribution of the manual. Proposed changes to the manual must be submitted in. writing to the County Allocation/CR/DC Section. Suggested revisions for the next fiscal year's manual must be received no later than March 1.

Requests for copies of the CR/DC Manual must be submitted in writing to the County Allocation/CR/DC Section, Department of Mental Health. It is the local program's responsibility to assure that all contract providers and all affected local program staff receive copies of the manual.

104.1 New Manual Format

The format and some of the content of this edition of the CR/DC Manual have been modified and expanded with the intent of improving the Manual's clarity. In lieu of using page numbers, each definition, instruction, and description has been assigned a section number. The new numbering system will facilitate and enable mid-year corrections and additions to the Manual. Information relating to Short-Doyle/Medi-Cal has been extracted from the various chapters in earlier manuals, expanded upon, and consolidated into one single chapter.

Publication of this edition is an initial step in producing a manual that can be improved and updated more readily. Comments and suggestions for improvements are welcomed.

105 ABBREVIATIONS

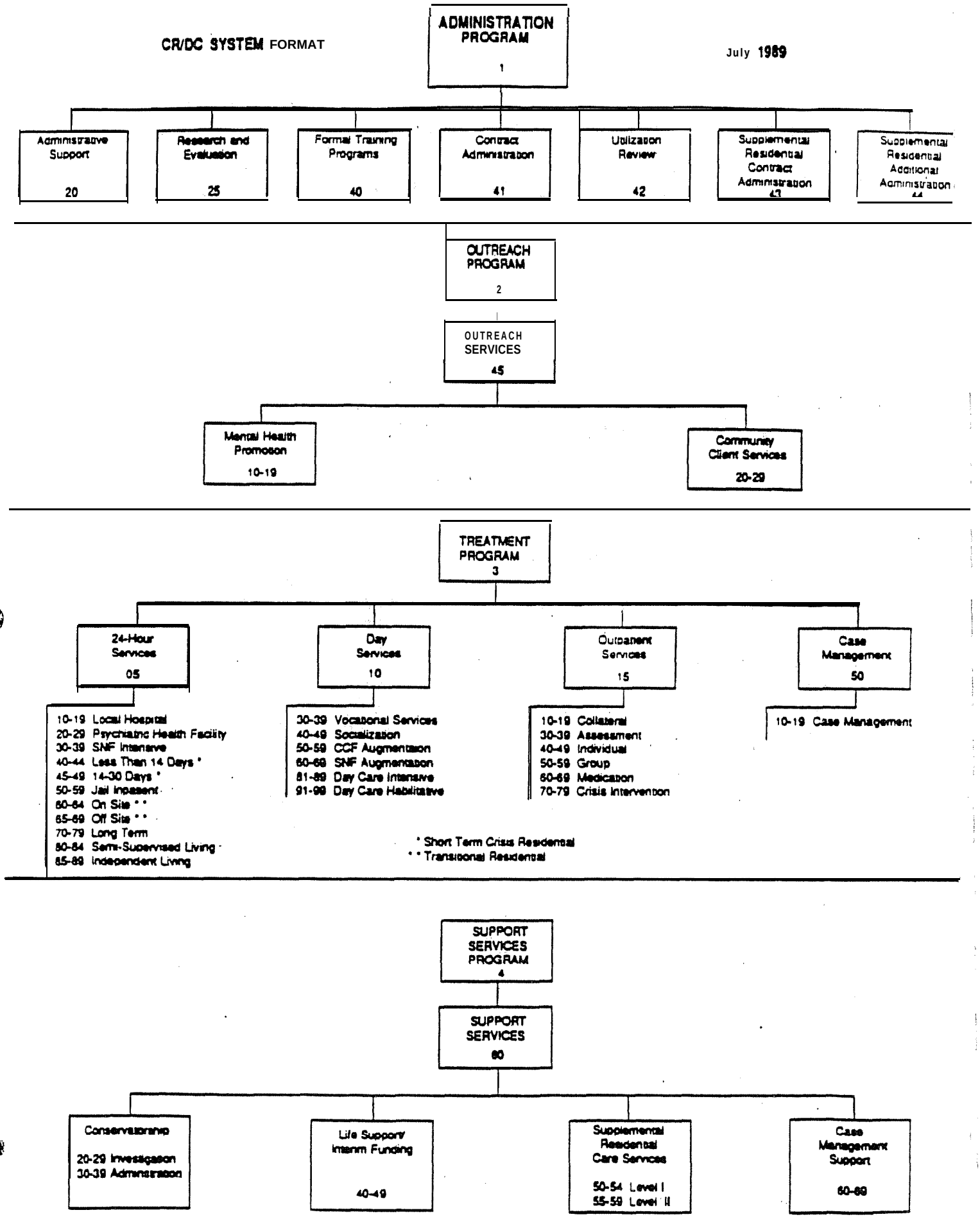
Common abbreviations which may be encountered in this manual and in other DMH publications are listed in Appendix 1.

106 CR/DC SYSTEM FORMAT

The chart on the facing page outlines the CR/DC System Format by program, mode of service, and service function.

CR/DC SYSTEM FORMAT

July 1989



107 STANDARD TERMS

The CR/DC System is designed to capture local program service data and costs at four different levels of refinement. In order of increasing refinement, the levels are Program Type, Program, Mode of Service, and Service Function. Each definition below is accompanied by the standardized numeric codes utilized in CR/DC budgeting and cost reporting and illustrated on the system format chart (Section 106).

108 PROGRAM TYPE

Program Type is a broad classification of a program based on funding or other special criteria. Currently, there is only one Program Type in effect.

108.1 01 - Regular Short-Doyle

Applies to all funds allocated for community mental health services under the provisions of the Community Mental Health Services Act. Reimbursable services included local program administration, outreach, treatment, and support. Funds are appropriated annually in the Budget Act and allocated by DMH to local, programs.

109 PROGRAM

A Program is a logical grouping of activities or services to meet a particular goal. There are four basic program categories:

109.1 (1) Administration Program

Services utilized to administer the local mental health program that are usually associated with a governmental (county or city} organization.

109.2 (2) Outreach Program

Services delivered in the community-at-large to special population groups, human services agencies, and to individuals and families who are typically not identified clients of the Short-Doyle program.

109.3 (3) Treatment Program

Therapeutic services provided directly to those clients identified through formal admission procedures.

109.4 (4) Support Services Program

Supplemental services which assist clients with supportive programs that facilitate and maximize the provision of direct treatment services.

110 MODE OF SERVICE

A mode of service more specifically identifies the different kinds of services provided within each of the four programs. There are currently thirteen modes of service in the CR/DC System.

110.1 (20) Administrative Support (Administration Program)

Services provided in the administration of the total county Short-Doyle program not directly attributable to a specific service program. Costs include general administrative personnel, e.g., the Director, Deputy Director, Fiscal Administrator. Typical functions include accounting,. budgeting, personnel, EDP, office services, motor pool, patient's rights activities, etc.

The cost of salaries, benefits, operating expense, equipment, remodeling and contracts directly attributable to Outreach, Treatment, or Support Services Programs must not be included as part of Administrative Support. Space, utilities, supplies, etc., should be a direct charge to service programs, based on a reasonable cost allocation method.

110.2 (25) Research and Evaluation (Administration Program)

Research -- Centralized activities under the direction of the Local Mental Health Director designed to increase the scientific knowledge and understanding of the nature, cause, prevention, and treatment of mental, emotional, or behavioral disorders.

Evaluation -- Scientific studies regarding the effectiveness and efficiency of specific mental health programs in which goals are clearly defined and achieved in measurable terms.

110.3 (40) Formal Training Programs (Administration Program)

Educational activities which are specifically designed to enhance the skills and knowledge of mental health staff. The educational activity is formally organized by a qualified instructor with specific learning objectives and is designed either to improve the quality of mental health services or improve the administration of the mental health program. Routine orientation of new staff is not included.

110.4 (41) Contract Administration (Administration Program)

Services involved in the administration of provider contracts. Activities include, but are not limited to:

Negotiation -- Activities necessary to effect the consummation of a contract. Includes preparation of materials and attendance at meetings.

Maintenance -- Ongoing activity necessary for the process/payment of provider claims, the distribution of essential announcements, policies, bulletins, forms, etc., and the training of provider staff.

Monitoring -- The review of provider operations, records, and programs to assure that contract provisions are fulfilled, that procedures for reporting are sufficient and accurate, and that the provider is in compliance with statute, regulation, and policy.

110.5 (42) Utilization Review (Administration Program)

The evaluation of the necessity and appropriateness of the use of all reimbursed medical services, procedures, and facilities. Includes review of the appropriateness of admissions, services ordered and provided, length of stay, and discharge practices.

110.6 (43) Supplemental Residential Contract Administration (Administration Program)

Services involved in the administration of contracts for supplemental residential care services. The funding amount is limited to 10.0% of the categorical allocation for supplemental residential care services.

110.7 (44) Supplemental Residential Additional Administration (Administration Program)

Contract administration services for the supplemental residential care program in addition to those reflected in mode 43.These services are funded with non-categorical Short-Doyle funds.

110.8 (45) Outreach Services (Outreach Program)

Services delivered in the community-at-large to special population groups, human services agencies, and to individuals and families who are not usually clients of the Short-Doyle program.

110.9 (05) 24-Hour Services (Treatment Program)

Services designed to provide a therapeutic environment of care and treatment within a residential setting. Depending on the severity of mental disorder, and the need for related medical care, treatment would be provided in one of a variety of settings.

204 REPORTING LEVELS

As discussed in Chapter 1, costs must be identified by (1) Program Type, (2) Program, (3) Mode of Service, and (4) Service Function.

Modes of service are the primary accounting level for purposes of cost assignment and allocation. Within the modes, costs are further differentiated into service functions, the secondary level. To properly allocate costs, they are first assigned to the mode of service, and then to the service function. With the exception of the Administration Program, all reporting through the CR/DC System must be done at the service function level.

At the county's option, costs may be further differentiated to a third level, the cost center. Each service function can accommodate from five to ten separate costs centers. Cost centers are most frequently used to segregate costs for the same service rendered to clients of different age groups or as aids in tracking categorical funding.

205 DIRECT AND INDIRECT COSTS

Costs are characterized as either direct or indirect.

Direct costs are those. that are incurred for a specific service. An example of direct costs are salaries and employee benefits, supplies, and travel identifiable to a specific service,

Indirect costs are incurred for the common benefit of an organization or facility and are not readily assignable to a specific service. Some examples are general administration, accounting and auditing, data processing, personnel and legal services. The method of allocation of indirect costs should be consistent from year to year. The following two categories of providers will use different methods of allocation:

1. Hospital Providers use the California Health Facilities Commission Manual, American Hospital Association, or California Hospital Association guidelines for Cost Finding and Rate Setting for Hospitals. Indirect costs allocated to mental health services must be directly related to services provided. Indirect costs may not be allocated to mental health services, regardless of general cost' finding principles, if the allocated, amount is not representative of actual services.

2. Non-hospital Providers use a suitable and reasonable allocation method which corresponds closely to benefits received. Indirect costs which are applicable to a provider's total operation are allocated to specific reporting levels.

206 ALLOWABLE COSTS

Allowable costs are those necessary and proper costs to develop and maintain a provider's commonly accepted mental health activities. Allowable costs must pass the test of reasonableness. This section presents the concept of reasonable cost and also includes Medicare/Medi-Cal reimbursement references, revenue accounting requirements, and specific allowable and unallowable costs.

The reasonable cost concept requires that a provider's Short-Doyle costs be necessary, proper, fair, and not extreme. The provider must determine that Short-Doyle costs are:

1. Customary charges to other third-party payors (e.g., Medicare, Medi-Cal, etc.) for similar services, and

2. Prevailing charges that are most frequently and widely used locally for similar services.

Final determination of reasonable cost is made during the provider's Short-Doyle audit. In instances where reasonableness of costs is questioned, the burden of proof of reasonableness rests with the provider,

In determining the allowability of costs, consideration must be given to the following sources of authority:

1. Applicable provisions of law, primarily provisions of the Welfare and Institutions Code and regulations related to reimbursement for mental health services.

2. Provisions of the Federal Medicare Provider Reimbursement Manual (HCFA 15-l). A detailed explanation and discussion of Medicare reimbursement principles can be found in HCFA 15-1 published by the 'Health Care Financing Administration, U.S. Department of Health and Human Services. This manual is utilized to determine the allowability of costs where allowability is not governed by state law, regulations, or Department of Mental Health policy.

3. Department of Mental Health policies with respect to types of costs set forth in this manual (CR/DC) and in policy letters and directives. Many of these policies provide additional guidance and clarification regarding allowable costs set forth by statute, regulation, or HCFA 15-l. However, the Department's policies may differ or may deal with costs not considered by HCFA 15-l. To the extent that the policies of the Department of Mental Health differ from provisions of HCFA 15-1, the Department's policy shall prevail.

The discussion of allowable costs and'the enumeration of allowable and unallowable costs which are contained in this chapter are not intended to be exhaustive. This chapter provides an overview dealing with the most frequently utilized cost categories and applicable reimbursement-standards. The table at the end of the chapter highlights these categories and standards.

206.1 Negotiated Rate/Net Amount Contract Costs

Subject to State approval, allowable costs may be negotiated between a local program and a provider under the statutory and policy provisions for NR/NNA contracts. If Federal funds are included in the contract, the agreement must also conform to applicable Federal guidelines.,

Ref: WIC, s. 5705.2(b)
DMH Letter 84-10

206.2 Supplemental Residential Contract Administration Costs

These costs are generally limited to 10% of the Supplemental Residential Care categorical allocation. A local program may request a waiver of the 10% limit if there is adequate documentation that actual contract administration costs exceed 10%. The waiver will only be considered if additional costs are documented and are pertinent to contract administration as defined in Chapter 1. Costs incidental to the Supplemental Residential Care program but unrelated to contract administration (e.g., case management services) must be excluded from the waiver request.

COMPLETION INSTRUCTIONS
MH 1942

L GENERAL

The MH 1942 is to be used to report the total cost and revenue for the modes of service within the Administration Program.

II. HEADING INSTRUCTIONS

A. County Code — Enter the two digit State assigned county number.

B. County of — Enter the County name.

C. Submission Date — Enter the date the form is completed and submitted.

III. COLUMN INSTRUCTIONS

Enter the Short-Doyle provider name and number assigned to each provider. Use additional summary cost report forms if the number of providers exceeds the number of preprinted columns for an administration program service. If more than one form is necessary, enter the grand total of administration program costs and revenues in the "Totals" column of the last page only.

NOTE: The column for "Utilization Review" is to be'used for county costs related to utilization review programs.

The column for Supplemental Residential contract administration (Column 43) is to be used only for Administrative costs that are 10% or less of the Supp. Res. allocation. Only funds from the Supp. Res. categorical allocation should be reflected in this column.

Column 44 is used to identify additional administrative cost associated with tbe Supplemental Residential program. (Community Services funds)

IV. LINE INSTRUCTIONS

All amounts are rounded to the nearest whole dollar and take special note of these expenditures:

V. Expenditures

Line No.	Description	Note
10	Equipment	Requires prior approval and is limited in accordance with Title 9, California Code of Regulations, Section 552.
1 5	Remodeling	Requires prior approval and must be in accordance with Title 9, California Code of Regulations, Section 553.
18	County Overhead	Costs in accordance with Federal OMB Circular A-87, Countywide Overhead Cost Allocation Plan that appropriately applies to the mental health program.
28	Neg. NA/NR Contracts	Includes negotiated net amount and negotiated rate service contracts, subject to the provisions of Sec. 5705.2 of the Welfare and Institutions Code. Report total gross cost.
40	Contracts/Fee for Service	Includes all service contracts, other than those reported on line 28, including Fee For Service contracts. If any portion of the contract is a Fee For Service, place an asterisk next to the Provider Name.
Revenues		
77	County Overmatch	Funds that the county contributes above those obligated by law or regulations.

Reference: CR/DC (Cost Reporting/Data Collection) Manual, Chapter III, Cost Report Process Section.

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF MENTAL HEALTH

SUMMARY COST REPORT FOR LOCAL SERVICES

MH 1942 (7/91)

Page _____ of _____

FISCAL YEAR	COUNN CODE	PROGRAM TYPE
91		01

ADMINISTRATION PROGRAM • 1	COUNTY OF	SUBMISSION DATE

COLUMN NUMBER	20	25		40	41	42	43	44	99	
SERVICE	ADMINISTRATIVE SUPPORT	RESEARCH AND EVALUATION		OTHER ADMINISTRATIVE COSTS					TOTAL	
				FORMAL TRAINING	CONTRACT ADMINISTRATION	UTILIZATION REVIEW	SUPP. RESIDENT. CONTRACT ADM.	SUPP. RESIDENT. ADMINISTRATION		
PROVIDER NAME									9999	
PROVIDER NUMBER										
ITEMS										
1540 SALARIES & EMPLOYEE BENEFITS 1		$		$	$	$	$	$		1
OPERATING EXPENSE										5
10 EQUIPMENT										10
15 REMODELING										15
18 COUNTY OVERHEAD										18
28 NEG. NA/NR CONTRACTS										28
40 CONTRACTS/FEE FOR SERVICE 2										40
45 GROSS COST										45
53 a. GRANTS RECEIVED										53
54 b. OTHER REVENUES										54
57 TOTAL REVENUES										57
58 COST TO BE DISTRIBUTED										58
59 COST DISTRIBUTED 3										59
62 DISTRIBUTION OF ADMINISTRATIVE SUPPORT AND RESEARCH & EVALUATION										62
65 ADJUSTED GROSS COST	0	0								65
69 a. GRANTS RECEIVED										69
75 g. OTHER REVENUES										75
76 h. REALIGNMENT										76
77 COUNTY OVERMATCH 4										77
78 TOTAL REVENUES										78
80 NET COST	-0-	-0-								80

STATE OF CALIFORNIA - HEALTH AND WELFARE AGENCY

DEPARTMENT OF MENTAL HEALTH

MH 1960 (6/95) CALCULATION OF PROGRAM COSTS

SUMMARY COST REPORT

County: DMH

County Code: 99

Fiscal Year: 95

Legal Entity: California

Legal Entity Number: C9999

		1	2	3
		Salaries and Benefits	Other	Total costs
1	Mental Health Expenditures	3,500,000	2,900,000	6,400,000
2	Encumbrances	90,000	-40,000	50,000
3	Less: Payments to Contract Providers (County Only)		-1,000,000	-1,000,000
4	Other Adjustments (Provide Detail)	-30,000	120,000	90,000
5	Total Costs Before Adjustments	3,560,000	1,980,000	5,540,000
6	Medi-Cal Adjustments from MH 1961			-100,000
7	MAC Claims			200,000
8	Allowable Costs for Allocation			5,240,000
	Administrative Costs (County Only)			
9	SD/MC Administration			550,000
10	Non-SD/MC Administration			120,000
11	Total Administrative Costs			670,000
	Utilization Review Costs (County Only)			
12	Skilled Professional Medical Personnel			90,000
13	Other SD/MC Utilization Review			45,000
14	Non-SD/MC Utilization Review			10,000
15	Total Utilization Review Costs			145,000
16	Research and Evaluation (County Only)			10,000
17	Direct Service Costs			4,415,000
18	Total Costs - Lines 9 through 17			5,240,000 EQUALS LINE 8

STATE OF CALIFORNIA - HEALTH AND WELFARE AGENCY

DEPARTMENT OF MENTAL HEALTH

MH 1992 FUNDING SOURCES
(6/95)

SUMMARY COST REPORT

County: DMH
county code: 99

Fiscal Year: 95

Legal Entity: California	1	2	3	4	5	6	7	8	9
Legal Entity Number: C9999	Administration/		Direct Services						Total
	Research & Evaluation	Utilization Review	Mode 05 - Hospital	Mode 05 - Residential	Mode 10 - Day Treatment	Mode 15 - Outpatient	Mode 45 - Outreach	Mode 60 - Support	Legal Entity
1 Adjusted Gross Cost	680,000	145,000	372,500	144,750	241,250	3,560,000	46,500	50,000	5,240,000
Funding Sources									
Grants									
2 SAMHSA Grants					4,500	80,000			84,500
3 PATH Grants						10,000			10,000
4 RWJ Grants						10,000			10,000
5 Other Grants	10,000					1,000			11,000
6 Total Grants ~~Received~~ Accrued	10,000				4,500	101,000			115,500
7 Patient Fees			2,545	7,795	3,546	9,211			23,097
8 Patient Insurance			34,123		4,343	8,799			47,265
9 Short-Doyle/Medi-Cal (FFP only)	274,820	90,000	109,200	38,866	75,465	1,223,604			1,811,955
10 Medicare			32,456	-	11,243	10,999			54,698
11 Conservatorship Admin. Fees								47	47
12 State General Fund-State Share						90,000			90,000
13 State General Fund-County Match						10,000			10,000
14 Other Revenues	81,715		82,064	251	14,324	83,208	15,737	7,966	285,265
15 Realignment Funds/MOE*	313,465	55,000	112,112	38,866	127,829	1,926,390	23,065	41,671	2,638,398
16 County Overmatch				58,972		96,789	7,698	316	163,775
17 Total Funding Sources	680,000	145,000	372,500	144,750	241,250	3,560,000	46,500	50,000	5,240,000

* Realignment Funds include match for Short-Doyle/Medi-Cal FFP.

1542

MINUTES

COMMISSION ON STATE MANDATES
June 27, 1996
10:00 a.m.
State Capitol, Room 444
Sacramento, California

Present: Chairperson Theresa Parker (recused for Item 4)
Representative of the Department of Finance
Member Richard Chivaro (for June 4, 1996 Minutes and Item 2 only)
Member Stan DiOrio (for all other agenda items)
Representatives of the State Controller
Member Diane Richardson
Representative of the Office of Planning and Research
Member William Sherwood (chairing for Item 4)
Representative of the State Treasurer
Member Albert P. Beltrami
Public Member

There being a quorum present, Chairperson Parker called the meeting to order at 10:08. Before calling the roll, Executive Director Kirk Stewart noted that Mr. Chivaro would be representing the State Controller only for actions pertaining to Solano County's Application for a Finding of Significant Financial Distress, i.e., the rninutes for June 4 and Item 2. Mr. Stewart also announced that Item 4, the *Special Education* Test Claim, would be taken up last.

