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COUNTY OF ORANGE HEALTH CARE AGENCY

BEHAVIORAL HEALTH SERVICES

Received
November 9, 2011
Commission on
State Mandates

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November 9, 2011

VIA E-MAIL
ADOBE ACROBAT PDF FILE

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
csminfo@csm.ca.gov

- Re: Audit of the Costs Claimed by the County of Orange for the Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services Program for the following Periods:
- July 1, 2000 through June 30, 2002
 - July 1, 2002 through June 30, 2005
 - July 1, 2005 through June 30, 2006

To the Commission on State Mandates:

The County of Orange ("the County") Health Care Agency ("HCA") hereby submits an Incorrect Reduction Claim ("IRC") challenging the State Controller's disallowance of a total of \$2,973,826.00 in costs claimed by the County for providing legislatively mandated out-of-state mental health services to seriously emotionally disturbed ("SED") students for the time periods of July 1, 2000 through June 30, 2006. Please find attached, the County's timely filed IRC which includes all required supporting documentation.

If you have any questions regarding the County's IRC, please contact Kim Engelby, Health Care Agency Accounting, at (714) 834-5264 or via email at kengelby@ochca.com.

Sincerely,

Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

**COMMISSION ON STATE MANDATES
INCORRECT REDUCTION CLAIM FORM**

Authorized by Government Code section 17558

GENERAL INSTRUCTIONS

- To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the Commission. All 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 notifying the claimant of a reduction.
- An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.
- Type all responses.
- Complete sections 1 through 12, as indicated. Failure to complete any of these sections will result in this incorrect reduction claim being returned as incomplete.
- Please submit by either of the following methods:
 1. **E-filing**. The claimant shall electronically file the incorrect reduction claim in PDF format to the e-filing system on the Commission's website (<http://www.csm.ca.gov/dropbox.shtml>), consistent with the Commission's regulations (CCR, tit.2, § 1181.2). The requester is responsible for maintaining the paper document with original signature(s) for the duration of the claim process, including any period of appeal. **No additional copies are required when e-filing the request.**
 2. **By hard copy**. Original incorrect reduction claim submissions shall be unbound and double-sided, without tabs, and include a table of contents. Mail, or hand-deliver, **one original and two copies** of your incorrect reduction claim submission to: Commission on State Mandates, 980 9th Street, Suite 300, Sacramento, CA 95814

Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the required sections are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the Commission within 30 days from the date the incomplete claim was returned to the claimant, the Commission shall deem the filing to be withdrawn.

You may download this form from our website at csm.ca.gov.

If you have questions, please contact us:

Website: www.csm.ca.gov

Telephone: (916) 323-3562

E-Mail: csminfo@csm.ca.gov

1. INCORRECT REDUCTION CLAIM TITLE

County of Orange SED Pupils:Out-of-State Mental Health
Services Program for Fiscal Years 2000/01 through 2005/06

2. CLAIMANT INFORMATION

County of Orange
Name of Local Agency or School District
Toni Smart
Claimant Contact
Manager, Financial Reporting / Mandated Costs Unit
Title
12 Civic Center Plaza
Street Address
Santa Ana, CA 92702
City, State, Zip
714-834-7480
Telephone Number
714-834-2569
Fax Number
toni.smart@ac.ocgov.com
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Kimberly Engelby
Claimant Representative Name
Accounting Manager
Title
Auditor-Controller / Health Care Agency
Organization
405 W. 5th Street, 7th Floor
Street Address
Santa Ana, CA 92701
City, State, Zip
714-834-5264
Telephone Number
714-834-5506
Fax Number
kengelby@ochca.com
E-Mail Address

<i>For CSM Use Only</i>	
Filing Date:	RECEIVED November 9, 2011 COMMISSION ON STATE MANDATES
	REVISED October 21, 2013
IRC #:	11-9705-I-02

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Please specify the subject statute or executive order that claimant alleges is not being fully reimbursed pursuant to the adopted parameters and guidelines.

California Government Code Sections 7570 et seq. (AB3632)

5. AMOUNT OF INCORRECT REDUCTION

Please specify the fiscal year and amount of reduction. More than one fiscal year may be claimed.

<u>Fiscal Year</u>	<u>Amount of Reduction</u>
2000/01	\$195,055.00
2001/02	\$313,520.00
2002/03	\$220,302.00
2003/04	\$286,285.00
2004/05	\$808,059.00
2005/06	\$1,150,605.00
TOTAL:	\$2,973,826.00

6. NOTICE OF INTENT TO CONSOLIDATE

Please check the box below if there is intent to consolidate this claim.

Yes, this claim is being filed with the intent to consolidate on behalf of other claimants.

Sections 7 through 11 are attached as follows:

7. Written Detailed Narrative: pages 1 to 9.
8. Documentary Evidence and Declarations: Exhibit A.
9. Claiming Instructions: Exhibit B.
10. Final State Audit Report or Other Written Notice of Adjustment: Exhibit C.
11. Reimbursement Claims: Exhibit D.

Sections 7 through 11 shall be included with each incorrect reduction claim submittal.

7. WRITTEN DETAILED NARRATIVE

Under the heading "7. Written Detailed Narrative," please describe the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

8. DOCUMENTARY EVIDENCE AND DECLARATIONS

If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim under the heading "8. Documentary Evidence and Declarations." All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

9. CLAIMING INSTRUCTIONS

Under the heading "9. Claiming Instructions," please include a copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

10. FINAL STATE AUDIT REPORT OR OTHER WRITTEN NOTICE OF ADJUSTMENT

Under the heading "10. Final State Audit Report or Other Written Notice of Adjustment," please include a copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

11. REIMBURSEMENT CLAIMS

Under the heading "11. Reimbursement Claims," please include a copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

12. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the incorrect reduction claim submission. **


This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Toni Smart

Print or Type Name of Authorized Local Agency
or School District Official

Manager, Financial Reporting/Mandated Costs Unit

Print or Type Title



Signature of Authorized Local Agency or
School District Official

10-15-13

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the incorrect reduction claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

ITEM 7: WRITTEN DETAILED NARRATIVE

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**COUNTY OF ORANGE
HEALTH CARE AGENCY**

BEHAVIORAL HEALTH SERVICES

DAVID L. RILEY
DIRECTOR

MARK A. REFOWITZ
DEPUTY AGENCY DIRECTOR
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ITEM 7: WRITTEN DETAILED NARRATIVE

**STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES**

**INCORRECT REDCUCTION OF CLAIM BY
THE COUNTY OF ORANGE**

Re: Audit of the Costs Claimed by the County of Orange for the Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services Program for the following Periods:

- July 1, 2000 through June 30, 2002
- July 1, 2002 through June 30, 2005
- July 1, 2005 through June 30, 2006

Introduction

In 1996 the Legislature amended Section 7576 of the Government Code (AB 2726) to add new fiscal and programmatic responsibilities for counties to provide mental health services to seriously emotionally disturbed ("SED") pupils placed in out-of-state residential programs. The legislation provided that the fiscal and program responsibilities of counties would be the same regardless of the location of the pupil's placement.

California Code of Regulations, Title 2, sections 60100 and 60200 set forth counties' programmatic and fiscal responsibilities when and SED pupil is placed out-of-state in a residential program. Section 60100 provides that such out-of-state placements may be made when no in-state facility can meet the pupil's needs and may only be in programs that meet the requirements of Welfare and Institutions Code sections 11460(c)(2) through (c)(3). Section 11460(c)(3) provides that reimbursement will only be paid to a group home organized and operated on a non-profit basis.

As summarized in the Parameters and Guidelines attached hereto in Item 9 as Exhibit B, the Commission on State Mandates ("CSM") adopted its Statement of Decision on the subject test claim and found the following activities to be reimbursable under Government Code section 17561:

- Payment of out-of-state residential placements for SED pupils;
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of Psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP); and
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000-60610.

The CSM adopted the parameters and guidelines on October 26, 2000 and these parameters and guidelines define the program and what costs are reimbursable. The State Controller's office issued claiming instructions on January 2, 2001 and those instructions are attached hereto as Item 9, Exhibit "B". Claiming instructions assist the counties in claiming the mandated program's reimbursable costs.

Summary of State's Audit and County's Incorrect Reduction of Claim

The State Controller's Office audited the costs claimed by the County of Orange ("County") for the legislatively mandated SED Pupils in three separate audits entitled "ORANGE COUNTY Audit Report, SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES PROGRAM" for the following audit periods:

- July 1, 2000 through June 30, 2002 (Audit 1)(See Item 10, Exhibit C-1);
- July 1, 2002 through June 30, 2005 (Audit 2)(See Item 10, Exhibit C-2);
- July 1, 2005 through June 30, 2006 (Audit 3)(See Item 10, Exhibit C-3).

The County submitted its Response to Drafts of Audit 1 and Audit 2 on February 13, 2008, and provided an amended response on March 13, 2008 (See Item 10, Exhibits C-1 and C-2). Final versions of Audit 1 and Audit 2 are dated November 12, 2008 and were received in November 2008. The County submitted its Response to Draft Audit 3 on August 9, 2010 (See Item 10, Exhibit C-3). The final version of Audit 3 is dated September 17, 2010 and was received in September 2010.

For Audit Period 1, the County claimed \$2,765,988 for the mandated program, and the State found that \$2,257,413 was allowable and that \$508,575 was unallowable. For Audit Period 2, the County claimed \$6,994,266 for the mandated program, and the State found that \$5,679,620 was allowable and that \$1,314,646 was unallowable. And for Audit Period 3, the county claimed \$4,118,407 for the mandated program, and the State found that \$2,967,802 was allowable and that \$1,150,605 was unallowable. The State alleges that the unallowable costs occurred because the County claimed ineligible vendor payments for out-of-state residential placement of SED pupils in facilities that are owned and operated for profit. The County disputes the State's findings that allege that the County claimed ineligible vendor payments and asserts that the State has incorrectly reduced the County's claims for all three Audit periods by \$2,973,826.00.

The County disputes the State's Findings in Audit 1, Audit 2 and Audit 3 – unallowable vendor payments – because the California Code of Regulations Title 2 section 60100 (h) and

Welfare and Institutions Code section 11460(c)(3) cited by the State is in conflict with the requirements of federal law, including the Individuals with Disabilities Education Act (IDEA) and Section 472(c)(2) of the Social Security Act (42 U.S.C. 672 (c)(2)). The Parameters and Guidelines which are included as an integral part of the Claiming Instructions attached hereto as Item 9, Exhibit B cite the State law referenced above which is in conflict with the requirements of federal law. Moreover the State ignores the administrative decisions of its own Office of Administrative Hearings (OAH) and a recent affirming United States District Court decision in its disallowance of the County of Orange claims.

Please see the following argument in support of County's position that the subject claims, for Audit Periods 1, 2, and 3, were incorrectly reduced by \$2,973,826.00.

1. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Regardless of the State's view of the validity of the residential facility contracts questioned by the Audit Reports, the State's position in this matter is in glaring discord with the requirements of the federal Individuals with Disabilities Education Act ("IDEA"). This is because the IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement.

The stated purpose of the IDEA is ". . . to ensure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A). The "free appropriate public education" required by IDEA must be tailored to the unique needs of the handicapped child by means of an "individualized educational program." 20 U.S.C. § 1401(9)(D); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (U.S. 1982). When a state receives funds under the IDEA, as does California, it must comply with the IDEA and its regulations. 34 C.F.R. § 300.2 (2006).

Local educational agencies ("LEAs") initially were responsible for providing all special education services including mental health services when necessary. The passage of Assembly Bill 3632/882 transferred the responsibility for providing mental health services to the counties. In conjunction with special education mental health services, the IDEA requires that a state pay for a disabled student's residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. 34 C.F.R. § 300.302 (2006); *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001).

Before 1997, the IDEA required counties to place special education students in nonprofit residential placements only. In 1997, however, section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 amended section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) to strike the nonprofit requirement. Section 472(c)(2) currently states:

The term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but

the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

In direct opposition to the IDEA, California's regulations limit special education residential placements to nonprofit facilities as follows:

... Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). 2 C.C.R. § 60100(h).

... State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis. Welfare and Institutions Code § 11460(c)(3).

Therefore, California law is inconsistent with the requirements of IDEA and incompatible with its foremost purpose, i.e., to provide each disabled child with special education designed to meet that child's unique needs. 20 U.S.C. §1401(25). **(This idea is supported by the recent U.S. District Court decision discussed in Section 3 below.)** Indeed, special education students who require residential treatment are often the students with the most unique needs of all because of their need for the most restrictive level of placement. This need rules out California programs. The limited number of out-of-state residential facilities that are appropriate for a special education student may not operate on a nonprofit basis. Thus, California's nonprofit requirement results in fewer appropriate services being available to the neediest children—those who can only benefit from their special education when placed in residential facilities.

It should also be noted that LEAs are not precluded by any similar nonprofit limitation. When special education children are placed in residential facilities, out-of-state LEAs can utilize education services provided by certified nonpublic, nonsectarian schools and other agencies operated on a for-profit basis. Educ. Code § 56366.1. Nonpublic schools are certified by the State of California when they meet the provisions of Education Code sections 56365 *et seq.* Nonprofit operation is *not* a requirement. Consequently, the two entities with joint responsibility for residential placement of special education students must operate within different criteria. This anomaly again leads to less available services for critically ill special education children.

2. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The principles set forth in Section 1 above were recently validated and corroborated by the State's own Office of Administrative Hearings ("OAH"), Special Education Division in OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008. (See Item 8, Exhibit A-5) (See also Section 3 Discussion, whereby the U.S. District Court affirms the OAH decision.)

In that matter, the school district and mental health agency were unable to find a residential placement that could meet the student's unique mental health and communication needs. All parties agreed that a particular for-profit residential placement was the appropriate

placement for the student. Interpreting Title 2 of Cal. Code Regs., section 60100(h) and Welfare and Institutions Code section 11460(c)(2) through (c)(3) in the same fashion as the State Controller's Audits, the school district and mental health agency concluded that they could not place the student at the for-profit facility.

The OAH disagreed. In fact, it found that section 60100(h) of Title 2 of the California Code of Regulations did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. *Student v. Riverside Unif. Sch. Dist. and Riverside Co. Dept. of Mental Health*, Case No. N 2007090403, January 15, 2008. Moreover, the OAH indicated such an interpretation "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." *Riverside Unif. Sch. Dist.* at p. 8.

The OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children. *Riverside Unif. Sch. Dist.* at p. 8, quoting *Katz v. Los Gatos-Saratoga Joint Union High School District*, 117 Cal. App. 4th 47, 63 (2004).

Like the school district and mental health agency in *Riverside*, the audits in question utilized a blanket, hard and fast rule that for-profit placements are never allowed, even when the placement itself indicates it is nonprofit, even when there is no other appropriate placement available, and even when the for-profit placement is in the best interests of the child. None of these factors were taken into consideration when the Audits determined that certain residential vendor expenses were ineligible for reimbursement.

In the September 2010 Audit Report, the State Controller rejected our reference to the OAH opinion in Case No. N 2007090403 *Student v. Riverside Unified School District and Riverside County Department of Mental Health* and stated that the case "is not legally binding on the SCO." He went on to state that the OAH case did not focus on the issue of funding residential placements made outside of the 60100 regulation and WIC 11460 (c)(3).

Without debating the issue of the legally binding nature of the OAH decision, we think it clear that the SCO is bound by a recent decision made by the United States District Court (discussed below in Section 3) which affirms the OAH decision and provides additional clarification regarding IDEA requirements and interprets state law and regulation in light of the IDEA.

3. United States District Court has Affirmed the California Office of Administrative Hearings Special Education Division of *Student v. Riverside Unified School District and Riverside County Department of Mental Health*.

On July 20, 2009 the United States District Court, Central District of California, Eastern Division heard an appeal to reverse the Administrative Law Judge's decision in *Student v. Riverside Unified School District and Riverside County Department of Mental Health*. (See *Riverside County Department of Mental Health v. Sullivan et al*, Case No. EDCV 08-0503-SGL (RCx)) (See Item 8, Exhibit A-6)

In that case, the U.S. District Court held that placement at the for-profit National Deaf Academy (NDA) was proper. The court went on to state that "California law does not prohibit placement at NDA and does not excuse compliance with IDEA." (*Id.* at 10).

In response to plaintiff arguments that California Administrative Code Section 60100(h)'s reference to WIC 11460(c)(2) through (c)(3) results in a prohibition in placing in for-profit facilities, the District court pointed out that Cal. Adm. Code Section 60000 provides that the intent of the chapter that Section 60100 appears "is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA." (*Id.*) Section 60000 goes on to state, "[t]hus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities for providing services to pupils with disabilities." (*Id.*)

Clearly the SCO is bound by the decision of the United States District Court, as referenced above. And the U.S. District Court specifically answered the question of whether out-of-state for-profit placements were prohibited under state law. That binding decision found that "California law does not prohibit placement at NDA and does not excuse compliance with IDEA."

Therefore, even assuming for argument sake, that the disallowed placements were "for-profit", the State is incorrect to disallow reimbursement for out-of-state for-profit placements for the audit periods without conducting further review as to whether an alternative nonprofit residential placement, that was able to provide FAPE, existed. Thus the State should reimburse the county for disallowed amounts.

4. The County Contracted with Nonprofit Facilities.

For the audit periods, the County believed, and still believes, it contracted with nonprofit facilities to provide all program services. The County cannot be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. This is not prohibited by California statute, regulation, or federal law.

Specifically, during the audit periods in question, the County contracted for out-of-state residential services with Mental Health Systems, Inc. (whose facilities include: Provo Canyon School and Logan River Academy), Aspen Solutions, Inc. (whose facilities include: Island View, Aspen Ranch, Youth Care of Utah, and Sunhawk Academy), and Kids Behavioral Health of Alaska, Inc. (whose facility includes Copper Hills Youth Center). Each of the entities that the County contracted with are organized as nonprofit organizations. (See Item 8, Exhibits A-2, A-3 and A-4) However these facilities were disallowed in the three State audits and are the subject of the County's disputes in this Incorrect Reduction Claim. The County contracted with these providers in a manner consistent with the requirements of the California Code of Regulations and Welfare and Institutions Code referenced above.

The County complies with a number of prerequisites before placing seriously emotionally disturbed ("SED") pupils in out-of-state residential facilities. For example, the pupil must be determined to be "emotionally disturbed" by his or her school district. In-state facilities must be unavailable or inappropriate. One of the County's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. When advised that the facility is for-profit, that facility is no longer considered for SED pupil placement. When advised that the facility is nonprofit, the County obtains documentation of that status, e.g., an IRS tax determination letter.

Neither the federal nor the state government has provided procedures or guidelines to specify if and/or exactly how counties should determine for-profit or nonprofit status. Although

counties have used many of these out-of-state residential facilities for SED student placement for years, the State only recently has begun to question their nonprofit status. Nor has the State ever provided the County with a list of facilities that it deems to be nonprofit, and therefore acceptable to the State. The State's history of paying these costs without question encouraged the County to rely upon the State's acceptance of prior claims for the very same facilities now characterized as for-profit.

Considering the foregoing, the conclusions of the audits lack the "fundamental fairness" that even minimal procedural due process requires.

5. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities.

Under the IDEA, when parents of a special education pupil believe their child's school district and/or county mental health agency breached their duties to provide the student with a free appropriate public education, the parents can seek reimbursement for the tuition and costs of a placement of the parents' choice. The United States Supreme Court has ruled that parents who unilaterally withdraw their child from an inappropriate placement must be reimbursed by the placing party(ies). This is true even if the parents' school placement does not meet state educational standards and is not state approved. *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7 (U.S. 1993).

This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand that the school district and/or mental health agency pay the bill. The California regulatory requirement for nonprofit residential placement prevents school districts and mental health agencies from selecting the most appropriate placement, regardless of tax status. Because of California's arbitrary regulatory requirement, which is not in accord with the 1997 amendment to IDEA, school districts and mental health agencies may be forced to place a child in a less appropriate facility increasing the likelihood that the parents will choose a different facility. The placement agencies are thereafter legally required to subsidize the expenses of the parents' unilateral choice, even if that unilateral placement does not meet the State's nonprofit and academic standards. The decision in *Riverside* explained and cited above precisely mirrors such a situation.

6. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

Special education mental health psychotherapy and assessment services must be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education California Government Code § 7572(c). These services can be provided directly or by contract at the discretion of county mental health agencies. 2 C.C.R. § 60020(i). Licensed practitioners included as "qualified mental health professionals" are listed in California Code of Regulations Title 2, section 60020(j). Neither section contains any requirement regarding the provider's tax status. Because tax status has no bearing on eligibility for mental health provider services, there is no basis for disallowing these claimed treatment costs.

7. The State's Interpretation of WIC Section 11460(c)(3) Would Result in Higher State Reimbursement Costs.

In conducting a review of the facilities that the State has disallowed reimbursement, it has become clear that the State's interpretation of WIC Section 11460(c)(3) would result in an overall increase the cost of reimbursement.

This conclusion is based on a comparison between the cost of mental health services provided at residential facilities that are organized as for-profit versus the same costs at residential facilities that are organized as nonprofit. On average, we have found that nonprofit residential placements cost more than for-profit residential placements. (See Item 8, Exhibit A-7).

