STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

July 26, 2016

Mr. Oscar Esquivel
Business Services and Support
Chula Vista Elementary School District
84 East J Street
Chula Vista, CA 91910-6199

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**
School District of Choice: Transfers and Appeals, 11-4451-I-05
Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)
Fiscal Year 1997-1998
Chula Vista Elementary School District, Claimant

Dear Mr. Esquivel and Ms. Kanemasu:

On July 22, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2011\4451 (School Dist of Choice Transfers and Appeals)\11-4451-I-05\Correspondence\Decisiontrans.docx

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, 48209.14 Statutes 1993, Chapter 160 (AB 19); Statutes 1994, Chapter 1262 (AB 2768) Fiscal Year 1997-1998 Chula Vista Elementary School District, Claimant	Case No.: 11-4451-I-05 *School District of Choice: Transfers and Appeals* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*) (*Served July 26, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. Jay Lal and Gwendolyn Carlos appeared on behalf of the State Controller's Office. The Chula Vista Elementary School District did not appear, but filed a letter indicating that it would stand on its written submission for the record.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to approve the IRC at the hearing by a vote of 6-0 as follows:

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

Summary of the Findings

This IRC challenges the State Controller's (Controller's) finding that the Chula Vista Elementary School District (claimant) claimed unallowable costs of $25,081 for the *School District of Choice* program for fiscal year 1997-1998. The following issues are addressed:

- Whether the claimant filed the IRC in a timely manner; and
- Whether the Controller initiated the audit in a timely manner.

The Commission finds that the IRC was filed in a timely manner, but there is no evidence in the record that the Controller initiated the audit before the statutory deadline. Therefore, the Commission finds that the Controller's audit is void and the IRC is approved. The Controller is requested, in accordance with Government Code section 17551(d) and section 1185.9 of the Commission's regulations, to reinstate to the claimant all costs incorrectly reduced.

COMMISSION FINDINGS

I. Chronology

12/16/1999 Claimant signed its 1997-1998 reimbursement claim.[1]

01/06/2000 Controller received the 1997-1998 reimbursement claim.[2]

04/29/2009 Controller sent claimant a letter with "results of [its] review" for the 1997-1998 reimbursement claim.[3]

05/04/2009 Claimant sent an email requesting an explanation of the "Intradistrict Cost Adjustment of 23,884.00."[4]

06/02/2009 Controller emailed claimant explaining reduction for 1997-1998.[5]

07/29/2011 Claimant filed this IRC.[6]

11/01/2011 Controller filed comments on the IRC.[7]

03/18/2016 Commission staff issued the Draft Proposed Decision.[8]

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[1] Exhibit A, IRC, page 24.

[2] *Ibid.* This is based on a date-stamp in the upper right corner of the document.

[3] Exhibit A, IRC, page 18. Note that Controller alleges that it first sent a letter to claimant on January 15, 2002, see Exhibit B, Controller's Comments on the IRC, page 2, but there is no evidence in the record to support a finding that the letter was received by claimant.

[4] Exhibit A, IRC, pages 20-21.

[5] Exhibit A, IRC, page 20.

[6] Exhibit A, IRC.

[7] Exhibit B, Controller's Comments on the IRC.

[8] Exhibit C, Draft Proposed Decision.

04/08/2016 Controller requested an extension of time, until May 9, 2016, to file comments on the Draft Proposed Decision, and a postponement of the hearing.

04/12/2016 The executive director approved Controller's request for an extension of time to file comments on the Draft Proposed Decision until April 29, 2016, and for postponement of the hearing from May 26, 2016 until July 22, 2016.

05/02/2016 Controller filed late comments on the Draft Proposed Decision.[9]

II. Background

Generally, under California law, each person between the ages of six and 18 years is required to attend school located in the district where the parent or guardian of the pupil resides.[10] In 1993 and 1994, the Legislature enacted statutes authorizing school districts to accept and enroll pupils who do not reside in the district, upon request, to transfer to their "school district of choice."[11] The "*interdistrict*" transfer of pupils is not allowed, however, if the transfer would negatively impact a court-ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the either the school district of residence or school district of choice.[12] The statutes also established the right of a parent or guardian of a pupil to appeal any transfer request denial to the county board of education.[13]

In 1995 and 1996, the Commission adopted decisions on two test claims, *School District of Choice* and *Choice Transfer Appeals,* finding that the test claim statutes imposed a partially reimbursable state-mandated program.[14] The Parameters and Guidelines for the *School District of Choice* and *Choice Transfer Appeals* programs were consolidated in July 1996, and the consolidated program was renamed *School District of Choice: Transfers and Appeals*. The Parameters and Guidelines authorize reimbursement for the following activities beginning in 1994:

1) Information Requests

For all school districts to respond to telephone and written inquiries for information regarding alternative pupil attendance choices for its schools, programs, policies and procedures. These costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act (Government Code section 6250 et seq.).