Item 1 Minutes

The minutes for the meeting of June 4, 1996, were presented for approval. Member Richardson moved approval, seconded by Member Sherwood, and they were approved unanimously.

Item 2 **FINAL STATEMENT OF DECISION**
County **of Solano** Filing of April 8, 1996 and
Preliminary Decision of June 4, 1996.

Mr. Stewart presented the item, noting that Solano County's Application for a Finding of Significant Financial Distress was filed on April 8, 1996, that the Commission held a public hearing in Fairfield on May 31 and made its preliminary decision on June 4 to approve the County's Application for a period of twelve months following the final Statement of Decision. Chairperson Parker commented that the Statement of Decision was consistent with the Commission's preliminary decision and noted that no individuals or organizations had testified in opposition to the County's Application. Member Beltrami moved approval of the Statement of Decision, seconded by Member Richardson, and the Statement of Decision to approve the County's Application carried on a unanimous roll call vote.

Mr. DiOrio represented the State Controller for the remainder of the meeting.

Item 1 Minutes (Continuation)

The minutes for the meeting of March 29, 1996, were presented and approved on the motion of Member Richardson, seconded by Member Sherwood, with Member Beltrami abstaining, The minutes for the meetings of May 6, 1996, were presented and approved unanimously on the motion of Member Sherwood, seconded by Member Richardson. Mr. Stewart stated that the minutes for the meetings of May 30 and May 31 had not been completed.

Before presenting the balance of the day's agenda, Mr. Stewart announced that Mr. Andrew Mendonsa was working with the Commission as a Student Aide for the Summer and that Mr. William Potts, who was on temporary assignment, would be leaving. Chairperson Parker welcomed the Student Aide and thanked Mr. Potts for his contribution to the Commission's work, particularly with respect to SB 1033 Applications.

Consent Calendar

Mr. Stewart announced that Item 7, amendment of Parameters and Guidelines for *Handicapped and Disabled Students,* had been withdrawn from Consent at the request of San Bernardino County and would be a discussion item, leaving Items 5 and 8 on Consent. Mr. Alan Burdick, representing the City of Long Beach, asked if an Attorney General's Opinion submitted by the City would be included in the administrative record for Item 5, *Safety Administrative Hearings,* and Mr. Stewart stated that the Opinion already was in the record as the City had requested.

On the motion of Member DiOrio, seconded by Member Sherwood, Consent Calendar Items 5 and 8 were unanimously adopted as follows:

Item 5 STATEMENT OF DECISION
CSM-4460
City of Long Beach
Safety Administrative Hearings
Government Code Section 21025
Chapter 1159, Statutes of 1991

Item 8 PARAMETERS AND GUIDELINES
CSM-4474
Education Code Section 48900.1
Chapter 1284, Statutes of 1988
Pupil Suspension: Parent Classroom Visits

Adoption of Proposed Regulations

Item 3 Action item to adopt Proposed Amendments, as modified, to California Code of Regulations, Title 2, Chapter 2.5, to incorporate changes required by Chapter 945, Statutes of 1995 (SB 11)

Staff Counsel Paula Higashi presented these proposed regulations for adoption. She reported that San Diego Unified School District had made two comments during the public comment period. The first was a question about agenda item materials received less than 15 days before a Commission meeting. Ms. Higashi pointed out that the regulations provide for the receipt of such materials, but they might not be included in the agenda binders and instead would have to be passed out at the meeting.

The second comment had to do with the subpoena process. Ms. Higashi explained that the party requesting a subpoena would have to state in an affidavit that to the best of their knowledge and belief the documents requested are not available under the Public Records Act. Also, the question was raised about the Commission staff assisting with the preparation of a Public Records Act request, and the regulations do not provide for such staff assistance. In response to a question from Member DiOrio, Ms. Higashi said that non-cooperation concerning a Public Records Act request would have to be weighed by the Commission as those cases arise.

Ms. Higashi then presented the four following staff recommendations, which were voted upon as a group :

1. The Commission determines that no alternative considered would be more effective in implementing Chapter 945, Statutes of 1995 (S.B. 1 1), than the proposed regulatory action.

2. The Commission adopts the proposed regulatory action, as modified on May 30, 1996, to implement Chapter 945, Statutes of 1995 (S .B. 11.).

3. The Commission authorizes staff to make non-substantive changes to the text of the adopted regulations, prior to filing with the Office of Administrative Law, and if requested by the Office of Administrative Law, to comply with publication requirements and filing with the Secretary of State. Included are changes to structure, numbering, syntax, cross-reference, grammar, or punctuation.

4. The Commission authorizes staff to update authority and reference citations, prior to submission with OAL, and upon OAL's request, if necessary to comply with publication requirements.

Member Beltrami expressed the hope that the regulations still would permit flexibility on the part of the Commission. Chairperson Parker responded by saying that the consensus of the Commissioners as the draft regulations were being discussed had been to leave flexibility to deal with issues on a case-by-case basis, and she noted that some changes had been made at that time to ensure more flexibility. The Commission complimented Ms. Higashi on her work in preparing the regulations.

Member' DiOrio made the motion to approve the four recommended action items, seconded by Member Beltrami, and the motion carried unanimously.

Action On Mandate Claims

Statement of Decision

Item 6 CSM-4483
Carmel Valley Fire Protection District, *et al.*
Mammoth Lakes Fire Protection District
Identified Mandate: Structural and Wildland Firefighters' Safety Clothing and Equipment (8 Cal. Code Regs. Sections 3401-3410)
Government Code Section 17581
Chapter 459, Statutes of 1990
Chapter 587, Statutes of 1992 (Budget Act of 1992)
Chapter 55, Statutes of 1993 (Budget Act of 1993)
Chapter 139, Statutes of 1994 (Budget Act of 1994)

Commission Counsel Gary Hori presented this item, explaining that it stemmed from the Commission's denial of this test claim at its hearing on February 6, 1996. The test claim concerned the suspension of the Firefighters' Safety Clothing and Equipment mandate under the provisions of Government Code section 17581 and the Budget Acts of 1992, 1993 and 1994. Mr. William D. Ross, representing the claimants, then made a presentation intended to supplement his written opposition of April 26, 1996, to the proposed Statement of Decision. Among the points he raised, Mr. Ross questioned the Commission's legal power to deny the test claim as it had done, objected to the framing of the issue on page one of the statement of decision, objected to the use of the term "test claim" as it the matter was characterized by the Commission, said that the Statement of Decision did not address the position that only the rulemaking agency (in this case Cal-OSHA) could terminate its regulations and not the Legislature, sought recusal of the Department of Finance, and raised an issue on the effect of late passage of the Budget Act of 1992.

Chairperson Parker asked Mr. Hori if he had any questions or response, and Mr. Hori observed that Mr. Ross' points would be a part of the record and that he thought that the vast majority of the points had been discussed at the test claim hearing. Chairperson Parker said that the matter of Finance's recusal had been dealt with long ago, that Finance would abide by the other Members' recommendation on that matter, and that the Commission had concurred that Finance should be able to participate. She also stated that she was not aware of late passage of a Budget Act causing the full fiscal year effect Budget Act language to come into question. Member DiOrio moved the staff recommendation to adopt the Statement of Decision, seconded by Member Sherwood, and the motion carried on a vote of four ayes, with Member Beltrami abstaining.

Parameters and Guidelines

Item 7 CSM-4282 (also cited as CSM-4496)
County of San Bernardino
Handicapped and Disabled Students (Amendment to P&Gs)
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200

This item had been removed from the Consent Calendar at the request of the claimant, represented by Ms. Marcia Faulkner, joined by Mr. Allan Burdick of CSAC-SB 90 Service. Ms. Faulkner acknowledged receipt of staff's proposed amended parameters and guidelines in May, but stated that she had just discovered a limitation on certain overhead costs that appeared to be an incorrect interpretation of federal OMB Circular A-87. Mr. Burdick suggested that the parameters and guidelines could be approved and that the State Controller could interpret the particular overhead matter.

Because this particular issue had just arisen on this date, neither Mr. William Ashby, State Controller's Office, nor Mr. Norman Black, Department of Mental Health, was in a position to offer comment on the technical issue raised by Ms. Faulkner.

Member Beltrami asked if Commission staff would have any problem with deleting the cost limitation phrases referenced by Ms. Faulkner. Mr. Stewart responded that because of the need for technical personnel in the state agencies to review the suggested change, the item should be put over. The Commission concurred, and the item was put over to a subsequent meeting.

Before moving to the next item, Chairperson Parker clarified for Member Beltrami that taking an item off Consent is permissible, but that the timing of such a request usually is more in advance of the hearing so that all parties to the item can be alerted that they should appear.

Procedural Issue On Incorrect Reduction Claims

Item 9 CSM-4435
San Diego Unified School District
Graduation Requirements
Education Code Section 5 1225.3
Chapter 498, Statues of 1983

Item 10 CSM-4479
San Jose Unified School District
Graduation Requirements
Education Code Section 5 1225.3
Chapter 498, Statues of 1983

Mr. Stewart reported on a meeting which he had attended at the State Controller's Office on June 17. At that meeting were the Chief Deputy State Controller and staff as well as Mr. Keith Petersen, representing San Diego USD, Mr. William Doyle, representing San Jose USD, and Dr. Carol Berg, representing the Education Mandated Cost Network.

Mr. Stewart related that a draft worksheet pertaining to the issue of science teacher salaries and savings offsets had been prepared by the SCO and was discussed at that meeting as was the context within which the SCO could or could not deal with amended Graduation Requirements claims. He reported that there was acceptance of the school representatives' view that teacher salary differentials could be disregarded for purposes of the worksheet, but there was substantial concern about the availability of data at the school district level to actually complete the proposed worksheet. The use of California Basic Educational Data System (CBEDS) data had been discussed extensively, with the SCO staff indicating the technical ability of that data to be used with the worksheet and with the educational representatives pointing to data integrity problems with it. He reported that a revised draft of the worksheet had been mailed to the meeting participants by the SCO and that varying degrees of concern or disagreement had been expressed by the education representatives. (Copies were given to the Commission Members .)

He recounted Mr. Hori's comments from the last meeting that, because of the statute of limitations, school districts have only three years from the SCO's reduced payment notice to file an incorrect reduction claim with the Commission. He noted that the SCO might have no ability to adjust the Graduation Requirements reduced claims outside the IRC process, and that only districts with timely IRCs might be in the position to benefit from whatever reevaluation the SCO can make of the former claims. Prospectively, the SCO could issue a worksheet or other guidance; and prospectively, the Cornmission could amend its parameters and guidelines on Graduation Requirements. He reported that, as of yesterday, the SCO had sent a clarification letter to school districts on Graduation Requirements reimbursement claims and that a version of the worksheet had been included as a non-mandatory tool for district use.

Mr. Stewart summarized by saying that the Commission still had three courses of action before it with respect to the Graduation Requirements IRCs: approve, disapprove or approve in part.

An extensive discussion of this matter ensued with Dr. Berg, Mr. Doyle and Mr. Petersen representing school districts and Mr. Ashby representing the SCO. Central to the discussion were the specific purpose of the SCO's June 26 clarification letter and worksheet; the amount of time permitted for response to the draft worksheet (three days); the availability and adequacy of data to support reimbursements claims to the satisfaction of the SCO (whether by way of the worksheet or any other means); perceived shortcomings of the SCO's worksheet other than data availability; and the legal need for the Graduation Requirements IRCs to come through the Commission's process to preserve the rights of the school districts under the statute of limitations.

Member DiOrio expressed particular concern about districts not retaining data to support their claims. Dr. Berg responded that records specific to teacher offsets were not gathered and kept because the districts were not aware of what those data requirements would become; further, she said that much of the information which might be helpful may have been archived years ago and is now unknown to current district employees. Mr. Petersen referred to the CBEDS data as a possible "life ring" for the claims, but went on to say that approaches other than the SCO's worksheet could preclude the need for the CBEDS data. Mr. Doyle pointed out situations, possibly unique to San Jose, which would make the use of the SCO worksheet undesirable for his district.

Mr. Ashby pointed out that the SCO cannot adjudicate IRCs. But he said that the SCO would be able to review completed worksheets submitted by districts at their discretion and advise the Commission as to what, if any, parts of the IRC could be paid if the Commission were to direct use of the worksheet. The discussion returned to the concern about the availability of data to use the voluntary worksheet regardless of how well grounded the worksheet might be in concept. Mr. Ashby stated that even if the CBEDS data were used by a district in completing the worksheet, the SCO still would have to be satisfied about the validity of that data. Mr. Ashby also indicated that the SCO worksheet could be used for Graduation Requirements reimbursement claims on a prospective basis whether or not it is used with the IRCs, and Mr. Petersen responded that claimants would not understand what to do with the worksheet.

The consensus of the Commission Members was that the SCO's attempt to develop a means to help resolve the Graduation Requirements IRCs had not met with the acceptance hoped for among the claimants. Mr. Stewart was directed to convene a meeting among the parties, including the SCO and the Department of Finance, to resolve the issue of whether the SCO's worksheet or some other approach should be the method of dealing with the IRCs. Parties were invited to submit formulas or other resolution proposals for consideration in advance of such a meeting. Having that meeting in about one month, with the IRC item to be back on the agenda in two months, appeared suitable to those present and to the Cornmission.

Welfare And Institutions Code Section 17000.6 (SB 1033)
Procedural Issues

Item 11	Discussion/action item on SB 1033 workload and processes, including any applications received
Item 12	Assignment of hearing panel or hearing officer pursuant to section 1186.62 for applicant counties
Item 13	Determination of vote requirement for hearing panels

Mr. Stewart reported that Butte County's SB 1033 filing is expected by the end of July and that Nevada County's filing also is expected in mid-to-late July. He reported that Orange and San Diego counties were not actively working on SB 1033 Applications. He stated that no action would be needed on agenda Items 12 and 13 today, and none was taken.

Other Business

Item 14	Executive Director's report on Commission staff activities, budget and legislation

Mr. Stewart reported that the Budget Conference Committee had reduced the Commission's budget by one position and had proposed Budget Trailer Bill language similar to that in AB 3284 to permit 36-month grandfathering of SB 1033 Applications approved by the Commission. Further, the Commission's budget is to be zero-based during the Fall budget cycle to permit review of the effects of SB 1033, as modified by the grandfathering, and by SB 11. SB 805, which would add two more members to the Commission, was back with the Senate for concurrence and AB 2379 was out of the Assembly. He further commented that the Commission's semi-annual report to the Legislature had been sent on June 14 and that the Claims Bill, SB 91, had gone to the Legislative Counsel for preparation of amendments to reflect that report. Mr. Stewart noted that the Commission's report had included two versions for the convenience of legislative staff, one showing all Commission-approved mandates and the other tying to the May Revision.

Mr. Stewart then commented that he was aware of concerns expressed about the timing of document flow for review prior to hearings and that the new regulations should assist in smoothing that process . He stated that he would opt henceforth for more review opportunity for all concerned as opposed to pushing items onto the agenda. Finally, he noted that an ironic immediate effect of SB 11 would be to remove some items from consideration in July due to the "restarting of the clock" under the new statute on July 1, 1996, and the need the accommodate the newly prescribed review times.

Member Beltrami announced that he had been invited to speak about Commission matters at the CSAC-subsidiary County Administrative Officers Association meeting in September. The

Commission Members agreed that Mr. Beltrami should represent the Commission at that meeting.

Member Beltrami also requested that the subject of the State Mandates Claims Fund be placed on a meeting agenda for discussion, Mr. Stewart said that he could cover the Fund status in his Executive Director's Report next month, but that a proposal to augment the fund would have to be an action item. Chairperson Parker responded that Commission budget issues would be discussed in the Fall.

There was no Closed Executive Session,

Chairperson Parker recused herself from the *Special Education* Test Claim, the only remaining agenda item, and Member Sherwood chaired the remainder of the meeting after a brief recess had been taken.

Action On Mandate Claims

Test Claim

Item 4 CSM-3986
Riverside County Superintendent of Schools, et al.
Special Education (Introduction and Initial 2 of 19 subject areas)
Maximum Age Limit for Special Education
Enrollment Caseloads for Special Education Services
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1989, et al.

Commission Counsel Gary Hori introduced this item, noting that it is now a consolidated test claim of several parties. It had begun as the test claims of Riverside and Santa Barbara.

As this item was taken up, Counsel for the Department of Finance, Deputy Attorney General Daniel Stone announced that he would withdraw his June 26, 1996, procedural request for continuance and additional briefing time. Also representing Finance was Deputy Attorney General Kyungah Suk.

Other parties were represented by: Mr. Craig Biddle and Mr. Jack Clarke for the Riverside County Superintendent of Schools, Ms. Diana K. Smith for the Education Mandated Cost Network and the supplemental test claimants, and Mr. Allan Tebbetts, for the Long Beach Unified School District, an interested party.

Chairperson Sherwood noted that this test claim had been in existence since 1980 and is comprised of nineteen separate elements to be heard over several months. He announced that background statements and procedural arguments would be taken up first, noting that several

procedural matters were before the Commission, followed by the Maximum Age Limit and Enrollment Caseloads elements of the test claim.

[Note: This agenda item is covered on pages 117 through 245, inclusive, of the June 27, 1996, Commission hearing transcript prepared by Janet H. Nicol, CSR. These minutes detail only procedural motions and clarifications and actions taken by the Commission. The transcript should be referred to review the full discussion of this item.]

Mr. Hori introduced the first procedural argument by the Department of Finance: That the unsupported test claims must be dismissed or stricken for failure to meet the Commission's clearly stated briefing instructions. This issue had to do with whether or not the claimants had adequately documented the subject statutes in a "historical matrix style comparative analysis" as the Commission had directed.

The Commission staff recommended that the test claims should not be summarily dismissed or stricken. Rather, the Commission should proceed to hear and decide each alleged program area identified in this consolidated test claim. Further, staff recommended that the eight supplemental test claims be consolidated with the Riverside test claim.

On the motion of Member DiOrio, seconded by Member Richardson, the staff recommendation was unanimously adopted.

Mr. Hori introduced the second procedural argument by the Department of Finance: That even if the claimants had satisfied their clearly delineated prima facie burdens, their claims concern programs within the sweeping scope of federal mandates imposing special education duties.

The staff recommended that Commission proceed to hear each of the program areas identified in the consolidated test claim and then determine whether a state mandated program exists in any of the program areas. No party objected to this staff recommendation.

On the motion of Member Richardson, seconded by Member Beltrami, the staff recommendation was unanimously adopted.

Mr. Hori introduced the third procedural argument by the Department of Finance: That California's Special Education Program is intended merely to effectuate and implement federally mandated requirements

The staff recommended that the Commission proceed to hear each of the program areas identified in the consolidated test claim and then determine whether a state mandated program exists in any of the program areas. Again, there was no objection from the parties.

On the motion of Member Richardson, seconded by Member DiOrio, the staff recommendation was unanimously adopted.

Mr. Hori introduced the fourth procedural argument by the Department of Finance: That the claim period is limited to current law. The intent of the Commission's Statement of Decision of April 28, 1995, amended July 20, 1995, was at issue here.

The staff recommended that the reimbursable time period should not be automatically limited to the period covering the current state law for each of the 19 program areas. Rather, the Commission should determine the existence of a state mandated program during the time periods set forth in the consolidated test claim.

Chairperson Sherwood and Member Richardson recalled their presence at the meeting when the Commission adopted its Statement of Decision covering this matter, and they agreed that the staff recommendation reflected that decision as they had intended, even though they could understand why someone might read it as Finance had done. Member Beltrami noted that the Statement of Decision was not very clear, but he would rely on the statements of Members Richardson and Sherwood since he had not been on the Commission in 1995. On the motion of Member Richardson, seconded by Member DiOrio, the staff recommendation was unanimously adopted.

Mr. Hori introduced the fifth procedural argument, this one by the Long Beach Unified School district: That the *Hayes* case requires the Commission to find a state mandate if the state retains any discretion in allocating the costs of the Special Education Programs. To the extent that the state does not retain such discretion, the Commission is authorized to exclude from the state mandate only the costs which are specifically imposed on the school districts by federal law. In addition, when the state law implements federal law and exceeds the federal mandate to any extent, all costs mandated by the state law are reimbursable.

The staff recommended that the Commission proceed to hear each of the program areas identified in the consolidated test claim and then determine whether a state mandated program exists in any of the program areas and that such determination does not include activities encompassed by the federal mandate.

Rather than acting on this as a procedural matter, the Commission decided that it would consider this issue as each of the 19 test claim subject areas was taken up.

At this point, the first of the nineteen Special Education test claim subjects was ready to be taken up. All present observed that it was a historic moment for Mr. Biddle, who had been involved with this case since 1980 and now is moving toward retirement from the practice of law.

Ms. Piper Rodrian of the Commission staff introduced the first of two subject areas for this day, Maximum Age Limit. She presented the staff recommendation that the Commission find that Education Code section 56026 does impose a new program or higher level of service upon school districts (as outlined chronologically in the staff analysis) which results in a reimbursable state mandated program for services provided to students past age 21. She further noted that Long Beach Unified School District had submitted a filing on June 24, 1996, alleging that Special Education services for pupils under age six and over age 18 should be found to be a reimbursable state mandate.

Following extensive discussion, on the motion of Member DiOrio, seconded by Member Beltrami, the Commission unanimously agreed to put over the issue raised by Long Beach

Unified School District on ages three through five and over age 18 and to receive concurrent briefings from the parties on this matter in 30 days. (Later in the meeting it was clarified by Mr. Hori and the Chair that two subjects would be covered in the concurrent briefings: first, the procedural one of whether these other ages are a part of this consolidated test claim; and,. if the Commission decided to hear the issue, the substantive mandate issue on these other ages.)