Clearly, it could not have been the intent of the drafters of WIC 11460(c)(3) to increase the cost of State reimbursement by limiting State reimbursement to group homes organized and operated on a nonprofit basis. The more reasonable interpretation of what the drafters intended was based on a (mistaken) assumption that nonprofit facilities are less expensive than for-profit facilities or a desire to mirror Federal IDEA law, which has since been modified to remove the nonprofit reimbursement restriction.

Therefore, to apply such an interpretation, without providing Counties any prior notice of the State's desire to enforce the code section in such a manner is clearly unfair and unreasonable, especially in light of the retroactive enforcement of the interpretation and the lack of any guidance provided by the State. Fairness requires that the state advise counties of its intent to enforce the interpretation moving forward, not retroactively. By providing counties advance notice of its intent to disallow a category of payment that has historically be reimbursed, would provide counties the ability to make adjustments and comply with the State's changed interpretation.

Thus, the State should reimburse County for all submitted amounts. If the State continues to disagree with the arguments and authorities provided in this IRC, then at least counties have notice of the possibility of future disallowances if they place in for-profit residential facilities.

Conclusion

Based on the foregoing, the County of Orange maintains that its total claimed program costs for Audit Periods 1, 2, and 3 in the amount of \$13,878,661.00 remain allowable and eligible for reimbursement.

Sincerely,


Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

cc: David L. Riley, Agency Director
David E. Sundstrom, CPA, Auditor-Controller
Mary R. Hale, Chief, Behavioral Health Services
Kenneth Grebel, Program Manager, Children & Youth Services
Kimberly Engelby, HCA Accounting Manager

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS

- Exhibit A-1 Summary of Program Costs for Fiscal Years 2000/01 through 2005/06
- Exhibit A-2 Articles of Incorporation, Aspen Solutions Inc.
- Exhibit A-3 Letter from Internal Revenue Service for Mental Health Systems, Inc.
- Exhibit A-4 Certificate of Good Standing, Kids Behavioral Health of Alaska, Inc.
- Exhibit A-5 Office of Administrative Hearings, Case No. N 2007090403
- Exhibit A-6 United States District Court, Case No. EDCV 08-0503-SGL (RCx)
- Exhibit A-7 Comparison of Rates for Mental Health Services, For-Profit and Nonprofit facilities

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-1

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-1

County of Orange, Health Care Agency
Summary of Program Costs
Seriously Emotionally Disturbed Pupils: Out of State Mental Health Service Program
Period of July 1, 2000 to June 30, 2006

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable Costs Concurring</u>
<u>July 1, 2000 - June 30, 2001</u>		
Ongoing mental health services costs:		
Vendor reimbursements	1,125,732	1,125,732
Case management	100,462	100,462
Total program costs	<u>1,226,194</u>	<u>1,226,194</u>
Less: Late claim penalty	(1,000)	(1,000)
Less: Amount paid by state		(33,556)
Allowable costs claimed in excess of amount paid		<u>(33,556)</u>
Allowable per State Audit		1,031,139
Difference - amount being appealed		<u>(195,055)</u>
<u>July 1, 2001 - June 30, 2002</u>		
Ongoing mental health services costs:		
Vendor reimbursements	1,423,385	1,423,385
Case management	116,409	116,409
Total program costs	<u>1,539,794</u>	<u>1,539,794</u>
Less: Late claim penalty	(1,000)	(1,000)
Less: Amount paid by state		-
Allowable costs claimed in excess of amount paid		<u>-</u>
Allowable per State Audit		1,226,274
Difference - amount being appealed		<u>(313,520)</u>
<u>July 1, 2002 - June 30, 2003</u>		
Ongoing mental health services costs:		
Vendor reimbursements	1,397,575	1,397,575
Case management	295,568	295,568
Total program costs	<u>1,693,143</u>	<u>1,693,143</u>
Less: Late claim penalty	(1,000)	(1,000)
Less: Amount paid by state		(105)
Allowable costs claimed in excess of amount paid		<u>(105)</u>
Allowable per State Audit		1,472,841
Difference - amount being appealed		<u>(220,302)</u>
<u>July 1, 2003 - June 30, 2004</u>		
Ongoing mental health services costs:		
Vendor reimbursements	2,036,041	2,036,041
Case management	362,791	362,791
Total program costs	<u>2,398,832</u>	<u>2,398,832</u>
Less: Reimbursements		(901,277)
Less: Amount paid by state		-
Allowable costs claimed in excess of amount paid		<u>1,497,555</u>
Allowable per State Audit		2,112,547
Difference - amount being appealed		<u>(286,285)</u>

County of Orange, Health Care Agency
Summary of Program Costs
Seriously Emotionally Disturbed Pupils: Out of State Mental Health Service Program
Period of July 1, 2000 to June 30, 2006

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable Costs Concurring</u>
<u>July 1, 2004 - June 30, 2005</u>		
Ongoing mental health services costs:		
Vendor reimbursements	5,043,632	5,043,632
Case management	443,489	443,489
Total program costs	<u>5,487,121</u>	<u>5,487,121</u>
Less: Late claim penalty	(1,000)	(1,000)
Less: Reimbursements		(1,683,553)
Less: Amount paid by state		<u>(3,802,568)</u>
Allowable costs claimed in excess of amount paid		<u>(5,486,121)</u>
Allowable per State Audit		<u>4,679,062</u>
Difference - amount being appealed		<u>(808,059)</u>
<u>July 1, 2005 - June 30, 2006</u>		
Ongoing mental health services costs:		
Vendor reimbursements	5,736,818	5,736,818
Case management	494,891	494,891
Total program costs	<u>6,231,709</u>	<u>6,231,709</u>
Less: Late claim penalty	(10,000)	(10,000)
Less: Reimbursements		(2,113,302)
Less: Amount paid by state		<u>(4,108,407)</u>
Allowable costs claimed in excess of amount paid		<u>-</u>
Allowable per State Audit		<u>5,081,104</u>
Difference - amount being appealed		<u>(1,150,605)</u>
<u>Summary: July 1, 2000 - June 30, 2006</u>		
Ongoing mental health services costs:		
Vendor reimbursements	16,763,183	16,763,183
Case management	1,813,610	1,813,610
Total program costs	<u>18,576,793</u>	<u>18,576,793</u>
Less: Late claim penalty	(14,000)	(14,000)
Less: Reimbursements		(4,698,132)
Less: Amount paid by state		<u>(4,142,068)</u>
Allowable costs claimed in excess of amount paid		<u>(8,840,200)</u>
Allowable per State Audit		<u>15,602,967</u>
Difference - amount being appealed		<u>(2,973,826)</u>

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-2

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-2

2142294

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JUN 26 1999

BILL JONES, Secretary of State

**ARTICLES OF INCORPORATION OF
ASPEN SOLUTIONS, INC.**

ARTICLE I

The name of this corporation is Aspen Solutions, Inc.

ARTICLE II

This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

ARTICLE III

The name in the State of California for this Corporation's initial agent for service of process is:

CT Corporation Systems

IN WITNESS WHEREOF, the undersigned, who is the incorporator of this Corporation, has executed these Articles of Incorporation on June 17, 1999.



Harold C. Pope, Esq.
Incorporator



ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-3

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-3



9465 Farnham Street
San Diego, CA 92123
Tel 858\573-2600
Fax 858\573-2602

FAX TRANSMITTAL SHEET

COVER SHEET PLUS 13 PAGES

DATE: 5-23-07
FROM: Claudia Oyuela on behalf of Michael Hawkey
TO: Monica Rossow
FAX #: 714-834-4450

The original of this transmitted document will be sent via:

Regular Mail UPS/FedEx Other _____

X This will be the only form of delivery

Fax Disclaimer: This fax transmittal and any pages transmitted with it are **confidential** and are intended solely for the use of the individual to whom or entity to which they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the fax to the intended recipient, be advised that you have received this fax in error and that any use, dissemination, forwarding, printing, or copying of this fax or its attachments is strictly prohibited. If you have received this fax in error, please notify the sender immediately.

MESSAGE: _____

MAY 07 2007

Internal Revenue Service

Date: April 28, 2007

MENTAL HEALTH SYSTEMS INC
9465 FARNHAM ST
SAN DIEGO CA 92123

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
T. Buckingham 29-70700
Customer Service Representative
Toll Free Telephone Number:
877-829-5500
Federal Identification Number:
95-3302967

Dear Sir or Madam:

This is in response to your request of April 26, 2007, regarding your organization's tax-exempt status.

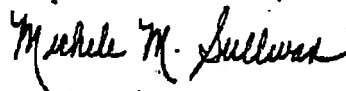
In November 1982 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a public charity under section 509(a)(2) of the Internal Revenue Code

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations 1

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-4

ITEM 8
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EXHIBIT A-4

Alaska Entity # 78003D

State of Alaska
Department of Commerce, Community, and Economic
Development

CERTIFICATE
OF
GOOD STANDING

THE UNDERSIGNED, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, and custodian of corporation records for said state, hereby certifies that

KIDS BEHAVIORAL HEALTH OF ALASKA, INC.

on the 12th day of November, 2002 filed in this office its Articles of Incorporation, as a Nonprofit Corporation organized under the laws of this state.

I FURTHER CERTIFY that said Nonprofit Corporation is in good standing, having fully complied with all the requirements of this office.

No information is available in this office on the financial condition, business activity or practices of this corporation.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on the 7th day of December, 2007.

Emil Notti
Commissioner



Francine Giani
Executive Director
Department of Commerce

Jon M. Huntsman, Jr.
Governor
State of Utah

Kathy Berg
Director
Division of Corporations
& Commercial Code

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF CORPORATIONS & COMMERCIAL CODE
CERTIFICATE OF REGISTRATION

CT CORPORATION SYSTEM
KIDS BEHAVIORAL HEALTH OF ALASKA, INC.
136 E SOUTH TEMPLE STE 2100
SALT LAKE CITY UT 84111

Access Code
Code: 4361694



State of Utah
Department of Commerce
Division of Corporations & Commercial Code

CERTIFICATE OF REGISTRATION

Corporation - Foreign - Non-Profit

This certifies that KIDS BEHAVIORAL HEALTH OF ALASKA, INC. has been filed and approved on December 07, 2007 and has been issued the registration number 6840462-0141 in the office of the Division and hereby issues this Certification thereof.

KATHY BERG
Division Director

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-5

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-5

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT and RIVERSIDE COUNTY
DEPARTMENT of MENTAL HEALTH,

Respondents.

OAH CASE NO. N2007090403

**NOTICE: This decision has been
UPHELD by the United States District
Court. Click [here](#) to view the USDC's
decision.**

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, Special Education Division, State of California (OAH), heard this matter by written stipulation and joint statement of facts presented by the parties, along with written argument and closing briefs submitted by each party.

Heather D. McGunigle, Esq., of Disability Rights Legal Center, and Kristelia Garcia, Esq., of Quinn Emanuel Urquhart Oliver & Hedges, represented Student (Student).

Ricardo Soto, Esq., of Best Best & Krieger, represented Riverside Unified School District (District).

Sharon Watt, Esq., of Filarsky & Watt, represented Riverside County Department of Mental Health (CMH).

Student filed his first amended Request for Due Process Hearing on September 25, 2007. At the pre-hearing conference on December 7, 2007, the parties agreed to submit the matter on a written Joint Stipulation of Facts, and individual written closing arguments. The documents were received, the record closed, and matter was submitted for decision on December 31, 2007.

ISSUE

May the educational and mental health agencies place Student in an out-of-state for-profit residential center under California Code of Regulations section 60100, subdivision (h), and California Welfare and Institutions Code section 11460, subdivision (c)(2) and (3), when no other appropriate residential placement is available to provide Student a FAPE?

CONTENTIONS

All parties agree that Student requires a therapeutic residential placement which will meet his mental health and communication needs pursuant to his October 9, 2007 Individual Educational Plan (IEP). The District and CMH have conducted a nation-wide search and have been unable to locate an appropriate non-profit residential placement for Student.

Student contends that, as the District and CMH's searches for an appropriate non-profit residential placement have been exhausted, the District and CMH are obligated to place Student in an appropriate out-of-state for-profit residential program in order to provide Student with a free and appropriate public education (FAPE).

Both the District and CMH contend that they do not have the authority to place Student at an out-of-state for-profit residential program.

JOINT STIPULATION OF FACTS¹

1. Student is 17 years old and resides with his Mother (Mother) within the District in Riverside County, California. Student's family is low-income and meets Medi-Cal eligibility requirements.
2. Student is deaf, has impaired vision and an orthopedic condition known as legg-perthes. Student has been assessed as having borderline cognitive ability. His only effective mode of communication is American Sign Language (ASL). Student also has a long history of social and behavioral difficulties. As a result, Student is eligible for special education and related services and mental health services through AB2726/3632 under the category of emotional disturbance (ED), with a secondary disability of deafness.
3. Student requires an educational environment in which he has the opportunity to interact with peers and adults who are fluent in ASL. Student attended the California

¹ The parties submitted a Stipulated Statement of Undisputed Facts and Evidence which is admitted into evidence as Exhibit 67, and incorporated herein. The stipulated facts have been consolidated and renumbered for clarity in this decision. As part of the same document, the parties stipulated to the entry of the joint Exhibits 1 through 66, which are admitted into evidence.

School for the Deaf, Riverside (CSDR) between January 2005 and September 2006, while a resident of the Monrovia Unified School District.

4. CSDR does not specialize in therapeutic behavior interventions. In January 2005, CSDR terminated Student's initial review period due to his behaviors. CSDR removed Student from school as suicide prevention because Student physically harmed himself. At that time, both CSDR and Monrovia USD believed Student to be a danger to himself and others. They, therefore, placed him in home-hospital instruction.

5. Between June 2005 and October 2005, Student's behaviors continued to escalate. Student was placed on several 72-hour psychiatric holds for which he missed numerous days of school. On one occasion, Student was hospitalized for approximately two weeks. On another occasion, he was hospitalized at least a week.

6. Pursuant to a mental health referral, on September 14, 2006, Monrovia USD and Los Angeles County Department of Mental Health (LACDMH) met, and determined that Student had a mental disturbance for which they recommended residential placement.² At that time, Amy Kay, Student's ASL-fluent therapist through LACDMH's AB2726 program, recommended a residential placement at the National Deaf Academy (NDA). Ms. Kay specifically recommended that Student be placed in a residential placement at NDA due to his need for a higher level of care to address his continuing aggressive and self-injurious behaviors. Additionally, the rehabilitation of these behaviors would be unsuccessful without the ability for Student to interact with deaf peers and adults. Ms. Kay further indicated that the use of an interpreter did not provide an effective method for Student to learn due to his special needs.

7. On August 5, 2006, NDA sent Student a letter of acceptance into its program. Monrovia USD and LACDMH, however, placed Student at Willow Creek/North Valley Non-public School. This placement failed as of March 2007, at which time both Monrovia USD and LACDMH indicated they were unable to find a residential placement for Student that could meet his mental health and communication needs. They did not pursue the residential treatment center at NDA because of its for-profit status.

8. Student and his mother moved to the District and Riverside County in April 2007.

9. On April 20, 2007, the District convened an IEP meeting to develop Student's educational program. The District staff, CMH staff, staff from CSDR, Student, his mother and attorney attended and participated in the IEP meeting. The IEP team changed Student's primary disability classification from emotional disturbance to deafness with social-emotional overlay. The parties agreed to this change in eligibility as CSDR required that

² As noted in Student's prior IEP, Student also required an educational environment which provided instruction in his natural language and which facilitated language development in ASL.

deafness be listed as a student's primary disability in order to be admitted and no other appropriate placements were offered. The IEP team offered placement at CSDR for a 60-day assessment period, individual counseling, speech and language services through CSDR, and individual counseling through CMH. The IEP team also proposed to conduct an assessment to determine Student's current functioning and to make recommendations concerning his academic programming based upon his educational needs.

10. CSDR suspended Student within its 60-day assessment period. CSDR subsequently terminated Student when, during his suspension, Student was found in the girl's dormitory following an altercation with the staff.

11. On May 23, 2007, the District convened another IEP meeting to discuss Student's removal from CSDR. The IEP team recommended Student's placement at Oak Grove Institute/Jack Weaver School (Oak Grove) in Murrieta, California, with support from a deaf interpreter pending the assessment agreed to at the April 2007 IEP meeting. CMH also proposed conducting an assessment for treatment and residential placement for Student.

12. On August 3, 2007, the District convened an IEP meeting to develop Student's annual IEP, and to review the assessments from CSDR and CMH. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. Based upon the information reviewed at the meeting, the IEP team proposed placement at Oak Grove with a signing interpreter, deaf and hard of hearing consultation and support services from the District, and individual counseling with a signing therapist through CMH. Mother and her attorney agreed to implementation of the proposed IEP, but disagreed that the offer constituted an offer of FAPE due to its lack of staff, teachers and peers who used ASL.

13. On October 9, 2007, the District convened another IEP meeting to review Student's primary disability. District staff, Oak Grove staff, CMH staff, Student's mother and attorney attended the IEP meeting. At this meeting, the IEP team once again determined Student's primary special education eligibility category as emotional disturbance with deafness as a secondary condition. The IEP team recommended placement in a residential treatment program, as recommended by CMH. Placement would remain at Oak Grove with a signing interpreter pending a residential placement search by CMH. Mother consented to the change in eligibility and the search for a residential placement. Mother also requested that Student be placed at NDA.

14. CMH made inquiries and pursued several leads to obtain a therapeutic residential placement for Student. CMH sought placements in California, Florida, Wyoming, Ohio and Illinois. All inquiries have been unsuccessful, and Student has not been accepted in any non-profit residential treatment center. At present CMH has exhausted all leads for placement of Student in a non-profit, in-state or out-of-state residential treatment center.

15. Student, his mother and attorney have identified NDA as an appropriate placement for Student. NDA, located in Mount Dora, Florida, is a residential treatment center for the treatment of deaf and hard-of-hearing children with the staff and facilities to

accommodate Student's emotional and physical disability needs. NDA also accepts students with borderline cognitive abilities. In addition, nearly all of the service providers, including teachers, therapists and psychiatrists are fluent in ASL. The residential treatment center at NDA is a privately owned limited liability corporation, and is operated on a for-profit basis. The Charter School at NDA is a California certified non-public school. All parties agree that NDA is an appropriate placement which would provide Student a FAPE.

16. Student currently exhibits behaviors that continue to demonstrate a need for a residential treatment center. Student has missed numerous school days due to behaviors at home. As recently as December 11, 2007, Student was placed in an emergency psychiatric hold because of uncontrollable emotions and violence to himself and others.

LEGAL CONCLUSIONS

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528], the party who files the request for due process has the burden of persuasion at the due process hearing. Student filed this due process request and bears the burden of persuasion.

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. Special education is defined as specially designed instruction provided at no cost to parents and calculated to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.)

3. In *Board of Education of the Hendrick Hudson Central School District, et. al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L. Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to a child with special needs." *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Court concluded that the standard for determining whether a local educational agency's provision of services substantively provided a FAPE involves a determination of three factors: (1) were the services designed to address the student's unique needs, (2) were the services calculated to provide educational benefit to the student, and (3) did the services conform to the IEP. (*Id.* at p.176; *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F. 2d 1307, 1314.) Although the IDEA does not require that a student be provided with the best available education or services or that the services maximize each child's potential, the "basic floor of opportunity"

of specialized instruction and related services must be individually designed to provide some educational benefit to the child. De minimus benefit or trivial advancement is insufficient to satisfy the *Rowley* standard of “some” benefit. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d at 130.)

4. Under California law, “special education” is defined as specially designed instruction, provided at no cost to parents, that meets the unique needs of the child. (Ed. Code, § 56031.) “Related services” include transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. State law refers to related services as “designated instruction and services” (DIS) and, like federal law, provides that DIS services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).) Included in the list of possible related services are psychological services other than for assessment and development of the IEP, parent counseling and training, health and nursing services, and counseling and guidance. (Ed. Code, § 56363, subd. (b).) Further, if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. (34 C.F.R § 300.104.) Thus, the therapeutic residential placement and services that Student requests are related services/DIS that must be provided if they are necessary for Student to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).) Failure to provide such services may result in a denial of a FAPE.

5. A “local educational agency” is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (Ed. Code, § 48200.)

6. Federal law provides that a local educational agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. (20 U.S.C. § 1412(a)(10)(C)(i).)

7. Under California law, a residential placement for a student with a disability who is seriously emotionally disturbed may be made outside of California only when no in-state facility can meet the student’s needs and only when the requirements of subsections (d) and (e) have been met. (Cal. Code Regs., tit. 2, § 60100, subd. (h).) An out-of-state placement shall be made only in residential programs that meet the requirements of Welfare and Institutions Code sections 11460, subdivisions (c)(2) through (c)(3).

8. When a school district denies a child with a disability a FAPE, the child is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*School Comm. of the Town of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996].) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief which may be granted for the denial of appropriate

special education services to help overcome lost educational opportunity. (*See e.g. Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The purpose of compensatory education is to “ensure that the student is appropriately educated within the meaning of the IDEA.” (*Id.* at p. 1497.) The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent Sch. Dist. v. State Bd. of Educ.* (6th Cir. 1986) 790 F.2d 1153, 1161.) However, the parents’ placement still must meet certain basic requirement of the IDEA, such as the requirement that the placement address the child’s needs and provide him educational benefit. (*Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14 [114 S.Ct. 361].)