2) Implementing Pupil Transfers

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[9] Exhibit D, Controller's Late Comments on the Draft Proposed Decision.

[10] Education Code section 48200.

[11] Statutes 1993, chapter 160, adding former Education Code section 48209 et seq., effective January 1, 1994.

[12] Former Education Code section 48209.1(b).

[13] Former Education Code sections 48209.9(d) (Stats. 1994, ch. 1262, eff. Sept. 30, 1994).

[14] Commission on State Mandates, *School District of Choice* Statement of Decision, CSM-4451, adopted April 28, 1995, and *Choice Transfer Appeals* Statement of Decision, CSM-4476, adopted May 6, 1996.

For school districts of residence to provide the district of choice information regarding the transferring pupil's completed coursework, attendance and other academic progress, and otherwise implement the transfer out of pupils, as well as the return transfer of a pupil whose choice transfer has been revoked by the district of choice as the result of a recommendation for expulsion.

3) Data Collection and Reporting

For school districts of residence to collect data on the number of transfers granted, denied, or withdrawn and annually report these statistics to the district governing board and Superintendent of Public Instruction.

4) Court-ordered Desegregation Plans

For school districts of residence with court-ordered desegregation plans to make a determination of whether the transfer to the school district of choice will negatively impact the plan; and to participate in and respond to a county board of education's appeal process, resulting only from a denied transfer based on the negative impact upon that district's court-ordered desegregation plan.

5) County Office Appeals

All county boards of education shall be reimbursed for the costs incurred to establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7 and to respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.[15]

On September 28, 2002, the Governor signed Statutes 2002, chapter 1032 (AB 3005), an urgency statute that amended the code sections approved in the Test Claim Statement of Decision and that made the program discretionary. On May 27, 2004, the Commission amended the Parameters and Guidelines to end reimbursement for the program, effective September 27, 2002.[16]

The Controller's Audit and Reduction of Costs

The Controller conducted a desk review of the claimant's reimbursement claim for costs incurred in fiscal year 1997-1998, and reduced costs claimed by $25,081, the entire amount claimed. The Controller did not prepare an audit report explaining the reduction. However, the following facts are in the record.

The fiscal year 1997-1998 reimbursement claim was signed by the claimant on December 16, 1999, and claimant states that it submitted the claim to the Controller on or about

[15] Exhibit A, IRC, pages 54-60.

[16] Commission on State Mandates, Amendment to the Parameters and Guidelines, *School District of Choice: Transfers and Appeals*, 02-PGA-05, adopted May 27, 2004.

that date.[17] The claim requested reimbursement of $25,081, based only on the direct costs of $23,884 for salaries and benefits of employees performing the first activity, "Information Requests," and indirect costs of $1,197.[18] The description of the expenses claimed states:

> COSTS OF RESPONDING TO INFORMATION REQUESTS (BOTH ORALLY AND PROVIDING WRITTEN MATERIAL) REGARDING SCHOOLS WITHIN THE DISTRICT, THESE REQUESTS ARE FROM PARENTS WHO ARE CONSIDERING WHETHER TO REQUEST A SCHOOL (OTHER THAN THEIR SCHOOL OF RESIDENCE) UNDER THE ALTERNATIVE ATTENDANCE OPTIONS OF OPEN ENROLLMENT, INTRA-DISTRICT TRANSFER OR INTERDISTRICT TRANSFER.[19]

The reimbursement claim is date-stamped January 6, 2000, which the claimant states is the date the Controller received the reimbursement claim.[20] The Controller has not disputed this fact.