On the motion of Member Richardson, seconded by Member DiOrio, the Commission unanimously approved the staff recommendation to find a reimbursable state mandate with respect to students past age 21.

In seconding the motion, Member DiOrio noted that the State Controller had asked him to specifically express her strong support for Special Education generally. Chairperson Sherwood acknowledged the Controller's expression and added that Special Education is an area of sensitivity and importance for all of the Members.

Ms. Rodrian next introduced the subject of Enrollment Caseloads and presented the staff recommendation that this portion of the test claim be denied. This subject has to do with resource specialist caseloads limited to 28 pupils and language, speech and hearing specialist caseloads not to exceed 55 cases.

Considerable discussion ensued with the result that the matter was put over for further briefing. The claimants were instructed to file their briefs in thirty days, followed by Finance's briefing in 30 days; and Enrollment Caseloads then would be reheard in September. Specific items to be covered in the briefs include: any federal application guidelines on the subject of caseload ratios inasmuch as some states were reported to have approved special education plans without caseload ratios; information about which states do or do not have caseload ratios and yet have approved plans; and waiver procedures for the caseload ratios (one ratio appeared to have waiver authority).

There being no further business, Chairperson Sherwood adjourned the meeting at 3:25 p.m.

K. G. Stewart

KIRK G. STEWART
Executive Director

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Notice And Agenda

COMMISSION ON STATE MANDATES
Public Hearing

August 29, 1996
10:00 a.m.
State Capitol
Room 444
Sacramento, California .

I ROLL CALL

II APPROVAL OF MINUTES

Item 1 MINUTES
Hearing of June 27, 1996
Hearing of July 25, 1996

III ACTION ON MANDATE CLAIMS

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

A. DETERMINATION OF TEST CLAIMS IN DISPUTE (See Attachment)

Item 2 Pursuant to section 1183 (j) of the regulations adopted by the Commission on June 27, 1996, all test claims filed with the Commission before July 1, 1996, are deemed received on July 1, 1996, and "undisputed" for purposes of determining when a statewide cost estimate must be adopted pursuant to section 17553 of the Government Code. This agenda item is for the purpose of finding test claims to be in dispute if: (1) they already have been recommended by the Executive Director in writing to the claimant and the parties to the test claim as being "disputed" on the basis of a Commission staff analysis of the test claim or (2) have been acknowledged in writing prior to this meeting to be in dispute by the claimant or by another party to the test claim, and that disputed status is not contested or (3) have had a request by a State Agency for extension to file opposition and a request to be found in dispute. In a fourth category are test claims deemed disputed by a party, but the claimant disagrees with that assessment.

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B. TEST CLAIMS

Item 3 CSM-4501
Kern High School District
Schoolsite Councils
Education Code Section 35147
Chapter 239, Statutes of 1994

C. STATEMENTS OF DECISION

Item 4 CSM-4500
City of Atascadero
Presidential Primary
Elections Code Section 1301 (renumbered from Section 2601)
Chapter 828, Statutes of 1993

D. PARAMETERS AND GUIDELINES

Item 5 CSM-4282 (also cited as CSM-4496) *(Amendment to P&Gs)*
County of San Bernardino
Handicapped and Disabled Students
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200

Item 6 CSM-4485
Commission on State Mandates (pursuant to Budget Act Provision)
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process - Amendment
for Budget Act of I996

E. STATEWIDE COST ESTIMATES

None

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

Item 7 Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, to incorporate changes required by Chapter 6 (SB 681), Chapter 154 (SB 805) and Chapter 206 (SB 1780), Statutes of 1996

V OTHER BUSINESS

Item 8 Executive Director's report on Comrnission staff activities, SB 1033, budget, legislation and status of the State Mandates Claims Fund

Item 9 Approval of Cornmission Meeting Calendar for 1997

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, Executive Director, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

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

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ITEM # 5

Supplemental Analysis

Proposed Amendment Of Parameters and Guidelines

Section 60000-60200
Title 2, California Code of Regulations, Division 9
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985

Handicapped ***and Disabled Students***

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Hearing Date: August 29, 1996
File Number: GM-4282
Commission Staff: Lucila Ledesma
LL\4282\SuppAnl.doc

ITEM 5

Supplemental Analysis

Proposed Amendment Of Parameters and Guidelines

Section 60000-60200
Title-2, California Code of Regulations, Division 9
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985

Handicapped and Disabled Students

Executive Summary

This item was presented at the Commission's June 27, 1996, hearing and put over to allow the claimant, San Bernardino County, to research an issue pertaining to certain overhead cost limits under Office of Management and Budget Circular A-87. The proposed June 27 amendment to the Parameters and Guidelines, and the related staff analysis, are included for background reference as Attachment B.

The claimant had objected to language in the proposed amendment to the Parameters and Guidelines which purports to limit reimbursable indirect costs, and the claimant also requested clarification of some of the terminology. The suggested revisions to the Amended Parameters and Guidelines made by the claimant are at Attachment A.

Staff concurs with the claimant that the objectionable language purporting to limit reimbursable indirect costs was inappropriate. That language has been deleted from the August 29, 1996, version of the proposed amended Parameters and Guidelines as included at Attachment E. Staff also concurs with claimant that some of the former terminology 'was ambiguous, and that has been clarified. While not requested by the claimant, technical modifications also have been made in the August 29 version of the Parameters and Guidelines to conform to changes made by SB 11 (Chapter 945, Statutes of 1995) and SB 19 (Chapter 45, Statutes of 1996).

Claimant's Position

In correspondence dated August 1, 1996, (Attachment A) the claimant expressed two objections to the proposed amended Parameters and Guidelines (P&Gs) as they had been presented to the Commission on June 27, 1996 (Attachment B), The claimant first objected to the phrase "and the cost of supervision above the first level" which appeared at Section VI, A, 3, a (twice) and at Section VI, B, 1, a (also twice). The

claimant also expressed concern that the concepts of "administrative costs" and "indirect costs" were being confused and requested clarification of this ambiguity in the P&Gs.

Departmental Positions

Staff have received no departmental position statements on this matter.

Staff Analysis

Regarding the claimant's objection to the phrase "and the cost of supervision above the first level" :

Staff has researched the origin of the phrase "and the cost of supervision above the first level". Staff incorporated that phrase into the proposed amended P&Gs from the State Controller's Claiming Instructions, specifically, Form HDS-2 . 1 HANDICAPPED AND DISABLED STUDENTS COMPONENT/ACTIVITY COST DETAIL Instructions at instruction number 6. (Form HDS-2.1 is at Attachment C.)

However, the Cornmission's Statement of Decision (SOD) on this test claim would be the proper source of authority for defining the Parameters and Guidelines, The SOD authorizes reimbursement for one hundred (100) percent of any costs related to mental health assessment, participation on the expanded IEP team and case management. The SOD further authorizes ten (10) percent reimbursement for Short-Doyle program mental health services for "individuals with exceptional needs" including those designated as "seriously emotionally disturbed". The terminology of the SOD is broad and does not distinguish supervisory costs above the first level as being unallowable. Such a distinction, therefore, would be inappropriate in the P&Gs. Accordingly, staff concurs with the claimant that the phrase "and the cost of supervision above the first level" should be deleted from every place where it appears in the P&Gs. The revised, proposed P&G amendment for August 29, 1996, is at Attachment E.

Regarding the claimant's concern over the ambiguity of terms in the P&Gs, specifically the terms "administrative costs" and "indirect costs", the claimant is correct that the term administrative costs did not appear in the June 27 version of the proposed amendment. The claimant is also correct that the use of the term "indirect costs" is ambiguous. To clarify the relationship between these terms and their respective allowability, modifications have been made in the August 29 version as follows:

1. Section V, A, 3 has been added and reads:

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

2. Section V, B, 3 has been added and reads:

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

3. Section VI, 3 was changed to read:

   "3. <u>Direct Administrative and/or Overhead Costs</u>:

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

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

4. The former Section VI, 3 was renumbered to Section VI, 4 and the title was changed to:

"Any Indirect Costs:".

These changes are intended to reflect staff's position that:

1. "Overhead costs" may include items not included in "Administrative costs" and vice versa. Both overhead and administrative costs, whether direct or indirect are allowable in their relative percentages.

2. If the claimant chooses to claim related indirect costs of any types by the short-cut method described in Section VI, 'A, 4, a and Section VI, B, 1, a; that claim for indirect costs combined with-any reimbursement of indirect costs already received from the Department of Mental Health cannot exceed ten (10) percent of total program direct labor costs excluding fringe benefits.

   Use of the short-cut method entails a trade-off which spares claimant the effort of preparing an Indirect Cost Rate Proposal in full compliance with OMB A-87 at the cost of being unable to claim all indirect costs. Assuming claimant's total indirect costs exceed ten (10) percent of direct labor costs excluding fringe benefits; to claim all indirect costs, claimant must prepare the Indirect Cost Rate Proposal(s).

Unrelated to the claimant's concerns about administrative, overhead or indirect costs, staff also has included technical amendments to the P&Gs in sections IV. "Period of Reimbursement" and VII. "Supporting Data" to conform to changes made by SB 11 (Chapter 945/95) and SB 19 (Chapter 45/96).

Conclusion

The language of the Commission's SOD on this test claim is broad, allowing indirect costs (administrative, overhead or any other related type). Therefore, the limiting phrase "and the cost of supervision above the first level" should be deleted from every place that it appeared in the June 27, 1996, version of the proposed P&G amendment. The ambiguity regarding the terms "administrative costs" and "indirect costs" needs to be clarified by modification of the wording in the P&Gs. Finally, this opportunity should be used to make changes conforming to SB 11 and SB 19.

Recommendation

The amended P&Gs should be adopted as modified in the August 29, 1996, version (Attachment E).

UDITOR/CONTROLLER-RECORDER

COUNTY OF SAN BERNARDINO

DITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
Bernardino, CA 92415-0018 • (909) 387-8322
CORDER • 222 West Hospitality Lane, First Floor
Bernardino, CA 92415-0022 • (909) 387-8306

ERROL J. MACKZUM, CPA
Auditor/Controller-Recorder
ROBERT L. CALDERON, CIA, CISA
Assistant Auditor/Controller-Recorder

August 1, 1996

ATTACHMENT A

LUCILA LEDESMA, program Analyst
Commission on State Mandates
1414 K street, Suite 315
Sacramento, CA 95814

RE: CSM-4282 HANDICAPPED & DISABLED STUDENTS
Amended Parameters & Guidelines

Dear Ms. Ledesma,

Upon my thorough examination of the Proposed Amended Parameters & Guidelines sent to me on May 22, 1996 for the above referenced action, I am requesting the following two modifications:

First, that the phrase " and the cost of supervision above the first level" be deleted from the text in four locations.

On page 5: amend Section VI, A, 3, a, to read:

> Ten (10) percent of related direct labor, excluding fringe benefits-&. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (I 0) percent of total program direct labor costs, excluding fringe benefits ~~and the cost of supervision above the first level.~~

On page 6: amend Section VI, B, 1, a. to read the same.

These deletions are necessary to prevent these Parameters & Guidelines from defining an erroneous restriction which, several years ago, the State Controller's Office had added to claiming instructions for other reimbursable mandates, citing the United States Office of Management and Budget Circular A-87. At that time, when asked to provide the citation, the Controller's Office reversed their position and agreed that the phrase was not appropriate,

However, this same language mysteriously re-appeared in several of the draft claiming instructions issued by the Controller's Office at various times since; most recently as documented

JAMES J. HLAVEK
County Administrative Officer

Board of Supervisors
MARSHA TURNER ..... First District
JON D. MIKELS ..... Second District
JERRY EAVES ..... Third District
BARBARA CRAIN BORDAN ..... Fourth District
LARRY WALKER ..... Fifth District

-1-

in my letter to Jeff on March 25, 1996 (Attachment A). On this occasion, Jeff responded by telephone to the effect that they must have forgotten to take out the language and would do so before final instructions were issued. I can provide copies of both the draft claiming instructions and the final claiming instructions showing this language and its subsequent deletion, if you wish the additional paperwork

Further, Attachment B, a page from the 1981 version of OMB A-87, shows the probably language that was misinterpreted. Attachment C is a page from the 1995 revision to OMB A-87, with very little change from the 1981 version.,

To research this matter further, I spoke with Ms, Jean Chui of the United States Department of Health and Human Services in San Francisco, That Department is the "cognizant agency" responsible for approving indirect cost proposals developed in California under OMB Circular A-87. In that telephone conversation, Ms. Chui verified that, while any rules about the application of indirect cost rates were contingent on the methodology and the classification of the direct and indirect costs used to calculate the indirect cost rate, the actual "levels of supervision" had no significance on the calculations or applications, Ms. Chui's telephone number is (415) 437-7820.

This phrase is also one of the reasons that prompted discussions with Commission staff, Controller's Office, Finance, counties and schools during late 1.994, with general agreement that boiler-plate language for the Parameters & Guidelines would greatly assist the SB90 process. I hope that we can resume that project in the near future and effectively prevent this issue from surfacing again.

For the second modification, I feel that the Parameters and Guidelines should very clearly state that all administrative costs which support this mandated program are reimbursable, as requested in my letter dated November 30, 1995 (Attachment D). Therefore, I request the following addition:

On page 4: add Section V, C, to read:

> Administrative costs, either directly or indirectly attributable to the foregoing activities, are reimbursable. Examples include administrative support, research and evaluation, formal training, contract administration, and utilization review.

Although the staff analysis thoroughly, supports the inclusion of all administrative costs as reimbursable, there may still be some confusion over the distinction between "administrative costs" and "indirect costs". The Proposed Amended Parameters and Guidelines discuss "indirect costs" in detail, but remain silent on "administrative costs", Since the Controller's Office specifically denied reimbursement for certain categories of "administrative costs", I fear that they would continue to deny reimbursement unless the Parameters and Guidelines- were just 'as specific in allowing them. Further, in the case of San Bernardino County's claim, some of these denied costs could be categorized as "direct costs" instead of "indirect costs". This problem

would not be resolved by the current version of the proposed amendment to the Parameters and Guidelines.

Please advise if you need any further information or explanation.

Once again, I do sincerely apologize for the inconvenience that my tardy discovery of the troublesome language caused all who were involved in this action. I regret this even more in light of the courtesy and promptness that both you and Kirk have extended to me.

Sincerely,

MARCIA C, FAULKNER
Reimbursable Projects Manager
(909) 386-8850

cc: Parties and Interested Parties:
Department of Finance, Jim Apps
State Controller's Office, Glenn Engle
Attorney General's Office, Floyd Shimomusa
Department of Mental Health, Norman L. Black
California State Association of Counties (CSAC)
County of Santa Clara, Steve Conrad
State Controller's Office, Jeff Yee
U. S. Department of Health & Human Services, Jean Chui

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AUDITOR/CONTROLLER-RECORDER

COUNTY OF SAN BERNARDINO

UDITOR/CONTROLLER - 222 West Hospitality Lane, Fourth Floor
an Bernardino, CA 92415-0018 • (909) 387-8322
CORDER • 222 West Hospitality Lane, First Floor
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ERROL J. MACKZUM, CPA
Auditor/Controller-Recorder
ROBERT L. CALDERON, CIA, CISA
Assistant Auditor/Controller-Recorder

March 25, I996

JEFF YEE, Chief, Bureau of Local Reimbursements
State Controller's Office, Division of Accounting

FAX to: (916) 323-6527

RE: DRAFT CLAIMING INSTRUCTIONS

Dear Jeff,

The following are some comments about the draft claimining instructions:

1. The instructions for all of the claims state that indirect costs may be added to direct costs, excluding fringe benefits and the cost of supervision above the first level, I thought there had been agreement that the restriction on the supervision was not appropriate, but that if a higher level employee performed a lower level activity, then the lower level salary would apply,

2. Stolen Vehicle Notification - The instructions do not indicate that a unit rime, not to exceed 10 minutes, may be used in lieu of actual time records, This provision is in the Ps&Gs. Also, it is unclear if the statistics requested on Form SVN-1 (the number of parties notified) should include those for which the reporting agency Cannot claim reimbursement because they were also the recovering agency.

3. Mandated Reimbursement ,-Process - Attached is a copy of the page with a suggestion noted,

Please feel free to call if you wish to discuss these comments.

Sincerely,

Marcia C. Faulkner

MARCIA C. FAULKNER
Reimbursable Projects Manager
(909) 386-8850

JAMES J. HLAWEK
County Administrative Officer

Board of Supervisors
MARSHA TURNER ... First District
JON D. MIKELS ... Second District
BARBARA CEAN BIGGAR ... Third District
LARRY WALKER ... Fourth District
JERRY EAVES ... Fifth District

particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

a. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives serve&it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect coal pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived,

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs. including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Circular. In lieu of determining the actual amount of granlcc departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (i) as to the probable level of Indirect costs in the grantee department during the period to be covered by de negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method iv used. a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of Indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed, Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable es indirect coals under this Circular, the amount not recoverable as indirect costs under a grant not be shifted to another federally-sponsored grant program or contract.

G. Cost Incurred by Agencies ef Than the Grantee

1. *General. The coal* of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting coats (Section B.12.) end supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head al a department and his staff assistants not directly involved in operations, However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu' of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a, ***Standard** indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect Coat of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. Cost Incurred by Cmntee Department for Others

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

J. Cost *Allocation Plan*

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent-feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

a. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees In preparation of cost allocation plank

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regularioa.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Attachments C and E mm comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a "Federal cognizant agency or maintained an file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

AUDITOR/CONTROLLER-RECORDER

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November 30, 1995

KIRK G. STEWART, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

NOV 30 1995

RE: CSM-4282
Ch. 1747/84; Ch. 1274/85; Title 2, CCR, Div 9, Sec 60000-60200
Handicapped and Disabled Students

This is a request to amend the Parameters & Guidelines for the above referenced mandate. 'although Santa Clara County was the lead test alaimant in this matter, Steve Conrad has suggested that San Bernardino County proceed with this request since we have already Identified the problem and developed proposed language. Howevar , please include Santa Clara County as an, interested party for dietribution of any materials or notices.

Specifically, we are 'requesting. that the Commission *on* State Mandates clarify that administrative costs associated with this mandated program are reimbursable., Aaqording to Controller staff, the existing Parameters & Guidelines do not specifically allow reimbursement of administrative costs when the Cost Report method is used to prepare the reimbursement claim. They believe that amended Parameters & Guidelines is the only solution.

San Bernardino County asserts that Section VI, Part B of the Parameters & Guidelines currently allows for the reimbursement of administrative costs when using the annual Cost Report method. This section states:

> 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.

We assert that our administrative costs are reimbursable because they are included in our annual cost reports,. We believe tbat the appropriate remedy with the Commission is an Incorrect Reduction Claim. But in order to protect our interests, we are willing to initiate this as a Parameters & Guidelines amendment.

This problem was identified earlier this year when Controller staff reviewed the reimbursement claims we submitted for 1986/87 through 1993/94. Using our annual Mental Health Cost Reports as support, we identified the "units of service" along with the "unit cost rates". Until 1992/93 the procedures in the Department of Mental Health CR/DC Manual (and the Medi-Cal, regulations) allowed only certain categories of administrative costs to be included In the computation of the "unit cost rates." We listed We' remaining admistrative cost categories as separate line items on our claims, These separate line items are the amounts the Controller staff has disallowed on our claims; while the administrative costs included in the "unit cost rates" have been allowed.

In 1993/94 the problem becomes worse. The Department 'of Mental Health CR/DC Manual (and the Medi-Cal regulations) no longer allow any administrative costs to be included in the "unit cost rates." Our $35,000 annual problem now becomes a $400,000 annual problem.

Although the cost report is a valuable tool for documentation, I ax concerned that the cost report (and the Hedi-Cal regulations) are determining which components are reimbursable for this mandate.

Going back ta the 'Statement' of Decision and the scope of the mandate as defined in Sections I and II of the existing Parameters & Guidelines, "any costs" relative to the mandate are reimbursable. I fail to see 'where Section VI, Part B excludes administrative costs, especially since administrative costs are reported on the annual cost reports.

However, if you determine 'that an' amendment to the Parameters & Guidelines is required, we request that the following language be 'added to Section VI, Part B. Cost Report:

> As reported on the cost report, administrative costs may be included in the claim. Examples of administrative costs include administrative support, sessarch and evaluation, formal training, contract administration, and utilization review.

Should you determine that an Incorrect Reduction Claim (or another remedy) is the solution, please advise me at your earliest convenience.

Sincerely,

Marcia C. Faulkner

Marcia C. Faulkner
Deputy Auditor/Controller

cc: Jeff Yee, Controller's Office
Members, CSAC/League SB-90 Committee
Allan Burdick, CSAC SB-90 Service

TOTAL P. 08

ATTACHMENT B

Hearing Date: June 27, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
LL\4282\pg-anl.rpt

Proposed Amendment Of Parameters and Guidelines

Section 60000-60200
Title 2, California Code of Regulations, Division 9,
Chapter 1747/84
Chapter 1274/85

Handicapped and Disabled Students

Executive Summary

San Bernardino County has filed claims with the State Controller's Office for reimbursement under the original parameters and guidelines (Attachment H) for the mandate found in Chapter 1747/84; Chapter 1274/85; Title 2, CCR, Div. 9, 'Sections 60000-60200, The State Controller's Office will not reimburse San Bernardino County or any other claimants for administrative expenses not included in the unit cost rates, The State Controller's refusal is based on a lack of clarity in the original parameters and guidelines. Claimant has requested that the Commission clarify that any administrative costs associated with the mandated-program are reimbursable.