Determination of Issues

9. In summary, based upon Factual Findings 2, 3, and 6 through 16, all parties agree that the placement in the day program at Oak Grove NPS with an interpreter cannot meet Student’s unique educational needs because it does not sufficiently address his mental health and communication needs and does not comport with his current IEP. All parties agree that Student requires a therapeutic residential placement in order to benefit from his education program. Further, all parties agree that the nationwide search by the District and CMH for an appropriate non-profit residential placement with a capacity to serve deaf students has been exhausted, and Student remains without a residential placement. Lastly, all parties agree that the National Deaf Academy can meet both Student’s mental health and communication needs. Further, the charter school at NDA is a California certified NPS.

10. The District and CMH rely upon Legal Conclusion 7 to support their contentions that they are prohibited from placing Student in an out-of-state for-profit residential placement, even if it represents the only means of providing Student with a FAPE.

11. As administrative law precedent, CMH cites *Yucaipa-Calimesa Joint Unified School District and San Bernardino County Department of Behavioral Health (Yucaipa)*, OAH Case No. N2005070683 (2005), which determined that the District and County Mental Health were statutorily prohibited from funding an out-of-state for-profit placement. The *Yucaipa* case can be distinguished from the one at hand. Clearly, the ruling in *Yucaipa*, emphasized that the regulation language used the mandatory term “shall,” and consequently there was an absolute prohibition from funding a for-profit placement. The ALJ, however, did not face a resulting denial of FAPE for Student. In *Yucaipa*, several non-profit placement options were suggested, including residential placement in California, however, the parent would not consider any placement other than the out-of-state for-profit placement. In denying Student’s requested for-profit placement, the ALJ ordered that the parties continue to engage in the IEP process and diligently pursue alternate placements. In the current matter, however, pursuant to Factual Findings 12 through 14, CMH has conducted an extensive multi-state search, and all other placement possibilities for Student have been exhausted. Pursuant to Factual Finding 15, NDA is the only therapeutic residential placement remaining, capable of providing a FAPE for Student.

12. “When Congress passed in 1975 the statute now known as the Individuals with Disabilities Act (IDEA or Act), it sought primarily to make public education available to handicapped children. Indeed, Congress specifically declared that the Act was intended to assure that all children with disabilities have available to them. . . appropriate public education and related services designed to meet their unique needs, to assure the rights of children with disabilities and their parents or guardians are protected. . . and to assess and assure the effectiveness of efforts to educate children with disabilities.” (*Hacienda La Puente Unified School District v. Honig* (1992) 976 F.2d 487, 490.) The Court further noted that the United States Supreme Court has observed that “in responding to these programs, Congress did not content itself with passage of a simple funding statute. . . Instead, the IDEA confers upon disabled students an enforceable substantive right to public education in participating States, and conditions federal financial assistance upon a State’s compliance with the substantive and procedural goals of the Act.” (*Id.* at p. 491.)

13. California maintains a policy of complying with IDEA requirements in the Education Codes, sections 56000, et seq. With regard to the special education portion of the Education Code, the Legislature intended, in relevant part, that every disabled child receive a FAPE. Specifically, “It is the further intent of the Legislature to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act.” (Ed. Code, § 56000.)

14. California case law explains further, “although the Education Code does not explicitly set forth its overall purpose, the code's primary aim is to benefit students, and in interpreting legislation dealing with our educational systems, it must be remembered that the fundamental purpose of such legislation is the welfare of the children.” (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App. 4th 47, 63.)

15. Pursuant to Legal Conclusion 6, a district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district made a free appropriate public education available to the child. All parties concur, in Factual Findings 12 through 15, that the District has been unable to provide a FAPE to Student because no appropriate placement exists except in an out-of-state for-profit residential program.

16. Assuming the District’s interpretation of section 60100, subdivision (h) of Title 2 of the California Code of Regulations is correct, it is inconsistent with the federal statutory and regulatory law by which California has chosen to abide. California education law itself mandates a contrary response to Welfare and Institutions Code section 11460, subdivision (c)(3), where no other placement exists for a child. Specifically, “It is the further intent of the Legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act.” (Ed. Code, § 56000, subd. (e) (Feb. 2007).) A contrary result

would frustrate the core purpose of the IDEA and the companion state law, and would prevent Student from accessing educational opportunities.³

17. Regardless of whether the District and CMH properly interpreted Legal Conclusion 7, Student has ultimately been denied a FAPE since May 23, 2007, when he was terminated from attending CSDR, as indicated in Factual Findings 10 through 16. Pursuant to Factual Findings 6 and 16, Student's need for therapeutic residential placement with ASL services continues. As a result of this denial of FAPE, Student is entitled to compensatory education consisting of immediate placement at the National Deaf Academy through the 2008-2009 school years. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

ORDER

The District has denied Student a free appropriate public education as of May 23, 2007. The District and CMH are to provide Student with compensatory education consisting of immediate placement at the National Deaf Academy and through the 2008-2009 school year. The obligation for this compensatory education shall terminate forthwith in the event Student voluntarily terminates his attendance at NDA after his 18th birthday, or Student's placement is terminated by NDA.

PREVAILING PARTY


Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student has prevailed on the single issue presented in this case.

³ Further, there appears to be no argument that had Mother completely rejected the District's IEP offer, and privately placed Student at NDA, she would be entitled to reimbursement of her costs from the District, if determined that the District's offer of placement did not constitute a FAPE. By all accounts, Student's low income status prevented placement at NDA, and therefore precluded Student from receiving a FAPE via reimbursement by the District.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: January 15, 2008


JUDITH L. PASEWARK
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-6

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-6

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JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

RIVERSIDE COUNTY DEPARTMENT
OF MENTAL HEALTH,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

CASE NO. EDCV 08-0503-SGL (RCx)

ORDER AFFIRMING ADMINISTRATIVE
LAW JUDGE'S DECISION

CONSOLIDATED CASES:

MONICA VALENTINE,

Plaintiff,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT et al,

Defendants.

RIVERSIDE UNIFIED SCHOOL
DISTRICT,

Plaintiff,

v.

ANTHONY SULLIVAN et al,

Defendants.

1 At its core, the case before the Court presents a simple question: Is a school
2 district excused from its duty under the federal Individuals with Disabilities Education Act
3 ("IDEA") to provide a free, appropriate public education ("FAPE") where certain state
4 administrative code provisions prohibit the reimbursement of expenses associated with
5 placement at an out-of-state for-profit facility but where that facility is the only one
6 identified as an appropriate placement? As set forth below, the Court rejects arguments
7 that the ALJ exceeded the scope of her authority, that California law prohibits the
8 recommended placement, and that a limited waiver made by the student does not
9 preclude the remedy imposed and, in the end, the Court concludes that such a funding
10 structure does not excuse the school district from its duty.

11 I. INTRODUCTION

12 This case arises from a dispute regarding the provision of educational services to
13 a disabled individual, defendant Anthony Sullivan ("Sullivan"). Plaintiffs Riverside
14 County Department of Mental Health ("DMH") and Riverside Unified School District
15 ("RUSD") seek the reversal of the January 15, 2008, decision of Administrative Law
16 Judge Judith L. Pasewark ("ALJ"), Office of Administrative Hearings, Special Education
17 Division, State of California ("OAH"), in *Anthony Sullivan v. Riverside Unified School*
18 *District and Riverside County Department of Mental Health*, and ask the Court to find
19 that Sullivan was not entitled to an order directing placement at the National Deaf
20 Academy ("NDA") under the Individuals with Disabilities Education Act ("IDEA"), 20
21 U.S.C. § 1400 *et seq.*, or California special education law, California Education Code
22 section 56000 *et seq.* See Administrative Record ("A.R.") 780-89.

23 Sullivan filed his First Amended Request for Due Process Hearing on September
24 25, 2007. A.R. 780. At the pre-hearing conference on December 7, 2007, the parties
25 agreed to have the matter decided by the ALJ without oral argument based stipulation
26 facts, stipulated evidence, and written closing arguments. *Id.* Ultimately, in the decision
27 that is the subject of the current appeal, the ALJ decided that defendant had been
28 denied a free, appropriate public education ("FAPE"), and ordered immediate placement

1 of defendant at an out-of-state residential facility. In a separate decision (which is also
2 the subject of the present appeal), the ALJ denied a motion for reconsideration based
3 on an issue of waiver.

4 Upon review of the ALJ's decision, the ALJ's Order Denying Motion for
5 Reconsideration, the pleadings, and the administrative record, the Court **AFFIRMS** the
6 ALJ's decisions.

7 **II. FACTUAL BACKGROUND**

8 At the time of the administrative hearing, Sullivan was seventeen years old and
9 resided with his mother, Monica Valentine ("Valentine"), within the RSUD in Riverside
10 County, California.¹ His family was considered low-income. Sullivan is deaf, has
11 impaired vision, and an orthopedic condition affecting the hip known as legg-perthes.
12 His only effective mode of communication is American Sign Language ("ASL"). He has
13 also been assessed as having borderline cognitive ability and a long history of social
14 and behavioral difficulties. As a result, Sullivan was eligible for special education and
15 related services and mental health services under the category of emotional disturbance
16 ("ED"), with a secondary disability of deafness.

17 Sullivan requires an education environment in which he has an opportunity to
18 interact with peers and adults who are fluent in ASL. Between January, 2005, and
19 September, 2006, he was a resident of the Monrovia Unified School District ("MUSD")
20 and attended the California School for the Deaf, Riverside ("CSDR"). CSDR did not
21 specialize in therapeutic behavior interventions. Sullivan was removed from CSDR for
22 suicide prevention because he physically harmed himself and was placed in home-
23 hospital instruction. Between June, 2005, and October, 2005, Sullivan was placed on
24 several 72-hour psychiatric holds.

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26
27 ¹ As part of the Request for Due Process Hearing, the Parties filed a joint
28 Stipulated Statement of Undisputed Facts and Evidence to the ALJ. A.R. 731 - 738.
The facts presented here are contained in the Parties' joint stipulation, which was relied
upon by the ALJ. See A.R. 781 - 784.

1 On September 14, 2006, MUSD and the Los Angeles County Department of
2 Mental Health ("LACDMH") held a meeting and recommended residential placement for
3 Sullivan. It was recommended that Sullivan be placed at National Deaf Academy
4 ("NDA") because of his need for a higher level of care to address his continuing
5 aggressive and self-injurious behaviors and to interact with deaf peers and adults
6 without the use of an interpreter. On August 5, 2006, Sullivan was accepted by NDA,
7 but was instead placed at Willow Creek/North Valley Non-public School. The placement
8 failed in March, 2007; MUSD and LACDMH indicated they were unable to find a
9 residential placement for Sullivan that could meet his mental health and communication
10 needs. As explained more fully below, NDA was not considered an option for MUSD
11 and LACDMH because of NDA's for-profit status.

12 In April, 2007, defendants moved into Riverside County and RUSD. On April 20,
13 2007, RUSD convened an Individual Education Plan ("IEP") meeting. The IEP team
14 changed Sullivan's primary disability classification from ED to deafness with social-
15 emotional overlay to enroll him in CSDR for a 60-day assessment period, which was the
16 only appropriate placement. CSDR terminated Sullivan's placement for poor behavior
17 within the 60-day assessment period.

18 On May 23, 2007, RUSD convened another IEP meeting to discuss Sullivan's
19 termination from CSDR. It was recommended that Sullivan be placed at Oak Grove
20 Institute/Jack Weaver School ("Oak Grove") and have support from a deaf interpreter.
21 On August 3, 2007, RUSD convened another IEP meeting to develop an annual IEP.
22 The IEP team proposed placement at Oak Grove with a signing interpreter, deaf and
23 hard-of-hearing consultation, and support services provided by RUSD and DMH.
24 Sullivan, his mother, and his attorney agreed to the proposed IEP, but disagreed that
25 the offer constituted a FAPE due to Oak Grove's lack of staff, teachers, and peers who
26 used ASL.

27 On October 9, 2007, RUSD convened another IEP and it was determined that
28 Sullivan's primary special education eligibility category should be changed back to ED

1 with deafness as a secondary condition. It was recommended by the IEP team that
2 Sullivan be placed in a residential treatment program and, until a proper residential
3 placement was found, he would remain at Oak Grove. DMH made inquiries to find a
4 proper non-profit residential placement for Sullivan, including schools in California,
5 Florida, Wyoming, Ohio, and Illinois, but was unsuccessful.

6 Sullivan, his mother, and his attorney all identified NDA as an appropriate
7 placement for Sullivan. NDA is a residential treatment center for the treatment of deaf
8 and hard-of-hearing children with the staff and facilities to accommodate Sullivan's
9 emotional and physical disability needs. NDA also accepts students with borderline
10 cognitive abilities. Also, nearly all of the service providers, including teachers,
11 therapists and psychiatrists are fluent in ASL. The Charter School at NDA is a
12 California certified non-public school and is operated on a for-profit basis. All parties
13 agree that NDA is an appropriate placement and would provide Sullivan with a FAPE.

14 Notwithstanding this agreement, the RSUD and DMH took the position that they
15 could not place Sullivan at NDA because it is operated by a for-profit entity. Sullivan
16 filed for a due process hearing to resolve the issue.

17 III. THE ALJ'S DECISION

18 As noted previously, the matter was submitted to the ALJ by stipulation. The
19 parties stipulated to a single issue, which was articulated as:

20 Must RUSD and RCDMH place Anthony at the
21 National Deaf Academy or other appropriate therapeutic
22 residential placement that can meet both his mental health
23 and communication needs, regardless of whether the facility
24 is run on a for-profit basis, in the absence of existing
25 alternatives?

26 A.R. 724. In articulating this issue, the parties noted their agreement on a number of
27 key points: (1) Sullivan's current placement at Oak Grove did not constitute a FAPE;
28 (2) Sullivan required therapeutic residential placement; (3) despite a nationwide search,

1 no appropriate non-for-profit residential placement could be found; and (4) placement at
2 NDA, would constitute a FAPE.

3 On January 15, 2008, the ALJ issued her decision in favor of Sullivan. A.R. 788.
4 She found that Sullivan had been denied a FAPE since May 23, 2007, when he was
5 removed from CSDR, that his need for therapeutic residential placement with ASL
6 service continued, and that he was "entitled to compensatory education consisting of
7 immediate placement at the National Deaf Academy." A.R. 788.

8 On January 28, 2008, RUSD submitted a Motion for Reconsideration of Decision
9 and Order. A.R. 791-97. The motion challenged the propriety of the remedy ordered by
10 the ALJ – immediate placement at NDA, in light of the fact that such a remedy was not
11 sought by the parties' stipulation, and in light of the fact that Sullivan had agreed to
12 waive all claims for a compensatory education for the period April, 2007, through
13 October 9, 2007. The existence of a waiver was not disputed by Sullivan. The ALJ, on
14 February 20, 2008, denied the Motion for Reconsideration. A.R. 818-20.

15 In response, Plaintiffs filed the instant action.

16 **IV. THE IDEA**

17 THE IDEA guarantees all disabled children a FAPE "that emphasizes special
18 education and related services designed to meet their unique needs and prepare them
19 for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).
20 A FAPE is defined as special education and related services that: (1) are available to
21 the student at public expense, under public supervision and direction, and without
22 charge; (2) meet the state education standards; (3) include an appropriate education in
23 the state involved; and (4) conform with the student's IEP. 20 U.S.C. § 1401(9).

24 "Special education" is defined as instruction specially designed to meet a
25 disabled student's unique needs, at no cost to parents, whether it occurs in the
26 classroom, at home, or in other settings. 20 U.S.C. § 1401(29); Cal. Educ. Code
27 § 56031. "Related services" include developmental, corrective, and supportive services,
28 such as speech-language services, needed to assist a disabled child in benefitting from

1 education, and to help identify disabling conditions. 20 U.S.C. § 1401(26); Cal. Educ.
2 Code § 56363.

3 The primary tool for achieving the goal of providing a FAPE to a disabled student
4 is the IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 818 (9th
5 Cir. 2007). An IEP is a written statement containing the details of the individualized
6 education program for a specific child, which is crafted by a team that includes the
7 child's parents and teacher, a representative of the local education agency, and,
8 whenever appropriate, the child. 20 U.S.C. § 1401(14), § 1414(d)(1)(B). An IEP must
9 contain: (1) Information regarding the child's present levels of performance; (2) a
10 statement of measurable annual goals; (3) a statement of the special educational and
11 related services to be provided to the child; (4) an explanation of the extent to which the
12 child will not participate with non-disabled children in the regular class; and (5) objective
13 criteria for measuring the child's progress. 20 U.S.C. § 1414(d)(1)(A).

14 The IDEA contains numerous procedural safeguards to ensure that the parents
15 or guardians of a disabled student be kept informed and involved in decisions regarding
16 the child's education. 20 U.S.C. § 1415. As part of this procedural scheme, the local
17 educational agency must give parents an opportunity to present complaints regarding
18 the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(6). Upon the presentation of
19 such a complaint, the parent or guardian is entitled to an impartial due process
20 administrative hearing conducted by the state or local educational agency. 20 U.S.C.
21 § 1415(f).

22 V. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

23 The IDEA provides that a party aggrieved by the findings and decisions made in
24 a state administrative due process hearing has the right to bring an original civil action
25 in federal district court. 20 U.S.C. § 1415(i)(2). The party bringing the administrative
26 challenge bears the burden of proof in the administrative proceeding. *Schaffer ex rel.*
27 *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Similarly, the party challenging the
28 administrative decision bears the burden of proof in the district court. *Hood v. Encinitas*

1 *Union Sch. Dist.*, 486 F.3d 1099, 1103 (9th Cir. 2007).

2 The standard for district court review of an administrative decision under the
3 IDEA is set forth in 20 U.S.C. § 1415(i)(2), which provides as follows:

4 In any action brought under this paragraph the court --
5 (i) shall receive the records of the administrative
6 proceedings; (ii) shall hear additional evidence at the request
7 of a party; and (iii) basing its decision on the preponderance
8 of the evidence, shall grant such relief as the court
9 determines is appropriate.

10 20 U.S.C. § 1415(i)(2)(C). Thus, judicial review of IDEA cases is quite different from
11 review of most other agency actions, in which the record is limited and review is highly
12 deferential. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993).
13 Courts give "due weight" to administrative proceedings, *Board of Educ. of the Hendrick*
14 *Hudson Central Sch. Dist. Westchester County v. Rowley*, 458 U.S. 176, 206 (1982),
15 but how much weight is "due" is a question left to the court's discretion, *Gregory K. v.*
16 *Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987). In exercising this discretion,
17 the Court considers the thoroughness of the hearing officer's findings and award more
18 deference where the hearing officer's findings are "thorough and careful." *Capistrano*
19 *Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995).

20 A hearing officer's findings are treated as "thorough and careful when the officer
21 participates in the questioning of witnesses and writes a decision contain[ing] a
22 complete factual background as well as a discrete analysis supporting the ultimate
23 conclusions." *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th
24 Cir. 2007) (internal quotation marks and citations omitted).²

25 _____
26 ² Plaintiffs contend that the Court, when reviewing purely legal questions such as
27 those at issue here, must subject the ALJ's decision to *de novo* review. Plaintiffs'
28 contention is not without support. See *Paul K. ex rel. Joshua K. v. Hawaii*, 567
F.Supp.2d 1231, 1234 (D. Hawai'i 2008) (setting forth standard of review in IDEA case
by stating, *inter alia*, "[s]tatutory interpretation is reviewed de novo," and collecting

1 **VI. CHALLENGES TO THE ALJ DECISIONS**

2 Plaintiffs oppose the decisions of the ALJ on three grounds: (1) First, they argue
3 that the remedy the ALJ ordered was beyond the scope of the order to which the parties
4 stipulated, and thus, should not have been decided by the ALJ; (2) next, California law
5 is an absolute bar to a placement at NDA; and (3) finally, that Sullivan waived his rights
6 to a compensatory education for the time period April, 2007, through October 9, 2007.

7 In the end, the Court rejects each of these challenges.

8 **A. The Remedy Ordered by the ALJ was Proper**

9 Plaintiffs assert that the ALJ overstepped her authority by awarding
10 compensatory education to Sullivan. Essentially, plaintiffs contend that the ALJ was
11 limited by the stipulation before her to the issue of the duty of plaintiffs regarding
12 placement of Sullivan in light of certain California Administrative Code provisions.

13 The ALJ rejected plaintiffs' argument in her February 20, 2008, Order Denying
14 Motion for Reconsideration. The ALJ found that "[n]one of the documents filed in this
15 matter indicate that Student's Request for Due Process Hearing had been restructured
16 as a request of Declaratory Relief only." A.R. 820. The Court agrees with the ALJ's
17 assessment.

18 When the ALJ ordered that Sullivan be placed at NDA, she ordered the natural
19 remedy that flowed from her determination that Sullivan was denied a FAPE and that
20 the California Administrative Code provisions relied upon by plaintiffs did not excuse
21 them from providing one. All the parties agreed that Sullivan was not receiving a FAPE,
22 and they agreed that NDA was the only facility, despite a nationwide search that could
23 provide him with a FAPE. Upon the presentation of the issue to the ALJ, the parties
24 should have understood that any affirmative response by the ALJ would result in an
25 order setting forth an appropriate remedy.

26 The suggestion that the ALJ was limited to sending the issue back to the parties

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28 cases). Nevertheless, because the Court's own analysis would lead it to the same
conclusion as that reached by the ALJ, the Court need not resolve this issue.