The Controller states that an "adjustment letter" on letterhead of the State Controller was sent on January 15, 2002, addressed to the claimant at:

Bd of Trustees
Chula Vista Elementary SD
San Diego County
84 East J Street
Chula Vista, CA 91910-6199[21]

This letter states that the 1997-1998 reimbursement claim requesting reimbursement of $25,081 was adjusted to $0:

Amount Claimed		25,081.00
Adjustment to Claim:		
Indirect Costs Overstated	1,197.00	
Intradistrict Cost Adjustment	23,884.00	
Less: Total Adjustments		25,081.00
Claim Amount Approved		0.00
Amount Due Claimant		$ 0.00.[22]

The letter also provides the claimant with the name of the contact person at the Controller's Office for questions. No other information was provided.

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[17] Exhibit A, IRC, pages 5 and 24. The claim in the record appears to have been date-stamped by the Controller on January 6, 2000.

[18] Exhibit A, IRC, pages 24, 26.

[19] Exhibit A, IRC, page 27.

[20] Exhibit A, IRC, pages 5 and 24.

[21] Exhibit B, Controller's Comments on the IRC, page 2.

[22] Exhibit B, Controller's Comments on the IRC, page 2.

The claimant's IRC does not mention the January 15, 2002 letter. Instead, claimant acknowledges receipt of only one letter from the Controller's Office dated April 29, 2009, as follows:

> The District received a 'results of review' letter dated April 29, 2009, reducing its claim as a result of the desk review. This letter constitutes a demand for repayment and adjudication of the claim.[23]

The letter, dated April 29, 2009, is on the Controller's letterhead, contains the same address for the claimant as the letter dated January 15, 2002, and provides substantially the same information as the letter allegedly issued on January 15, 2002.[24] Unlike the January 15, 2002 letter provided by the Controller with its comments on the IRC, however, the April 29, 2009 letter is date-stamped by the claimant "RECEIVED May 04, 2009, CHULA VISTA ELEM SCH DIST ACCOUNTING DEPT."

On May 4, 2009, the claimant's representative (SixTen and Associates) sent an email to Kim Nguyen of the State Controller's Office asking for an explanation about the adjustment as follows:

> Chula Vista Elementary (S37035) received an advisory dated April 29, 2009 regarding the Mandate Claim for Program 156, School District of Choice Chapter 1262/94 for fiscal year 1997/1998. The advisory states "Intradistrict Cost Adjustment" of $23,884.00. The district has requested that we query the state regarding this adjustment and ask for an explanation. As you are listed as the "contact person" on this advisory, would you please provide us with an explanation of the adjustment?[25]

Ms. Nguyen of the Controller's Office responded by email on May 4, 2009, advising the claimant's representative to contact Dennis Speciale of the Controller's Office "for assistance tomorrow."[26] The claimant's representative then forwarded the emails to Mr. Speciale that same day.[27]

On June 2, 2009, Mr. Speciale of the Controller's Office emailed the claimant's representative at 11:48 a.m., explaining that the adjustment was based on cost items dealing with "Information Requests" for *intradistrict* transfers, or transfers within the district, which are not eligible for reimbursement under this program. Reimbursement is required only for information requests on *interdistrict* transfers. The email states in relevant part the following:

> I will do the best I can to explain the adjustment below.
>
> Referencing:
> Chula Vista Elementary (S37035)

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[23] Exhibit A, IRC, page 4.

[24] Exhibit A, IRC, page 18.

[25] Exhibit A, IRC, page 21.

[26] *Ibid.*

[27] Exhibit A, IRC, page 20.

Program 156, School District of Choice Chapter 1262/94
Fiscal Year: 1997/1998

An adjustment was made, "Intradistrict Cost Adjustment" for $23,884.00. This adjustment was made specifically for cost items dealing with Information Request. The adjustments criteria are has [sic] follows:

1) If a group of cost fall under the description of providing "…information request…" relating to "..*interdistrict district transfer*.." then no adjustments are made to these costs. These are valid costs as they relate to providing interdistrict information requests.

2) If a group of cost falls under the description of providing "…information requests…" relating to "…*intradistrict*.." or "…*within the school district*..", then we will need to remove these cost [sic]. Intradistrict-related cost [sic] are not reimbursable.[28]

At 1:50 p.m. the same day, the claimant's representative acknowledged receipt of the Controller's email.[29]

On December 15, 2009, claimant's representative sent an email to Mr. Speciale of the Controller's Office requesting a copy of the reimbursement claim and annual documents.[30] Claimant states that it received the documents on December 16, 2009.[31]

On July 29, 2011, claimant filed this IRC.