A review of Chapters 1747/84 and 1274/85 and related regulations established that the Department of Mental' Health has statutory authority to define allowable expenses through the regulations it is authorized to promulgate. However, no regulations have been promulgated which define allowable administrative costs. In the absence of statutory or regulatory definition, a review of the Commission's conclusion in the original test claim reveals a mandate finding which defined <u>any</u> expense related to participation on the expanded Individualized Education Program team and case management services for specified individuals as being fully reimbursable, and <u>any</u> expenses related to treatment as being ten percent reimbursable.

Once the allowable administrative expenses were defined, 'it-became apparent that the language of the original parameters and guidelines was inadequate to explain how reimbursable administrative expenses are to be claimed. The parameters and guidelines were amended to clarify them sufficiently 'for the State Controller's personnel to be able to determine the validity of each claim. The amended parameters and guidelines are Attachment A.

Claimant

San Bernardino County

Chronology

11/30/95	Request to amend Parameters and Guidelines filed with the' Commission on State Mandates (CSM) by claimant (Attachment B).
02/29/96	Department of Mental Health's (DMH) Position Statement received at CSM (Attachment C).
04/04/96	Department of Finance's (DOF) Position Statement received at CSM (Attachment D) .
04/04/96	State Controller's Office's (SCO) Position Statement received at CSM (Attachment E). .
O5/22/96	Staff mailed proposed Amended Parameters and Guidelines to all parties with a response deadline date of June 10, 1996.
06/10/96	No responses to proposed Amended Parameters and Guidelines were received by staff.

Summary of Test Claim

San Bernardino County (not the original test claimant) has filed claims with the SCO for reimbursement under the mandate found by the Commission in Chapter 1747/84; Chapter 1274/85; Title 2, CCR, Div. 9, Sec. 60000-60200. The SCO will not reimburse claimants for administrative expenses not included in the unit cost rates. Claimant has requested that the Commission clarify that any administrative dosts associated with the mandated program are reimbursable.

Claimant asserts that administrative costs are reimbursable because they are included on the annual cost reports. Additionally, Claimant relies on the wording of the Commission's Statement of Decision for the original mandate finding., (Attachment F) which refers to costs related to county participation on the expanded IEP team and case management services as costs mandated by the state and as fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

State Controller's Office Position Statement

The State Controller's Office claiming instructions for this mandate (Attachment G) allow for claiming under either of two methods -those two claiming methods are: a.) Actual Increased Costs or b.) Cost Report. Both methods are described in the original Parameters and Guidelines (Attachment H, page 5). The Claimant allegedly. claimed under alternative B, the Cost Report method. SCO's staff concluded that they were unable to determine which administrative expenses above those claimed in the unit rates as computed on the Cost Report should be allowed under the Cost Report claiming method. SCO did not allow any administrative expenses beyond those built in to the unit rates.

Department of Mental Health's Position Statement

Department of Mental Health believes that some administrative costs should be allowed for reimbursement as expenditures necessarily incurred in the provision of the direct services. DMH had historically allowed a portion of the administrative costs to be included in the calculations of the unit rates for reimbursement prior to fiscal year 1993-94, Although the calculation of the unit rates changed with the 1993-94 fiscal year by the removal of all administrative expenses from the unit rates calculation, this was' done only to comply with federal requirements and did not reflect a policy change on the part of DMH. Since fiscal year 1993-94, to compensate for the change in the unit rates calculations, DMH has permitted counties to claim administrative costs up to 15 percent of the service costs.

Department of Finance's Position Statement

Department of Finance essentially agrees with DMH. 'Specifically DOF recommends that the county's request to amend the parameters and guidelines to include the two items of administrative overhead which were in the service unit costs in the cost reports until 1993-94 (administrative support and research and evaluation) be approved. While the county's request to add additional administrative cost items (formal training, contract administration, and utilization review) as allowable reimbursement items be denied.

Staff Analysis

Issue #1: . Do the statute (Chapter 1747/84) or applicable regulations define which, if any, administrative expenses are allowable under the Special Education Pupils' Program?

Chapter 1747/84 (Attachment I), while a rather lengthy chapter, has three brief portions which are relevant to this inquiry. Those portions are all found in Section 2 where Chapter 26 (commencing with Section 75670) of Division 7 of Title 1 is added to the Government Code. The first-relevant new Government Code section is 7570 which states in pertinent part:

> "Ensuring maximum utilization of all state and federal resources available to provide handicapped children, . . .with a free appropriate public education., .related services.. and designated instruction and services . . .shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare.. . . "

This section is the foundation for the chain of authority for implementation of this statute. That chain of authority continues to be identified at new Government Code section 7571 which states in pertinent part:

> "The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities, described in Section 7570;. . , "

According to page 2 of DMH 'letter Number 86-12 (Attachment J), DMH was' designated by the Secretary of Health and Welfare to assume the responsibilities described in Section 7570. Those responsibilities included compliance with the new Government Code section 7587 which states in pertinent part:

I

> "By July 1, 1985, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act...."

To comply with this requirement DMH participated in the promulgation of the Joint Regulations For Handicapped Children which were codified as sections 60000 et seq. of Division 9 of Title 2 of The California Administrative Code (now known as the California Code of Regulations),

In an effort to identify administrative expenses that are allowable under the regulations implementing the statute in question, staff searched for any relevant statutory or regulation definitions #at encompassed administrative expenses. Section 300.16(b)(8)(v) of Title 34 of the Code of Federal Regulations turned out to be the only reference to administrative expenses that staff found in the regulations. And that reference was to administrative expenses related to the provision of psychological services only, Staff concludes that the regulations do not define allowable administrative expenses.

In its capacity as the Secretary of Health and Welfare's designated department, DMH also became responsible for compliance with new Government code section 7583(d) which states in its entirety:

> "(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section. "

To comply with this responsibility, DMH published the Cost Reporting / Data Collection Manual (CR/DC) and related cost report forms. However, the manual states in its introduction that it was designed to provide a guide to counties and providers for the cost reporting/data collection system and contains pertinent fiscal policy and procedures. By including fiscal policy,' the manual appears to exceed the requirements of Government code section 7583(d). The CR/DC manual (1989 edition is the most recent available and excerpts from it are Attachment K) at section '102 states:

> " 102 PURPOSE
> This manual specifies fiscal and administrative policies and procedures to be followed by provider, local program, and state personnel concerning fiscal activities of community mental health services.' The primary objectives of this manual are to:
> - Provide uniform procedures, forms, and instructions for budgeting, claiming, and cost reporting.
> - Establish basic cost and revenue accounting guidelines.
> - Identify basic requirements which must be included in provider contracts, "

Among the policy statements that DMH made through the CR/DC Manual was the section 205 discussion of direct and indirect costs. It reads in its entirety:

> "20.5 DIRECT AND INDIRECT COSTS
> Direct costs are those that are incurred for a specific service. An example of direct costs are salaries and employee benefits, supplies, and travel identifiable to a specific service.
> Indirect costs are incurred for the common benefit of an organization or facility and are not readily assignable to a specific service. Some examples are general administration,

accounting and auditing, data processing, personnel and legal services. The method of allocation of indirect costs should be consistent from year to year. The following two categories of providers will use different methods of allocation:

1. Hospital Providers use the California Hospital Facilities Commission Manual, American Hospital Association, or California Hospital Association guidelines for Cost Finding and Rate Setting for Hospitals. Indirect costs allocated to mental health services must be directly related to services provided. Indirect costs may not be allocated to mental health services, regardless of general cost finding principles, if the allocated amount is not representative of actual services, (Boldmg added for emphasis,)
2. Non-hospital Providers use a suitable and reasonable **allocation** method which corresponds closely to benefits received. (Bolding added for emphasis.) Indirect costs which are applicable to a provider's total operation are allocated to specific reporting levels. "

In accordance with its policy statement regarding' indirect costs in the CR/DC manual DMH, has traditionally 'permitted mental health services providers to claim closely related overhead costs on the cost report, DMH has interpreted that to include the categories of "administrative support" and "research & evaluation" only. For that reason, DMH has allowed these two categories 'of administrative expenses 'to be allocated through the cost report and become part of the reimbursable unit rates for services.

With that background information, let us return to the original question: Do the statute (Chapter 1747/84) or applicable regulations (sections 60000 et seq. of Division 9 of Title 2 of The California Administrative Code) define which, if any, administrative expenses are allowable under the Special Education Pupils Program? The statute does not provide the requisite definition. Of the regulations, only Section 300.16(b)(8)(v) of Title 34 of the Code of Federal Regulations as cited in Section 60010(d) includes "planning arid managing a program of psychological services.. . ". However, the statute at Government Code section 7587 authorizes each department named in the chapter (this includes DMH) to develop regulations, as necessary, for the department or designated local agency to implement this act, And Government Code section 7583(d) authorizes the Secretary of Health and Welfare (and DMH as the Secretary's designee) to develop uniform data collection forms to be used by local agencies in reporting. It appears to staff that while DMH has authority originating directly in Chapter 1747/84 to define through regulations, reimbursable costs for the Special Education Pupils Program; DMH has not done so. Instead of defining "indirect costs" and which of them would be allowable in the regulations that were promulgated, DMH put those definitions in its CR/DC manual. The CR/DC manual was not promulgated as a regulation in accordance, with the California Administrative Procedure Act (Government Code section 11340 et seq.), The staff cannot comfortably stretch the statutory authority to "develop uniform'data collection'forms" to include the CR/DC manual's setting of policy which defines reimbursable expenses.

Issue #2: Which, if any, of the administrative expenses related to the Special Education Pupil Program are reimbursable under the mandate found in Chapter 1747/84; Chapter 1274/85; and Title 2, CCR, Div. 9, Sec. 60000-60200?

Since the statute does not define this, and the regulations are vague, where is there an authoritative definition? For the purposes of this Commission, the Statement of Decision (SOD) for Chapter 1747184; Chapter 1274/85; and Title 2, CCR, Div. 9, Sec. 60000-60200 (Attachment I) is worthy of review. The SOD states in relevant part:

> "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. . .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. .."

All that this passage appears to require is for the costs to be related to the activities which are inandated; and in the case of the costs related to activities which form part of the county's Short-Doyle plan, only 10 percent of those are reimbursable under the mandate. There are no restrictions on the types of costs which are reimbursable. Consequently, related administrative costs of any variety appear to be reimbursable,

Issue #3: Do the existing Parameters and Guidelines (Ps & Gs) for this mandate (Attachment F) provide a clear description of which costs are reimbursable under the mandate?

After reviewing the Ps & Gs, staff conclude that they do not. Ps & Gs section V - Reimbursable Costs, subdivision A states:

> "Reimbursable Activities Not Subject to the Short-Doyle Act (IEP Participation Costs, Assessment, and Case Management):. . , "

To more accurately reflect the conclusions of the SOD, staff recommends Ps & Gs section V - Reimbursable Costs, subdivision A should be redrafted to state:

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

Ps & Gs section V- Reimbursable Costs, subdivision B states:

> "Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):, . ."

Staff recommend that Ps & Gs section V- Reimbursable Costs, Subdivision B be redrafted to read:

> "Ten (10) percent of any costs related to mental health treatment services:. , ."

Attachment A is the proposed revised parameters and guidelines and incorporates all the changes discussed in this analysis.

Issue #4: Do the existing Parameters and Guidelines for CSM-4282 (Attachment H) provide a clear description of how reimbursable costs may be claimed?

It might be helpful at this point to provide some background into the reimbursement process for this program which was in place before the mandate was recognized, because that is the process which the Ps & Gs were designed to modify. The Legislature had authorized some categorical funding which was placed in the DMH budget for this program since the inception of the program. DMH had developed a cost report form through which the counties could claim reimbursements for the program from the categorical funds. DMH had built a computation into the cost report forms for determining which costs were reimbursed and in what amounts. That computation was based on the CR/DC manual policy statement of allowable costs. While this policy was not established through regulations, it had been used for years to disburse the categorical funds without being challenged by the counties, Historically, the budgeted amount was substantially less than the counties expended for this program. Consequently, a test claim was brought forward to identify and seek reimbursement for aspects of the program which were new. It was in this environment that the Ps & Gs were developed. Staff therefore believes that the parties involved in drafting the Ps & Gs did so with the inherent understanding that the allowable costs would continue to be defined by the DMN CR/DC manual and continue to be computed as calculated in the DMH cost report forms. (This belief is based only on analysis of the existing environment and historical behavior of the parties. The official record does not reflect any discussions of this matter during the course of development of the original Ps & Gs.) The only difference being that when DMH exhausted the categorical funds, counties could then seek further reimbursements by filing claims with SCO under the recognized mandate.

This request to amend the Ps & Gs, however, changes all of those premises, In this request, the claimant county has challenged DMH's authority to define allowable costs under the mandate through the cost report forms. A staff evaluation of the statutory authority reveals that DMH cannot properly establish policy through the CR/DC manual and has not defined allowable costs through its regulations, In the original test claim the Commission found that all of any costs related to certain new activities are reimbursable, and ten percent of any costs related to new treatment are reimbursable under the mandate. Staff no longer believe the cost report format to be effective to compute the reimbursable costs since the counties are not bound by DMH's definitions of allowable costs. Staff therefore recommends the cost report method of claiming reimbursement for mandated costs be 'modified.

How should the cost report method of claiming reimbursement for mandated costs be modified? A substantial clue may be taken from the original Ps & Gs claiming Method A - The Actual Increased Costs Method. Since the Commission findings in the original test claim establish that all (or ten percent. for treatment costs) related costs are

reimbursable, this is essentially a finding that the actual costs are to be reimbursed. However, if the computation methodologies of the Actual Increased Costs Method are utilized as the parameters for claiming actual costs, then the cost report can continue to play essentially the same role that it has historically. The difference would be that indirect costs would be reimbursable beyond the limit established by the cost report up to the limit established by the Indirect Cost Rate Proposal(s). To implement this modification the following revisions are needed in the wording of the amended Ps & Gs.

Staff concludes that Ps & Gs section VI - Claim Preparation needs clarification. The heading for Ps & Gs section VI, subdivision A currently reads:

> "A, Attach a statement showing the actual increased costs incurred:"

Staff proposes the heading for Ps & Gs section VI, subdivision A be clarified to read:

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

Additionally, in Ps & Gs section VI, subdivision A, item 3 currently reads :

> "Allowable Overhead Costs. Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions. "

Ps & Gs section VI, subdivision A, item 3 would be clarified if it read:

> "3. Allowable Overhead Costs. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources,, they may be, claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
>
> 1. Ten (10) percent of related direct labor, excluding fringe benefits and the cost of supervision above the first level. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits and the cost of supervision above the first level.
>
> OR if an indirect cost rate greater than 10% is being claimed,
>
> 2. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87. Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or properly promulgated regulations which further restrict allowability of costs, Additionally, if more than one department is involved in the mandated program, each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s) . "

Ps & Gs section VI, subdivision B describes the Cost Report Method for claiming and currently reads:

> "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."

Ps & Gs section VI, subdivision B would be clarified if it read:

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

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

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

OR if an indirect cost rate greater than 10% is being' claimed,

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

Conclusion

Staff concludes that while the Department of Mental Health appears to have statutory authority to define allowable expenses, it has not done so through its regulations. Further, that the Commissionin its original test claim defined any expense related to participation on the expanded Individualized Education Program team and case management services for specified individuals being fully reimbursable and expenses related to treatment, as being ten percent reimbursable. The existing parameters and guidelines require the various modifications to sections V and VI described above to reflect the Commission's description of reimbursable expenses and to explain proper reimbursement, claiming methods.

Recommendation

Staff recommends that the Ps & Gs be amended to read as proposed in Attachment A.

ATTACHMENT B

Hearing Date: June 27, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
LL\4282\P&GAmend.TXT

Original Adopted: 8/22/9 1
Presented, but not acted upon 6/27/96

PROPOSEDAMENDED

PARAMETERS AND GUIDELINES

Section 60000-60200
Title 2, California Code of Regulations, Division 9,
Chapter 1747/84
Chapter 1274/85
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 extend that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs, " such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded- "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

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

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally disturbed," and required in such individual's IEP.

Such mental-health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISION

The commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county's Short-Doyle share (i.e., ten percent) of the mental health treatment costswill 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):~~ One Hundred (100) percent of any costs related to IEP Participation, 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~~ of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary,

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(l)).

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

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

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

the claimant's mental health professional on that individual's expanded IEP team.

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

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

B. ~~Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):~~ Ten (10) percent of anv costs related to mental health treatment services rendered under the Short-Dovle Act :

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 State Department of Social Services payment for the residential placement.

VI, CLAIM PREPARATION

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

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

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

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

3. Allowable Overhead Costs: ~~Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.~~ To the extent that reimbursable indirect costs have not alreadv been reimbursed by DMH from categorical funding sources, thev mav be claimed under this method in either of the two following wavs prescribed in the State Controller's claiming instructions:

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

   OR if an indirect cost rate greater than 10% is being: claimed,

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

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

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

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

   OR if an indirect cost rate greater than 10% is being: claimed,

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

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less that 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. 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,

HANDICAPPED AND DISABLED STUDENTS COMPONENT/ACTIVITY COST DETAIL

Instructions

FORM HDS-2.1

(01) Enter the name of claimant.

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

(03) Reimbursable Components. Due Process Proceedings.

(04) Description of Expenses. The following tables identifies the type of information required to support reimbursable costs. To detail costs for due process proceedings, enter the employee names or position titles, a brief description of their activities performed, productive hourly rate, fringe benefits, supplies used, etc. For audit purposes, all support documents for actual costs must be retained by the claimant for a period of four years after the end of the calendar year in which the reimbursement claim was filed or amended. Such documents shall be made available to the State Controller's office upon request.

Object/ Subobject Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries and Benefits Salaries	Employee Name Title	Hourly Rate	Hours Worked	(b) x (c) Hourly Rate x Hours Worked			
Benefits	Activities Performed	Benefit Rate		Salaries	(b) x (d) Benefit Rate x Salaries		
Services and Supplies Office Expenses	Description of Supplies Used	Unit Cost	Quantity Used			(b) x (c) Unit Cost x Quantity Overhauled	

(05) Total Direct Costs. Total columns (d), (e) and (f). Enter the sum of columns (d), (e) and (f) in column (g).

(06) Indirect Cost Rate. Enter the indirect cost rate. Indirect costs may be computed as 10% of direct labor costs; excluding fringe benefits and the cost of supervision above the first level. If an indirect cost rate of greater than 10% is used, include the department's Indirect Cost Rate Proposal (ICRP) for the program with the claim. If more than one department is reporting costs, each must have their own ICRP for the program.

(07) Indirect Costs. Multiply Total Salaries, line (05),(d), by the Indirect Cost Rate, line (06). If both salaries and benefits are used in the distribution base for the computation of the indirect cost rate, then multiply Total Salaries and Benefits, line (05)(d) and line (05)(e), by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of line (05)(g) and line (07). Forward the amount to From HDS-1, line (03)(d).

ATTACHMENT D

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Santa Clara, Claimant	No. CSM-4282 Chaptei 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, 199.0.

IT IS SO ORDERED April 26, 1990.

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

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

PROPOSED DECISION

On December 1, 1388, 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 3, sections 60000 through 60200, of the California Code of Regulations, require counties to implement a new program or provide a higher level of service in an existing program within the meaning of Government Code section 17514 and section 6, article XIIIB of the California Constitution? If so, are the counties entitled to reimbursement under the provisions of section 6, article XIIIB of the California Constitution?

II. FACTS

A. Background

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

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

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

The following facts are based upon the "Joint Statement of Facts" to extent that they are pertinent in the Commission'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 tha handicapped children receive a free appropriate' public education: the Individualized Education Program ("IEP"). The IEP is a written statement for a handicapped child that i developed and implemented in accordance with federal IE 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 agenc 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 possibl being handicapped. He or she must be evaluated in all areas o'f suspected handicaps by a multidisciplinary team, which include,? 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 360.342. Meetings must be conducted at least once a yea? 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 2 commencing with section 7570, to Division 7 of Title 1 of the Government Code and amended section 114.01 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 a 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 75.72 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 service when certain conditions have been satisfied. Following that referral,' the local mental health program shall be-responsible, for -reviewing the educational information, observing, if necessary,- the individual in the school environment, and determining if mental health assessments are needed. The local mental health program-- shall provide to the IEP team a written assessment report.;. in accordance+ with Education Code section 56327.

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

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

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

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

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

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

the county personnel department, for the first time, to assum a lead case management role in the IEP process when it i 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 Governmen code.

The law pertaining to the funding, organization, and operation of community mental health services in California, known as th "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 t organize and finance community mental health services for th mentally disordered in every county through locally administered and locally controlled community mental health programs. Before that time, state hospitals played a larg 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 ensur appropriate' utilization of all mental health professions, to provide a means for local government participation determining the need for and allocation of mental heal? resources, to establish a uniform ratip of local and stat government responsibility for financing mental health services, and to provide a means for allocating state mental health fundc according to community needs.

The goals of Short-Doyle community mental health, programs are threefold: to assist persons who are institutionalized becaus of mental disorder, or who have a high risk of becoming so, t 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 tc a level. of functioning which enables them to cope with thei 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 determin whether the legislation that is the subject of this Test Clai 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 Californi Constitution, the Commission finds the following:

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

It was found that section 60040, Title 2, California Code o Regulations, requires, for th'e first time, 'that the local mental health programs shall provide to the IEP team a written mental health assessment report, in accordance with Educatio 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 menta health department.

It was found that Government Code section 7572.5 subdivisions (a) and (b), requires, *for* .the first time, tha 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 tear 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 or 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 bv 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 bv 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 relate- participation on the expanded IEP team and case managemen services for, "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Government Cod section 7572.5 and their implementing regulations, impose a ne program or higher level of service upon a county. Furthermore, the Commission concludes that the, aforementioned mandator county participation' in the IEP process is not subject to th 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 withi the meaning .of section 6, article XIIIB of the Californi Constitution.

The Commission concludes that the provisions of Welfare an 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 Cod sections 7571 and 7576 and their implementing regulations, mus be included in the county Short-Doyle annual plan. In, addition, such services includes psychotherapy and other menta health services provided to "individuals with exceptiona 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 cos 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 meanin 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.