1 for another IEP process is absurd in light of the agreement as to the only appropriate
2 placement. Sullivan would be forced to litigate an issue that he was entitled to a
3 particular placement when an ALJ had already effectively determined the issue. Such
4 an outcome is horribly inefficient; it would be a waste of administrative and judicial
5 resources, and would result in a wholly avoidable delay in the only appropriate
6 placement identified for Sullivan.

7 Accordingly, this Court finds that the issue of a compensatory education was
8 presented to the ALJ and she did not overstep her authority by granting Sullivan a
9 remedy after finding that he had been denied a FAPE.

10 **B. California Law Does Not Prohibit Placement at NDA and Does Not Excuse**
11 **Compliance with the IDEA**

12 The heart of the present appeal is represented by plaintiffs' argument regarding
13 funding for Sullivan's placement at NDA. As alluded to earlier, the difficulty in placing
14 Sullivan at that facility is in its for-profit status.

15 The Court begins with Cal. Adm. Code tit. 2, § 60100(h), relating to "Interagency
16 Responsibility for Providing Services to Pupils with Disabilities" in the area of
17 "Residential Placement" such as that considered for Sullivan:

18 (h) Residential placements for a pupil with a disability who is
19 seriously emotionally disturbed may be made out of
20 California only when no in-state facility can meet the pupil's
21 needs and only when the requirements of subsections (d)
22 and (e) have been met. Out-of-state placements shall be
23 made only in residential programs that meet the
24 requirements of Welfare and Institutions Code Sections
25 11460(c)(2) through (c)(3). For educational purposes, the
26 pupil shall receive services from a privately operated
27 non-medical, non-detention school certified by the California
28 Department of Education.

1 Id. This provision has many requirements, but no party contends that the student is not
2 “seriously emotionally disturbed,” that there is an “instate-facility [that] can meet [his]
3 needs,” that the requirements of subsection (d) (relating to documentation for residential
4 placement) have not been met, or that the requirements of subsection (e) (relating to a
5 mental health service case manager assessment) have not been met. Rather, plaintiffs
6 focus on the requirement that out-of-state placements meet the requirements of Cal.
7 Welfare & Inst. Code § 11460(c)(2)-(3) have not been met.

8 In relevant part, § 11460(c)(2)-(3) provides that “(3) State reimbursement for an
9 AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home
10 organized and operated on a nonprofit basis.”³

11 Reading these statutes together, the Court, like the ALJ, can discern no outright
12 prohibition under California law on Sullivan’s placement at NDA. To be sure,
13 § 60100(h) speaks in terms of conditions precedent to out-of-state placements when it
14 provides as follows: “Out-of-state placements **shall be made only** in residential
15 programs that meet the requirements of Welfare and Institutions Code Sections
16 11460(c)(2) through (c)(3),” but the subsection upon which plaintiffs focus, subsection
17 (c)(3) does not set forth a requirement so much as a limitation upon reimbursement for
18 the costs of such placement.⁴ This is especially so when viewed in light of § 60000,
19 which provides that the intent of the chapter of the Administrative Code in which
20 § 60100 appears “is to assure conformity with the federal Individuals with Disabilities
21 Education Act or IDEA.” That section provides guidance on interpretation of the Code
22 provisions that follow it:

23
24 ³ The parties cite to subsection (c)(2) and (c)(3), but the “for-profit” non-
placement provision is found only in subsection (c)(3).

25
26 ⁴ This incorporation of the requirements makes much more sense as to
27 subsection (c)(2), which sets forth certain conditions relating to the operations of the
28 facility. Plaintiffs do not argue that these requirements have not been met; their
argument is that they are prohibited from placing Sullivan at NDA because of its for-
profit status.

1 Thus, provisions of this chapter shall be construed as
2 supplemental to, and in the context of, federal and state laws
3 and regulations relating to interagency responsibilities for
4 providing services to pupils with disabilities.

5 *Id.*

6 Plaintiffs reliance on *Yucaipa-Calimesa Joint Unified School District and San*
7 *Bernardino County Department of Behavioral Health*, OAH Case No. N2005070683
8 (2005), does not compel a contrary result. The ALJ properly distinguished that case on
9 the grounds that other acceptable placements were identified for the student. No such
10 alternative placements have been identified for Sullivan, and therefore the cited case is
11 unpersuasive.

12 What was apparent to the ALJ, and what is apparent to this Court, is that
13 whatever funding limitations plaintiffs may face, the duty under the IDEA to provide to
14 Sullivan a FAPE is clear and cannot be diminished. Equally clear from the record
15 before the ALJ, and before this Court, is that Sullivan can receive a FAPE through
16 placement at NDA, and that no other alternative placement has been identified.

17 **C. Sullivan’s Waiver Was Limited and Does not Affect the ALJ-Ordered**
18 **Remedy**

19 The waiver was limited to the time period of April, 2007, through October 9, 2007.
20 Rights for the time period thereafter are expressly reserved. DMH Compl., Exh. D.
21 (“Parent does not waive any claims of any kind from October 9, 2007 forward.”).

22 The compensatory education ordered by the ALJ only applied to the period from
23 the date of her decision, January 15, 2008, through the 2008- 2009 school year, several
24 months after the Defendants’ waiver expired. A.R. 788. The ALJ’s order of
25 compensatory education was a prospective equitable remedy that did not require RUSD
26 and DMH to provide any compensation for the time period before January 15, 2008.

27
28 **VI. CONCLUSION**

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Accordingly, and for the foregoing reasons, the Court **AFFIRMS** the ALJ's January 15, 2008, decision requiring RUSD and DMH provide Sullivan with a compensatory education consisting of immediate placement at the National Deaf Academy. The Court also **AFFIRMS** ALJ's February 20, 2008 Order Denying Motion for Reconsideration.

Counsel for defendants shall lodge a proposed judgment that complies with Fed. R. Civ. P. 54(a) within five days of the entry of this Order. A motion for attorney fees may be filed in accordance with the schedule previously set by the Court.

IT IS SO ORDERED.

DATE: July 20, 2009



STEPHEN G. LARSON
UNITED STATES DISTRICT JUDGE

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-7

ITEM 8
DOCUMENTARY EVIDENCE AND DECLARATIONS
EXHIBIT A-7

County of Orange, Health Care Agency
Seriously Emotionally Disturbed Pupils: Out of State Mental Health Service Program
Comparison of the Rates of Mental Health Services
For-Profit Facilities & Nonprofit Facilities
Period of July 1, 2000 to June 30, 2006

Facility Name	Daily Rates (1)					
	FY 00/01	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06
Facilities Identified in Audit as "For-Profit"						
Aspen Ranch	--	--	--	80.00	--	--
Copper Hills Youth Center	--	--	--	--	--	105.00
Island View Academy	39.50	49.50	52.00	55.00	57.75	--
Logan River	--	--	--	65.00	77.41	77.41
National Deaf Academy	--	--	--	122.57	135.00	--
Provo Canyon School	54.50	54.50	54.50	60.00	70.00	75.00
Sunhawk Academy	--	--	--	--	80.00	82.00
Youth Care of Utah	--	--	--	90.00	94.00	95.00
AVERAGE DAILY RATE	47.00	52.00	53.25	78.76	85.69	86.88
Facilities Identified in Audit as "NonProfit"						
Alpine Academy	--	--	--	84.25	--	109.05
Buckeye Ranch	--	--	--	138.00	138.00	--
Cathedral Home for Children	--	--	--	120.00	135.00	135.00
Chileda Institue (3)	--	--	--	80.40	78.97	80.12
Cinnamon Hill Youth Crisis Ctr	--	--	--	--	--	45.00
Colorado Boys Ranch (2)	94.45	97.59	97.59	100.43	106.56	109.80
Daystar Residential	60.00	60.00	80.00	80.00	80.00	80.00
Devereux Arizona (Scottsdale)	51.00	30.00	67.50	--	--	--
Devereux Texas (Unit 1)	119.42	128.86	129.70	125.16	138.10	138.10
Devereux Texas (Unit 4/5)	88.17	90.53	91.28	91.28	100.72	100.72
Devereux Texas (Unit 6)	123.20	124.23	125.16	129.70	143.11	143.11
Devereux Texas (Victoria)	46.00	50.02	51.84	51.84	57.20	57.20
Devereux Cleo Wallace	--	--	--	118.45	124.37	130.59
Emily Griffith Centers	--	--	112.41	112.41	115.00	117.30
Excelsior Youth Center	75.06	79.20	83.95	88.03	89.83	91.63
Forest Heights Lodge	45.19	52.78	53.84	48.87	--	--
Heritage School	--	41.72	46.04	46.04	50.81	53.35
Intermountain Children's Home	--	--	--	50.90	--	--
Pathway School	--	--	--	107.07	--	--
Yellowstone Boys/Girls Ranch	61.00	61.00	62.22	63.15	67.00	70.00
AVERAGE DAILY RATE	76.35	74.18	83.46	90.89	101.76	97.40

(1) Source: Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Annual Claim for FY's 2000/01, 01/02, 03/04, 04/05, and 05/06; Component/Activity Cost Detail, Form SEDP-2.

(2) Rate for Colorado Boys Home for FY's 00/01 is an average of the two billing rates for that period.

(3) Rate for Chileda Institute for FY's 04/05 & 05/06 is an average of the two billing rates for those periods.

ITEM 9
CLAIMING INSTRUCTIONS
EXHIBIT B

ITEM 9
CLAIMING INSTRUCTIONS
EXHIBIT B

OFFICE OF THE STATE CONTROLLER

STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2000-14

SERIOUSLY EMOTIONALLY DISTURBED PUPILS:
OUT-OF-STATE MENTAL HEALTH SERVICES

JANUARY 2, 2001

In accordance with Government Code Section (GC) 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for the filing of claims for Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (SEDP). These claiming instructions are issued subsequent to the adoption of the program's parameters and guidelines (P's & G's) by the Commission on State Mandates (COSM).

On May 25, 2000, COSM determined that the SEDP program establishes costs mandated by the State according to the provisions listed in the attached P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

Government Code Section 7576, as amended by Chapter 654, Statutes of 1996, established new fiscal and programmatic responsibilities for counties to provide mental health services to SED pupils placed in out-of-state residential programs.

Eligible Claimants

Any county that incurs increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

Filing Deadlines

A. Initial Claims

Initial claims must be filed within 120 days from the issuance date of claiming instructions. Reimbursement claims for the period January 1, 1997, through June 30, 1997, and 1997-98 through 1999-00 fiscal years must be filed with SCO and must be delivered or postmarked on or before **May 2, 2001**. Annually thereafter, having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. All initial reimbursement claims will be considered as one claim for the purpose of computing the late claim penalty. If the claims are late, the penalty should be applied to a single fiscal year. The penalty should not be prorated among fiscal years. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. **Claims filed more than one year after the deadline, or without the requested supporting documentation, will not be accepted.**

B. Estimated Claims

Unless otherwise specified in the claiming instructions, local agencies are not required to provide cost schedules and supporting documents with an estimated claim if the estimated

amount does not exceed the previous fiscal year's actual costs by more than 10%. The claimant can simply enter the estimated amount on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, the claimant must complete supplemental claim forms to support their estimated costs as specified for the program to explain the reason for the increased costs. If no explanation supporting the higher estimate is provided with the claim, it will automatically be adjusted to 110% of the previous fiscal year's actual costs.

Estimated claims filed with SCO must be postmarked by January 15 of the fiscal year in which costs will be incurred. However, 2000-01 estimated claims must be filed with SCO and postmarked by **May 2, 2001**. Timely filed claims will be paid before late claims.

Minimum Claim Cost

GC § 17564(a) provides that no claim shall be filed pursuant to § 17561 unless such a claim exceeds \$200 per program per fiscal year. Claims should be rounded to the nearest dollar.

Reimbursement Claims

Initial reimbursement claims will only be reimbursed to the extent that expenditures can be supported and, if such information is unavailable, claims will be reduced. In addition, ongoing reimbursement claims must be supported by documentation as evidence of the expenditures. Examples of documentation may include, but are not limited to, employee time records that identify mandate activities, payroll records, invoices, receipts, contracts, travel expense vouchers, purchase orders, and caseload statistics.

Audit of Costs

All claims submitted to SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the P's & G's adopted by COSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment," specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Claim documentation shall be made available to SCO on request.

Retention of Claiming Instructions

The claiming instructions and forms in this package should be retained permanently in your *Mandated Cost Manual* for future reference and use in filing claims. These forms should be duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at www.sco.ca.gov/ard/local/locreim/index.htm.

Address for Filing Claims

Submit a signed original and a copy of form FAM-27, Claim for Payment, and a copy of all other forms and supporting documents to:

If delivery is by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivery is by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 7576, as amended
by Statutes of 1996, Chapter 654;
California Code of Regulations, Title 2,
Division 9, Chapter 1, Sections 60000-60610;
and
California Department of Mental Health
Information Notice Number 86-29

Filed on December 22, 1997

By the County of Los Angeles, Claimant.

No. 97-TC-05

*Seriously Emotionally Disturbed (SED)
Pupils: Out-of-State Mental Health Services*

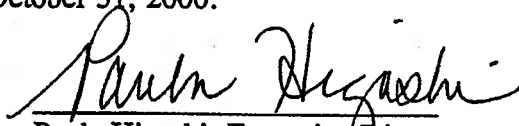
ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Adopted on October 26, 2000)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted Parameters and Guidelines for the above-entitled matter on October 26, 2000.

This Decision shall become effective on October 31, 2000.


Paula Higashi, Executive Director

Adopted: October 26, 2000
F:/mandates/1997/97tc05/pg102600
Document Date: October 12, 2000

Parameters and Guidelines

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections 60000 through 60610, were amended to further define counties' fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

On May 25, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding the following activities to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, §§ 60100, 60110)
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, § 7576, Cal. Code Regs., tit. 2, § 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, § 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivision 60000-60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

II. ELIGIBLE CLAIMANTS

Counties.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. This test claim was filed by the County of Los Angeles on December 22, 1997. Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997. Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 on or after January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall 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)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, sub divisions 60100 and 60110.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and Title 2, California Code of Regulations, sub division 60110, including the costs of treatment

related litigation (including administrative proceedings) over such issues as placement and the administration of psychotropic medication. Litigation (including administrative proceedings) alleging misconduct by the county or its employees, based in negligence or intentional tort, shall not be included.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in Title 2, California Code of Regulations, subdivision 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, subdivisions 60100 and 60110.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All

documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

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

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES	For State Controller Use Only (19) Program Number 00191 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program 191
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L A B E L H E R E	(01) Claimant Identification Number		Reimbursement Claim Data	
	(02) Claimant Name		(22) SEDP-1, (03)	
	County of Location		(23) SEDP-1, (04)(A)(1)(f)	
	Street Address or P.O. Box Suite		(24) SEDP-1, (04)(A)(2)(f)	
	City State Zip Code		(25) SEDP-1, (04)(B)(1)(f)	
	Type of Claim	Estimated Claim	Reimbursement Claim	(26) SEDP-1, (04)(B)(2)(f)
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) SEDP-1, (06)	
Fiscal Year of Cost	(06) 20 ___/___ 20 ___	(12) 20 ___/___ 20 ___	(30) SEDP-1, (07)	
Total Claimed Amount	(07)	(13)	(31) SEDP-1, (09)	
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32) SEDP-1, (10)	
Less: Prior Claim Payment Received		(15)	(33)	
Net Claimed Amount		(16)	(34)	
Due to Claimant	(08)	(17)	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer	Date
 <hr/>	 <hr/>
Type or Print Name	Title
(38) Name of Contact Person for Claim	Telephone Number () - Ext.
 <hr/>	 <hr/>
E-Mail Address	 <hr/>

Program 191	SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES Certification Claim Form Instructions	FORM FAM-27
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- (01) Enter the payee number assigned by the State Controller's Office.
- (02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.
- (03) If filing an estimated claim, enter an "X" in the box on line (03), Estimated.
- (04) If filing a combined estimated claim on behalf of districts within the county, enter an "X" in the box on line (04), Combined.
- (05) If filing an amended estimated claim, enter an "X" in the box on line (05), Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form SEDP-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.
- (08) Enter the same amount as shown on line (07).
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09), Reimbursement.
- (10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10), Combined.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11), Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim from form SEDP-1, line (11). The total claimed amount must exceed \$1,000.
- (14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs were incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter 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 a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., SEDP-1, (04)(A)(1)(f), means the information is located on form SEDP-1, block (04), section (A), line (1), column (f). 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., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

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

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

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 500
 Sacramento, CA 95816

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY	FORM SEDP-1				
(01) Claimant		(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>				
		Fiscal Year 20__/20__				
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						
Direct Costs	Object Accounts					
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Fixed Assets	(e) Travel and Training	(f) Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements						
2. Case Management						
3. Travel						
4. Program Management						
(05) Total Direct Costs						
Indirect Costs						
(06) Indirect Cost Rate	[From ICRP]					%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x (line (05)(a) + line (05)(b))]					
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					

Program 191	SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY Instructions	FORM SEDP-1
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- (01) Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A separate form SEDP-1 should be completed for each department.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.

Form SEDP-1 must be filed for a reimbursement claim. Do not complete form SEDP-1 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 SEDP-1 must be completed and a statement attached explaining the increased costs. Without this information the estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the number of pupils placed in out-of-state residential programs in the fiscal year of claim.
- (04) Reimbursable Components. For each reimbursable component, enter the total from form SEDP-2, line (05), columns (d) through (h) to form SEDP-1, block (04), columns (a) through (e) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total columns (a) through (f).
- (06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.
- (07) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If an ICRP is submitted and both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06). If more than one department is reporting costs, each must have its own ICRP for the program.
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings. If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements. If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. From Total Direct and Indirect Costs, line (08), subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10). Enter the remainder on this line and carry the amount forward to form FAM-27, line (07) for the Estimated Claim or line (13) for the Reimbursement Claim.

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
------------------------------	--	------------------------------

(01) Claimant	(02) Fiscal Year
---------------	------------------

(03) Reimbursable Components: Check only **one** box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training

(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: ___ of ___	
--	--

Program 191	SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
Instructions		

- (01) Claimant. Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A separate form SEDP-2 should be completed for each department.
- (02) Fiscal Year. 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 SEDP-2 shall be prepared for each applicable component.
- Mental Health Service Vendor Reimbursements*. This component includes reimbursement for residential costs, i.e., board and care of out-of-state placements.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, etc. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked					
Benefits	Title Activities	Benefit Rate			Benefits = Benefit Rate x Salaries				
Services and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used			
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed			Invoice
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage				Cost = Unit Cost x Usage		Invoice
Travel and Training	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode					Cost = Rate x Days or Miles or Total Travel Cost	
Training	Employee Name/Title Name of Class		Dates Attended					Registration Fee	

- (05) Total line (04), columns (d) through (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component/activity costs, number each page. Enter totals from line (05), columns (d) through (h) to form SEDP-1, block (04), columns (a) through (e) in the appropriate row.

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-1

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-1

ORANGE COUNTY

Audit Report

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES PROGRAM

Chapter 654, Statutes of 1996

July 1, 2000, through June 30, 2002



JOHN CHIANG
California State Controller

November 2008



JOHN CHIANG
California State Controller

November 12, 2008

John M.W. Moorlach, CPA, CFD, Chair
Board of Supervisors
Orange County
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Dear Mr. Moorlach:

The State Controller's Office (SCO) audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2000, through June 30, 2002.

The county claimed \$2,763,988 (\$2,765,988 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$2,255,413 is allowable and \$508,575 is unallowable. The costs are unallowable primarily because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State paid the county \$33,556. The State will pay allowable costs claimed that exceed the amount paid, totaling \$2,221,857, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

John M.W. Moorlach

-2-

November 12, 2008

cc: Honorable David E. Sundstrom, CPA
Auditor-Controller
Orange County
Mark A. Refowitz, Deputy Agency Director
Behavioral Health Services
Orange County Health Care Agency
Mary R. Hale, M.S., Chief
Behavioral Health Services
Orange County Health Care Services
Alan V. Albright, Division Manager
Children & Youth Services
Orange County Health Care Agency
Alice Sworder, Accounting Manager
Orange County Health Care Agency
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Stacey Wofford
Special Education Program
Department of Mental Health
Cynthia Wong, Manager
Special Education Division
California Department of Education

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2000, through June 30, 2002.

The county claimed \$2,763,988 (\$2,765,988 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$2,255,413 is allowable and \$508,575 is unallowable. The costs are unallowable primarily because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State paid the county \$33,556. The State will pay allowable costs claimed that exceed the amount paid, totaling \$2,221,857, contingent upon available appropriations.

Background

Chapter 654, Statutes of 1996, added and amended Government Code section 7576 by allowing new fiscal and programmatic responsibilities for counties to provide mental health services to seriously emotionally disturbed (SED) pupils placed in out-of-state residential programs. Counties' fiscal and programmatic responsibilities, including those set forth in California Code of Regulations section 60100, provide that residential placements for an SED pupil may be made out-of-state when no in-state facility can meet the pupil's needs.

On May 25, 2000, the Commission on State Mandates (CSM) determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code Section 17561 for the following:

- Payment of out-of-state residential placements for a SED pupils;
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan; and
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on October 26, 2000. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2000, through June 30, 2002.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the county's internal controls to gain an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Orange County claimed \$2,763,988 (\$2,765,988 less a \$2,000 penalty for filing late claims) for costs of the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program. Our audit disclosed that \$2,255,413 is allowable and \$508,575 is unallowable. The State paid the county \$33,556. The State will pay allowable costs claimed that exceed the amount paid, totaling \$2,221,857, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft audit report on January 18, 2008. Mark Refowitz, Deputy Agency Director, Behavioral Health Services, Health Care Agency, responded by letter dated March 13, 2008 (Attachment), disagreeing with the audit results. This final report includes the county's response.