III. Positions of the Parties

A. Chula Vista Elementary School District

The claimant argues that the $25,081 reduced is incorrect and should be reinstated. According to claimant, it received notice of the reduction on April 29, 2009 as a result of a Controller desk audit, but with no explanation of the reason for the reduction.[32] The claimant argues that the Controller had two years to audit the reimbursement claim, measured from the date the claim was filed in January 2000, and that an adjustment made in 2009 is too late and beyond the "statute of limitation" provided in Government Code section 17558.5(a).

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[28] Exhibit A, IRC, page 20. Intradistrict transfers are the subject of a separate mandated program called *Intradistrict Attendance*, CSM 4454, which required school districts to prepare and adopt rules establishing and implementing a policy of open enrollment within the district for residents of the district; establish and operate a random selection process in excess of schoolsite capacity; determine the attendance area capacity of the schools in the district; and evaluate each request for intradistrict attendance for its impact on district racial and ethnic balances.

[29] Exhibit A, IRC, pager 20.

[30] Exhibit A, IRC, page 22.

[31] Exhibit A, IRC, page 6.

[32] Exhibit A, IRC, page 18.

On the merits, claimant argues that the scope of the activity to provide information is broad, and is not limited to requests for information about interdistrict transfers only. Claimant bases its argument on the plain language of former Education Code section 48209.13, which states the following: "Each school district shall make information regarding its schools, programs, policies, and procedures available to any interested person upon request." Thus, claimant argues that it properly claimed costs for providing information about intradistrict transfers.

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller argues that the IRC was not timely filed because an adjustment letter dated January 15, 2002, advised claimant of the reduction. Therefore, the IRC filed July 29, 2011, was not filed within the three-year deadline required by the Commission's regulations.[33]

The Controller filed late comments on May 2, 2016, disagreeing with the Draft Proposed Decision and stating that the adjustment letter was sent to the claimant on January 15, 2002. The Controller asserts that adjustment letters were also sent to 509 other school districts on that date for the same program in the same fiscal year. The district's claim, along with claims of 42 other school districts, was reduced to zero due to adjustments for disallowed costs. The Controller further states that the April 29, 2009 letter was generated as a result of a system error while processing interest payments, and that the letter was sent to claimant and the other 42 districts that had their claims reduced to zero. According to the Controller, of the 43 districts that received the letter, only the claimant alleges that it did not receive the original, January 15, 2002, adjustment letter. The Controller further states that the process for sending adjustment letters non-certified and by U.S. mail has not changed for over a decade and has not resulted in any issues. Thus, the Controller argues that based on the first adjustment letter dated January 15, 2002, claimant should not be able to file an IRC after January 15, 2005.[34]

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes

[33] Exhibit B, Controller's Comments on the IRC, pages 1-2.

[34] Exhibit D, Controller's Late Comments on the Draft Proposed Decision.

over the existence of state-mandated programs within the meaning of article XIII B, section 6.[35] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[36]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[37] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[38]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[39] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[40]

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[35] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[36] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[37] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (supra.) 162 Cal.App.4th 534, 547.

[38] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[39] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[40] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

A. The IRC Was Timely Filed.

The Controller argues that the IRC, filed July 29, 2011, was not filed within the three-year period of limitation in the Commission's regulations based on the adjustment letter dated January 15, 2002.[41]

The Commission finds, based on the evidence in the record, that the IRC was timely filed.

Under the statutory mandates scheme, a reimbursement claim filed by a local agency or school district is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5(a). Government Code section 17558.5(c) requires the Controller to notify the claimant of any adjustment to a claim for reimbursement that results from an audit or review. The "notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment."[42] Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

Since 1999, the Commission's regulations have provided a period of limitation for filing an IRC. At the time the reimbursement claim in this case was filed in 2000, former section 1185(b) of the Commission's regulations required IRCs to be "submitted to the Commission no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction."[43] The period of limitation for filing an IRC is currently in section 1185.1(c), which similarly provides that "[a]ll incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim." An IRC is deemed incomplete by Commission staff and returned to the claimant if it is not timely filed.[44]

"Critical to applying a statute of limitations is determining the point when the limitations period begins to run."[45] Thus, given the multiple documents issued by the Controller in this case, the threshold issue is when the right to file an IRC based on the Controller's reductions accrued, and consequently when the applicable period of limitations began to run against the claimant.

