



**RECEIVED**  
April 15, 2016  
**Commission on  
State Mandates**

# County of San Diego

THOMAS E. MONTGOMERY  
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL  
1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101  
(619) 531-4860 Fax (619) 531-6005

ATTORNEY NAME  
TITLE  
Direct Dial: (619) 531-xxxx  
E-Mail: xxxx@sdcounty.ca.gov

VIA E-FILING (<http://csm.ca.gov/dropbox.shtml>)

April 15, 2016

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Seriously Emotionally Disturbed Pupils (SED): Out-of-State Mental Health Services 10-9705-I-01 and 13-98705-I-05

Dear Ms. Halsey:

On behalf of the County of San Diego (County), please accept the following comments to the draft proposed decision on the above referenced matter. The County disagrees with the conclusion and recommendations in the draft proposed decision.

The County asserts that it is entitled to the full amount of costs claimed for reimbursement for the placement of pupils in certain out-of-state residential facilities that are organized and operated on a non-profit basis for the reasons cited in the County's incorrect reduction claim filing.

The County also requests that the Commission consider the correct method of reviewing evidence in making its decision on the merits of this matter.

The draft proposed decision sets forth a judicial standard of review that requires the Commission to determine whether the Controller's reduction of costs is correct as a matter of law and not "arbitrary, capricious or entirely lacking in evidentiary support." However, there is no statutory or regulatory authority cited for this standard. This standard is one that an appellate court may apply to *its* review of a Commission decision; however, such a high standard of review does not apply to the administrative body that is hearing evidence. Here, the Commission must hear the matter *de novo* in accordance with California Code of Regulations Title 2, Chapter 2.5, Article 7.

The draft proposed decision states that with regard to the Controller's audit decisions, "the Commission must determine whether they were arbitrary, capricious or

entirely lacking in evidentiary support”.<sup>1</sup> In support of this standard, the draft proposed decision reasons that this standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency. The draft proposed decision states that courts have found when reviewing alleged abuse of discretion deference is given to the agency’s authority and expertise and a “court may not reweigh all of the evidence or substitute its judgment for that of the agency.”<sup>2</sup> This standard of review, however, is contrary to the statutes and regulations that define the Commission’s quasi-judicial hearing procedures set forth in California Code of Regulations Title 2, Chapter 2.5, Article 7.

The robust evidentiary hearing authority found in Article 7 of the Commission’s regulations contradicts the use of an abuse of discretion standard during the Commission’s hearing. Article 7 details a robust hearing procedure that allows for an independent review of the facts and law which is much more than a review that provides such a high level of deference to the agency’s authority and expertise. Here, the hearing procedures are detailed and specific and provide for the presentation of evidence, presence of witnesses, issuance of subpoenas, and representation at hearing.

In *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4<sup>th</sup> 1150, 1156-1158, the Sheriff contended that the Civil Service Commission should have reviewed his department’s actions regarding a disciplinary matter for substantial evidence rather than conduct an independent review of the facts and law. However, the court found the Commission conducted a full evidentiary hearing to ascertain the basis for the Sheriff’s charges with the opportunity to present evidence, hear sworn witness testimony, and be represented by counsel. The court found that the Civil Service Commission’s authority was more consistent with an independent review rather than with a substantial evidence review of the Sheriff’s termination orders. Otherwise, “there would be no need for the statute to authorize the Commission’s adjudicatory review, and the commission could simply exist to rubberstamp the Sheriff’s disciplinary orders.”<sup>3</sup>

Much like the Civil Service Commission in *Kolender*, the Commission on State Mandates conducts a full evidentiary review. It is a quasi-judicial proceeding with the submission of evidence<sup>4</sup>, swearing and testimony of witnesses, issuance of subpoenas<sup>5</sup>

---

<sup>1</sup> See page 13, Draft Proposed Decision.

<sup>2</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4<sup>th</sup> 534, 547-548.