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 Disabied 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

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

Original Adopted: 8/22/91
Revised: 8/2 1/96

PROPOSED AMENDED
PARAMETERS AND GUIDELINES

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

I. SUMMARY OF MANDATE

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

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 565 1 of the Welfare and Institutions, Code.

To the extent that Gov. Code section 7572 and section 60040, 'Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs, " such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county. ,

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

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan, Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally disturbed, " and required in such individual's IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISION

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

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMEN?

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, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to *Government Code* 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):~~ One Hundred (100) percent of any costs related to IEP Participation, Assessment. and Case Management:

1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

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

   a. Whenever an LEA refers an individual suspected ~~for~~ of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the-Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      i. interview with the child and family,
      ii, collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary,

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

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

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

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

the claimant's mental health professional on that individual's expanded IEP team.

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

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

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

B. ~~Reimbursable Activities subject to the Short-Doyle Act (Mental Health Treatment Services):~~ Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Dovle Act :

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

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

a. Individual therapy,

b. Collateral therapy-and contacts,

c. Group therapy,

d. Day treatment, and

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

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

VI. CLAIM PREPARATION

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

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

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

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

3. *Direct Administrative Costs.*

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

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

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

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

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

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No, A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions. there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method,

total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

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

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

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

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

VII. SUPPORTING DATA

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

AUDITOR/CONTROLLER-RECORDER

COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322
RECORDER • [illegible]
San Bernardino, CA 92415-0022 • (909) 387-8306

ERROL J. MACKZUM, CPA
Auditor/Controller-Recorder
ROBERT L. CALDERON, CIA, CISA
Assistant Auditor/Controller-Recorder

August 20, 1996

LATE FILING

LUCILA LEDESMA, Program Analyst
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: **CSM-4282 HANDICAPPED & DISABLED STUDENTS**
Amended Parameters & Guidelines

Dear Ms. Ledesma,

I have reviewed the Supplemental Analysis and the Proposed Amended Parameters and Guidelines for the August 29, 1996 Commission hearing for the above referenced matter.

As we discussed today, San Bernardino County concurs with the changes made to these Parameters and Guidelines.

Again, thank you for all of your assistance in getting these difficult issues defined and resolved,

Sincerely,

ERROL J. MACKZUM
AUDITOR/CONTROLLER-RECORDER

By: Marcia C. Faulkner
MARCIA C. FAULKNER
Reimbursable Projects Manager
(909) 386-8850

cc (faxed): Parties and Interested Parties:
Department of Finance, Jim Apps
State Controller's Office, Glenn Engle
Attorney General's Office, Floyd Shimomura
Department of Mental Health, Norman L. Black
California State Association of Counties (CSAC)
County of Santa Clara, Steve Conrad

MCF(C:\DATA\SB90\1747PGS.FIN)

JAMES J. HEAWEK
County Administrative Officer

Board of Supervisors
MARSHA TUROO ..... First District
JON D. MIKELS ..... Second District
JERRY EAVES ..... Fifth District
BARBARA CEAT RIORDAN ..... Third District
LARRY WALKER ..... Fourth District

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

PUBLIC HEARING

STATE CAPITOL

ROOM 444

SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 29, 1996

10:05 a.m.

Reported by:

Peter Petty

COMMISSIONERS PRESENT

Theresa Parker, Chairperson

William Sherwood

Stan DiOrio

Diane Richardson

Al Beltrami

STAFF PRESENT

Kirk Stewart, Executive Director

Paula Higashi, Staff Counsel

ALSO PRESENT

Marcia C. Faulkner, San Bernardino County

Allan Burdick, California State Association of Counties (CSAC), Sacramento

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1 Okay. Item number 5. This is the Ps&Gs.

2 EXECUTIVE DIRECTOR STEWART: Madam Chair, item 5

3 is an item that had been before you a couple months ago, and

4 it was put over at the request of the claimant, San

5 Bernardino County, in order to clarify an issue having to do

6 with overhead costs under Federal Office of Management

7 Budget Circular A-87.

8 . The County submitted its recommended changes to

9 the parameters and guidelines, and staff, Department of

10 Finance concur with the County's request to change. We

11 believe the County was right.

12 We've not received formal response from the State

13 Controller's Office, nor from the Department of Mental

14 Health, but have heard no adverse comment on the Ps&Gs as

15 they now stand.

16 We took the opportunity to include technical

17 changes to reflect the provisions of SB11, as applicable,

18 since we had the time to do it. And compared to the draft

19 that went out I added the conjunction "and" in one place

20 where there was just a comma before.

21 Recommend approval.

22 CHAIRPERSON PARKER: You're representing the

23 County. If you would state your name for the record,

24 please?

25 MS. FAULKNER: I'm Marcia Faulkner with the County

of San Bernardino.

CHAIRPERSON PARKER: Okay, and basically the County is in agreement --

MS. FAULKNER: The County is very pleased with the final product here, but --

CHAIRPERSON PARKER.:: We had a great deal of discussion about this, and I think even irrespective of the timing issue, it was -- that we stepped back and had the additional time to take a look at this. And in that sense, I have these correctly reflected.

So I think the Ps&Gs are before us now. There seems to be unanimity among everyone, and at least we have not heard any opposition.

So, the Chair would entertain a motion.

MEMBER RICHARDSON: Move to adopt.

MEMBER SHERWOOD: Second.

CHAIRPERSON PARKER:: Motion by Ms. Richardson and second by Mr. Sherwood to adopt the parameters and guidelines. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON PARKER: Ps&Gs are adopted unanimously. Thank you very much.

Item number 6.

EXECUTIVE DIRECTOR STEWART: Madam Chair, item 6 is an amendment to the parameters and guidelines having to

CERTIFICATE OF REPORTER

I, Peter Petty, an Electronic Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing Commission on State Mandates, Public Hearing was reported by me and thereafter transcribed into typewriting.'

I further certify that I am not of counsel or attorney for any of the parties in this matter, nor in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of September, 1996.

Peter Petty
OFFICIAL REPORTER

MINUTES

COMMISSION ON STATE MANDATES
August 29, 1996
10:00 a.m.
State Capitol, Room 444
Sacramento, California

Present: Chairperson Theresa Parker
Representative of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Stan DiOrio
Representative of the State Controller
Member Diane Richardson
Representative of the Office of Planning and Research
Member Albert P. Beltrami
Public Member

There being a quorum present,, Chairperson Parker called the meeting to order at 10:00 a.m.

Item 1 Minutes

The minutes for the meeting of June 27, 1996, were presented and were approved on the motion of Member Beltrami, seconded by Member Sherwood, with Chairperson Parker abstaining. The minutes for the meeting of July 25, 1996, were presented and were approved on the motion of Member Richardson, seconded by Member Beltrami, with Chairperson Parker abstaining.

There was no Consent Calendar for this meeting. **Item 3,** the *Schoolsite Councils* Test Claim had been deferred by the Executive Director at the request of the claimant, Kern High School District.

Determination Of Test Claims In Dispute

Item 2 Pursuant to section 1183 (j) of the regulations adopted by the Commission on June 27, 1996, all test claims filed with the Commission before July 1, 1996, are deemed received on July 1, 1996, and "undisputed" for purposes of determining when a statewide cost estimate must be adopted pursuant to section 17553 of the Govermnent Code. This agenda item is for the purpose of finding test claims to be in dispute if: (1) they already have been recommended by the Executive Director in writing to the claimant and the parties to the test claim as being "disputed" on the basis of a Commission staff analysis of the test claim or (2) have been acknowledged in writing prior to this meeting to be in

dispute by the claimant or by another party to the test claim, and that disputed status is not contested or (3) have had a request by a State Agency for extension to file opposition and a request to be found in dispute. In a fourth category are test claims deemed disputed by a party, but the claimant disagrees with that assessment.

(1) Test Claims recommended by the Executive Director in writing to the claimant and the parties to the Test Claim as being DISPUTED on the basis of a Commission staff analysis of the test claim:

Claim No.	Short Title	Claimant	Next Action
	[none this meeting]		

(2) Test Claims which have been acknowledged in writing prior to this meeting to be in DISPUTE by the claimant or by another party to the Test Claim, and that status is uncontested:

Claim No.	Short Title	Claimant	Next Action
CSM-4420	Pesticide Use Reports	County of San Bernardino	SCE
CSM-4427	Prisoner Parental Rights	County of San Bernardino	SCE
CSM-4464	Behavioral Intervention Plans	San Diego USD	TC
CSM-4472	Meetings: Taxes & Assessments	County of San Bernardino	TC
CSM-4503	Three Strikes	County of Los Angeles	TC
CSM-4506	Standardized Emergency Management System (EMS)	County of San Bernardino	TC
CSM-4507	Airport Land Use	County of San Bernardino	TC

(3) Test Claims for which a State Agency has requested an extension to file opposition and has requested that the Commission find the Test Claim to be in DISPUTE:

Claim No.	Short Title	Claimant	Next Action
CSM-4473	Property Tax Administration: Schools and ERAF	County of San Bernardino	TC
CSM-4509	Sexually Violent Predators	County of Los Angeles	TC

(4) Test Claims which have been acknowledged in writing prior to this meeting to be in DISPUTE by a party to the Test Claim, but the claimant maintains that the claims should be deemed UNDISPUTED by the Commission:

Claim No.	Short Title	Claimant	Next Action
CSM-4419	California Fire Incident Reporting System (CFIRS) Manual	City of Newport Beach	TC
CSM-4461	Annual Parent Notification	San Diego USD	SCE
CSM-4474	Parent Classroom Visits	San Diego USD	SCE

CSM-4476	Choice Transfer Appeals	San Diego USD	SCE
CSM-4488	Alternative Schools - Annual Notification	Newport Mesa USD	TC
CSM-4499	Peace Officers' Procedural Bill of Rights	City of Sacramento	TC

Executive Director Kirk Stewart presented this item. He noted that Mr. Keith Petersen, on behalf of the claimants, had expressed disagreement with CSM-4461, 4474, 4476 and 4488 being found in dispute. Mr. Petersen was not present but had agreed that Mr. Stewart could state his opposition on his behalf.

Mr. Stewart then set forth the following. With respect to CSM-4488, Mr. Petersen had argued that the issues were similar to those already decided by the Commission in other parental notification test claims, that the comments on the test claim were in the Commission's hands, and the test claim should therefore be on an undisputed six month timeline. With respect to the three statewide cost estimates, Mr. Petersen had argued that the test claims were adjudicated, the parameters and guidelines finished, and there was no dispute on the estimates - they simply did not exist yet. The claimants did not want to be in the legal position of having an 18 month timeline on this end-of-the-process item even if the Commission's staff were fully intending to get the estimates done by year-end. Mr. Petersen had said that other workload priorities, such as SB 1033, could derail the staff's intentions to have the estimates done in six months.

Mr. Stewart then turned to the staff's position on the fourth category of Item 2. He noted that CSM-4419 was an old, inactive test claim that had been re-activated by Newport Beach, and the already-existing state agency comments and claimant rebuttals constituted a state of "dispute" and would be used for a draft staff analysis which would be circulated for review. He said that CSM-4499 was, in fact, disputed by the Department of Finance, and that Finance's correspondence to that effect should have been received by the City of Sacramento by now. With respect to CSM-4488, Mr. Stewart reported that Finance and the claimant actually are disputing points of that test claim. For all three of those test claims, Mr. Stewart recommended that they be found in dispute. With respect to the statewide cost estimates, Mr. Stewart said that staff did intend to finish the estimates within the six month timeframe, and that he would not have a problem with the Commission finding them undisputed. He noted that a dispute could arise later if the estimates were viewed as unsatisfactory by any party. Asked by Members DiOrio and Richardson, Mr. Stewart said that the only six-month timeline estimate that had not yet been started -- CSM-4476 -- was of some concern, inasmuch as it is assigned to an analyst who will be leaving at the end of September.

On the motion of Member Beltrami, seconded by Member Richardson, the Commission unanimously found all of the forgoing Test Claims and Statewide Cost Estimates in agenda Item 2 to be disputed except for: CSM-4461, *Annual Parent Notification,* and CSM-4474, *Parent Classroom Visits.*

Statement Of Decision

Item 4 CSM-4500
City of Atascadero
Presidential Primary
Elections Code Section 1301 (renumbered from Section 2601)
Chapter 828, Statutes of 1993

Mr. Stewart presented this item reflecting the Commission's denial *of* the *Presidential Primary* test claim at its last meeting., No one from the audience chose to speak on the issue. On the motion of Member DiOrio, seconded by Member&Sherwood, the statement of decision was adopted, 4 ayes, with Chairperson Parker abstaining.

Parameters And Guidelines

Item 5 CSM-4282 (also cited as CSM-4496) *(Amendment to P&Gs)*
County of San Bernardino
Handicapped and Disabled Students
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200

Mr. Stewart presented this item, noting that it had been before the Commission two months earlier and deferred at the request of the claimant in order to research and clarify certain overhead provisions related to federal OMB Circular A-87. He said that the Department of Finance and Commission staff were in agreement with the claimant's changes as now included in the a-mended Parameters and Guidelines, and that no opposition had been received from the State Controller's Office or from the Department of Mental Health. Mr. Stewart also stated that technical changes to conform to SB 11 (Chapter 945/95) had been included during this last review period. Ms. Marcia Faulkner , representing San Bernardino County , had no further testimony on the amendment? On the motion of Member Richards&, seconded by Member Sherwood, the amended Parameters and Guidelines were unanimously approved.

Item 6 CSM-4485
Commission on State Mandates (pursuant to
Budget Act provision)
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process - Amendment
for Budget Act of 1996

Mr. Stewart presented this item concerning reimbursement for mandate claiming activities, stating that the amendment was required by a provision in the Budget Act of 1996 and mirrored the same Budget Act provision and resulting P&G amendment from 1995. He recommended its approval.

Mr. Allan Burdick, representing CSAC, said that he had sought certain clarification from the State Controller's Office concerning the claiming for this same item under the 1995 provision and had not yet received an answer. He requested that the Commission, therefore, clarify in the P&Gs the point asked of the State Controller concerning just how certification of cost-effectiveness (as required by the Budget Act) would occur, He spoke of alternative scenarios for consideration.

Inasmuch as the Commission and staff had not been made aware of Mr. Burdick's concern prior to this hearing, the item was put over, and Mr. Burdick was invited by the Chair to put his proposal in writing and sent it to Con-mission staff o that it could be circulated to other parties for comment.

E. STATEWIDE COST ESTIMATES

None

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

Item 7 Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, to incorporate changes required by Chapter 6 (SB 681), Chapter 154 (SB 805) and Chapter 206 (SB 1780), Statutes cf 1996

Staff Counsel Paula Higashi, presented the proposed amendments dealing with the changes in the Commission's membership (SB 805), which will affect quorum and voting requirements, and changes in the period of a finding of significant financial distress for counties applying to the Commission under section 17000.6 of the Welfare and Institutions Code (SB 681 and SB 1780). She also indicated that a county's providing copies of its application materials under section 17000.6 to a representative of general assistance recipients was an existing practice which is proposed for addition to the regulations. Discussion ensued, particularly regarding quorum and voting requirements and the effect of vacancies on the Commission. Member Beltarmi raised the question of the effect of designees serving for the state officer members as opposed to the public member who has no designee. There also was discussion about the reason for requiring the service of county application materials on representatives of general assistance recipients. Because the proposed regulations were only being presented to gain authorization to initiate rulemaking, to include circulating the proposal for public comment,

there was no Commission action on any of those points of discussion. Instead, the Commission unanimously approved, without objection, initiation of the rulemaking process.

'V OTHER BUSINESS

Item 8 Executive Director's report on Commission staff activities, SB 1033, budget, legislation and status of the State Mandates

Mr. Stewart reported on the status of legislation affecting the Commission, noting especially that the Claims Bill, SB 91, had been amended to include the appropriation for the Not Guilty By Reason Of Insanity claim and that AB 2379 had been amended to take out references to school districts. Member Richardson stated that SB 91 was now enrolled. Mr. Stewart previewed the three September hearings with the Commission: September 23 for Butte County's SB 1033 Application, in Oroville, and September 26 and 27 in the Capitol to cover the Graduation Requirements Incorrect Reduction Claim, Special Education subjects, and other test claims. He reported that no other SB 1033 applications were known to be imminent, that the Commission Office is scheduled to move to 1300 I Street in mid-December, and that the Members would be involved with staff in developing a "strategic plan" for the Commission during the next several months.

Item 9 Approval of Commission Meeting Calendar for 1997

Mr. Stewart presented the proposed calendar, which called for Commission meetings to continue to be held on the last Thursday of the month (except in November and December, when the meeting would be the Thursday before Thanksgiving Day and Christmas Day, respectively). He noted, for the Members serving on other boards and commissions, that those days would not conflict with the Board of Control or the State Treasurer's financing authority or board meeting days. This item was put over so that staff could check with the Treasurer's Office on whether the various financing authorities and boards would be meeting during the same week of the month as the Commission.

There being no further business, Chairperson Parker adjourned the meeting at 11:30 a.m.

K.G. Stewart

KIRK G. STEWART
Executive Director

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

PARAMETERS AND GUIDELINES

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

IT IS SO ORDERED August 29, 1996.

K.G. Stewart

Kirk G. Stewart, Executive Director
Commission on State Mandates

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FILE COPY

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

Original Adopted: 8/22/91
Revised: 8/29/96

PARAMETERS AND GUIDELINES

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

I. SUMMARY OF MANDATE

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

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 565 1 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs," such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed," pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

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

The provisions of Welfare and Institutions Code section 565 1, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally disturbed, " and required in such individual's IEP.

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

II. COMMISSION ON STATE MANDATES' DECISION

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

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

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

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

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

V. REIMBURSABLE COSTS

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

1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

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

   a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary.

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(l)).

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

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

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

the claimant's mental health professional on that individual's expanded IEP team.

f. When the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed,' claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572 .5).

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

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

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

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

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

a. Individual therapy,

b. Collateral therapy and contacts,

c. Group therapy,

d. Day treatment, and

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

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

VI. CLAIM PREPARATION

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

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

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

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

3. Direct Administrative Costs:

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

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

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

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

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

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

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

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

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

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

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

VII. SUPPORTING DATA

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

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

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

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

2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

IX. REQUIRED CERTIFICATION

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

Adopted: 8/22/91
WP 0769s

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 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.

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 reyuest 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..

1x. REOUIRED CERTIFICATION

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

Hearing Date: March 27, 1997
File Number: CSM-4282
Staff: Staff
File: f:/mandates/Lucila/4282/Rev-toc.doc

ITEM #12

Statewide Cost Estimate

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 Date: March 27, 1997
File Number: CSM-4282
Staff: Staff
File: f:/mandates/Lucila/4282/Rev-sce.doc

ITEM #12

Statewide Cost Estimate

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 statewide cost estimate is an augmentation for a previously recognized state mandated program contained in Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570. The estimate reflects an augmentation for amended parameters and guidelines adopted by the Commission on August 29, 1996 to reimburse counties for additional administrative and/or overhead costs incurred under the original mandate.

To arrive at the estimate, staff surveyed thirty-one counties that have claimed under the original mandate. Of those, nineteen counties responded to the survey. Responses represent approximately sixty-seven percent of the statewide population.

While Los Angeles County responded to the survey, it provided no estimate for fiscal years 1996/97 and 1997/98. The absence of this information has significant potential to adversely impact the validity of the overall estimate due to Los Angeles County representing approximately twenty-eight percent of the statewide population. In order to account for the absence, staff calculated an estimate adjustment to provide an allocation for Los Angeles County for fiscal years 1996/97 and 1997198.

Staff recommends the Commission adopt the following statewide cost estimate augmentations including costs for fiscal years 1994195 of $1,532,227; 1995/96 of $2,688,828; 1996/97, $2,024,347; and 1997198 of $2,187,400. The total statewide cost estimate augmentation of $8,432,802 has been rounded to $8,433,000. In addition, staff computed a budget deficiency from survey data for informational purposes only. This budget deficiency is not proposed for adoption.

Hearing Date: March 27, 1997
File Number: CSM-4282
Staff: Staff
File: f:/mandates/Lucila/4282/Rev-sce.doc

Statewide Cost Estimate Calculation

Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Division 9

Handicapped and Disabled Students

Chronology

08/17/87	Original Test Claim filing.
04/26/90	Original Statement of Decision adopted.
08/22/91	Original Parameters and Guidelines adopted,
11/30/95	Request to amend Parameters and Guidelines filed with the Commission on State Mandates (CSM) by claimant.
06/27/96	Proposed amended Parameters and Guidelines presented at CSM Hearing, held over for further analysis.
08/29/96	Amended Parameters and Guidelines adopted by the Commission at hearing.
11/26/96	Statewide cost estimate survey mailed to all counties historically claiming on this mandate.

Mandate Background

Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985 added and amended Chapter 26, Division 7, Title 1 of the Government Code, commencing with section 7570. These statutes, along with, Title 2, California Code of Regulations, sections 60000 et seq., have previously been identified as mandating counties to provide mental health assessments, treatment, and case management to handicapped and disabled children in need of such supportive services in order to benefit from their "Individualized Education Program. "

This amendment reflects a clarification of the scope of the mandate regarding reimbursable administrative and/or overhead expenses. The current amendments to the mandate are the findings that with regard to the mental health assessment functions, any related administrative and/or overhead costs are fully reimbursable. And with regard to Short-Doyle treatment services, ten percent (10%) of any related administrative and/or overhead costs are reimbursable. These are the only material changes between the original parameters and guidelines and the amended parameters and guidelines. Exhibit A is the Statement of Decision.

Reim but-sable Activities

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

1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

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

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

      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary.

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(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's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572.5).

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

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

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

1. The scope of the mandate is ten (10) percent reimbursement,
2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):
    a. Individual therapy,
    b. Collateral therapy and contacts,
    c. Group therapy,
    d. Day treatment, and
    e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

Exhibit B is a copy of the amended parameters and guidelines.