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.[46] The California Supreme Court has described statutes of limitations as follows:

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[41] Exhibit B, Controller's Comments on the IRC, page 1.

[42] Former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

[43] Former California Code of Regulations, title 2, section 1185(b) (Register 1999, No. 38, eff. September 13, 1999).

[44] California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

[45] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

[46] *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

> A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): "[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."[47]

The general rule, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.[48] Generally, the Court noted, "a plaintiff must file suit within a designated period after the cause of action accrues."[49] The cause of action accrues, the Court said, "when [it] is complete with all of its elements."[50] Put another way, the courts have held that "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.'"[51] Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional injuries later become manifest,[52] those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or

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[47] *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

[48] See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 ["[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time."]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 ["A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time."].

[49] *Ibid*.

[50] *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

[51] *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

[52] *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 ["Generally, statutes of limitation are triggered on the date of injury, and the plaintiff's ignorance of the injury does not toll the statute… [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to detect injuries or the breach of fiduciary relationship*." (Emphasis added.)]; *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 802, where the court held that for statute of limitations purposes, a later physical injury caused by the same conduct "can, in some circumstances, be considered 'qualitatively different'." The court limited its holding to latent disease cases, and did not decide whether the same rule applied in other contexts. (*Id*. p. 792.)

she has been injured.[53] The courts do not toll a statute of limitations because the full extent of the claim, or its legal significance, or even the identity of a defendant, is not yet known at the time the cause of action accrues.[54]

For IRCs, the "last element essential to the cause of action" that begins the running of the period of limitation under former section 1185(b) (now § 1185.1(c)) of the Commission's regulations, is notice to the claimant of the adjustment that includes the claim components, amounts adjusted, and the reason for the adjustment. As enacted in 1995, Government Code section 17558.5(b) provided in pertinent part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.[55]

An IRC can be maintained and filed with the Commission to challenge the Controller's findings in accordance with Government Code sections 17551 and 17558.7 as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the claim components, amounts adjusted, and the reason for adjustment in accordance with Government Code section 17558.5. The Commission's regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5(c), in whatever written form provided by the Controller, to file an IRC with the Commission, or otherwise be barred from such action. The IRC must include a detailed narrative describing the alleged reductions

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[53] *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient's body, and not medical devices implanted in it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord's belated discovery of that his homeowner's policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 ["It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations."].

[54] *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 ["Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations."]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute…begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."].

[55] See former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

and a copy of any "written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance."[56, 57]

In this case, the Controller alleges that it sent its first "adjustment letter" to the claimant on January 15, 2002 and contends that the statute of limitations began accruing against the claimant on that date.[58]

However, the claimant does not mention this letter in its IRC, and instead contends that it first received a letter from the Controller on April 29, 2009, as follows:

> This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185(b), requires incorrect reduction claims to be filed no later than three years following the date of the Controller's "written notice of adjustment notifying the claimant of a reduction." The Controller conducted a desk review of the District's FY 1997-98 annual claim. The District received a "results of review" letter dated April 29, 2009, reducing its claim as a result of the desk review. This letter constitutes a demand for repayment and adjudication of the claim.[59]

In comments on the Draft Proposed Decision, the Controller states that the January 15, 2002 adjustment letter was also sent to 509 other school districts on that date for the same program in the same fiscal year. The district's claim, along with claims of 42 other school districts, were reduced to zero due to adjustments for disallowed costs. The Controller further states that the April 29, 2009 letter was generated as a result of a system error while processing interest payments, and was sent to claimant and the other 42 districts that had their claims reduced to zero. According to the Controller, of the 43 districts that received the letter, only the claimant alleges that it did not receive the original, January 15, 2002, adjustment letter.[60]