Restricted Use

This report is solely for the information and use of Orange County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

November 12, 2008

**Schedule 1—
Summary of Program Costs
July 1, 2000, through June 30, 2002**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2000, through June 30, 2001</u>				
Ongoing mental health service costs:				
Vendor reimbursements	\$ 1,125,732	\$ 902,027	\$ (223,705)	Finding 1
Case management	100,462	129,112	28,650	Finding 2
Subtotal	1,226,194	1,031,139	(195,055)	
Late claim penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 1,225,194</u>	1,030,139	<u>\$ (195,055)</u>	
Less amount paid by the State		(33,556)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 996,583</u>		
<u>July 1, 2001, through June 30, 2002</u>				
Ongoing mental health service costs:				
Vendor reimbursements	\$ 1,423,385	\$ 1,045,374	\$ (378,011)	Finding 1
Case management	116,409	180,900	64,491	Finding 2
Subtotal	1,539,794	1,226,274	(313,520)	
Late claim penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 1,538,794</u>	1,225,274	<u>\$ (313,520)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,225,274</u>		
<u>Summary: July 1, 2000, through June 30, 2002</u>				
Ongoing mental health service costs:				
Vendor reimbursements	\$ 2,549,117	\$ 1,947,401	\$ (601,716)	
Case management	216,871	310,012	93,141	
Subtotal	2,765,988	2,257,413	(508,575)	
Late claim penalty	(2,000)	(2,000)	—	
Total program costs	<u>\$ 2,763,988</u>	2,255,413	<u>\$ (508,575)</u>	
Less amount paid by the State		(33,556)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 2,221,857</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
 Ineligible vendor costs**

The county overstated vendor costs by \$601,716 for the audit period.

The county claimed the ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed (SED) pupils in facilities that are owned and operated for profit. The vendor payments consist solely of treatment costs.

The program’s parameters and guidelines, section IV.C.1., specify that the mandate will reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements, as specified in Government Code section 7576 and California Code of Regulations, Title 2, sections 60100 and 60110.

The California Code of Regulations, Title 2, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall only be paid to a group home organized and operated on a nonprofit basis.

The parameters and guidelines also state that all costs claimed must be traceable to source documents that show evidence of the validity of such costs and their relationship to the state mandated program.

The following table summarizes the unallowable vendor costs claimed:

	Fiscal Year		Total
	2000-01	2001-02	
Ineligible placements:			
Treatment	\$ (223,705)	\$ (378,011)	\$ (601,716)

Recommendation

We recommend that the county ensure that out-of-state residential placements are made in accordance with law regulations. Further, we recommend that the county only claim eligible treatment and board and care costs corresponding to the authorized placement period of each eligible client.

County's Response

The county disputes the finding concerning ineligible vendor costs with the following six arguments. The entire text of its arguments is attached to this report.

1. Program costs for FY 2000-01 through FY 2003-04 owed by the State to the county were previously established by court judgment.

The county believes that this audit is impacted by the San Diego Superior Court case *County of San Diego and County of Orange v. State of California et al.*, instituted against the State of California, the SCO, and the State Treasurer in April 2004 (case number GIC 825109 consolidated with GIC 827845). The county believes that the issue is *res judicata*, as a court of law set the amount of money (\$5,920,024) the State owes the county for unreimbursed program costs for FY 2000-01 through FY 2003-04.

The county further states that even if no judgment established the amount the State owes the county, it still disagrees that treatment and board and care costs totaling \$1,825,027 for out-of-state residential facilities characterized as "for profit" represent ineligible vendor payments.

2. The county contracted with nonprofit facilities.

The county believes that it did contract with nonprofit facilities to provide all program services and that it should not be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. One of the county's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. The county states that if the facility is for-profit, that facility is no longer considered for SED pupil placement.

Furthermore, neither the federal nor the state government has provided guidance on how counties should determine for-profit or nonprofit status. The county has used many of the out-of-state residential facilities for SED student placement for years without the State questioning the nonprofit status. Therefore, the county believes that the audit finding lacks the "fundamental fairness" that minimal due process requires.

3. California for-profit placement restriction is incompatible with the Federal Individual with Disabilities Education Act's (IDEA) "Most Appropriate Placement" requirement and placement provision.

The county believes that the State's position is in discord with the requirements of IDEA. IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement. Therefore, California's regulation limiting special education residential placements to nonprofit facilities is in direct opposition to the IDEA.

The county notes that Local Educational Agencies are not precluded by any similar nonprofit limitation. Under Education Code section 56366.1, out-of-state LEAs can use education services provided by certified nonpublic nonsectarian schools and other agencies operated on a for-profit basis when special education students are placed in residential facilities. Furthermore, nonpublic schools are certified by the State of California when they meet the provisions of section 56365 *et seq.*; yet nonprofit operation is not a requirement.

4. California Office of Administrative Hearings Special Education Division corroborates Orange County Health Care Agency's contention that for-profit placement restriction is incompatible with IDEA's "Most Appropriate Placement" requirement and placement provisions.

The county states that the principles discussed in Item 3 above were recently validated and corroborated by the State's own Office of Administrative Hearings (OAH), Special Education Division. The county referred to OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In this case, the school district and mental health agency were unable to find a residential placement that met the student's unique mental health and communication needs. They all agreed that a particular for-profit residential placement was appropriate for the student. However, based on the school district and mental health agency's interpretation of California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460, subdivisions (c)(2) through (c)(3), they could not place the student at the for-profit facility.

The OAH disagreed and found that section 60100, subdivision (h), did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. The OAH indicated that such an interpretation of the school district and mental health agency "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." As such, the OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children.

The county believes that the audit did not consider relevant factors in determining that certain residential vendor expenses were ineligible for reimbursement.

5. Counties face increased litigation if restricted to nonprofit residential facilities.

The county believes that in California, under IDEA, if no nonprofit placement meets the unique needs of a special education student, his or her parents can place the student in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc. The county believes that the parents can then demand that the school district and/or mental health agency pay the bill.

6. Federal and state law do not impose tax status requirements on provider treatment services.

Under Government Code section 7572, subdivision (c), special education mental health psychotherapy and assessment services must be conducted by qualified mental health professional and these services can be provided directly or by contract at the discretion of county mental health agencies. Further, California Code of Regulations, Title 2, section 60020, subdivisions (i) and (j), does not contain any requirement regarding the provider tax status. Therefore, the county believes the tax status has no bearing on eligibility for mental health provider services. Consequently, the county believes that the SCO's basis for the adjustment is not valid.

SCO's Response

The finding remains unchanged.

The audit is valid and has a legal bearing. In the two consolidated cases, the superior court issued a preemptory writ of mandate on May 12, 2006, declaring that Orange and San Diego counties were entitled to reimbursement under California Constitution, Article XIII B, section 6, for state-mandated costs. The court granted mandate relief under Code of Civil Procedure section 1085, requiring the State of California to pay the counties over a 15-year period.

However, on July 1, 2008, the Court of Appeal reversed and remanded with direction to the superior court to vacate the preemptory writ of mandate, and to enter a judgment denying the petition for writ of mandate. The court found that the appropriation of funds for the state-mandated program is a legislative rather than a judicial issue.

The county is prohibited from placing a client in a for-profit facility under the California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460(c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that payment shall be made only to a group home organized and operated on a nonprofit basis. The county placed clients in a Provo Canyon, Utah, an out-of-state residential facility that is not organized and operated on a nonprofit basis. Based on documents the county provided us in the course of the audit, we determined that Mental Health Systems, Inc., a California nonprofit corporation, contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide out-of-state residential placement services.

The proponents of Assembly Bill 1805 sought to change the regulations and allow payment to for-profit facilities for placement of SED pupils. The legislation would have permitted retroactive application, so that any prior unallowable claimed costs identified by the SCO would be reinstated. However, the Governor vetoed this legislation on September 30, 2008. Therefore, counties must comply with the governing regulations cited in the SED Pupils: Out-of-State Mental Health Services Program's parameters and guidelines.

We do not dispute the assertion that California Law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils; however, the fact remains that this is a state-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of the California Code of Regulations, Title 2, section 60100.

Regarding the discussion of local educational agencies (LEAs), we do not dispute that Education Code sections 56366.1 and 56365 do not restrict LEAs from contracting with for-profit schools for educational services. The cited Education Code sections specify that educational services must be provided by a school certified by the California Department of Education.

We do not dispute that Government Code section 7572 requires mental health services to be provided by qualified mental health professionals. The county is prohibited from placing a client in a for-profit facility under the California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that payment shall only be made to a group home organized and operated on a nonprofit basis. The treatment and board and care vendor payments claimed result from the placement of clients in prohibited out-of-state residential facilities. Again, the state mandated program's parameters and guidelines do not include a provision for the county to be reimbursed for vendor payments to out-of-state residential placements made outside of the regulation.

**FINDING 2—
 Understated case
 management costs**

The county understated case management costs by \$93,141 for the audit period.

The county used incorrect units of service and costs per unit to determine case management costs. We adjusted units and applied the cost per unit from the California Department of Mental Health to determine costs. We adjusted costs claimed by the amount of the understatement. As a result, the county understated costs by \$28,650 in FY 2000-01 and \$64,491 in FY 2001-02.

The program's parameters and guidelines, section IV.B.2., specify that the mandate will reimburse counties for case management of SED pupils in out-of-state placements, including supervision of mental health treatment and monitoring of psychotropic medications.

The following table summarizes the understated case management costs:

	Fiscal Year		Total
	2003-04	2004-05	
Case management	\$ 28,650	\$ 64,491	\$ 93,141

Recommendation

We recommend that the county ensure that all units of service within the admission and discharge of eligible out-of-state placements are included and the appropriate cost per unit is used to compute costs.

County's Response

The county did not respond to this finding.

**Attachment—
County's Response to
Draft Audit Report**

At the county's request, we excluded private vendor information from the county's attachments to its response. The following excerpts excludes a portion of Attachment D and the entire Attachment E.



**COUNTY OF ORANGE
HEALTH CARE AGENCY**

BEHAVIORAL HEALTH SERVICES

**JULIETTE A. POULSON, RN, MN
DIRECTOR**

**MARK A. REFOWITZ
DEPUTY AGENCY DIRECTOR
BEHAVIORAL HEALTH SERVICES**

**MAILING ADDRESS:
405 W. 5TH STREET, 7TH FLOOR
SANTA ANA, CA 92701**

**TELEPHONE: (714) 834-6032
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E-MAIL: mrefowitz@ochca.com**

*Excellence
Integrity
Service*

March 13, 2008

Jim L. Spano, Chief
Mandated Cost Audits Bureau
California State Controller's Office
Division of Audits
Post Office Box 94250
Sacramento, CA 94250-5874

Re: Orange County Audit Reports, Seriously Emotionally Disturbed Pupils:
Out-of-State Mental Health Services Program for the periods of July 1, 2000
through June 30, 2002 and July 1, 2002 through June 30, 2005

Dear Mr. Spano:

The County of Orange ("the County") Health Care Agency ("HCA") is writing to amend its initial response, dated February 13, 2008, in regard to the audit reports referenced above. The County received an extension from you to submit its response. In light of new evidence that became available after HCA's initial response was submitted, we are sending this amendment, which is still in compliance with that extension.

Please refer to Item #4, describing a case that was decided in January 2008 in Riverside County, which has been added to our initial response. We wish to reiterate that HCA does not agree with the audits' conclusions that \$601,716 and \$1,314,646 respectively represent unallowable program costs identified in the two audits. All supporting attachments were sent with our initial response, so we are not including them in this submittal.

1. Program Costs for Fiscal Years 2000-01 through 2003-04 Owed By the State to the County Were Previously Established by Court Judgment.

You may or may not be aware of a lawsuit that the County of Orange instituted against the State of California, the State Controller, and the State Treasurer in April 2004. The County of Orange was a plaintiff as was the County of San Diego in the case of *County of San Diego and County of Orange v. State of California et al.*, San Diego Superior Court case number GIC 825109 (consolidated with GIC 827845). At issue in the lawsuit were unreimbursed mandated

costs for fiscal years 1994-95 through and including 2003-04. After a trial on the merits in December 2005, judgment was entered in favor of the counties. The judgment set the sum total of unreimbursed mandated costs owing to the County in the amount of \$72,755,977. See Attachment A, a true and correct copy of the Judgment.

The \$72,755,977 is comprised of 42 different state mandated programs including the program that is the subject of the two Audit Reports. Attachment B is a true and correct copy of what was an exhibit at trial, reflecting the various state mandated programs and corresponding amounts to which the Attorney General's Office, on behalf of the State defendants, stipulated were due and owing to the County, and not in dispute at trial. As item 29 on page three of Attachment B reflects, the Court's judgment set the amount owed to the County for "Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services (Ch 654/96)" at \$1,191,638 for fiscal year 2000-01, \$1,538,794 for fiscal year 2001-02, \$1,692,038 for fiscal year 2002-03 and \$1,497,554 for fiscal year 2003-04. Attachment C is a true and correct copy of relevant pages from the "Joint Trial Readiness Conference Report" that was filed with the Court in November 2005, demonstrating the stipulation of the parties. Attachment D is a true and correct copy of relevant pages of the Court's statement of decision which formed the basis for the judgment in favor of the plaintiff counties. As Attachments C and D reflect, the State's attorneys agreed the amounts reflected in Attachment B were due and owing to the County, and judgment was entered accordingly.

Since a court of law set the amount of money due from the State for unreimbursed program costs for fiscal years 2000-01 through 2003-04 at a total of \$5,920,024 payable to the County from the State, the issue is *res judicata* and the audit for those fiscal years has no legal bearing.

Even if there were no Judgment establishing the amount the State owes the County for the fiscal years in question, the County also disagrees with the audits' conclusions that treatment and board and care costs totaling \$1,825,037 for out-of-state residential facilities characterized as "for profit" represent ineligible vendor payments.

2. The County Contracted with Nonprofit Facilities.

For the audit periods, the County believed, and still believes, it contracted with nonprofit facilities to provide all program services. The County cannot be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. This is not prohibited by California statute, regulation, or federal law.

The County complies with a number of prerequisites before placing seriously emotionally disturbed ("SED") pupils in out-of-state residential facilities. For example, the pupil must be determined to be "emotionally disturbed" by his or her school district. In-state facilities must be unavailable or inappropriate. One of the County's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. When advised that the facility is for-profit, that facility is no longer considered for SED pupil placement. When advised that the facility is nonprofit, the County obtains documentation of that status, e.g., an IRS tax determination letter.

Because the County has been placing SED children in out-of-state facilities since 1984, not all nonprofit status documents can be located. Some may have been misplaced in the

intervening 20 plus years. However, nonprofit status documentation was provided to the State's auditor in many cases as reflected in Attachment E.

Neither the federal nor the state government has provided procedures or guidelines to specify if and/or exactly how counties should determine for-profit or nonprofit status. Although counties have used many of these out-of-state residential facilities for SED student placement for years, the State has never before questioned their nonprofit status. Nor has the State ever provided the County with a list of facilities that it deems to be nonprofit, and therefore acceptable to the State. The State's history of paying these costs without question encouraged the County to rely upon the State's acceptance of prior claims for the very same facilities now characterized as for-profit.

Considering the foregoing, the audits' conclusions lacks the "fundamental fairness" that even minimal procedural due process requires.

3. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Regardless of the State's view of the validity of the residential facility contracts questioned by the two Audit Reports, the State's position in this matter is in glaring discord with the requirements of the federal Individuals with Disabilities Education Act ("IDEA"). This is because the IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement.

The stated purpose of the IDEA is ". . . to ensure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A). The "free appropriate public education" required by IDEA must be tailored to the unique needs of the handicapped child by means of an "individualized educational program." 20 U.S.C. § 1401(9)(D); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (U.S. 1982). When a state receives funds under the IDEA, as does California, it must comply with the IDEA and its regulations. 34 C.F.R. § 300.2 (2006).

Local educational agencies ("LEAs") initially were responsible for providing all special education services including mental health services when necessary. The passage of Assembly Bill 3632/882 transferred the responsibility for providing mental health services to the counties. In conjunction with special education mental health services, the IDEA requires that a state pay for a disabled student's residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. 34 C.F.R. § 300.302 (2006); *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001).

Before 1997, the IDEA required counties to place special education students in nonprofit residential placements only. In 1997, however, section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 amended section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) to strike the nonprofit requirement. Section 472(c)(2) currently states:

The term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State

in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

In direct opposition to the IDEA, California's regulations limit special education residential placements to nonprofit facilities as follows:

... Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). 2 C.C.R. § 60100(h).

... State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis. Welfare and Institutions Code § 11460(c)(3).

Therefore, California law is inconsistent with the requirements of IDEA and incompatible with its foremost purpose, i.e., to provide each disabled child with special education designed to meet that child's unique needs. 20 U.S.C. §1401(25). Indeed, special education students who require residential treatment are often the students with the most unique needs of all because of their need for the most restrictive level of placement. This need rules out California programs. The limited number of out-of-state residential facilities that are appropriate for a special education student may not operate on a nonprofit basis. Thus, California's nonprofit requirement results in fewer appropriate services being available to the neediest children—those who can only benefit from their special education when placed in residential facilities.

It should also be noted that LEAs are not precluded by any similar nonprofit limitation. When special education children are placed in residential facilities, out-of-state LEAs can utilize education services provided by certified nonpublic, nonsectarian schools and other agencies operated on a for-profit basis. Educ. Code § 56366.1. Nonpublic schools are certified by the State of California when they meet the provisions of Education Code sections 56365 *et seq.* Nonprofit operation is *not* a requirement. Consequently, the two entities with joint responsibility for residential placement of special education students must operate within different criteria. This anomaly again leads to less available services for critically ill special education children.

4. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The principles set forth in Item 3 above were recently validated and corroborated by the State's own Office of Administrative Hearings ("OAH"), Special Education Division in OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In that matter, the school district and mental health agency were unable to find a residential placement that could meet the student's unique mental health and communication

needs. All parties agreed that a particular for-profit residential placement was the appropriate placement for the student. Interpreting Title 2 of Cal. Code Regs., section 60100(h) and Welfare and Institutions Code section 11460(c)(2) through (c)(3) in the same fashion as the State Controller's Audits, the school district and mental health agency concluded that they could not place the student at the for-profit facility.

The OAH disagreed. In fact, it found that section 60100(h) of Title 2 of the California Code of Regulations did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. *Student v. Riverside Unif. Sch. Dist. and Riverside Co. Dept. of Mental Health*, Case No. N 2007090403, January 15, 2008. Moreover, the OAH indicated such an interpretation "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." *Riverside Unif. Sch. Dist.* at p. 8.

The OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children. *Riverside Unif. Sch. Dist.* at p. 8, quoting *Katz v. Los Gatos-Saratoga Joint Union High School District*, 117 Cal. App. 4th 47, 63 (2004).

Like the school district and mental health agency in *Riverside*, the audits in question utilized a blanket, hard and fast rule that for-profit placements are never allowed, even when the placement itself indicates it is nonprofit, even when there is no other appropriate placement available, and even when the for-profit placement is in the best interests of the child. None of these factors were taken into consideration when the Audits determined that certain residential vendor expenses were ineligible for reimbursement.

5. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities.

Under the IDEA, when parents of a special education pupil believe their child's school district and/or county mental health agency breached their duties to provide the student with a free appropriate public education, the parents can seek reimbursement for the tuition and costs of a placement of the parents' choice. The United States Supreme Court has ruled that parents who unilaterally withdraw their child from an inappropriate placement must be reimbursed by the placing party(ies). This is true even if the parents' school placement does not meet state educational standards and is not state approved. *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7 (U.S. 1993).

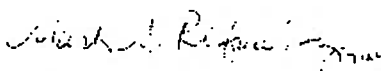
This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand that the school district and/or mental health agency pay the bill. The California regulatory requirement for nonprofit residential placement prevents school districts and mental health agencies from selecting the most appropriate placement, regardless of tax status. Because of California's arbitrary regulatory requirement, which is not in accord with the 1997 amendment to IDEA, school districts and mental health agencies may be forced to place a child in a less appropriate facility increasing the likelihood that the parents will choose a different facility. The placement agencies are thereafter legally required to subsidize the expenses of the parents' unilateral choice, even if that unilateral placement does not meet the State's nonprofit and academic standards.

6. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

Special education mental health psychotherapy and assessment services must be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education California Government Code § 7572(c). These services can be provided directly or by contract at the discretion of county mental health agencies. 2 C.C.R. § 60020(i). Licensed practitioners included as "qualified mental health professionals" are listed in California Code of Regulations Title 2, section 60020(j). Neither section contains any requirement regarding the provider's tax status. Because tax status has no bearing on eligibility for mental health provider services, there is no basis for disallowing these claimed treatment costs.

Based on the foregoing, the County of Orange maintains that its claimed program costs of \$9,756,254 remain allowable and eligible for reimbursement. Please feel free to contact the undersigned with any questions or concerns.