<sup>3</sup> *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4<sup>th</sup> 1150, 1156-1158

<sup>4</sup> California Code of Regulations Title 2, Chapter 2.5, Article 7 §1187.5

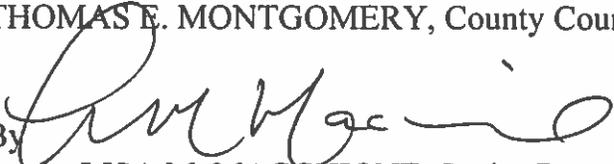
<sup>5</sup> California Code of Regulations Title 2, Chapter 2.5, Article 7 §1187.7

and representation at hearing<sup>6</sup>. This is not and should not be a rubberstamp of the Controller's audit findings, nor should the Commission restrict itself to an inapplicable appellate standard of weighing and reviewing evidence. Therefore, the standard of review must be an independent review without limiting itself to whether the Controller "abused its discretion."

The County requests that the draft proposed decision be rewritten taking into Commission's full authority to make an independent determination of the Controller's actions in this matter.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By   
LISA M. MACCHIONE, Senior Deputy

LMM  
10-00518

---

<sup>6</sup> California Code of Regulations Title 2, Chapter 2.5, Article 7 §1187.8

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 18, 2016, I served the:

**Claimant Comments on the Draft Proposed Decision**

*Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services,*  
10-9705-I-01 and 13-9705-I-05

Government Code Section 7576, as amended by Statutes 1996, Chapter 654;

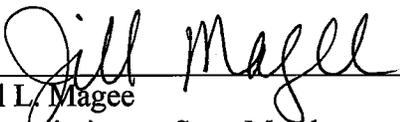
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110

Fiscal Years: 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006

County of San Diego, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 18, 2016 at Sacramento, California.

  
\_\_\_\_\_  
Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/24/16

**Claim Number:** 10-9705-I-01 Consolidated with 13-9705-I-05

**Matter:** Seriously Emotionally Disturbed Pupils (SEDS): Out of State Mental Health Services (97-TC-05)

**Claimant:** County of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

**Alfredo Aguirre**, Director, *County of San Diego*  
Behavioral Health Services, 3255 Camino Del Rio South, San Diego, CA 92108  
Phone: (619) 563-2766  
alfredo.aguirre@sdcounty.ca.gov

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Lacey Baysinger**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Julia Blair**, Senior Commission Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
julia.blair@csm.ca.gov

**Danielle Brandon**, Budget Analyst, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
danielle.brandon@dof.ca.gov

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608  
allanburdick@gmail.com

**Gwendolyn Carlos**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-0706  
gcarlos@sco.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630  
Phone: (916) 939-7901  
achinners@aol.com

**Marieta Delfin**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-4320  
mdelfin@sco.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
susan.geanacou@dof.ca.gov

**Dillon Gibbons**, *Legislative Representative, California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814  
Phone: (916) 442-7887  
dillong@cnda.net

**Mary Halterman**, *Principal Program Budget Analyst, Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Mary.Halterman@dof.ca.gov

**Justyn Howard**, *Program Budget Manager, Department of Finance*

915 L Street, Sacramento, CA 95814  
Phone: (916) 445-1546  
justyn.howard@dof.ca.gov

**Edward Jewik**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012  
Phone: (213) 974-8564  
ejewik@auditor.lacounty.gov

**Jill Kanemasu**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-9891  
jkanemasu@sco.ca.gov

**Anne Kato**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-5919  
akato@sco.ca.gov

**Jay Lal**, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0256  
JLal@sco.ca.gov

**Lisa Macchione**, *County of San Diego*

**Claimant Representative**

Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101  
Phone: (619) 531-6296  
lisa.macchione@sdcounty.ca.gov

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
gneill@counties.org

**Andy Nichols**, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Christian Osmena**, *Department of Finance*

915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

**Arthur Palkowitz**, *Artiano Shinoff & Holtz, APC*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@sashlaw.com

**Keith Petersen**, *SixTen & Associates*

P.O. Box 340430, Sacramento, CA 95834-0430  
Phone: (916) 419-7093  
kbsixten@aol.com

**Jai Prasad**, *County of San Bernardino*

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018  
Phone: (909) 386-8854  
jai.prasad@atc.sbcounty.gov

**Tracy Sandoval**, *County of San Diego*

1600 Pacific Highway, Room 166, San Diego, CA 92101  
Phone: (619) 531-5413  
tracy.sandoval@sdcounty.ca.gov

**Carla Shelton**, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 327-6490

carla.shelton@csm.ca.gov

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849

jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

DSpeciale@sco.ca.gov