There is no evidence in the record, however, that the January 15, 2002 letter was ever sent to the claimant, or that the claimant received it. Unlike the letter dated April 29, 2009, the January 15, 2002 letter was *not* date-stamped "received" by the claimant. And as indicated above, a statute of limitations does not accrue until a claimant has sufficient facts to be on notice or constructive notice that a wrong has occurred. In this respect, Government Code section 17558.5 requires the Controller to "notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review" and the notice is required to specify the claim components, amounts adjusted, and the "the reason for the adjustment." Evidence to support the Controller's contention that the January 15, 2002 letter was served on the claimant could come, for example, from a declaration

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[56] California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

[57] This interpretation is consistent with previously adopted Commission decisions. See Commission on State Mandates, Decision, *Collective Bargaining*, 05-4425-I-11, adopted December 5, 2014, and Decision, *Handicapped and Disabled Students,* 05-4282-I-03 adopted September 25, 2015.

[58] Exhibit B, Controller's Comments on the IRC, page 1.

[59] Exhibit A, IRC, page 4.

[60] Exhibit D, Controller's Late Comments on the Draft Proposed Decision.

or proof of service by the Controller's Office setting forth the title of the document served, the name and business address of the person making the service, the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and that the envelope was sealed and deposited in the mail with the postage fully prepaid.[61] The fact of service could also be supported by the filing of the return receipt for certified mail with a post office stamp.[62] Evidence in the record that the January 15, 2002 letter was properly mailed or served is required before the Commission can presume under the law that the letter was received in the ordinary course of mail, absent evidence from the claimant to the contrary.[63] However, no such facts are contained in the record for this IRC.[64] Therefore, there is no evidence that the claimant received written notice of the adjustment on or about January 15, 2002, and thus, the Commission cannot find that the period of limitation began to accrue against the claimant with the January 15, 2002 letter. Even if evidence were filed to support a finding that the January 15, 2002 letter was mailed to and received by the claimant, additional analysis would still be required to determine whether the letter provided sufficient notice under Government Code section 17558.5 to trigger the accrual of the period of limitation to file an IRC.

The second letter dated April 29, 2009, which the claimant admits receiving on May 4, 2009, contains the same information as the January 15, 2002 letter. Both letters identify the amount adjusted, which was the full amount claimed for the one component of providing information to parents and guardians about alternative pupil attendance choices. However, the later letter prompted the claimant to contact the Controller's Office on May 4, 2009, to ask for an explanation of the adjustment. This raises the issue of whether the information contained in the letter of April 29, 2009, sufficiently specifies the reason for the adjustment as required by Government Code section 17558.5 to trigger accrual of the period of limitation.

Assuming for the purposes of argument that either the April 29, 2009 letter or the June 2, 2009 email, both of which were received by the claimant, complies with Government Code section 17558.5(c), the IRC was timely filed. Whether the beginning of the accrual period is measured from the April 29, 2009 adjustment letter or the June 2, 2009 email, the Commission finds that the IRC filed July 29, 2011 (less than three years after either of these notices) is timely because it complies with the three-year period of limitation in the Commission's regulations.

Accordingly, based on evidence in the record, the Commission finds that this IRC was timely filed.

B. There Is No Evidence in the Record that the Controller Timely Initiated the Audit and thus, the Audit Findings Are Void.

The claimant contends that the Controller did not audit its reimbursement claim in a timely manner. The claimant argues that the Controller had two years to audit the reimbursement claim,

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[61] See, e.g., Code of Civil Procedure section 1013a.

[62] *Call v. Los Angeles County Gen. Hosp.* (1978) 77 Cal.App.3d 911, 916-917.

[63] Evidence Code section 641; *Bear Creek Master Ass'n. v. Edwards* (2005) 130 Cal.App.4th 1470, 1486.

[64] In addition, the Controller's allegation of fact (that the letter was sent) was not submitted under penalty of perjury as required by section 1187.5(b) of the Commission's regulations.

measured from the date the claim was filed in January 2000, and that an adjustment made in 2009 is too late and beyond the "statute of limitation" provided in Government Code section 17558.5(a).

At the time the reimbursement claim was filed in January 2000 (and as stated in Section VII. of the Parameters and Guidelines for this program),[65] Government Code section 17558.5(a), as added by Statutes 1995, chapter 945, provided that:

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to an audit by the 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 Controller to initiate an audit shall commence to run from the date of initial payment of the claim.[66]

The plain language of this section provides that reimbursement claims are "subject to audit" no later than two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" does not require the completion of the audit. Such a reading adds words to section 17558.5 that are not there. If the words of a statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute.[67] This section, however, sets a time during which a claimant is on notice that an audit may occur. This reading is consistent with the plain language of the second sentence, which provides that when no funds are appropriated for the program, "the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."