Sincerely,



Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

cc: David E. Sundstrom, CPA, Auditor-Controller
Mary R. Hale, Chief, Behavioral Health Services
Alan V. Albright, Division Manager, Children & Youth Services
Alice Sworder, HCA Accounting Manager

ATTACHMENT A

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F I L E D
Clerk of the Superior Court
MAY 12 2006
By: L. ROCKWELL, Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

COUNTY OF SAN DIEGO,
Plaintiff/Petitioner,

Case No. GIC 825109 (consolidated with
Case No. GIC 827845)

v.

JUDGMENT (PROPOSED)

**STATE OF CALIFORNIA; STEVE
WESTLY in his official capacity as California
State Controller; PHIL ANGELIDES in his
official capacity as California State Treasurer;
DONNA ARDUIN in her official capacity as
Director of the California State Department of
Finance; and DOES 1 through 50, inclusive,**
Defendants/Respondents.

Trial Date: November 28, 2005
Time: 10:30 a.m.
Dept: 70
I/C Judge: Honorable Jay M. Bloom
Actions filed: 2/3/04 and 4/1/04

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~~**JUDGMENT (PROPOSED)**~~

1 COUNTY OF ORANGE,
2 Plaintiff/Petitioner,
3 v.
4 STATE OF CALIFORNIA; STEVE
5 WESTLY in his official capacity as California
6 State Controller; PHIL ANGELIDES in his
7 official capacity as California State Treasurer;
8 DONNA ARDUIN in her official capacity as
9 Director of the California State Department of
10 Finance; and DGES 1 through 50, inclusive,
11 Defendants/Respondents.

12 Plaintiffs/Petitioners County of San Diego's and County of Orange's consolidated
13 complaints for declaratory relief and petitions for issuance of a writ of mandate came on for trial
14 on November 28, 2005, at 10:30 am., in Department 70 of the above-entitled court, the
15 Honorable Jay M. Bloom, judge presiding. The County of San Diego was represented by John
16 J. Sansone, County Counsel by Timothy M. Barry, Senior Deputy. The County of Orange was
17 represented by Benjamin P. de Mayo, County Counsel by Wendy J. Phillips, Deputy County
18 Counsel. The State of California, California State Controller, California State Treasurer, and
19 Director of the California State Department of Finance, were represented by William Lockyer,
20 Attorney General by Leahie R. Lopez, Deputy Attorney General.

21 Having heard and considered the evidence both written and oral and the oral arguments
22 of counsel for the parties it is hereby ORDERED, AJUDGED and DECREED as follows:

23 1. The State of California is obligated to reimburse the County of San Diego and the
24 County is entitled to judgment in the total principal sum of \$41,652,974 for the balance due on
25 its claims for costs incurred in providing State mandated programs and services from fiscal year
26 1994-95 through fiscal year 2003-04, together with interest thereon at the legal rate of seven
27 percent.

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~~JUDGMENT (PROPOSED)~~

1 percent (7%) per annum from February 3, 2004. Interest on the \$41,652,974 at the legal rate
2 from February 3, 2004, through May 10, 2006 (826 days), the date of entry of this judgment, is
3 \$6,328,236 for a total judgment of \$47,981,210.

4 2. The State of California is obligated to reimburse the County of Orange and the
5 County is entitled to judgment in the total principal sum of \$72,755,977 for the balance due on
6 its claims for costs incurred in providing State mandated programs and services from fiscal year
7 1994-95 through fiscal year 2003-04, together with interest at the legal rate of seven percent
8 (7%) per annum from April 1, 2004. Interest on the \$72,755,977 at the legal rate from April 1,
9 2004, through May 10, 2006 (770 days), the date of entry of this judgment, is \$9,982,132 for a
10 total judgment of \$82,738,109.

11 3. The Counties request for pre-petition interest is denied.

12 4. A writ of mandate pursuant to Code of Civil Procedure section 1084, et seq. shall
13 issue commanding respondents, State of California, State Controller, State Treasurer, and
14 Director of the California State Department of Finance to pay the amount of the judgment plus
15 interest to the County of San Diego and the County of Orange over the fifteen year period
16 required by Government Code section 17617 (or a shorter period if the Legislature enacts a
17 shorter period, elects to pay the debt off earlier or is otherwise required by law to pay the debt
18 off over a shorter period) in equal annual installments beginning with the budget for the 2006-07
19 fiscal year and annually thereafter each successive budget until paid.

20 5. Respondents will file a return on the writ with the court within 90 days of the
21 enactment of the State budget for each fiscal year commencing with the 2006-07 fiscal year
22 demonstrating compliance with the writ until the amounts owed have been fully paid.

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~~JUDGMENT (PROPOSED)~~

ATTACHMENT B

Carroll County - Orange County

BUDGET ITEM - STATE DEPARTMENT										
Mandate										
Item	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Item 0430-295-0001 State Trial Court Funding										
1 Grand Jury Proceeding (Ch 1170/96)									22,572	7,921
Item 0658-295-4001 Office of Emergency Services										
2 Crime Victims' Rights (Ch 411/93) (Previously 8100-295-0001 Off. Of Crm. Justice)								17,044	16,964	
3 Sex Crimes Confidentiality (Ch 502/92)				13,818	14,276	15,237	14,646	14,749	17,649	
Item 0820-295-0001 Department of Justice										
4 Booking & Fingerprinting (Ch 1105/92)							947			
5 Child Abduction and Recovery (Ch 1397/76)							144,508	171,935	384,528	516,632
6 Sex Offenders Disclosure By Law Enforcement Officers (Megan's Law) - (Local Agencies) (Ch 508/96)			10,067	295,206	368,974	401,231	441,988	438,597	448,889	
7 Stolen Vehicle Notification (Ch 337/90)										
Item 0830-295-4001 Secretary of State										
8 Absentee Ballots (Local Agency) (Ch 777/8 and Ch 920/94)							401,436	348,334	573,375	891,366
9 Absentee Ballots: Tabulation by Precinct (Ch 697/99)							2,979			

Clatsop Summary - Clatsop County

BUDGET ITEM - STATE DEPARTMENT		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
10	Permanent Absent Voters (Ch 1422/82)								86,663	91,815	43,754
11	Presidential Primaries 2000 (Ch 1899)								26,176		
12	Voter Registration Procedures (Ch 704/75)								38,150	41,950	89,864
	Item 0950-295-0001 State Treasurer										
13	County Treasury Oversight Comm. (Ch 784/95)		6,330	22,496	41,910	53,775	51,664	61,407	65,363	105,617	
	Government Reports (Local Agencies) (Ch 787/95)									452,471	
	Item 1880-295-0401 State Personnel Board										
15	Police Officers Procedural Bill Of Rights (Ch 465/76)	417,968	424,219	775,948	451,726	384,219	315,388	341,751	508,494	513,301	654,990
	Item 2740-295-0044 Department of Motor Vehicles										
16	Administrative License Suspension (Ch 1460/89)						1,570	2,189	1,569	1,815	1,761
	Item 4760-295-0001 Department of Health Services										
17	Aids Testing (Ch 1597/88)								1,126	46,843	
18	Medical-Cal Death Notices (Ch 102/81)								6,181	8,441	5,085
	Pacific Beach Safety (Ch 961/93)										
	Search Warrant: Aids (Ch 1088/88)										

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
21	SIDS: Autopsy Protocol (Ch 955/89)								2,498	82,939	
22	SIDS: Contact By Local Health Officers (Ch 268/91) Item 4380-295-0001 Department of Developmental Services									30,985	
23	Conservatorship (Ch 1304/80)								5,600	5,928	
24	Developmentally Disabled: Attorney Services (Ch 694/75) SIVAS Mentally Retarded: Diversion (Ch 1253/80) Item 4440 295-0001 Department of Mental Health								25,337	121,334	123,265
									3,809	4,323	
26	MDSO (Mentally Disordered Sex Offenders) Recommitments (Ch 1036/78)								4,758	17,665	21,183
27	Mentally Disordered Offenders' Extended Commitment Proceedings (Ch 1418/85)		5,359		9,207	14,699	76,672	82,777	152,136	102,479	
28	Not Guilty By Reason Of Insanity (Ch 1114/75 and Ch 650/82)			127,307				255,800	126,773	93,786	
29	Seriously Emotionally Disturbed Pupils: Out-Of-State Mental Health Services (Ch 654/96)			53,524	63,355	53,099	1,191,638	1,538,794	1,692,938	1,497,554	
30	Services to Handicapped and Disabled Students (Ch 1747/84 and Ch 1274/85)					4,895,541	3,320,300	10,590,208	20,222,066	7,581,073	

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT		Mandate											
		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04		
31	Sexually Violent Predators (Ch 762 and 763, Statutes of 1995)								619,630	1,310,550	1,016,876		
32	SIMAS Carcens (Ch 498/77)									15,170	16,134		
	Item 5180-295-0001 Department of Social Services												
33	Child Abuse Treatment Services Authorization And Case Management (Ch 1090/96)												
	Item 5246-295-0001 Department of Corrections												
34	Prisoner Parental Rights (Ch 820/93)								227,010	652,104	304,142		
	Item 5456-295-0001 Board of Corrections												
35	Domestic Violence Treatment Services Authorization And Case Management (Ch 183/92)								54,876	281,552	318,814		
	Item 5460-295-0001 Department of Youth Authority												
36	Extended Commitment - Youth Authority (Ch 146/84 & 267/98)								3,944	7,483	1,132		
	Item 7350-295-0001 Department of Industrial Relations (Previously Item 8350-295-0001)												
37	Peace Officer's Career Presumption (Ch 117/89)								1,239	2,132	1,872		

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Mandatory Item 8120-295-0001 Commission on Peace Officer Standards and Training									15,598	22,456	21,966
38 Domestic Violence Arrest Policies And Standards (Ch 246/95)											
39 Law Enforcement Sexual Harassment Training (Ch 126/93)							1,043				
Item 8570-295-0001 Department of Food and Agriculture											
Animal Adoptions (Ch 757/98)					2,205		31,446	63,175	22,800	17,422	
Item 9100-295-0001 Local Assistance - Tax Relief											
41 Allocation of Property Tax Revenue: Educational Revenue Augmentation Funds (Ch 697/92)									122		
42 Redevelopment Agencies - Tax Disbursement Reporting (Ch 39/98)					2,182		2,249	2,361	2,459	2,513	2,580
43 Senior Citizens' Property Tax Deferral Program (Ch 1242/77)										14,755	15,569
44 Unitary Countywide Tax Rate (Ch 921/87)											
Item 9210-295-0001 Local Government Financing											
48 Health Benefits For Survivors Of Peace Officers And Firefighters (Local Agencies) (Ch 1120/96)											

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	
	46 Mandate Reimbursement Process (Ch 486/75)						238,241	164,785	188,444	197,642	
47 Open Meetings (Ch 641/86)				11,389	11,489	12,459	20,765	77,668	87,432	112,381	
48 Rape Victim Counseling Center Notices (Ch 999/91 and Ch 224/92)											
49 Mentally Disordered Sex Offenders: Extended Commitments (Ch 991/79)											
Item No. 2660-1620890 Dept. of Transportation (FY 05-06) - Gov. Item framed vetoed appropriation									5,061	0	
50 Regional Housing Needs (1143/80)											
TOTAL	417,968	440,749	806,513	1,000,269	911,652	5,025,746	6,332,486	15,385,496	27,982,158	13,650,902	72,755,977

ATTACHMENT C

1 JOHN J. SANSONE, County Counsel
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2 By TIMOTHY M. BARRY, Senior Deputy (SBN 089019)
C ELLEN PILSECKER, Senior Deputy (SBN 154241)
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5 Attorneys for Plaintiff/Petitioner County of San Diego

6 BENJAMIN P. de MAYO, County Counsel
County of Orange
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11 Attorneys for Plaintiff/Petitioner County of Orange

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN DIEGO

15 COUNTY OF SAN DIEGO,
16 Plaintiff/Petitioner,

17 v.

18 STATE OF CALIFORNIA; STEVE
WESTLY in his official capacity as California
19 State Controller; PHIL ANGELIDES in his
official capacity as California State Treasurer;
20 DONNA ARDUTIN in her official capacity as
21 Director of the California State Department of
Finance; and DOES 1 through 50, inclusive,

22 Defendants/Respondents.

Case No. GIC 825109 (consolidated with
Case No. GIC 827845
[Actions filed: 2/3/04 and 4/1/04]

**JOINT TRIAL READINESS
CONFERENCE REPORT**

Trial Readiness Conference
Date: November 18, 2005
Time: 1:30 p.m.
Dept: 70

Trial Date: November 23, 2005
Trial Time Estimate:
Jury Requested: No
Jury Fee Deposited: N/A
Court Reporter Requested: Yes

VC Judge: Honorable Jay M. Bloom

Actions filed: 2/3/04 and 4/1/04

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Joint Trial Readiness Conference Report

1 COUNTY OF ORANGE,
2 Plaintiff/Petitioner,
3 v.
4 STATE OF CALIFORNIA; STEVE
5 WESTLY in his official capacity as California
6 State Controller; PHIL ANGELIDES in his
7 official capacity as California State Treasurer;
8 DONNA ARDUIN in her official capacity as
9 Director of the California State Department of
10 Finance; and DOES 1 through 50, inclusive,
11 Defendants/Respondents.

12 A. The parties to the above case, by their attorneys: plaintiffs/petitioners, County
13 of San Diego, County Counsel John J. Sansone, by Timothy M. Barry, Senior Deputy; County
14 of Orange, County Counsel Benjamin P. de Mayo, by Wendy J. Phillips, Deputy; and
15 defendants/respondents by Deputy Attorneys Generals Michelle Mitchell Lopez and Leslie
16 Lopez conferred and discussed settlement but could not settle the case. They are prepared for
17 trial.

18 B. Nature of Case:
19 Plaintiffs/Petitioners, County of San Diego and County of Orange ("the Counties"), seek
20 reimbursement of costs incurred in relation to providing various State mandated programs at the
21 local level. The California Constitution requires the State to reimburse counties for costs
22 incurred in relation to providing mandated programs. Between the two counties, reimbursement
23 for 50 different mandated programs are at issue, totaling more than \$110 million. The Counties
24 seek a writ of mandate compelling Defendants/Respondents: State of California, Phil Angelides
25 (Treasurer), Steve Westly (Controller) and Tom Campbell (Director of Finance), (collectively
26 "the State"), to pay the Counties as required by the California Constitution. The Counties are
27 requesting the court to order the State to pay the mandated costs from funds within the State's
28 budget that are appropriated but unencumbered.

29 C. Legal issues which are not in dispute:
30 1. In November of 2004, the Court granted the Counties' joint motion for judgment

1 on the pleadings. In that Order, the Court granted Counties declaratory relief stating that the
2 State "failed to reimburse costs incurred in providing state mandated services and programs for
3 fiscal years 2002-2004 in violation of the State's constitutional and statutory obligations."

4 2. The State does not dispute that the Counties are owed reimbursement for costs
5 incurred in relation to providing state mandated services.

6 3. The State agrees that the amounts set forth on Exhibits "A" and "B"
7 accurately reflect the amount of the Counties claims, that the State has not disputed the
8 amount of the claims as reflected on Exhibits "A" except for Item 22, FY 03-04, Item 28,
9 FY 99-00, and Item 46, FY 94-95 and 95-96 and on Exhibit "B" except for Items _____,
10 and that the State has not paid the Counties' claims.

11 **D. Legal issues which are in dispute:**

12 1. The State disputes that this court may issue a writ of mandate requiring the State
13 reimburse the Counties. The State asserts that, as a result of section 6 being amended in
14 November 2004 and because of Government Code section 17617, it has no "clear, present, and
15 ministerial duty" to reimburse the Counties. The State asserts that article XIII B, section 6(b)(2)
16 of the California Constitution and Government Code section 17617 control the State's duty to
17 reimburse the specific mandated costs at issue in this case and thus, the State has 15 years,
18 commencing in fiscal year 2006-07, to reimburse the Counties.

19 2. The State also disputes that there are "appropriated but unencumbered funds" from
20 which the Court may order the State to pay the obligation owing the Counties. At issue for the
21 trial is whether there are funds in the State's Fiscal Year 2005-06 Budget that have been
22 appropriated by the Legislature for specific departments and programs from which the Court
23 may legally order, in conformity with applicable case law, the State to pay the Counties to
24 satisfy the reimbursement obligation.

25 **E. Exhibits: See Attachments "E-1" and "E-2"**

26 **F. Plaintiff's standard jury instructions: Not Applicable**

27 **G. Defendant's standard jury instructions: Not Applicable**

28 **H. Special verdict form: Not Applicable**

ATTACHMENT D

1 found the passage of Proposition 1A in November of 2004 did not render the writ moot. By stipulation,
2 amended complaints were filed alleging defendants' failure to fully pay the mandates from 1994 through
3 2004. Beginning in the 2002-2003 budget year, some mandates were suspended while the Legislature
4 funded the remaining mandates in the amount of \$1,000. See Government Code section 17581.

5 The State's motion for Summary Adjudication was denied. The Court of Appeal denied the
6 application for a Writ of Mandate, and court trial commenced on November 28, 2005.

7
8 **III. Facts**

9 **A. Plaintiffs' Case**

10 Plaintiffs and the State agreed before trial the State owed all the money sought by plaintiff
11 except for about \$22,000. Plaintiffs proved they were owed the additional sum of about \$22,000 that
12 relates to Mandate 22. (SIDS-Contact by Local Officers) During closing argument, defendant agreed it
13 owed plaintiffs all the money sought by plaintiffs in accord with California Constitution, Article XIII B,
14 section 6. Thus, San Diego County is owed \$41,652,974 and Orange County is owed \$72,755,977.
15 Plaintiffs are seeking a total judgment of \$114,408,951.

16 In-order to have a court order the immediate embargo of State budget funds owed to pay a State
17 debt, California Courts have required the funds in the state budget be generally related to the funds
18 missing. See *Butt v. State of California* (1992) 4 Cal.4th 668, 699-700. To make this connection,
19 plaintiffs called Mr. William Hamm, the former Legislative Analyst for the State of California. In
20 response to questions regarding different mandates he used terms such as reasonably related, generally
21 related, similar purpose, and similar. For purposes of simplicity, the court has given him the benefit of
22 the doubt and construed his testimony as being the funds sought to reimburse the counties, were

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-2

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-2

ORANGE COUNTY

Audit Report

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES PROGRAM

Chapter 654, Statutes of 1996

July 1, 2002, through June 30, 2005



JOHN CHIANG
California State Controller

November 2008



JOHN CHIANG
California State Controller

November 12, 2008

John M.W. Moorlach, CPA, CFP, Chair
Board of Supervisors
Orange County
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Dear Mr. Moorlach:

The State Controller's Office audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2002, through June 30, 2005.

The county claimed \$6,992,266 (\$6,994,266 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$5,677,620 is allowable and \$1,314,646 is unallowable. The costs are unallowable because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State paid the county \$3,802,673. Allowable costs claimed exceed the amount paid by \$1,874,947.

If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

John M.W. Moorlach

-2-

cc: Honorable David E. Sundstrom, CPA
Auditor-Controller
Orange County
Mark A. Refowitz, Deputy Agency Director
Behavioral Health Services
Orange County Health Care Agency
Mary R. Hale, M.S., Chief
Behavioral Health Services
Orange County Health Care Agency
Alan V. Albright, Division Manager
Children & Youth Services
Orange County Health Care Agency
Alice Sworder, Accounting Manager
Orange County Health Care Agency
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Stacey Wofford
Special Education Program
Department of Mental Health
Cynthia Wong, Manager
Special Education Division
California Department of Education

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2002, through June 30, 2005.

The county claimed \$6,992,266 (\$6,994,266 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$5,677,620 is allowable and \$1,314,646 is unallowable. The costs are unallowable because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State paid the county \$3,802,673. Allowable costs claimed exceed the amount paid by \$1,874,947.

Background

Chapter 654, Statutes of 1996, added and amended Government Code section 7576 by allowing new fiscal and programmatic responsibilities for counties to provide mental health services to seriously emotionally disturbed (SED) pupils placed in out-of-state residential programs. Counties' fiscal and programmatic responsibilities including those set forth in California Code of Regulations section 60100 provide that residential placements for an SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs.

On May 25, 2000, the Commission on State Mandates (CSM) determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561 for the following:

- Payment of out-of-state residential placements for SED pupils;
- Case management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan; and
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on October 26, 2000. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2002, through June 30, 2005.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the county's internal controls to gain an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed an instance of noncompliance with the requirements outlined above. This instance is described in the accompanying Summary of Program Costs (Schedule 1) and in the Finding and Recommendation section of this report.

For the audit period, Orange County claimed \$6,992,266 (\$6,994,266 less a \$2,000 penalty for filing late claims) for costs of the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program. Our audit disclosed that \$5,677,620 is allowable and \$1,314,646 is unallowable.

For the fiscal year (FY) 2002-03 claim, the State paid the county \$105. Our audit disclosed that \$1,471,841 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,471,736, contingent upon available appropriations.

For the FY 2003-04 claim, the State made no payments to the county. Our audit disclosed that \$1,211,270 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,211,270, contingent upon available appropriations.