Methodology and Calculations

Exhibit C is a sample of the cover letter and survey questionnaire mailed only to the counties which have previously claimed reimbursements for this mandate. Thirty-one counties were included in the survey. Responses were received from nineteen counties. Based on 1995 demographic data, these nineteen counties contain approximately sixty-seven percent (67 %) of the total state population.

Table 1 presents a summary of the survey response data. In general, it is very straight forward. The data for each category of service was totaled for each fiscal year. Then an annual statewide total was computed for each year. The footnotes explain some minor variations on that concept necessitated by the limitations of survey response data.

However, there is one major variation which warrants highlighting. Los Angeles County provided information for fiscal years 1994/95 and 1995/96.[1] But Los Angeles County did not provide data for fiscal years 1996197 or 1997/98. Mr. Kaye of the Los Angeles County Auditor Controller's Office, stated that the data varied so greatly his program personnel are simply not able to make a reliable estimate for future fiscal years. Since Los Angeles County alone contains about twenty-eight percent (28 %) of the total state population, exclusion of some allocation for that county for each fiscal year would almost certainly result in a serious deficiency in allocation.

Staff extrapolated the total annual estimates for fiscal years 1996/97 and 1997/98 which effectively back in to estimated allocations for Los Angeles County for each fiscal year. A simple computation of the percentage of total claims for each fiscal year for both fiscal years 1994/95 and 1995/96 averaged out to about twenty-five percent (25%) per year for Los

[1] Los Angeles county's response to the survey stated that no additional amounts were proposed to be claimed by that county for fiscal years 1994/95 or 1995/96 as a result of the amendment to the mandate.

CSM-4282A **Amended Statewide Cost Estimate** **Table 1 - Summary of Survey Responses**

County	94/95 Part A Addition	94/95 Part B Addition	95/96 Part A Addition	95/96 PartB Addition	96/97 Part A Full Amt.	96197 Part A Addition	96197 PartB Full Amt.	96/97 PartB Addition	97/98 Part A Full Amt.	97/98 Part A Addition	97/98 Part B Full Amt.	97/98 PartB Addition
Alameda	43,021	562,915	44,312	579,802	221,223	45,641	2,908,699	597,196	227,859	47,011	2,995,960	615,112
Contra Costa	149,802	88,512	155,893	68,898	155,893	7,795	68,898	3,445	163,688	8,184	72,343	3,617
Kern	0	0	42,000	134,700	44,000	4,000	144,500	14,000	45,000	5,000	155,000	16,000
Los Angeles	0	0	0	0	n/r A	n/r	n/r	n/r	n/r	n/r	n/r	n/r
Orange	0	0	222,000	245,000	1,650,000	n/r	3,930,000	n/r	1,897,500	n/r	4,519,500	n/r
Placer				242,393 B			254,513				267,238	
Riverside	-24,008	264,826	90,650	306,702	564,310	79,024	2526,091	321,888	677,172	94,829	3,031,309	386,256
San Bernardino	131,321	177,553	131,300	177,500	420,000	140,000	800,000	180,000	500,000	155,000	900,000	190,000
San Francisco	0	0	0	0	5,139,700	0	n/r	0	5,294,000	0	n/r	0
San Joaquin	0	0	0	0	45,000	0	45,000	0	n/r	0	n/r	0
San Luis Obispo	0	n/r	56,566	n/r	56,566	0	n/r	n/r	56,566	0	n/r	n/r
San Mateo	0	0	0	0	161,000	0	1,397,000	0	166,000	0	1,439,000	0
Santa Barbara	1,649 C	1,766 C	9,626	10,311	9,626	2,888	10,311	3,093	9,819	2,946	10,517	3,155
Solano	0	0	37,175	0	63,800	38,290	102,040	0	66,440	39,440	108,000	0
Sonoma	0	0	0	0	0	0	550,000	0	0	0	577,500	0
Stanislaus	0	0	0	0	0	0	0	0	0	0	0	0
Tulare	0	0	0	0	n/r	n/r	15,900	n/r	n/r	n/r	17,400	n/r
Ventura	52,779	22,091	52,000	22,000	187,000	52,000	443,000	22,000	187,000	52,000	443,000	22,000
Yolo	10,000	50,000	10,000	50,000	10,000	2,000	50,000	5,000	12.000	n/r	55,000	n/r
Totals	364,564	1,167,663	851,522	1,837,306	8,728,118	371,638	13,245,952	1,146,622	9,303,044	404,410	14,591,767	1,236,140
Additions/Year		1,532,227 D		2,688,828 E				1518,260				1,640,550
Totals/Year		26,989,346		26,619,993			23,492,330				25535,361	

A n/r = **no** response to this item.

B Placer County provided only information from which estimated annual amounts not broken down by category could be computed. Staff has added them to the largest column for each year.

C Santa Barbara had not filed for FY 94/95. Addition for Part A=$1,649., Part B = $1,766. due to amendment.

D $1,532,227 is de addition, original approved is $25,457,119 for a total of $26,989,346.

E $2,688,828 is the addition, original approved is $23,931,165 for a total of $26,619,993.

F The following counties were also contacted but did not respond to the survey:
Del Norte; El Dorado; Fresno; Marin; Mendocino; Monterey; Napa; Sacramento; San Diego; Santa Clara; Santa Cruz; Shasta.

f:mandates/lucila/4282/4282asce.xls

Angeles County. Consequently, the Table 1 annual additional costs for fiscal years 1996/97 and 1997/98, which exclude any allocation for Los Angeles County, were estimated to be only seventy-five percent (75 %) of necessary annual allocations. The calculation has the following steps.

1. Annual survey total for additional administrative/overhead costs (from Table 1) for each fiscal year (1996/97 and 1997/98 only) divided by seventy-five percent, (75 %) equals the extrapolated annual total for each fiscal year.

FY	Annual survey total	÷ .75	=	extrapolated annual total including L. A.
1996197	$1,518,260	÷ .75	=	**$2,024,347**
1997198	$1,640,550	÷ .75	=	**$2,187,400**

2. Extrapolated annual additional total minus annual additional survey total equals fiscal year estimate for Los Angeles.

FY	Extrapolated annual total	-	Annual survey total	= estimate for L.A.
1996/97	$2,024,347	-	$1,518,260	= $506,087
1997198	$2,187,400	-	$1,640,550	= $546,850

Assumptions and Total Costs

1. Costs shown by the surveys returned by the counties are indicative of costs reimbursable under the parameters and guidelines.
2. Costs experienced for providing these mandated program activities are similar for all eligible jurisdictions in the state.
3. The statewide cost was determined from the costs as reported by those surveyed solely because it was determined that this was the most practical method of computing the estimated statewide cost of the mandated program.
4. All counties surveyed which did not respond to the survey will not make claims under this mandate.
5. Los Angeles County will represent approximately twenty-five percent of the total claims for fiscal years 1996/97 and 1997198.

The amounts listed in Table 2 are the annual augmentations for the amendment. This table also shows the budgetary deficiencys computed based on survey data. The budgetary deficiencies are not proposed to be adopted by the Commission.

Table 2

Summary of Proposed Budgetary Augmentations

FY	Total Estimate Computed in this Revised Statewide Cost Estimate	Previously Budgeted Amount	Annual Budgetary Deficiency	Annual Augmentation for Amendment
1994195	$27,000,728	$20,660,000	$6,340,728	**$1,532,227**
1995196	$26,619,993	$21 ,000,000	$5,619,993	**$2,688,828**
1996/97	$31,323,106	$21,918,000	$9,405,106	**$2,024,347**
1997/98	$34,047,148	$22,488,000	$11,559,148	**$2,187,400**
TOTAL			$32,925,000 (R)	**$8,433,000 (R)**

EXHIBIT A

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

DECISION

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

This Decision shall become effective on April 26, 1990.

IT IS SO ORDERED April 26, 1990.

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

WP0363h

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

95 34759

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

PROPOSED DECISION

On December 1, 1388, in Sacramento, California, Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. Harlan E. Van Wye, Deputy Attorney General, represented the California State Departments of Finance', Education, and Mental Health. Susan A. Chapman, Deputy County Counsel, represented the County of Santa Clara.

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

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

I. ISSUES

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

II. FACTS

A. Background

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

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

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

The following facts are based upon the "Joint Statement of Facts" to extent that they are pertinent in the Commission'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 ERA 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 agd '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. Schobl 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 ERA, 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 360.342. 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 5'6000) 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 pladement. 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 ratip 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 7,576, 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 exdeptional 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) t:he role as lead case manager, pursuant to Government Code section 7572.5, subdivision (c), when residential placement is prescribed for an "individual with exceptional needs" who is "seriously emotionally disturbed."

Government Code section 7571 requires the Secretary 'of Health and Welfare to designate a single agency in each county to coordinate the service responsibilities described in Government Code section 7572.

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

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

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

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

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

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

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

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

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

Government Code section 17551, subdivision (a) provides:

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

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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 t o 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 anv , 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 t e meanin 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

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EXHIBIT B

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

PARAMETERS AND GUIDELINES

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

IT IS SO ORDERED August 29, 1996.

K.G. Stewart

Kirk G. Stewart, Executive Director
Commission on State Mandates

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FILE COPY

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

Original Adopted: 8/22/91
Revised: 8/29/96

PARAMETERSANDGUIDELINES

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

I, SUMMARY OF MANDATE

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

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 565 1 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "individuals with exceptional needs, " such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed, " pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county,

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

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally disturbed, " and required in such individual's IEP.

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

II. COMMISSION ON STATE MANDATES' DECISION

The Cornmission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that deterrnined 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, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

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

V. REIMBURSABLE COSTS

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

1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act,

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

   a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      i. interview with the child and family,
      ii. collateral interviews, as necessary,
      iii. review of the records,
      iv. observation of the child at school, and
      v. psychological testing and/or psychiatric assessment, as necessary.

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(l)).

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

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

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

the claimant's mental health professional on that individual's expanded IEP team.

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

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

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

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

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

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

a. Individual therapy,

b. Collateral therapy and contacts,

c. Group therapy,

d. Day treatment, and

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

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

VI. CLAIM PREPARATION

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

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

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

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

3. Direct Administrative Costs:

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

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

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

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

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

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

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

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

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

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

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

VII. SUPPORTING DATA

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

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

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

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

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

2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

IX. REQUIRED CERTIFICATION

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

EXHIBIT C

November 26, 1996

RE: Statewide Cost Estimate
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

How much money should be reserved for your county ? The Commission on State Mandates (CSM) has amended the Parameters and Guidelines for the mandate found in CSM-4282 Handicapped and Disabled Students (See Attachment B). It is now necessary to revise the statewide cost estimate to be used in the Legislature's annual claims bill for mandate reimbursement appropriations. To assure that sufficient funds are allocated to reimburse your county for this mandate, we need to secure a revised estimate of your costs. Please complete the enclosed survey form (Attachment A).

The amended Parameters and Guidelines are effective for 1994-95 and subsequent fiscal years and clarify that any related costs for administration and/or overhead are one hundred percent (100%) reimbursable if related to IEP Participation and ten percent (10%) reimbursable if related to Short-Doyle Treatment under this mandate when using either the Actual Costs method or the Cost Report method of claiming reimbursement, These costs are reimbursable even though they may not be included in the Unit Cost Rates calculated for the various service providers in accordance with the Department of Mental Health's CR/DC Manual.

Please return the completed survey form to this office no later than December 20, 1996. We would like to emphasize that this request is being made for the purpose of estimating the additional cost for this mandate. Therefore, no backup documentation needs to be provided for the purpose of this survey. The State Controller's Office will be issuing actual revised claiming instructions and documentation requirements for your subsequent filing of reimbursement claims.

Your prompt provision of this information will be greatly appreciated. If you have any questions, please call Lucila Ledesma of the CSM staff at 916-323-3562 or Lucila@CSM.CA.GOV.

Sincerely,

Kirk G. Stewart,
Executive Director

Attachments - 2
F/Mandates/Lucila/4282/scesurvy.doc

Alameda

INSTRUCTIONS FOR COMPLETION OF
AMENDED STATEWIDE COST ESTIMATE SURVEY

Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Division 9

Handicapped and Disabled Students

I. Participant Identification:

Name of County: _____ Contact Person: _____
Address: _____ Title: _____
_____ Phone Number : _____

II. Instructions:

A. Counties may revise the amounts claimed back to July 1, 1994,

B. Amounts reported on the survey form should be net of all offsets (i.e. categorical funding received from California Department of Mental Health) and limitations (i.e. Short-Doyle county portion),

C. Written descriptions of all activities for which costs are included in the additional estimated claim are required for the survey to be properly completed. The activities on the survey form are separated into A: IEP Participation and B: S-D Treatment. Examples of what is claimable under each type of activity include:

Activity A: IEP Participation

1. 100 % of cost per hour for mental health professional to interview child multiplied by total hours worked equals IEP Participation cost,
2. 100% of administrative costs for case management. Administrator's hourly pay rate multiplied by hours spent on case management. Plus overhead cost for administrator for hours spent on case management.

Activity B: Short-Doyle Treatment

1. 10% of cost per hour for mental health professional to provide individual therapy multiplied by total hours provided equals S-D Treatment cost.
2. 10% of administrative costs for S-D Treatment. 10% of administrator's hourly pay rate multiplied by hours spent on S-D Treatment administration. Plus 10% of overhead cost for administrator for hours spent on S-D Treatment administration.

D. Please list only the additional amount you would claim for years up through FY 1995-96, not the revised total. For FYs 1996-97 and 1997-98 estimate the full amount you intend to claim and separately identify the portion of that which is due to the arnendment. Describe only activities involved in additional amount.

Survey due no later than December 20, 1996. Mail or Fax to Commission on State Mandates #4282, 1414 K Street, Suite 315, Sacramento, CA 95814 or Fax to (916) 445-0278. For questions call Lucila Ledesma at (916) 323-3562.

III. Reimbursable Activities:

Introduction: Attachment A to the cover letter contains the full text of the amended parameters and guidelines for this mandate. We have paraphrased them here for your convenience in completing the survey,

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

1. The scope of the mandate is one hundred (100) percent reimbursement minus the Federal Financing Participation portion for Medi-Cal patients.

2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable:

a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department for mental health assessment and recommendation by qualified mental health professionals, mandated services include:

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.

c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested.

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

e. In cases of 'individuals with special needs' who are 'seriously emotionally disturbed', participation of the claimant's mental health professional on that individual's expanded IEP team,

f. When the IEP prescribes residential placement, claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities.

g . Required participation in due process procedures.

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

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

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

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

a. Individual therapy,
b. Collateral therapy and contacts,
c, Group therapy,
d. Day treatment, and
e. Mental health portion of residential treatment

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

IV. Historical Costs

II. Historical Claim Information For County of : Alameda

Fiscal Year	Claimed Amount	Approved Amount ,
1986-87	$ 81,369	$ 81,369
1987-88	131,012	131,012
1988-89	474,113	459,703
1989-90	700,611	700,611
1990-91	937,212	937,212
1991-92	1,132,838	1,132,838
1992-93	1,567,894	1,564,119
1993-94	2,290,348	1,991,607
1994-95	2,344,315	0
1995-96	1,887,948	0

AMENDED STATEWIDE COST ESTIMATE SURVEY FORM
for
CSM - 4282 Handicapped and Disabled Students Mandate

III. Costs

Fiscal Year	Activity Code	Description of Activities Included in Amount.	Additional Amount
1994-95	A.	_____	$_____
		_____	
		_____	
	B	_____	$_____
		_____	
		_____	
1995-96	A.	_____	$_____
		_____	
		_____	
	B	_____	$_____
		_____	
		_____	

AMENDED STATEWIDE COST ESTIMATE SURVEY FORM
for
CSM - 4282 Handicapped and Disabled Students Mandate

Fiscal Year	Activity Code	Description of Activities Included in Additional Amount.	Estimated Full Amount	Additional Amount
1996-97	A.		$	$
	B.		$	$
'-98	A.		$	$
	B.		$	$

PUBLIC HEARING

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

ORIGINAL

COPY

State Capitol

Room 437

Sacramento, California

Thursday, March 27, 1997

9:30 a.m.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

APPEARANCES

COMMISSION MEMBERS PRESENT:

Theresa Parker, Chairman
Representative of the Department of Finance

Albert P. Beltrami
Public Member

Dave Cox
Representative of County Boards of Supervisors

Fred R. Buenrostro, Jr.
Representative of the State Controller

Nancy Patton
Representative of the Office of Planning and Research

William Sherwood
Representative of the State Treasurer

STAFF PARTICIPATING:

Mary Ann Aguayo, Assistant Executive Director

Paula Higashi, Interim Executive Director

Gary D. Hori, Counsel

Piper Rodrian

Steve Zimmerman

PUBLIC PARTICIPATING:

James Apps, Department of Finance

Caryn L. Becker, Department of Finance

Carol Berg, Ph.D., School Services of California, Inc.

Allan P. Burdick, California Cities SB 90 Service

James Cunningham, San Diego City Schools

(continued)

APPEARANCES
(continued)

PUBLIC PARTICIPATING:
(continued)

Glen Everroad, City of Newport Beach

James Ewert, California Newspaper Publishers Association

Marcia Faulkner, County of San Bernardino

Leonard Kaye, LA County Office of Auditor-Controller

Thomas Newton, California Newspaper Publishers Association

Keith Petersen, Education Mandated Cost Network

I N D E X

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1 items that we have pulled from the agenda, postponements
2 based on requests from claimants and one that was based on a
3 staff request.
4 Item 3 is postponed, Item 6 is postponed, Item 9
5 is postponed, Item 11 is postponed.
6 There's one item that can be voted on on the
7 consent calendar and that is Item 12, which is the statewide
8 cost estimate for the handicapped and disabled students.
9 CHAIRPERSON PARKER: Okay. Given that we only
10 have one item, we can take it now or we can just go through
11 the --
12 MEMBER BELTRAMI: Madam Chair, I move adoption of
13 Item 12.
14 MEMBER COX: Second.
15 CHAIRPERSON PARKER: We have a motion and a second
16 to adopt Item 12, the proposed statewide cost estimates for
17 handicapped and disabled students.
18 Is there any discussion?
19 All those in favor signify by saying aye.
20 (Ayes.)
21 CHAIRPERSON PARKER: The item is adopted
22 unanimously.
23 Okay. Minutes are not going to be considered at
24 this meeting?
25 INTERIM EXECUTIVE DIRECTOR HIGASHI: That's

CERTIFICATE OF SHORTHAND REPORTER

I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing meeting in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April 1997.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

MINUTES

COMMISSION ON STATE MANDATES

March 27, 1997
9:30 a.m.

State Capitol, Room 437
Sacramento, California

Present: Chairperson Theresa Parker
Representative of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Fred Buenrostro
Representative of the State Controller
Member Nancy Patton
Representative of the Office of Planning and Research
Member Dave Cox
Representative of County Boards of Supervisors
Member Albert P. Beltrami
Public Member

There being a quorum present, Chairperson Parker called the meeting to order at 9:40 a.m. Interim Executive Director Paula Higashi reviewed the day's agenda, noting that Items 3, 6 (statement of decision only), 9, and 11 had been postponed.

Consent Calendar

Proposed Statewide Cost Estimate

Item 12 *Handicapped and Disabled Students* CSM-4282 (CSM-4496)
County of San Bernardino
(Estimate resulting from 8/29/96 Amendment to Ps & Gs)
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Sections 60000-60200

On the motion of Member Beltrami, second by Member Cox, the Consent Calendar, consisting of Item 12 (as shown above), was unanimously adopted. No persons appeared to testify concerning the Consent Calendar.

Regular Agenda

Item 1 Minutes

Approval of the minutes for the hearings of February 14, 1997 and February 27, 1997 was postponed.

Items Heard And Continued From February 27, 1997 Hearing

Action To Be Taken On State Mandate Claims

Item 2 *Open Meeting Requirements Applicable to School Site Councils and Advisory Committees* - CSM-4501
Kern High School District
Education Code Section 35147
Chapter 239, Statutes of 1994

Mr. Gary Hori, Legal Counsel to the Commission, introduced the item. He explained that the test claim focuses on only one 1994 statute which exempts eight identified school councils and advisory committees from the full-blown Open Meeting requirements of the Brown Act and instead subjects them to an abbreviated set of requirements. Mr. Hori briefly reviewed the legislative history and claimant's allegations. He recounted that, following last month's discussion, claimant and local representatives asserted that the staff analysis was incorrect because it did not perform a historical analysis of the Open Meeting requirements from 1975 through the 1993 legislation. He reminded Commission members that claimants cited four court decisions and explained that instead of presenting a report on these four cases which highlight state mandated programs under section 6, article XIIIB and their relationship to post-January 1, 1975 law, staff performed a historical review in its analysis. Based on this analysis, staff reported finding that school site councils and advisory committees were subject to the open meeting requirements of the Brown Act before 1975, and, therefore, recommended that the test claim be denied.

Parties were represented as follows : Mr. James Apps for the Department of Finance; Mr. Tom Newton and Mr. James Ewert for the California Newspapers Publishers' Association; Dr. Carol Berg for the Education Mandated Cost Network; Mr. Keith Petersen, counsel for the Education Mandated Cost Network and representative for Kern High School District; Ms. Marcia Faulkner, interested party for San Bernardino County; Mr. Allan Burdick, interested party for the California State Association of Counties; Mr. Jim Cunningham for the San Diego Unified School District; Mr. Leonard Kaye, interested party for Los Angeles County.

Mr. Petersen stated his concern regarding the legal effect of intervening statutes. From the February Hearing, it was his understanding that staff was directed to find a legal basis for their conclusions in the last recommendation. He also asked what was being considered today the threshold issue, or the revised test claim analysis.