This interpretation is also consistent with the Legislature's 2002 amendment to Government Code section 17558.5, effective January 1, 2003, clarifying that "subject to audit" means "subject to the initiation of an audit," as follows in underline and strikeout:

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to <u>the initiation of an</u> audit by the Controller no

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[65] Exhibit A, IRC, page 59. Section VII. of the Parameters and Guidelines describes the "Supporting Data" to claim reimbursement as follows:

> For auditing purposes, all costs claimed must be traceable to source documents (e.g. employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed 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 Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

[66] Government Code section 17558.5, as added by Statutes 1995, chapter 945, effective July 1, 1996.

[67] *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.

later than ~~two~~ three years after the ~~end of the calendar year in which the~~ date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.[68, 69]

Here, the claimant states that funds were appropriated for this program, and the Controller has not filed any evidence rebutting this assertion.[70] Thus, the first sentence in the 1995 version of section 17558.5(a) applies, specifying that the reimbursement claim is subject to the initiation of an audit "no later than two years after the end of the calendar year in which the reimbursement claim is filed." Because the reimbursement claim was filed on January 6, 2000,[71] as indicated by the claimant and the date stamp on the letter, the Controller had until December 31, 2002, to initiate the audit.

The Legislature did not specifically define the event that initiates the audit and, unlike other auditing agencies that have adopted formal regulations to clarify when the audit begins (which can be viewed as the controlling interpretation of a statute), the Controller has not adopted a regulation for the audits of state-mandate reimbursement claims.[72] Since section 17558.5 is silent as to the act or event that initiates an audit, the Commission cannot, as a matter of law, state what the act or event is in all cases; but must determine when the audit commenced and whether it was timely initiated based on evidence in the record.

The requirement to initiate an audit no later than two years after the end of the calendar year in which the reimbursement claim is filed requires a unilateral act of the Controller. And failure to timely initiate the audit within the two-year deadline is a jurisdictional bar to any reductions made by the Controller of claimant's reimbursement claims.[73] In this respect, the initiation provisions of Government Code section 17558.5 are better characterized as a statute of repose, rather than a statute of limitations. Section 17558.5 provides a period during which an audit or review may be initiated, and after which the claimant may enjoy repose, dispose of any evidence

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[68] Statutes 2002, chapter 1128.

[69] This section was amended again (Stats. 2004, ch. 313, eff. Jan. 1, 2005) to require an audit to be completed not later than two years after it is commenced.

[70] Exhibit A, IRC, pages 14-15.

[71] Exhibit A, IRC, page 24.

[72] See, e.g., regulations adopted by the California Board of Equalization (title 18, section 1698.5, stating that an "audit engagement letter" is a letter "used by Board staff to confirm the start of an audit or establish contact with the taxpayer.").

[73] Courts have ruled that when a deadline is for the protection of a person or class of persons, and the language of the statute as a whole indicates the Legislature's intent to enforce the deadline, the deadline is mandatory. (*People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (18 Cal.3d 901, 909-910). Because the deadlines in Government Code section 17558.5 are mandatory and not directory, the requirement to meet the statutory deadline is jurisdictional.

or documentation to support their claims, and assert a defense that the audit is not timely and therefore void.

The court in *Giest v. Sequoia Ventures, Inc.*, described a statute of repose as follows:

> Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a *specific event occurs*, regardless of whether a cause of action has accrued or whether any injury has resulted." [citations] A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded.[74]

Described by another court in *Inco Development Corp. v. Superior Court*,[75] the characteristics of a statute of repose include that it is "not dependent upon traditional concepts of accrual of a claim, but is tied to an independent, objectively determined and verifiable event…"

However, whether analyzed as a statute of repose, or a statute of limitations, the unilateral act that must occur before the expiration of the statutory period may be interpreted similarly. That is, the filing of a civil action may be interpreted analogously to the initiation of an audit, to the extent that the initiation of the audit, like the commencement of a civil action, terminates the running of the statutory period, and vests authority in the party to proceed.[76] However, unlike a plaintiff filing a complaint in court within a statutory time period to protect against a statute of limitations defense barring the matter, Government Code section 17558.5 does not require the Controller to lodge a document to *prove* it timely initiated an audit. Nevertheless, because it is the Controller's authority to audit that must be exercised within a specified time, it must be within the Controller's exclusive control to meet or fail to meet the deadline imposed. The Controller has the burden of proof on this issue and must show with evidence in the record that the claimant was notified that an audit was being initiated by the statutory deadline to ensure that the claimant not dispose of any evidence or documentation to support its claim for reimbursement. In this IRC, there is no evidence in the record to support a finding that the Controller initiated the audit by the December 31, 2002 deadline.