For FY 2004-05, the State paid the county \$3,802,568. Our audit disclosed that \$2,994,509 is allowable. The State will offset \$808,059 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

**Views of
Responsible
Officials**

We issued a draft audit report on January 10, 2008. Mark Refowitz, Deputy Agency Director, Behavioral Health Services, responded by letter dated March 13, 2008 (Attachment), disagreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Orange County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

November 12, 2008

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2005**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment ¹
<u>July 1, 2002, through June 30, 2003</u>			
Ongoing mental health services costs:			
Vendor reimbursement	\$ 1,397,575	\$ 1,177,273	\$ (220,302)
Case management	295,568	295,568	—
Total costs	1,693,143	1,472,841	(220,302)
Less late claim penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 1,692,143</u>	1,471,841	<u>\$ (220,302)</u>
Less amount paid by the state		(105)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,471,736</u>	
<u>July 1, 2003, through June 30, 2004</u>			
Ongoing mental health services costs:			
Vendor reimbursement	\$ 2,036,041	\$ 1,749,756	\$ (286,285)
Case management	362,791	362,791	—
Net ongoing costs	2,398,832	2,112,547	(286,285)
Less reimbursements	(901,277)	(901,277)	—
Total program costs	<u>\$ 1,497,555</u>	1,211,270	<u>\$ (286,285)</u>
Less amount paid by the state		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,211,270</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing mental health services costs:			
Vendor reimbursement	\$ 5,043,632	\$ 4,235,573	\$ (808,059)
Case management	443,489	443,489	—
Net ongoing costs	5,487,121	4,679,062	(808,059)
Less reimbursements	(1,683,553)	(1,683,553)	—
Total costs	3,803,568	2,995,509	(808,059)
Less late claim penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 3,802,568</u>	2,994,509	<u>\$ (808,059)</u>
Less amount paid by the state		(3,802,568)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (808,059)</u>	

Schedule 1 (continued)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment ¹</u>
<u>Summary: July 1, 2002, through June 30, 2005</u>			
Ongoing mental health services costs:			
Vendor reimbursement	\$ 8,477,248	\$ 7,162,602	\$ (1,314,646)
Case management	<u>1,101,848</u>	<u>1,101,848</u>	<u>—</u>
Net ongoing costs	9,579,096	8,264,450	(1,314,646)
Less reimbursements	<u>(2,584,830)</u>	<u>(2,584,830)</u>	<u>—</u>
Total costs	6,994,266	5,679,620	(1,314,646)
Less late claim penalty	<u>(2,000)</u>	<u>(2,000)</u>	<u>—</u>
Total program costs	<u>\$ 6,992,266</u>	5,677,620	<u>\$ (1,314,646)</u>
Less amount paid by the state		<u>(3,802,673)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,874,947</u>	

¹ See the Finding and Recommendation section.

Finding and Recommendation

**FINDING—
 Ineligible vendor costs**

The county claimed ineligible vendor payments of \$1,316,462 (treatment costs of \$897,557 and board-and-care costs of \$418,905) for out-of-state residential placement of Seriously Emotionally Disturbed (SED) pupils in facilities that are owned and operated for profit. The costs represent treatment costs and 60% of total board-and-care costs. The county also omitted an eligible payment totaling \$1,816 for treatment costs from the claim.

The program’s parameters and guidelines, section IV.C.1, specify that the mandate is to reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and the California Code of Regulations, Title 2, sections 60100 and 60110.

The California Code of Regulations, Title 2, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirement of Welfare and Institutions Code sections 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall be paid only to a group home organized and operated on a nonprofit basis.

The parameters and guidelines also state that all costs claimed must be traceable to source documents that show evidence of the validity of such costs and their relationship to the state-mandated program.

The following table summarizes the unallowable vendor costs claimed:

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Ineligible placements:				
Treatment costs	\$ (220,302)	\$ (286,285)	\$ (390,970)	\$ (897,557)
Board-and-care costs	—	—	(418,905)	(418,905)
Omitted payment	—	—	1,816	1,816
Totals	\$ (202,302)	\$ (286,285)	\$ (809,875)	\$ (1,314,646)

Recommendation

We recommend that the county ensure that out-of-state residential placements are made in accordance with laws and regulations. Further, we recommend that the county only claim eligible treatment and board-and-care costs corresponding to the authorized placement period of each eligible client.

County's Response

The county disputes the finding concerning ineligible vendor costs with the following six arguments. The entire text of its arguments is attached to this report.

1. Program costs for FY 2000-01 through FY 2003-04 owed by the State to the county were previously established by court judgment.

The county believes that this audit is impacted by the San Diego Superior Court case *County of San Diego and County of Orange v. State of California et al.*, instituted against the State of California, the SCO, and the State Treasurer in April 2004 (case number GIC 825109 consolidated with GIC 827845). The county believes that the issue is *res judicata*, as a court of law set the amount of money (\$5,920,024) the State owes the county for unreimbursed program costs for FY 2000-01 through FY 2003-04.

The county further states that even if no judgment established the amount the State owes the county, it still disagrees that treatment and board and care costs totaling \$1,825,027 for out-of-state residential facilities characterized as "for profit" represent ineligible vendor payments.

2. The county contracted with nonprofit facilities.

The county believes that it did contract with nonprofit facilities to provide all program services and that it should not be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. One of the county's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. The county states that if the facility is for-profit, that facility is no longer considered for SED pupil placement.

Furthermore, neither the federal nor the state government has provided guidance on how counties should determine for-profit or nonprofit status. The county has used many of the out-of-state residential facilities for SED student placement for years without the State questioning the nonprofit status. Therefore, the county believes that the audit finding lacks the "fundamental fairness" that minimal due process requires.

3. California for-profit placement restriction is incompatible with the Federal Individual with Disabilities Education Act's (IDEA) "Most Appropriate Placement" requirement and placement provision.

The county believes that the State's position is in discord with the requirements of IDEA. IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement. Therefore, California's regulation limiting special education residential placements to nonprofit facilities is in direct opposition to the IDEA.

The county notes that Local Educational Agencies are not precluded by any similar nonprofit limitation. Under Education Code section 56366.1, out-of-state LEAs can use education services provided by certified nonpublic nonsectarian schools and other agencies operated on a for-profit basis when special education students are placed in residential facilities. Furthermore, nonpublic schools are certified by the State of California when they meet the provisions of section 56365 *et seq.*; yet nonprofit operation is not a requirement.

4. California Office of Administrative Hearings Special Education Division corroborates Orange County Health Care Agency's contention that for-profit placement restriction is incompatible with IDEA's "Most Appropriate Placement" requirement and placement provisions.

The county states that the principles discussed in Item 3 above were recently validated and corroborated by the State's own Office of Administrative Hearings (OAH), Special Education Division. The county referred to OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In this case, the school district and mental health agency were unable to find a residential placement that met the student's unique mental health and communication needs. They all agreed that a particular for-profit residential placement was appropriate for the student. However, based on the school district and mental health agency's interpretation of California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460, subdivisions (c)(2) through (c)(3), they could not place the student at the for-profit facility.

The OAH disagreed and found that section 60100, subdivision (h), did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. The OAH indicated that such an interpretation of the school district and mental health agency "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." As such, the OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children.

The county believes that the audit did not consider relevant factors in determining that certain residential vendor expenses were ineligible for reimbursement.

5. Counties face increased litigation if restricted to nonprofit residential facilities.

The county believes that in California, under IDEA, if no nonprofit placement meets the unique needs of a special education student, his or her parents can place the student in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc. The county believes that the parents can then demand that the school district and/or mental health agency pay the bill.

6. Federal and state law do not impose tax status requirements on provider treatment services.

Under Government Code section 7572, subdivision (c), special education mental health psychotherapy and assessment services must be conducted by qualified mental health professional and these services can be provided directly or by contract at the discretion of county mental health agencies. Further, California Code of Regulations, Title 2, section 60020, subdivisions (i) and (j), does not contain any requirement regarding the provider tax status. Therefore, the county believes the tax status has no bearing on eligibility for mental health provider services. Consequently, the county believes that the SCO's basis for the adjustment is not valid.

SCO's Response

The finding remains unchanged.

The audit is valid and has a legal bearing. In the two consolidated cases the superior court issued a peremptory writ of mandate on May 12, 2006, declaring that Orange and San Diego counties were entitled to reimbursement under California Constitution, Article XIII B, section 6, for state-mandated costs. The court granted mandate relief under Code of Civil Procedure section 1085, requiring the State of California to pay the counties over a 15-year period.

However, on July 1, 2008, the Court of Appeal reversed and remanded with direction to the superior court to vacate the peremptory writ of mandate, and to enter a judgment denying the petition for writ of mandate. The court found that the appropriation of funds for the state-mandated program is a legislative rather than a judicial issue.

The county is prohibited from placing a client in a for-profit facility under the California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that payment shall only be made to a group home organized and operated on a nonprofit basis. The county placed clients in a Provo Canyon, Utah, an out-of-state residential facility that is not organized and operated on a nonprofit basis. Based on documents the county provided us in the course of the audit, we determined that Mental Health Systems, Inc., a California nonprofit corporation, contracted with Charter Provo Canyon School, a Delaware for-profit limited liability company, to provide out-of-state residential placement services.

The proponents of Assembly Bill 1805 sought to change the regulations and allow payment to for-profit facilities for placement of SED pupils. The legislation would have permitted retroactive application, so that any prior unallowable claimed costs identified by the SCO would be reinstated. However, the Governor vetoed this legislation on September 30, 2008. Therefore, counties must comply with the governing regulations cited in the SED Pupils: Out-of-State Mental Health Services Program's parameters and guidelines.

We do not dispute the assertion that California Law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils; however, the fact remains that this is a state mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of the California Code of Regulations, Title 2, section 60100.

Regarding the discussion of local educational agencies (LEAs), we do not dispute that Education Code sections 56366.1 and 56365 do not restrict LEAs from contracting with for-profit schools for educational services. The cited Education Code sections specify that educational services must be provided by a school certified by the California Department of Education.

We do not dispute that Government Code section 7572 requires mental health services to be provided by qualified mental health professionals. The county is prohibited from placing a client in a for-profit facility under the California Code of Regulations, Title 2, section 60100, subdivision (h), and Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that payment shall be made only to a group home organized and operated on a nonprofit basis. The treatment and board and care vendor payments the county claimed resulted from the placement of clients in prohibited out-of-state residential facilities. Again, the state-mandated program's parameters and guidelines do not include a provision for the county to be reimbursed for vendor payments to out-of-state residential placements made outside of regulations.

**Attachment—
County's Response to
Draft Audit Report**

At the county's request, we excluded private vendor information from the county's attachments to its response. The following excerpt excludes a portion of Attachment D and the entire Attachment E.



**COUNTY OF ORANGE
HEALTH CARE AGENCY**

BEHAVIORAL HEALTH SERVICES

JULIETTE A. POULSON, RN, MN
DIRECTOR

MARK A. REFOWITZ
DEPUTY AGENCY DIRECTOR
BEHAVIORAL HEALTH SERVICES

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*Excellence
Integrity
Service*

March 13, 2008

Jim L. Spano, Chief
Mandated Cost Audits Bureau
California State Controller's Office
Division of Audits
Post Office Box 94250
Sacramento, CA 94250-5874

Re: Orange County Audit Reports, Seriously Emotionally Disturbed Pupils:
Out-of-State Mental Health Services Program for the periods of July 1, 2000
through June 30, 2002 and July 1, 2002 through June 30, 2005

Dear Mr. Spano:

The County of Orange ("the County") Health Care Agency ("HCA") is writing to amend its initial response, dated February 13, 2008, in regard to the audit reports referenced above. The County received an extension from you to submit its response. In light of new evidence that became available after HCA's initial response was submitted, we are sending this amendment, which is still in compliance with that extension.

Please refer to Item #4, describing a case that was decided in January 2008 in Riverside County, which has been added to our initial response. We wish to reiterate that HCA does not agree with the audits' conclusions that \$601,716 and \$1,314,646 respectively represent unallowable program costs identified in the two audits. All supporting attachments were sent with our initial response, so we are not including them in this submittal.

1. Program Costs for Fiscal Years 2000-01 through 2003-04 Owed By the State to the County Were Previously Established by Court Judgment.

You may or may not be aware of a lawsuit that the County of Orange instituted against the State of California, the State Controller, and the State Treasurer in April 2004. The County of Orange was a plaintiff as was the County of San Diego in the case of *County of San Diego and County of Orange v. State of California et al.*, San Diego Superior Court case number GIC 825109 (consolidated with GIC 827845). At issue in the lawsuit were unreimbursed mandated

costs for fiscal years 1994-95 through and including 2003-04. After a trial on the merits in December 2005, judgment was entered in favor of the counties. The judgment set the sum total of unreimbursed mandated costs owing to the County in the amount of \$72,755,977. See Attachment A, a true and correct copy of the Judgment.

The \$72,755,977 is comprised of 42 different state mandated programs including the program that is the subject of the two Audit Reports. Attachment B is a true and correct copy of what was an exhibit at trial, reflecting the various state mandated programs and corresponding amounts to which the Attorney General's Office, on behalf of the State defendants, stipulated were due and owing to the County, and not in dispute at trial. As item 29 on page three of Attachment B reflects, the Court's judgment set the amount owed to the County for "Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services (Ch 654/96)" at \$1,191,638 for fiscal year 2000-01, \$1,538,794 for fiscal year 2001-02, \$1,692,038 for fiscal year 2002-03 and \$1,497,554 for fiscal year 2003-04. Attachment C is a true and correct copy of relevant pages from the "Joint Trial Readiness Conference Report" that was filed with the Court in November 2005, demonstrating the stipulation of the parties. Attachment D is a true and correct copy of relevant pages of the Court's statement of decision which formed the basis for the judgment in favor of the plaintiff counties. As Attachments C and D reflect, the State's attorneys agreed the amounts reflected in Attachment B were due and owing to the County, and judgment was entered accordingly.

Since a court of law set the amount of money due from the State for unreimbursed program costs for fiscal years 2000-01 through 2003-04 at a total of \$5,920,024 payable to the County from the State, the issue is *res judicata* and the audit for those fiscal years has no legal bearing.

Even if there were no Judgment establishing the amount the State owes the County for the fiscal years in question, the County also disagrees with the audits' conclusions that treatment and board and care costs totaling \$1,825,037 for out-of-state residential facilities characterized as "for profit" represent ineligible vendor payments.

2. The County Contracted with Nonprofit Facilities.

For the audit periods, the County believed, and still believes, it contracted with nonprofit facilities to provide all program services. The County cannot be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. This is not prohibited by California statute, regulation, or federal law.

The County complies with a number of prerequisites before placing seriously emotionally disturbed ("SED") pupils in out-of-state residential facilities. For example, the pupil must be determined to be "emotionally disturbed" by his or her school district. In-state facilities must be unavailable or inappropriate. One of the County's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. When advised that the facility is for-profit, that facility is no longer considered for SED pupil placement. When advised that the facility is nonprofit, the County obtains documentation of that status, e.g., an IRS tax determination letter.

Because the County has been placing SED children in out-of-state facilities since 1984, not all nonprofit status documents can be located. Some may have been misplaced in the

intervening 20 plus years. However, nonprofit status documentation was provided to the State's auditor in many cases as reflected in Attachment E.

Neither the federal nor the state government has provided procedures or guidelines to specify if and/or exactly how counties should determine for-profit or nonprofit status. Although counties have used many of these out-of-state residential facilities for SED student placement for years, the State has never before questioned their nonprofit status. Nor has the State ever provided the County with a list of facilities that it deems to be nonprofit, and therefore acceptable to the State. The State's history of paying these costs without question encouraged the County to rely upon the State's acceptance of prior claims for the very same facilities now characterized as for-profit.

Considering the foregoing, the audits' conclusions lacks the "fundamental fairness" that even minimal procedural due process requires.

3. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Regardless of the State's view of the validity of the residential facility contracts questioned by the two Audit Reports, the State's position in this matter is in glaring discord with the requirements of the federal Individuals with Disabilities Education Act ("IDEA"). This is because the IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement.

The stated purpose of the IDEA is ". . . to ensure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A). The "free appropriate public education" required by IDEA must be tailored to the unique needs of the handicapped child by means of an "individualized educational program." 20 U.S.C. § 1401(9)(D); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (U.S. 1982). When a state receives funds under the IDEA, as does California, it must comply with the IDEA and its regulations. 34 C.F.R. § 300.2 (2006).

Local educational agencies ("LEAs") initially were responsible for providing all special education services including mental health services when necessary. The passage of Assembly Bill 3632/882 transferred the responsibility for providing mental health services to the counties. In conjunction with special education mental health services, the IDEA requires that a state pay for a disabled student's residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. 34 C.F.R. § 300.302 (2006); *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001).

Before 1997, the IDEA required counties to place special education students in nonprofit residential placements only. In 1997, however, section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 amended section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) to strike the nonprofit requirement. Section 472(c)(2) currently states:

The term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State

in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

In direct opposition to the IDEA, California's regulations limit special education residential placements to nonprofit facilities as follows:

... Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). 2 C.C.R. § 60100(h).

... State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis. Welfare and Institutions Code § 11460(c)(3).

Therefore, California law is inconsistent with the requirements of IDEA and incompatible with its foremost purpose, i.e., to provide each disabled child with special education designed to meet that child's unique needs. 20 U.S.C. §1401(25). Indeed, special education students who require residential treatment are often the students with the most unique needs of all because of their need for the most restrictive level of placement. This need rules out California programs. The limited number of out-of-state residential facilities that are appropriate for a special education student may not operate on a nonprofit basis. Thus, California's nonprofit requirement results in fewer appropriate services being available to the neediest children—those who can only benefit from their special education when placed in residential facilities.

It should also be noted that LEAs are not precluded by any similar nonprofit limitation. When special education children are placed in residential facilities, out-of-state LEAs can utilize education services provided by certified nonpublic, nonsectarian schools and other agencies operated on a for-profit basis. Educ. Code § 56366.1. Nonpublic schools are certified by the State of California when they meet the provisions of Education Code sections 56365 *et seq.* Nonprofit operation is *not* a requirement. Consequently, the two entities with joint responsibility for residential placement of special education students must operate within different criteria. This anomaly again leads to less available services for critically ill special education children.

4. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The principles set forth in Item 3 above were recently validated and corroborated by the State's own Office of Administrative Hearings ("OAH"), Special Education Division in OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In that matter, the school district and mental health agency were unable to find a residential placement that could meet the student's unique mental health and communication

needs. All parties agreed that a particular for-profit residential placement was the appropriate placement for the student. Interpreting Title 2 of Cal. Code Regs., section 60100(h) and Welfare and Institutions Code section 11460(c)(2) through (c)(3) in the same fashion as the State Controller's Audits, the school district and mental health agency concluded that they could not place the student at the for-profit facility.

The OAH disagreed. In fact, it found that section 60100(h) of Title 2 of the California Code of Regulations did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. *Student v. Riverside Unif. Sch. Dist. and Riverside Co. Dept. of Mental Health*, Case No. N 2007090403, January 15, 2008. Moreover, the OAH indicated such an interpretation "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." *Riverside Unif. Sch. Dist.* at p. 8.

The OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children. *Riverside Unif. Sch. Dist.* at p. 8, quoting *Katz v. Los Gatos-Saratoga Joint Union High School District*, 117 Cal. App. 4th 47, 63 (2004).

Like the school district and mental health agency in *Riverside*, the audits in question utilized a blanket, hard and fast rule that for-profit placements are never allowed, even when the placement itself indicates it is nonprofit, even when there is no other appropriate placement available, and even when the for-profit placement is in the best interests of the child. None of these factors were taken into consideration when the Audits determined that certain residential vendor expenses were ineligible for reimbursement.

5. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities.

Under the IDEA, when parents of a special education pupil believe their child's school district and/or county mental health agency breached their duties to provide the student with a free appropriate public education, the parents can seek reimbursement for the tuition and costs of a placement of the parents' choice. The United States Supreme Court has ruled that parents who unilaterally withdraw their child from an inappropriate placement must be reimbursed by the placing party(ies). This is true even if the parents' school placement does not meet state educational standards and is not state approved. *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7 (U.S. 1993).

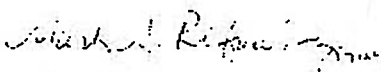
This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand that the school district and/or mental health agency pay the bill. The California regulatory requirement for nonprofit residential placement prevents school districts and mental health agencies from selecting the most appropriate placement, regardless of tax status. Because of California's arbitrary regulatory requirement, which is not in accord with the 1997 amendment to IDEA, school districts and mental health agencies may be forced to place a child in a less appropriate facility increasing the likelihood that the parents will choose a different facility. The placement agencies are thereafter legally required to subsidize the expenses of the parents' unilateral choice, even if that unilateral placement does not meet the State's nonprofit and academic standards.

6. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

Special education mental health psychotherapy and assessment services must be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education California Government Code § 7572(c). These services can be provided directly or by contract at the discretion of county mental health agencies. 2 C.C.R. § 60020(i). Licensed practitioners included as "qualified mental health professionals" are listed in California Code of Regulations Title 2, section 60020(j). Neither section contains any requirement regarding the provider's tax status. Because tax status has no bearing on eligibility for mental health provider services, there is no basis for disallowing these claimed treatment costs.

Based on the foregoing, the County of Orange maintains that its claimed program costs of \$9,756,254 remain allowable and eligible for reimbursement. Please feel free to contact the undersigned with any questions or concerns.

Sincerely,



Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

cc: David E. Sundstrom, CPA, Auditor-Controller
Mary R. Halc, Chief, Behavioral Health Services
Alan V. Albright, Division Manager, Children & Youth Services
Alice Sworder, HCA Accounting Manager

ATTACHMENT A

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FILED
Clerk of the Superior Court
MAY 12 2006
By: L. ROCKWELL, Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

COUNTY OF SAN DIEGO,
Plaintiff/Petitioner,

Case No. GIC 825109 (consolidated with
Case No. GIC 827845)

v.