Mr. Hori responded that the work requested of staff has been done. The most recent analysis does not go over each case individually, but the end result is the same conclusion: There is no new program or higher level of service caused by the subject statute. Mr. Hori stated that, had the Commission gone over those four cases, the result would be the same. He reviewed the original staff analysis and the more recent revision. In the first analysis, staff looked at the prior law and concluded that there was no new program or higher level of service. In revisiting that analysis, the conclusion is the same. A more extensive analysis, going back to pre-1975, post-1975, and pre-1993, does not change the conclusion. In fact, in each analysis, staff found a *lower level* of *service.* Mr. Hori further added that a lower level of service had been found in two prior test claims, one was denied and the other withdrawn.

Member Beltrami asked if the Commission's established policy is to review all claims based

on the 1975, pre-1975 comparison. He explained that the benchmark (against which a test claim is compared) depends upon statutes claimed in any given test claim. He illustrated the difference between a claim that would be compared to prior statutes (for example, School Site Councils, agenda item 2, which claimed a single statute in 1994) and a test claim that would be compared to January 1, 1975, (Pupil Expulsions, agenda item 6, in which all statutes dating back to January 1, 1975, are claimed). He also stated that during his tenure at the Commission, since 1989, the analytical approach had not changed.

Member Sherwood added that he would prefer to deal with the merits of the test claim at this time and that he was satisfied with Mr. Hori's response that the analytical approach had not changed.

Mr. Petersen reminded the Commission that, at the last hearing, staff had been directed to respond to the issue of intervening statutes and that this had not been done. He also questioned other test claims cited by staff and their relevance to this discussion and pointed out that Commission staff had now prepared three different analyses on the School Site Councils test claim, that each treated the law differently, and that each should be brought into the record.

Chairperson Parker acknowledged the importance of consistency in decisions and continuity in analyses. She polled the Commissioners as to whether or not they felt adequately prepared to assess the merits of the test claim before them. Members Sherwood, Cox, Buenrostro, Beltrami, and Patton indicated they were. Member Sherwood asked if the claimants had enough opportunity to be prepared. Mr. Petersen said that the material was faxed on Friday (March 21), but the legal question is the 'threshold issue'. Ms. Parker reminded the Commissioners that claimants decide which statutes are included when they prepare, and file, their test claims.

Member Cox asked the claimants if they were prepared to proceed. Witnesses Cunningham, Petersen, Kaye, and Berg stated they were not prepared, while Faulkner and Burdick spoke of the 'threshold issue'. Witnesses Apps, Ewert and Newton stated they were prepared.

Mr. Newton and Mr. Ewert representing the California Newspaper Publishers' Association, testified that they came prepared to prove that school site councils were covered by the Brown Act in 1975, and before. Mr. Newton reminded the Commissioners that the burden of proof is on the claimants. He asked that the Commissioners' attention turn to the *proof presented by the claimants,* not the staff analysis. He characterized the claimants as disingenuous when they stated they were unprepared to discuss their test claim.

Member Cox moved to continue item 2 until May, Member Sherwood seconded, and the motion passed unanimously.

Chairperson Parker acknowledged the work of staff, and gave additional direction: 1) Staff will analyze the 4 cases, 2) No new analysis will be produced, rather, additional material will handled as an amendment to the analysis, 3) The 'threshold issue' will be addressed at the same tune as the test claim CSM# 4501, and 4) Mr. Petersen will respond to the analysis, dated March 27, 1997, within 3 or 4 weeks.

Action To Be Taken On State Mandate Claims With Concurrent Statement of Decision

Item 4 *Investment Reports* - CSM-96-358-02 *(Undisputed Test Claim)*

County of Santa Clara and City of Newport Beach
Government Code Section 53646
Chapter 783, Statutes of 1995
Chapters 156 and 749, Statutes of 1996

Mr. Steve Zimmerman, Program Analyst for the Commission, introduced this item.

Parties were represented as follows: Mr. Allan Burdick with the California State Association of Counties SB90 Service for the County of Santa Clara, Mr. Glen Everroad for the City of Newport Beach, and Mr. James Apps for the Department of Finance.

Chairperson Parker, recalling that the Commission members had previously discussed the item, requested that the members address the outstanding issue raised by the State Controller's Office rather than rehearing the entire claim. Mr. Zimmerman noted that staff addressed this specific issue in its supplement to the staff analysis. Chairperson Parker further noted that staff reviewed the federal act and concluded that its original analysis was correct; no federal requirements existed that were comparable to the state requirements. All parties stated their agreement with staff's recommendation to approve the test claim.

Staff's recommendation to approve the test claim and concurrent proposed statement of decision was approved unanimously on motion by Member Sherwood and second by Member cox.

Commission Members' Request To Schedule Reconsideration Of Previously Decided Test Claim: Open Meetings Act - CSM-4257
Government Code Sections 54954.2 and 54954.3
Chapter 641, Statutes of 1986

Item 5a *Request for Disqualification of Commission Member Representing the State Controller pursuant to Title 2, California Code of Regulations, Section 1187.3 (b).*
Filed by the San Diego Unified School District on March 11, 1997

Ms. Higashi introduced this item, explaining that the Commission's regulations permit any party to request the disqualification of any Commission member by filing an affidavit. The regulations also specify that this matter must be placed before the Commission prior to hearing of the substantive issue in which the disqualification is sought.

Parties were represented as follows: Mr. Jim Curmingham for San Diego City Schools and Dr. Carol Berg for Education Mandated Cost Network.

Mr. Cunningham explained that the District's request for disqualification of the Controller stems from the fundamental concept of due process and the right to a fair hearing. He asserted that the State Controller's Office (SCO) cannot be impartial during deliberations on test claims and incorrect reduction claims relating to the Open Meetings Act because the Office is the moving party for the Commission's reconsideration of the Open Meetings Act test claim. He stated that a fair and impartial hearing would be impossible without this disqualification. Chairperson Parker asked Mr. Cunningham to present proof demonstrating why the SCO

should be disqualified and asked the representative of the SCO for a statement.

Member Buenrostro, representing the State Controller's Office, stated that as a Deputy Controller he is authorized to act as the Controller's agent. He is prepared to discuss issues and to act on them, to listen and weigh facts, to consult with the Controller herself and reach conclusions. He has reviewed the record, and is competent to participate in the discussions and to vote. Chairperson Parker asked the other members for a motion.

Member Beltrami asked whether litigation is involved and how similar cases have traditionally been handled. Chairperson Parker responded, stating that each member is to recuse himself or herself, based upon individual assessment of impartiality. The Department of Finance has recused itself in the past, and there have been other attempts by non-Commission members to disqualify members. None have been successful.

Member Cox stated that he was not prepared to suggest that a member step aside; in his mind there was no doubt that a representative of a particular agency or organization has the ability to serve and to render a judgment and decision based upon the facts. He further added that the issue the representative has to weigh and make a decision on is the appearance of conflict. That is up to the representative and department to decide, and not the Commission. He recognized that claimants had other remedies if they believed there had been an impropriety here. Chairperson Parker agreed.

Mr. Cunningham stated that the required first step is to ask the Commission to disqualify a member. Member Beltrami commented that this type of decision should be made by an individual or an agency rather than the Commission,

Chairperson Parker explained that the regulation raises the question for the individual and the body to essentially consider. The burden is on the claimant to make something so unique that the Commission would then take action to disqualify one of its members.

Legal Counsel Gary Hori further clarified the issue. He stated that the regulation provides the parties with an avenue to pose the issue and question before the Comrnission. And having been resolved, through a denial, that party has exhausted its administrative remedies, and therefore, that party has a ticket to then go before the Superior Court. Member Cox observed that the claimant could get 'two bites at the apple' because of this arrangement.

Once again, Chairperson Parker asked for a motion. No motion was made.

Item 5b *Reconsideration of Final Decision*
Open Meetings Act - CSM-4257
Government Code Sections 54954.2 and 54954.3
Chapter 641, Statutes of 1986

Chairperson Parker opened discussion on this item. She expressed concerns about (1) voting on this issue and (2) parties before the Commission not having any finality to an action of the Commission. She showed a general interest in exploring a higher test, e.g., a super majority vote for the Commission to reconsider a prior fmal decision. Member Sherwood stated that

any reason for reconsidering a prior issue would have to be *substantial.* Member Buenrostro stated that, since there was a general interest in talking about the concept, further discussion about what would constitute a super majority or what the process might be should be continued since it was not on the agenda. Member Cox stated he had no interest in re-opening prior decisions. Member Patton agreed.

Ms. Higashi clarified the Commission's rulemaking process.

Chairperson Parker made a motion, seconded by Member Sherwood, to put over item 5b for two months, pending an interim staff report and an agendized item for a rulemaking proposal addressing reconsideration and vote requirements for prior final decisions on test claims. The motion carried unanimously,

Proposed Amendment of Parameters and Guidelines

Item 10 *Annual Parent Notification - CSM 4461*
San Diego Unified School District
Education Code Section 48980, subdivisions (a), (b), & (f)
(as amended by the following claims: CSM-4445, *Interdistrict Transfer Requests: Parent's Employment,* Ed. Code, § 48980, subd, (e); CSM-*4453, Notification to Parents: Pupil Attendance Alternatives,* Ed. Code, § 48980, subds. (e) & *(g);* CSM-4462, *Schoolsite Discipline Rules,* Ed. Code, § 35291 portion only.)
Proposed Amendment to add:
CSM-4474, *Pupil Suspensions, Parent Classroom Visits, Policy Notijication Portion Only,* Ed. Code, § 48900.1; and,
CSM-4488, *Alternative Schools Annual Notijication,* Ed. Code § 58501.

Ms. Piper Rodrian, Program Analyst for the Commission, introduced this item, a consolidation of six notification related test claims. She recommended the Commission adopt a uniform cost rate and a fixed number of pages for each component of reimbursement and noted that claimant was not in full agreement with this recommendation. Notably, the claimant disagreed with the use of a fixed page count for section 48980, subdivision (g), regarding attendance alternatives. Therefore, staff prepared two alternative recommendations for the Commission's consideration. The first alternative eliminated the fixed page count for section 48980, subdivision (g). The second alternative was similar, but set a ceiling on the number of pages.

Parties were represented as follows: Mr. Jim Cunningham for San Diego Unified School District; Dr. Carol Berg for Education Mandated Cost Network; Mr. James Apps and Ms. Caryn Becker for the Department of Finance.

Mr. Cunningham testified that the fixed page count seemed to lessen the burden on districts and the Controller's Office. However, the district did have a problem with a fixed page count for the open enrollment portion of the notification because reimbursement would only be made for three (3) pages. Instead, he proposed that the parameters and guidelines specify that a better approach is an actual page count, or a more realistic number of pages for a fixed page count, i.e. twelve (12). He added that staff's proposed alternative 3 does not avoid having an audit burden on the State Controller's Office to actually do an analysis of the number of actual

pages.

Dr. Berg testified on behalf of the nearly 750 school districts comprising the Network, stating that she favored a fixed page count for simplicity. She added that she did not believe that anybody would be harmed by a fixed page count; consideration had been given to different options for districts over 10,000 and under 10,000. She agreed with Mr. Cunningham's statement that the larger the district, the more school sites, and the more pages. She further explained that most of the Network's school districts run between 3,000 and 20,000 in average daily attendance and added that there are those that are very small.

Ms. Becker indicated that DOF would support the initial staff recommendation, but if that is unreasonable, she would look to alternative 3.

Commission members discussed the following issues: How the Controller's Office would audit district claims; the assumption that larger school districts would require more pages to comply with the mandate; the practical difficulties in determining a fixed page count with a maximum number of pages; a banding concept based on the size of school districts. Because of the Commission members' interest in having staff continue its discussions on banding with the parties and other state agencies, Ms. Higashi stated that staff would work with the parties to bring the parameters and guidelines and proposed statewide cost estimate to the April hearing. Without objection, this item was put over until next month.

Items Postponed Prom February 27, 1997 Hearing

Supplemental Staff Analysis Of Test Claim

Item 6 *Pupil Expulsions* - CSM-4455
San Diego Unified School District
Education Code Sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, and 48918 Chapter 1253, Statutes of 1975 Chapter 965, Statutes of 1977
Chapter 668, Statutes of 1978 Chapter 318, Statutes of 1982
Chapter 498, Statutes of 1983 Chapter 23, Statutes of 1984
Chapter 536, Statutes of 1984 Chapter 622, Statutes of 1984
Chapter 3 18, Statutes of 1985 Chapter 1136, Statutes of 1986
Chapter 383, Statutes of 1987 Chapter 942, Statutes of 1987
Chapter 1306, Statutes of 1989 Chapter 1231, Statutes of 1990
Chapter 909, Statutes of 1992 Chapter 1255, Statutes of 1993
Chapter 1256, Statutes of 1993 Chapter 1257, Statutes of 1993
Arnended to Include:
Education Code Sections 48900.3 and 48900.4
Chapter 146, Statutes of 1994 Chapter 1017, Statutes of 1994
Chapter 1198 Statutes of 1994

Parties were represented as follows: Mr. Jim Cunningham for San Diego Unified School District; Dr. Carol Berg for the Education Mandated Cost Network; Ms. Caryn Becker for the Department of Finance.

A. Education Code Section 48918, Subdivision (b)

Ms. Higashi introduced this item. She reviewed the Commission's October 31, 1996 findings, and the scope of reconsideration, as follows: The Commission previously found that governing boards are required to include in the notice of expulsion hearing a statement of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used in the expulsion hearing. This requirement also applies to those hearings that would occur later on in the process held by another school district when a pupil who has been expelled by one district seeks admission at another district. The Commission determined that this requirement imposed a reimbursable state mandated program because the requirement exceeded minimal federal due process. At the December 1996 hearing, the Commission agreed to allow staff to revisit this issue, to examine its relationship to federal law. Staff examined federal law and concluded that the Commission's prior determination should not be changed. However, regarding the right of the parent or guardian to inspect the documents to be used in the expulsion hearing, or preadmission hearing, staff found that, depending on who made the request to see the documents, that it was a federal requirement. Therefore, staff found that a request consistent with the Family Educational Rights and Privacy Act (FERPA) requirements would not constitute a reimbursable state mandated program. However, to the extent that these documents were provided to a person outside of FERPA, staff concluded that it would constitute a reimbursable state mandated program.

Mr. Cunningham. Disagreed with the approach used by staff to determine whether or not FERPA is a federal mandate. He explained that FERPA does not require a school district to provide the right to inspect documents -- FERPA states that if you want federal funds you cannot have a policy that would interfere with a parent's right to inspect documents. Second, FERPA says that the parent has a right to inspect documents; it does not grant a right to copies in every case and it authorizes school districts to charge a copy fee for documents. On the other hand, the test claim statute does not address the fee issue; it does not authorize districts to charge a fee. Therefore, claimant asserted that it is a broader requirement than FERPA. Lastly, Mr. Cunningham explained that there is some disagreement on the approach of how to determine what records are subject to FERPA. He further suggested that it be stated, that if there is a right to access or right to inspect under FERPA, that right to inspect is not reimbursable. He concluded that there is no recommendation from staff that, when a document which is not an education record is provided, districts should be entitled to reimbursement.

Ms. Caryn Becker, Department of Finance, agreed with the amended staff recommendation.

In response to a question from Member Beltrami, Ms. Higashi explained that it is staff's belief that under federal and state law, districts are authorized to charge certain people for records. to allow access to the parent or guardian or adult student from the statute's requirement for access to be provided to the pupil or the pupil's parent or guardian, irrespective of age, and from staff's conclusion that schools are not authorized to charge a pupil who is under 18 or a parent or guardian of a pupil who is 18, and therefore, providing copies to such individuals would be reimbursable.

Mr. Cunningham argued that this is a very specific statute and that it overrides the more general California provisions for pupil records.

Mr. Hori reviewed the statutes in question. The California version of FERPA is broader than

the federal law. This law states that a parent shall have the right to inspection and a right to copies with a five-day turnaround time imposed for compliance. This is preexisting law, it stems from federal law, and it was on the books before 1975. The federal law was enacted in 1974. California imposed and enacted certain Education Code sections to be consistent with federal law.

Ms. Higashi further clarified that even Without the words in Education Code section 48918, subdivision (b), the parent or guardian or adult student would have the right to obtain a copy of those records to be used in an expulsion hearing because the federal definition of a record very clearly includes those documents which are part of the disciplinary action. She added that federal law does not include the records of a law enforcement investigation within this definition, unless it pertains to a pupil disciplinary action, Mr. Cunningham added that if an investigatory report was prepared by law enforcement, not for the purpose of pupil discipline, it would be outside of the federal definition.

On motion by Member Sherwood and second by Member Beltrami, staff's recommendation concerning Education Code section 48918, subdivision (b), was unanimously adopted.

B . Education Code Sections 48918, Subdivision (g) and 48915.1

Ms. Higashi introduced this item. She stated that there was no question that governing boards are required to make a record of an expulsion and preadmission determination hearing by any means, so long as a reasonably accurate and complete transcription of the record could be made. The question before the Commission was defined as whether this is a state requirement or a federal requirement. The Commission's original October 31, 1996 determination was based on the adoption of staff's recommendation that this provision was enacted as part of the original 1975 enactment when the Legislature responded and imposed the procedural due process requirements on school districts. She further summarized staff's basis for this conclusion, reviewed case law cited, and acknowledged that some of the cases were not directly on point. She further explained that claimant had cited a different set of cases.

Mr. Cunningham acknowledged staff's statement that the U.S. Supreme Court has not spoken on this issue. He further asserted that the *Mathews v. Eldridge* three-part balancing test, as used in *Jaksa,* is the proper analysis to be used. He added that *Goss* v. *Lopez* did not mention the need for a recording in their indication of procedures which might be required in an expulsion hearing. He criticized staff's reliance upon an old 9th Circuit case (Black *Coalition v. Portland)* because it did not include a written record as part of the proceedings. In conclusion, he stated that although there is not complete agreement by the courts, the better reasoning is that, this is not a component of federal due process and districts are entitled to reimbursement.

Ms. Caryn Becker, Department of Finance, stated her agreement with the staff recommendation.

Ms. Higashi closed by rebutting Mr. Cunningham's reliance upon Goss and *Mathews v. Eldridge.* After discussion of the alternatives, no action was taken by the Commission to change its original determination of October 3 1, 1996.

C. Education Code Section 48918, Subdivision (j) and Section 48915.1

Ms. Higashi introduced the item, explaining that staff is recommending a change in the October 31, 1996 determination, based on its reexamination of this provision which specifies that the governing board shall maintain a record of each expulsion. Mr. Cunningham stated his agreement with staff's recommendation.

On motion of Member Sherwood, second by Member Patton, staff's recommendation was adopted unanimously.

Supplemental Staff Analysis Of Test Claim and Proposed Statement of Decision

Item 7 *Pupil Expulsion Appeals* - CSM-4463
San Diego Unified School District and
San Diego County Office of Education
Education Code Sections 48919, 48920, 48921, 48922, 48923, and 48924
Chapter 1253, Statutes of 1975
Chapter 965, Statutes of 1977
Chapter 668, Statutes of 1978

Parties were represented as follows: Mr. Jim Cunningham for San Diego Unified School District; Dr. Carol Berg for the Education Mandated Cost Network; Ms. Caryn Becker for the Department of Finance.

Ms. Higashi introduced this item, explaining that the October 31, 1996 determination was reviewed in light of FERPA. Staff noted that the second paragraph of section 48919 does not distinguish between pupils who are adults or who are under 18 years of age. Although the statute provides districts with the authorization to recover costs of the transcript, it does not include other documents and records. Thus, staff now recommends that districts be reimbursed for making those documents available to pupils under 18 years of age.

Mr. Cunningham stated that he had the same three objections made in the prior claim. First, the Commission is using a double standard as to: 1) whether there is any discretion when looking at federal standards; 2) the definition of what is and what is not covered as an education record under FERPA; and 3) the idea of copy costs altogether. He recognized that section 48919 authorizes districts to charge for transcripts, but not other documents. He explained that districts should be reimbursed for the costs of providing copies to the other people who are covered under FERPA (namely parents/guardians, adult students.)

Ms. Caryn Becker, Department of Finance, agreed with staff's recommendation.

On motion of Member Beltrami, second by Member Sherwood, staff's recommendation was adopted unanimously.

Before proceeding to the proposed statement of decision, Mr. Cunningham requested the Commission make a finding concerning the statutory requirement for the transcripts to be provided to students free of charge in specified situations, Although these transcripts are currently being paid under an appropriation that was part of the original statute, claimants requested that the Commission find that those are reimbursable activities. Ms. Higashi responded that the staff analysis acknowledged the fact that reimbursement can be obtained for

this activity, but does not make such finding. Mr. Cunningham stated that he was concerned that the Legislature would not continue appropriating funds for this mandate.

Ms. Higashi pointed out that if this issue were before the Commission, her understanding of constitutional law principles would not permit reimbursement because it would be a denial of equal access to an appeals process if a person were indigent. She added that the same body of case law that allows indigents access to the courts would require transcripts to be made available to pupil's whose parents are indigent. Mr. Hori expressed his concern that if the requirement were before the Commission and a determination is made that it is a mandated program, another finding would have to be made that there are no costs mandated by the state because it is fully funded by the appropriation. Ms. Higashi observed that, at least for the indigent pupil, her staff analysis would find that a constitutional right of fair access to an appeals procedure would require districts to provide the transcript even absent the statute.

Chairperson Parker stated that she was not prepared to make a decision on Mr. Cunningham's request without a staff analysis. She asked Mr. Cunningham if he wanted this to occur, and he withdrew his comment.

On motion of Member Sherwood, second by Member Patton, the Commission adopted the proposed statement of decision unanimously.

Item 8 *Pupil Behavioral Exclusions* and *Pupil Health Exclusions*
CSM-4457 and CSM-4477
San Diego Unified School District
Education Code Sections 48213 and 48214
Chapter 668, Statutes of 1978

Ms. Paula Higashi, presented the item. She explained that the Commission's October 31, 1996 action on this test claim was inconsistent with its earlier majority vote on the Pupil Expulsions test claim (CSM-4455). Therefore, staff presented a revised staff analysis consistent with its review of FERPA, and the Expulsions test claim.