The Controller alleges that the claimant was notified of the audit reduction by the letter dated January 15, 2002.[77] Since the letter indicates that the Controller reduced costs to $0, then it can logically be presumed, *if* this letter can be verified and shown that it was provided to the claimant, that the audit commenced some time before the January 15, 2002, date of the letter and thus, before the December 31, 2002 deadline.

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[74] *Giest v. Sequoia Ventures, Inc*. (2000) 83 Cal.App.4th 300, 305.

[75] *Inco Development Corp. v. Superior Court* (2005), 131 Cal.App.4th 1014.

[76] *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 ["A party does not have a vested right in the time for the commencement of an action [and nor] does he have a vested right in the running of the statute of limitations prior to its expiration." (citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80; *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468)].

[77] Exhibit B, Controller's Comments on the IRC, pages 1-2.

However, the Controller's allegation that the letter was sent on January 15, 2002, was not submitted under penalty of perjury in compliance with the Commission's regulations.[78] The letter itself does not contain a proof of service, certificate of mailing, or an affidavit by the Controller's Office to verify the date of mailing. By itself, the letter is an out of court document being used for the truth of the matter asserted (i.e., that the claimant was notified of a reduction before the time expired to initiate an audit), and is unreliable hearsay evidence.[79] And, as explained in the section above, there is no evidence in the record that the claimant received this letter. Unlike the letter dated April 29, 2009, which the claimant states is the first notice received,[80] the January 15, 2002 letter is not date stamped "received" by the claimant. Moreover, the April 29, 2009 letter does not provide any information to indicate when the Controller initiated the audit.[81] Thus, there is nothing in this record to verify when the Controller initiated the audit, or any evidence that the claimant was notified that it could not dispose of its supporting documents after the December 31, 2002 deadline.[82]

Therefore, based on this record, the Commission finds that the Controller did not timely initiate the audit within the deadlines required by Government Code section 17558.5(a) and, therefore, the audit findings are void.

V. Conclusion

For the reasons discussed above, the Commission approves this IRC. The Commission requests, in accordance with Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate to the claimant the $25,081 incorrectly reduced, consistent with these findings.

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[78] California Code of Regulations, title 2, section 1187.5(b).

[79] Evidence Code section 1200; *People v. Zunis* (2005) 134 Cal.App.4th Supp. 1, 5.

[80] Exhibit A, IRC, page 4.

[81] Exhibit A, IRC, page 18.

[82] The facts in this case are unlike a previous IRC decided by the Commission (*Health Fee Elimination*, 05-4206-I-06, March 27, 2015) where the record contained declarations and admissions from the claimant showing that it received actual notice that an audit was being initiated before the deadline imposed by Government Code section 17558.5(a), which was sufficient to verify that finding.

STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

RE: **Decision**

School District of Choice: Transfers and Appeals, 11-4451-I-05
Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)
Fiscal Year 1997-1998
Chula Vista Elementary School District, Claimant

On July 22, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Heather Halsey, Executive Director

Dated: July 26, 2016

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

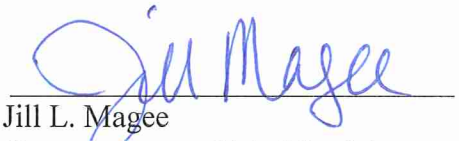
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 26, 2016, I served the:

Decision
School District of Choice: Transfers and Appeals, 11-4451-I-05
Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)
Fiscal Year: 1997-1998
Chula Vista Elementary School District, 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 July 26, 2016 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/24/16

Claim Number: 11-4451-I-05

Matter: School District of Choice: Transfer and Appeals

Claimant: Chula Vista Elementary School District

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.)

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