Parties were represented as follows: Mr. Jim Cunningham for San Diego Unified School District; Dr. Carol Berg for the Education Mandated Cost Network; Mr. Jim Apps for the Department of Finance,

Mr. Cunningham stated that he had only two of the same or similar arguments already made concerning FERPA. First, this statute only grants a right to inspect. Second, claimant does not agree that all documents used in the exclusion hearing are education records; and recommends that the definitions be left in FERPA and not be redefined in these documents.

Mr. Jim Apps, Department of Finance, agreed with the staff analysis.

On motion by Member Patton and second by Member Beltrami, the Commission unanimously approved the supplement to the staff analysis to correct the October 3 1, 1996 analysis.

Mr. Cunningham stated that the proposed statement of decision accurately reflected the Commission's action at the October 31, 1996 hearing, and staff's recommendations in the supplemental analysis.

The proposed statement of decision was unanimously adopted upon motion by Member

Sherwood and second by Member Beltrami.

Other Business: Executive Director's Report

Ms. Higashi reported that staff was reviewing legislation sponsored by the SB 90 Network and would provide comments to its sponsors.

Closed Session

At 1: 11 p.m., Chairperson Parker adjourned the Commission meeting to closed executive session for purposes of discussion of personnel.

Open Session

At 1:40 p.m., Chairperson Parker reconvened the open session. She reported that items of personnel were discussed in closed session. She announced that the. Comrnission adopted unanimously the decision to offer Paula Higashi the position of executive director and that she is now the ED of the Commission on State Mandates.

There being no further business, the meeting was adjourned at 1:41 p.m.

Paula Higashi
Executive Director

COUNTY OF ORANGE

S. E. LEWIS
AUDITOR-CONTROLLER

FINANCE BUILDING
630 NORTH BROADWAY
P. O. BOX 567
SANTA ANA, CALIFORNIA 92702

TELEPHONE: 834-2450
AREA CODE 714

OFFICE OF AUDITOR-CONTROLLER

September 21, 1987

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RECEIVED
SEP 23 1987
COMMISSION ON STATE MANDATES

Commission on State Mandates
1130 "K" Street, Suite LLSO
Sacramento, CA 95814

TO: Stephen R. Lehman
Assistant Executive Director

SUBJECT: Test Claim of Santa Clara County; Mental Health Services to Handicapped and Disabled Students (Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Title 2 California Administrative Code Division 9)

Please send me a copy of all past and future correspondence concerning this test claim, which is tentatively scheduled for a January 1988 commission hearing. This county is an "other interested party" because a test claim for which we are the claimant, Chapter 1598, Statutes of 1982, also pertains to county mental health programs.

Thank you for your cooperation.

Samuel R. Brandt

Samuel R. Brandt
Single Audit, Mandated Costs & Grants

SRB:eg
cc: Timothy P. Mullins, Health Care Agency
Linda Boyd, Health Care Agency
Frank Murillo, Health Care Agency
Michael R. Jensen, Auditor-Controller
Victor T. Bellerue, County Counsel
Jim McConnell, Auditor-Controller
James Schwartz, County of Santa Clara, Mental Health Bureau
Susan Chapman, County of Santa Clara, County Counsel
Fred Archer, County of Santa Clara, SB 90 Coordinator
Allan Burdick, CSAC
Andrea Hix, CSAC SB 90 Service
Paul Robinson, Fresno County
A. B. Brand, San Bernardino County

STATE OF CALIFORNIA

FILE COPY

GEORGE DEUKMEJIAN, Governor

COMMISSION ON STATE MANDATES
1130 K STREET, SUITE 1150
SACRAMENTO, CA 95814
(916) 323-3562

December 16, 1987

Susan A. Chapman, Deputy County Counsel
County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110

RE: CSM-4282
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Ms. Chapman:

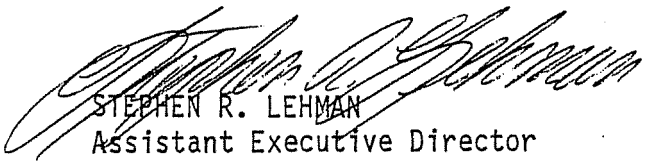
The above entitled test claim is being continued from the commission's hearing of January 28, 1988. The reason for this continuance is that some of the issues in this claim appear to be a part of the litigation in Huff v. Commission on State Mandates (Sacramento Superior Court No. 352795). For example, an underlying issue in both of these matters is whether Section 504 of the Rehabilitation Act of 1973, and Public Law (PL) 94-142 constitute federal mandates. Both of these federal laws were at issue in the Special Education claim heard by the Board of Control which involved Chapter 797, Statutes of 1980, and Chapter 1247, Statutes of 1977. The board reached the decision that no federal mandate resulted from Section 504 and PL 94-142. This mandate finding is being challenged in the Huff v. Commission on State Mandates case, and this issue may be addressed by the court.

Therefore, at the commission's January hearing, the commission will discuss possible options on hearing this test claim. For example, the commission may want to assign the claim to an Administrative Law Judge for hearing, or to a hearing panel of one or more commissioners, or perhaps continue action on the claim until the case of Huff v. Commission on State Mandates is resolved. Currently, we are developing an analysis of the various options the commission

may wish to utilize in adjudicating this claim. This analysis will be sent to you approximately one week before the January hearing. The merits of the test claim will not be discussed at this hearing.

If you have any questions, please feel free to contact me.

Sincerely,



STEPHEN R. LEHMAN
Assistant Executive Director

SRL:do:0147s

cc: Jim Apps, Department of Finance
Glen Beatie, State Controller's Office
Phil Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office
Lynn Whetstone, Department of Mental Health
William Pieper, Department of Education
Allan Burdick, County Supervisors Association of California
Andrea Hix, David M. Griffith & Associates

State of California

FILE COPY

Memorandum

To : Clifford L. Allenby, Agency Secretary
Health and Welfare Agency
1600 Ninth Street, Room 450
Sacramento, CA 95814

Date: January 5, 1988

From : Commission on State Mandates, 1130 K Street, Suite LL-50, Sacramento, CA 95874-3927

Subject : Test Claim of Santa Clara County
Chapter 1747, Statutes of 1984; Chapter 1247, Statutes of 1985;
'Title 2, CAC, Division 9
Handicapped and Disabled Students

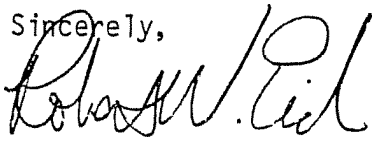
The Commission on State Mandates has received a test claim from the County of Santa Clara, alleging that counties have incurred costs mandated by the state as a result of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Division 9 of Title 2, of the California Administrative Code. These statutes shifted the responsibility of providing psychotherapy and other mental health services from the Department of Education to the Department of Mental Health. The statutes also shifted the responsibility of providing residential care for seriously emotionally disturbed students from the Department of Education to the Department of Social Services.

This claim was originally scheduled for hearing by the commission on January 28, 1988. However, after reviewing recommendations submitted by the Department of Finance, and the Department of Mental Health, it was decided that the issues involved were complex and difficult, and may be impacted by ongoing litigation. Therefore, the merits of this claim will not be discussed at the commissions January hearing, instead the commission will discuss various options for adjudicating the claim.

This postponement on the merits of the claim allows us the opportunity to request recommendations from your office, as well as the Department of Health Services and the Department of Social Services. Since the above mentioned departments are under the jurisdiction of your agency, you may wish to coordinate the development of recommendations issued by the departments within your agency, or alternatively, you may wish to submit one recommendation that represents the view of all applicable departments within the Health and Welfare Agency. Because we are unsure of what action the commission will take at its January hearing, we cannot provide you with a due date for the recommendations. However, I am enclosing for your review and distribution to the appropriate departmental personnel in Health Services and Social Services, a copy of the claim, the recommendations submitted by the Department of Finance, and the Department of Mental Health, and a copy of a report by the Auditor General regarding the adequacy of funding for this program.

Prior to the commission's January hearing, you will receive a copy of the staff analysis on the various options the commission may wish to utilize in adjudicating this claim. After the hearing, you will be informed of the commission's decision. At that time we will be able to provide you with a date the recommendation(s) will be required, Finally, please inform us of the contact person in your agency. If you have any questions, please do not hesitate to contact myself or Stephen Lehman, Assistant Executive Director, at 323-3562.

Sincerely,



ROBERT W. EICH
Executive Director

RWE:jb:0148s

Enclosures: County of Santa Clara Test Claim
Department of Finance Recommendation
Department of Mental Health Recommendation
Department of Education Recommendation
County of Santa Clara Rebuttal
Auditor General's Report

cc: Jim Apps, Department of Finance
Lynn Whetstone, Department of Mental Health

State of California

MEMORANDUM

Date : September 23, 1992

RECEIVED
SEP 2 8 1992
COMMISSION ON
STATE MANDATES

To Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates

From : Department of Finance

Subject: Proposed Statewide Cost Estimate for Claim No. CSM-4282, based on Chapter 1747/84, Chapter 1274/85 and Title 2, Division 9, Sections 60000 et seq., CCR, relating to "Handicapped and Disabled Students"

The above-cited bases of this claim essentially require counties to provide mental health assessments, treatment, and case management services to handicapped children who are in need of such supportive services in order to benefit from their "Individualized Education Program" (IEP). The Commission determined that county participation in the IEP process is a state-mandated program and that any costs related thereto are fully reimbursable. The Commission also determined that any mental health treatment required by an IEP is subject to the Short-Doyle Program cost sharing formula and, therefore, only the counties' Short-Doyle share (i.e., 10 percent) of any mental health treatment costs will be reimbursed by the state. The Commission adopted parameters and guidelines to reflect this decision and sent them to each of the 58 counties along with instructions on how to use them for purposes of developing an estimate of the costs to each county. We understand that 20 counties containing approximately 75 percent of the state's total population responded to this survey and provided the data upon which the statewide cost estimate of $75.7 million for the 1986-87 through 1992-93 fiscal years is based.

We would note that Section VIII. in the parameters and guidelines titled "Offsetting Savings and Other Reimbursements" contained not only the standard "boilerplate" language that is found in all parameters but also directed the counties to deduct from their estimated costs "...any direct payments (categorical funding) received from the State which are specifically allocated to this program...(and) . ..any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance, and Medi-Cal payments), which is received from any source, e.g., federal, state, etc." We assume that this admonition was observed by the responding counties but have no information to substantiate whether any or all counties did so. In its August 21, 1992 memorandum to you, the Department of Mental Health questions whether counties did take into account all of the categorical funding allocated to them by the state, but notes that when actual claims are submitted to the State Controller, they must clearly account for such funding. In addition, the Controller would be in a position to audit those claims for total conformity to the parameters and guidelines.

Because of the Department of Mental Health's reservations about the accuracy of the $75.7 million estimate, we cannot concur in that number. We understand, however, that the Commission needs to fulfill its statutory obligation in this matter by adopting a statewide cost estimate and requesting funding therefor in

its 1993 claims bill. On that basis, we would have no problem with the Commission adopting an estimate solely for that purpose, recognizing that the amount may be adjusted before that bill is enacted if additional information becomes available.

If you have any questions or comments regarding this memorandum, please contact Robert Schladale at 445-6423 or James Apps at 324-0043.

Fred Klass
Program Budget Manager

cc: Lynn Whetstone, Department of Mental Health
Carl Elder, Department of Mental Health

LR:CORR\MCSM4282.623

County of Santa Clara
Office of the County Counsel

County Government Center, East Wing
70 West Heddlng Street
San Jose. California 95 1 1 0-I 770
(408) 299-2 1 1 1
(408) 292-7240 (FAX)

Steven M. Woodside
County Counsel

M E M O R A N D U M

DATE: September 23, 1992

TO: MR. STEPHEN R. LEHMAN
Assistant Executive Director
Commission on State Mandates

FROM: SANTA CLARA COUNTY

SUBJECT: Proposed Statewide Cost Estimate for Claim No. CSM-4282, based on Chapter 1747/84, Chapter 1274/85 and Title 2, Division 9, Sections 60000 et seq., CCR, relating to "Handicapped and Disabled Students"

Santa Clara County submits that the categorical funding for the SEP program must be applied to the entire cost of operating the program, i.e. to the 90% Short-Doyle State portion, the 10% portion, and to case management, evaluation, and IEP team participation. This County has taken the categorical funding in to account as directed by the parameters and guidelines. However, the application of the funding still leaves a substantial shortfall in the program.

For instance, in the 1990 fiscal year, this county received 1.1 million (approx.) for operating the SEP Program. Treatment costs alone were 2.4 million. Therefore, there is no categorical funding left to be applied to the estimate of unreimbursed . costs. If the Commission were to sustain the position taken by the Department of Mental Health (DMH), this County would end up owing money to DMH despite the fact that the total cost of the program far exceeded the amount of the SEP allocation.

The County, therefore, rejects DMH's method of deducting the SEP categorical allocation from its estimate and urges this Commission to also reject such an absurd interpretation of its decision.

Respectfully submitted

RIMA H. SINGH
Deputy County Counsel

Chief Assistant County Counsel: Ann Miller Ravel
Chief Deputies: Robert J. Menifee, Susan G. Levenherg, William 1. Anderson

AUDITOR/CONTROLLER-RECORDER

COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER . 222 West Hospitality Lana, Fourth Floor
San Bernardino, CA 92415-0018 (909) 387-8322
RECORDER 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 (909) 387-8306

ERROL J. MACKZUM, CPA
Auditor/Controller-Recorder
ROBERT L. CALDERON, CIA, CISA
Assistant Auditor/Controller-Recorder

September 18, 1996

RECEIVED
SEP 23 1996
COMMISSION ON STATE MANDATES

LUCILA LEDESMA, Program Analyst
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: **CSM-4282 HANDICAPPED & DISABLED STUDENTS**
Survey for Statewide Cost Estimate
Due to Amended Parameters & Guidelines

Dear Ms. Ledesma,

I am proposing the attached survey to determine the need and amounts for a Statewide Cost Estimate for the above referenced matter. As discussed with Kirk, the survey should be conducted for fiscal years 1994-95 through 1997-98.

I spoke with Brad Burgess of David M. Griffith & Associates and he indicated that their CSAC-SB90 Service assists several counties with preparing their reimbursement claims. They would be willing to distribute and coordinate the surveys for those counties. This may help expedite their responses. Those counties are Riverside, Orange, San Francisco, Marin, Napa, Monterey, and Stanislaus.

I also called Jeff Yee of the Controller's Office to inquire if the latest years' state budget appropriations had been more than adequate for the amounts claimed by the counties (and possibly avoid the need for the survey). Receiving no response, I reviewed the payment status of our reimbursement claims for 1994-95 and 1995-96. Based on remittance advices from the Controller's Office, they paid only 8 1% and 87 % (respectively) of our estimated claims for those years. From that limited data, it appears that the survey is still necessary.

Please let me know if I can do anything further to assist in this effort.

Sincerely,

Marcia C. Faulkner

MARCIA C. FAULKNER
Reimbursable Projects Manager
(909) 386-8850
MCF(C:\DATA\SB90\1747SCE.CSM)

JAMES J. HLAWEK
County Administrative Officer

Board of Supervisors
MARSHA TUROCI . . . . First District
JON D. MIKELS . . . . Second District
JERRY EAVES . . . . Fifth District
BARBARA CRAM RIORDAN . . . Third District
LARRY WALKER . . . . Fourth District

SUGGESTED LANGUAGE FOR SURVEY REQUEST LETTER

RE: Statewide Cost Estimate
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

On August 29, 1996, the Commission on State Mandates approved the attached, amended, Parameters & Guidelines for the above referenced program. This amendment clarifies that costs for administration and/or overhead are reimbursable for this program when using either the Actual Costs method or the Cost Report method of claiming reimbursement. These costs are reimbursable even though they may not be included in the Unit Cost Rates calculated for the various service providers in accordance with the Department of Mental Health CR/DC Manual and other state and federal regulations.

Also enclosed is a survey form requesting information regarding the additional administrative and/or overhead costs which can be claimed for fiscal years 1994-95 through 1997-98. The request for the amendment to the Parameters & Guidelines is first effective for the 1994-95 fiscal year. Further, obtaining any additional appropriation as a result of this survey could not occur until the 1997 budget.

Please complete the survey form and return it to this office no later than December 6. 1996. We would like to emphasize that this request is being made for the purpose of estimating the additional cost for this mandate. Therefore, no backup documentation needs to be provided for the purpose of this survey. The State Controller's Office will be issuing actual claiming instructions and documentation requirements for your subsequent filing of the reimbursement claims.

Your prompt assistance with this request is appreciated. If you have any questions, please contact.. . . . .

STATE OF CALIFORNIA PETE WILSON, Governor

COMMISSION ON STATE MANDATES
1414 K Street, Suite 315
SACRAMENTO, CA 95814
(916) 323-3562

November 19, 1996

Ms. Marcia Faulkner
Reimbursable Projects Manager
County of San Bernardino
222 W. Hospitality Lane, 4th Floor
San Bernardino, California 924 15-0018

Re: CSM 4282
CCR, Div. 9, Sections 60000 -60200
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Disabled and Handicapped Students

Dear Ms. Faulkner:

The State Controller's Office has advised CSM that they do not have sufficient information on which to base a revised statewide cost estimate. It will therefore be necessary to resurvey the counties. Given the need to resurvey, staff have tentatively scheduled the statewide cost estirnate for hearing on March 27, 1997. Staff will advise you as far in advance as possible if that date is to be changed. Your patience is appreciated.

Sincerely,

K.G. Stewart

Kirk G. Stewart
Executive Director

c: Mailing List

f/Mandates/Lucila/4282/Hearsch.doc

Originated: 12/05/95
Updated: 11 /19/96

MAILING LIST

CSM-4282-Admendment Request for Parameters and Guidelines
Chapter 1747, Statutes 1984
Chapter 1274, Statutes 1985
CCR, Div. 9, Sec 60000-60200
Handicapped and Disabled Students

Mr. Jim Apps A-15
Department of Finance
915 L Street, 8th floor
Sacramento, CA 95814
Tel: 916/445-8913
Fax: 916/327-0225

Mr. John Korach **(B-8)**
Div. Of Accounting & Reporting
State Contrller's Office
3301 C Street Room 501
Sacramento CA 958 16
Tel: 916/323-2849
Fax: 916/323-4807

Norman L. Black **(A-31)**
Department of Mental Health
Legal Office
1600 9th Street, Room 153
Sacramento, CA 95814
Tel: 916/654-23 19
Fax: 916/653-7212

Ms. Marcia C. Faulkner
Office of the Auditor/Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino, CA 92415-00 18
Tel: 909/386-8850
Fax: 909/386-8830

California State Association of Counties
(CSAC)
1100 K Street, Suite 101
Sacramento, CA 95814
Tel: 916/327-7500
Fax: 916/441-5507

INTEREXTED PARTY:

Mr. Steve Conrad SB-90 Coordinator
County of Santa Clara
Dept of Finance Controller-Treasurer Div
County Government Center
70 W. Hedding East Wing 2nd Floor
San Jose, CA 95 110
Tel: 408/299-2541 Ext 151
Fax: 408/289-8629

Mr. Floyd Shirnomura **(D-8)**
Attorney General's Office
1300 I Street 17th Floor
Sacramento Ca 95814
Tel: 916-324-5390
Fax: 916-324-8835

Originated: 12/05/95
Updated: 10/1/96

MAILING LIST

CSM-4282-Admendment Request for Parameters and Guidelines
Chapter 1747, Statutes 1984
Chapter 1274, Statutes 1985
CCR, Div. 9, Sec 60000-60200
Handicapped and Dbabled Students

Mr. Jim Apps A-15
Department of Finance
9 15 L Street, 8th floor
Sacramento, CA 95814
Tel: 916/445-8913
Fax: 916/327-0225

Mr. Glenn Engle
Div. Of Accounting & Reporting
State Contrller's Office
3301 C Street Room 501
Sacramento CA 95816
Tel: 916/323-2849
Fax: 9 16/323-4807

Norman L. Black A-3 1
Department of Mental Health
J .egal Office
1600 9th Street, Room 153
Sacramento, CA 958 14
Tel: 916/654-23 19
Fax: 916/653-7212

Ms. Marcia C. Faulkner
Office of the Auditor/Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino, CA 92415-0018
Tel: 909/386-8850
Fax: 909/386-8830

California State Association of Counties
(CSAC)
1100 K Street, Suite 101
Sacramento, CA 95814
Tel: 916/327-7500
Fax: 916/441-5507

INTERESTED PARTY:
Mr. Steve Conrad SB-90 Coordinator
County of Santa Clara
Dept of Finance Controller-Treasurer Div
County Government Center
70 W. Hedding East Wing 2nd Floor
San Jose, CA 95 110
Tel: 408/299-2541 Ext 151
Fax: 408/289-8629

COST ESTIMATE! SURVEY FORM

Amended Parameters & Guidelines
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, California Code of Regulations, Division 9
Handicapped and Disabled Students

Name of County _____

Address _____

Contact Person _____ Telephone _____

Estimated administrative and/or overhead costs are now expressly allowed by the Parameters & Guidelines amended August 29, 1996. These are the administrative/overhead costs which are allocated to this mandated program but are excluded from the Unit Cost Rates pursuant to state and federal regulations when using the Cost Report Method of claiming reimbursement.

Fiscal Yr	Total Claimed according to ORIGINAL Ps&Gs	Additional Costs for Administration/ Overhead allowed by AMENDED Ps&Gs	Total Claimable
1994-95			
1995-96			
1996-97*			
1997-98*			
TOTALS			

*For Fiscal Years 1996-97 and 1997-98, provide estimates for all amounts.

Please complete form and return by December 6, 1996 to:

Commission on State Mandates
1414 K Street, Suite 315, Sacramento, CA 95814
Attn.: Lucila Ledesma