JUDGMENT (PROPOSED)

**STATE OF CALIFORNIA; STEVE
WESTLY in his official capacity as California
State Controller; PHIL ANGELIDES in his
official capacity as California State Treasurer;
DONNA ARDUIN in her official capacity as
Director of the California State Department of
Finance; and DOES 1 through 50, inclusive,**
Defendants/Respondents.

Trial Date: November 28, 2005
Time: 10:30 a.m.
Dept: 70
I/C Judge: Honorable Jay M. Bloom
Actions filed: 2/3/04 and 4/1/04

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~~**JUDGMENT (PROPOSED)**~~

1 COUNTY OF ORANGE,
2 Plaintiff/Petitioner,
3 v.
4 STATE OF CALIFORNIA; STEVE
5 WESTLY in his official capacity as California
6 State Controller; PHIL ANGELES in his
7 official capacity as California State Treasurer;
8 DONNA ARDUIN in her official capacity as
9 Director of the California State Department of
10 Finance; and DOES 1 through 50, inclusive,
11 Defendants/Respondents.

12 Plaintiffs/Petitioners County of San Diego's and County of Orange's consolidated
13 complaints for declaratory relief and petitions for issuance of a writ of mandate came on for trial
14 on November 28, 2005, at 10:30 am., in Department 70 of the above-entitled court, the
15 Honorable Jay M. Bloom, judge presiding. The County of San Diego was represented by John
16 J. Sansone, County Counsel by Timothy M. Barry, Senior Deputy. The County of Orange was
17 represented by Benjamin P. de Mayo, County Counsel by Weedy J. Phillips, Deputy County
18 Counsel. The State of California, California State Controller, California State Treasurer, and
19 Director of the California State Department of Finance, were represented by William Lockyer,
20 Attorney General by Leslie R. Lopez, Deputy Attorney General.

21 Having heard and considered the evidence both written and oral and the oral arguments
22 of counsel for the parties it is hereby ORDERED, AJUDGED and DECREED as follows:

23 1. The State of California is obligated to reimburse the County of San Diego and the
24 County is entitled to judgment in the total principal sum of \$41,652,974 for the balance due on
25 its claims for costs incurred in providing State mandated programs and services from fiscal year
26 1994-95 through fiscal year 2003-04, together with interest thereon at the legal rate of seven
27 percent.

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~~JUDGMENT (PROPOSED)~~

1 percent (7%) per annum from February 3, 2004. Interest on the \$41,652,974 at the legal rate
2 from February 3, 2004, through May 10, 2006 (826 days), the date of entry of this judgment, is
3 \$6,328,236 for a total judgment of \$47,981,210.

4 2. The State of California is obligated to reimburse the County of Orange and the
5 County is entitled to judgment in the total principal sum of \$72,755,977 for the balance due on
6 its claims for costs incurred in providing State mandated programs and services from fiscal year
7 1994-95 through fiscal year 2003-04, together with interest at the legal rate of seven percent
8 (7%) per annum from April 1, 2004. Interest on the \$72,755,977 at the legal rate from April 1,
9 2004, through May 10, 2006 (770 days), the date of entry of this judgment, is \$9,982,132 for a
10 total judgment of \$82,738,109.

11 3. The Counties request for pre-petition interest is denied.

12 4. A writ of mandate pursuant to Code of Civil Procedure section 1084, et seq. shall
13 issue commanding respondents, State of California, State Controller, State Treasurer, and
14 Director of the California State Department of Finance to pay the amount of the judgment plus
15 interest to the County of San Diego and the County of Orange over the fifteen year period
16 required by Government Code section 17617 (or a shorter period if the Legislature enacts a
17 shorter period, elects to pay the debt off earlier or is otherwise required by law to pay the debt
18 off over a shorter period) in equal annual installments beginning with the budget for the 2006-07
19 fiscal year and annually thereafter each successive budget until paid.

20 5. Respondents will file a return on the writ with the court within 90 days of the
21 enactment of the State budget for each fiscal year commencing with the 2006-07 fiscal year
22 demonstrating compliance with the writ until the amounts owed have been fully paid.

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ATTACHMENT B

CRIMINAL JUSTICE - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Item 0430-295-0001 State Trial Court Funding										22,572	7,921
1 Grand Jury Proceedings (Ch 117096)											
(Item 0698-295-0001 Office of Emergency Services											
2 Crime Victims' Rights (Ch 41195) (Previously 8100-295-0001 Off. of Cm. Justice)					13,848	14,276	15,237	14,646	14,749	17,649	17,649
3 Sex Crimes Confidentially (Ch 50292)											
(Item 0820-295-0001 Department of Justice											
4 Booking & Fingerprinting (Ch 110592)								947			
5 Child Abduction and Recovery (Ch 139976)								144,508	173,935	584,528	516,632
6 Sex Offenders Disclosure By Law Enforcement Officers (Megan's Law) - (Local Agencies) (Ch 90896)			10,067	295,206	368,974	401,231	441,988	438,597	448,889		
7 Stolen Vehicle Notification (Ch 33790)											
(Item 0890-295-0001 Secretary of State											
8 Absentee Ballots (Local Agency) (Ch 7778 and Ch 92096)							401,436	348,334	573,375	891,366	
9 Absentee Ballots: Tabulation by Precinct (Ch 69799)							2,979				

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
10 Permanent Absent Voters (Ch 1422/82)								86,663	91,815	43,754
11 Residential Primaries 2000 (Ch 1899)						26,176				
12 Voter Registration Procedures (Ch 704/75)								38,150	41,950	89,864
Item 0950-295-0001 State Treasurer										
13 County Treasury Oversight Comm. (Ch 784/95)		6,330	22,496	41,910	55,775	51,664	61,407	65,363	105,617	
Investment Reports (Local Agencies) (Ch 783/95)									452,471	
Item 1860-295-0001 State Personnel Board										
15 Police Officers Procedural Bill of Rights (Ch 465/76)	417,968	434,219	775,948	451,726	384,219	315,388	341,751	508,494	513,301	654,996
Item 2740-295-0044 Department of Motor Vehicles										
16 Administrative License Suspension (Ch 1460/89)						1,570	2,189	1,569	1,815	1,761
Item 4260-295-0001 Department of Health Services										
17 Aids Testing (Ch 139/78)								1,126	46,843	
18 Medical-CAL Death Notices (Ch 102/81)								6,181	8,441	5,085
Pacific Beach Safety (Ch 961/92)										
20 Search Warrant Aids (Ch 1088/88)										

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
31 Sexually Violent Predators (Ch 762 and 763, Statutes of 1995)								619,630	1,310,550	1,016,836
32 SMAS Carriers (Ch 498/77)									15,170	16,134
Item 5180-295-0001 Department of Social Services										
33 Child Abuse Treatment Services Authorization And Case Management (Ch 1090/96)										
Item 5244-295-0001 Department of Corrections										
34 Prisoner Parental Rights (Ch 820/93)								227,010	652,104	304,142
Item 5436-295-0001 Board of Corrections										
35 Domestic Violence Treatment Services Authorization And Case Management (Ch 183/92)								44,876	281,552	318,814
Item 5460-295-0001 Department of Youth Authority										
36 Extended Commitment - Youth Authority (Ch 546/94 & 267/98)						3,944	7,483	1,132		
Item 7350-295-0001 Department of Industrial Relations (Previously Item 8390-295-0001)										
37 Peace Officer's Cancer Presumption (Ch 1171/89)								1,239	2,132	1,872

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT											
Mandate											
Item	Description	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
38	Domestic Violence Arrest Policies And Standards (Ch 24693)								15,998	22,456	21,966
39	Law Enforcement Sexual Harassment Training (Ch 12693)						1,043				
	Item 8570-295-0001 Department of Food and Agriculture										
	Animal Adoptions (Ch 75298)				2,205	31,446	63,175	22,600		17,422	
	Item 9100-295-0001 Local Assistance - Tax Relief										
41	Allocation of Property Tax Revenue: Educational Revenue Augmentation Funds (Ch 69792)							122			
42	Redevelopment Agencies - Tax Disbursement Reporting (Ch 1998)				2,182	2,249	2,361	2,459	2,513	2,580	
43	Senior Citizens' Property Tax Deferral Program (Ch 124277)								14,759	15,569	
44	Voluntary Countywide Tax Rate (Ch 92187)										
	Item 9210-295-0001 Local Government Financing										
45	Health Benefits For Survivors Of Peace Officers And Firefighters (Local Agencies) (Ch 112096)										

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	
46 Mandate Reimbursement Process (Ch 48675)						238,241	164,785	188,444	197,642		
47 Open Meetings (Ch 64186)				11,389	11,489	12,459	20,765	77,668	87,432	112,381	
48 Rape Victim Counseling Center Notices (Ch 999191 and Ch 22492)											
49 Mentally Disordered Sex Offenders: Extended Commitments (Ch 99179)											
Item No. 2660-1620890 Dept. of Transportation (FY 05-06) - Gov. Line Itemed vehicle appropriation									5,061	0	
50 Regional Housing Needs (1143/80)										0	
TOTAL	417,968	440,749	806,513	1,000,269	911,662	5,025,746	6,332,486	13,385,496	27,982,168	13,650,902	72,755,971

ATTACHMENT C

1 JOHN J. SANSONE, County Counsel
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11 Attorneys for Plaintiff/Petitioner County of Orange

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN DIEGO

15 COUNTY OF SAN DIEGO,
16 Plaintiff/Petitioner,
17 v.

18 STATE OF CALIFORNIA; STEVE
WESTLY in his official capacity as California
19 State Controller; PHIL ANGELIDES in his
official capacity as California State Treasurer;
20 DONNA ARDUN in her official capacity as
Director of the California State Department of
21 Finance; and DOES 1 through 50, inclusive,
22 Defendants/Respondents.

Case No. GIC 825109 (consolidated with
Case No. GIC 827845
[Actions filed: 2/3/04 and 4/1/04]

JOINT TRIAL READINESS
CONFERENCE REPORT

Trial Readiness Conference
Date: November 18, 2005
Time: 1:30 p.m.
Dept: 70

Trial Date: November 23, 2005
Trial Time Estimate:
Jury Requested: No
Jury Fee Deposited: N/A
Court Reporter Requested: Yes

I/C Judge: Honorable Jay M. Bloom

Actions filed: 2/3/04 and 4/1/04

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1 COUNTY OF ORANGE,
2 Plaintiff/Petitioner,
3 v.
4 STATE OF CALIFORNIA; STEVE
5 WESTLY in his official capacity as California
6 State Controller; PHIL ANGELIDES in his
7 official capacity as California State Treasurer;
8 DONNA ARDUIN in her official capacity as
9 Director of the California State Department of
10 Finance; and DOES 1 through 50, inclusive,
11 Defendants/Respondents.

12 A. The parties to the above case, by their attorneys: plaintiffs/petitioners, County
13 of San Diego, County Counsel John J. Sansone, by Timothy M. Barry, Senior Deputy; County
14 of Orange, County Counsel Benjamin P. de Mayo, by Wendy J. Phillips, Deputy; and
15 defendants/respondents by Deputy Attorneys Generals Michelle Mitchell Lopez and Leslie
16 Lopez conferred and discussed settlement but could not settle the case. They are prepared for
17 trial.

18 B. Nature of Case:
19 Plaintiffs/Petitioners, County of San Diego and County of Orange ("the Counties"), seek
20 reimbursement of costs incurred in relation to providing various State mandated programs at the
21 local level. The California Constitution requires the State to reimburse counties for costs
22 incurred in relation to providing mandated programs. Between the two counties, reimbursement
23 for 50 different mandated programs are at issue, totaling more than \$110 million. The Counties
24 seek a writ of mandate compelling Defendants/Respondents: State of California, Phil Angelides
25 (Treasurer), Steve Westly (Controller) and Tom Campbell (Director of Finance), (collectively
26 "the State"), to pay the Counties as required by the California Constitution. The Counties are
27 requesting the court to order the State to pay the mandated costs from funds within the State's
28 budget that are appropriated but unencumbered.

29 C. Legal issues which are not in dispute:
30 1. In November of 2004, the Court granted the Counties' joint motion for judgment

1 on the pleadings. In that Order, the Court granted Counties declaratory relief stating that the
2 State "failed to reimburse costs incurred in providing state mandated services and programs for
3 fiscal years 2002-2004 in violation of the State's constitutional and statutory obligations."

4 2. The State does not dispute that the Counties are owed reimbursement for costs
5 incurred in relation to providing state mandated services.

6 3. The State agrees that the amounts set forth on Exhibits "A" and "B"
7 accurately reflect the amount of the Counties claims, that the State has not disputed the
8 amount of the claims as reflected on Exhibits "A" except for Item 22, FY 03-04, Item 28,
9 FY 99-00, and Item 46, FY 94-95 and 95-96 and on Exhibit "B" except for Items _____,
10 and that the State has not paid the Counties' claims.

11 **D. Legal issues which are in dispute:**

12 1. The State disputes that this court may issue a writ of mandate requiring the State
13 reimburse the Counties. The State asserts that, as a result of section 6 being amended in
14 November 2004 and because of Government Code section 17617, it has no "clear, present, and
15 ministerial duty" to reimburse the Counties. The State asserts that article XIII B, section 6(b)(2)
16 of the California Constitution and Government Code section 17617 control the State's duty to
17 reimburse the specific mandated costs at issue in this case and thus, the State has 15 years,
18 commencing in fiscal year 2006-07, to reimburse the Counties.

19 2. The State also disputes that there are "appropriated but unencumbered funds" from
20 which the Court may order the State to pay the obligation owing the Counties. At issue for the
21 trial is whether there are funds in the State's Fiscal Year 2005-06 Budget that have been
22 appropriated by the Legislature for specific departments and programs from which the Court
23 may legally order, in conformity with applicable case law, the State to pay the Counties to
24 satisfy the reimbursement obligation.

25 **E. Exhibits:** See Attachments "E-1" and "E-2"

26 **F. Plaintiff's standard jury instructions:** Not Applicable

27 **G. Defendant's standard jury instructions:** Not Applicable

28 **H. Special verdict form:** Not Applicable

ATTACHMENT D

1 found the passage of Proposition 1A in November of 2004 did not render the writ moot. By stipulation,
2 amended complaints were filed alleging defendants' failure to fully pay the mandates from 1994 through
3 2004. Beginning in the 2002-2003 budget year, some mandates were suspended while the Legislature
4 funded the remaining mandates in the amount of \$1,000. See Government Code section 17581.

5 The State's motion for Summary Adjudication was denied. The Court of Appeal denied the
6 application for a Writ of Mandate, and court trial commenced on November 28, 2005.

7
8 **III. Facts**

9 **A. Plaintiffs' Case**

10 Plaintiffs and the State agreed before trial the State owed all the money sought by plaintiff
11 except for about \$22,000. Plaintiffs proved they were owed the additional sum of about \$22,000 that
12 relates to Mandate 22. (SIDS-Contact by Local Officers) During closing argument, defendant agreed it
13 owed plaintiffs all the money sought by plaintiffs in accord with California Constitution, Article XIII B,
14 section 6. Thus, San Diego County is owed \$41,652,974 and Orange County is owed \$72,755,977.
15 Plaintiffs are seeking a total judgment of \$114,408,951.

16 In order to have a court order the immediate embargo of State budget funds owed to pay a State
17 debt, California Courts have required the funds in the state budget be generally related to the funds
18 missing. See *Butt v. State of California* (1992) 4 Cal.4th 668, 699-700. To make this connection,
19 plaintiffs called Mr. William Hamun, the former Legislative Analyst for the State of California. In
20 response to questions regarding different mandates he used terms such as reasonably related, generally
21 related, similar purpose, and similar. For purposes of simplicity, the court has given him the benefit of
22 the doubt and construed his testimony as being the funds sought to reimburse the counties, were

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-3

ITEM 10
FINAL STATE AUDIT REPORTS
EXHIBIT C-3

ORANGE COUNTY

Audit Report

SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES PROGRAM

Chapter 654, Statutes of 1996

July 1, 2005, through June 30, 2006



JOHN CHIANG
California State Controller

September 2010



JOHN CHIANG
California State Controller

September 17, 2010

The Honorable Janet Nguyen, Chair
Orange County Board of Supervisors
333 W. Santa Ana Boulevard
Santa Ana, CA 92701

Dear Ms. Nguyen:

The State Controller's Office audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2005, through June 30, 2006.

The county claimed and was paid \$4,108,407 (\$4,118,407 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$2,957,802 is allowable and \$1,150,605 is unallowable. The costs are unallowable because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State will offset \$1,150,605 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

The Honorable Janet Nguyen

-2-

September 17, 2010

cc: The Honorable David E. Sundstrom, CPA
Auditor-Controller
Orange County
Mark Refowitz, Deputy Agency Director
Behavioral Health Services
Orange County
Kim Engelby, HCA Accounting Manager
Behavioral Health Services
Orange County
Howard Thomas, HCA Accounting Manager
Behavioral Health Services
Orange County
Jeff Carosone, Principal Program Budget Analyst
Cor-Gen Unit, Department of Finance
Carol Bingham, Director
Fiscal Policy Division
California Department of Education
Renaë Rodocker
Special Education Program
Department of Mental Health
Matika Rawls, Manager
Special Education Division
California Department of Education
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Orange County for the legislatively mandated Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program (Chapter 654, Statutes of 1996) for the period of July 1, 2005, through June 30, 2006.

The county claimed and was paid \$4,108,407 (\$4,118,407 less a \$10,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$2,957,802 is allowable and \$1,150,605 is unallowable. The costs are unallowable because the county claimed ineligible vendor payments for out-of-state residential placement of seriously emotionally disturbed pupils in facilities that are owned and operated for profit. The State will offset \$1,150,605 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

Background

Government Code section 7576 (added and amended by Chapter 654, Statutes of 1996) allows new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed Pupils (SEDP) placed in out-of-state residential programs. Counties' fiscal and programmatic responsibilities including those set forth in California Code of Regulations section 60100 provide that residential placements for a SEDP may be made out-of-state only when no in-state facility can meet the pupil's needs.

On May 25, 2000, the Commission on State Mandates (CSM) determined that Chapter 654, Statutes of 1996, imposed a state mandate reimbursable under Government Code section 17561 for the following:

- Payment of out-of-state residential placements for SEDPs;
- Case management of out-of-state residential placements for SEDPs. Case management includes supervision of mental health treatment and monitoring of psychotropic medications;
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan;
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on October 26, 2000. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program for the period of July 1, 2005, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed an instance of noncompliance with the requirements outlined above. This instance is described in the accompanying Summary of Program Costs (Schedule 1) and in the Finding and Recommendation section of this report.

For the audit period, Orange County claimed \$4,108,407 (\$4,118,407 less a \$10,000 penalty for filing a late claim) for costs of the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program. Our audit disclosed that \$2,957,802 is allowable and \$1,150,605 is unallowable.

For the fiscal year (FY) 2005-06 claim, the State paid the county \$4,108,407. Our audit disclosed that \$2,957,802 is allowable. The State will offset \$1,150,605 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

Views of Responsible Official

We issued a draft audit report on June 30, 2010. Mark A. Refowitz, Deputy Agency Director, Behavioral Health Services, responded by letter dated August 9, 2010 (Attachment), disagreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Orange County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

September 17, 2010

**Schedule 1—
Summary of Program Costs
July 1, 2005, through June 30, 2006**

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment ¹</u>
Ongoing mental health services costs:			
Vendor reimbursements	\$ 5,736,818	\$ 4,586,213	\$ (1,150,605)
Case management	494,891	494,891	—
Net ongoing costs	6,231,709	5,081,104	(1,150,605)
Less reimbursements	(2,113,302)	(2,113,302)	—
Total costs	4,118,407	2,967,802	(1,150,605)
Less late claim penalty	(10,000)	(10,000)	—
Total program costs	<u>\$ 4,108,407</u>	2,957,802	<u>\$ (1,150,605)</u>
Less amount paid by the State		<u>(4,108,407)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (1,150,605)</u>	

¹ See the Finding and Recommendation section.

Finding and Recommendation

FINDING— Ineligible vendor costs

The county overstated vendor costs by \$1,150,605 for the audit period.

As in the prior State Controller's Office audit, the county claimed ineligible vendor payments. For the audit period, the ineligible vendor payments totaled \$1,220,071 (treatment costs of \$616,320 and board-and-care costs of \$603,751) for out-of-state residential placement of Seriously Emotionally Disturbed (SED) Pupils in facilities that are owned and operated as for profit. We issued the prior audit on November 12, 2008, for the period July 1, 2002, through June 30, 2005. In addition, the county included ineligible in-state vendor treatment costs and unallowable prior year costs and omitted eligible board-and-care costs. The county used realignment funds to reduce its board-and-care costs claimed during the year. We reduced the realignment funds applied by the portion of ineligible board-and-care costs.

The following table summarizes the unallowable vendor costs claimed:

	Fiscal Year 2005-06
Ineligible placements:	
Treatment costs	
For-profit vendors	\$ (616,320)
In-state vendor	(1,179)
Board-and-care costs	(603,751)
Realignment adjustment	66,116
Ineligible prior year costs	(2,037)
Omitted board-and-care costs	6,566
	<hr/>
Total	<u>\$ (1,150,605)</u>

The program's parameters and guidelines (section IV.C.1.) specify that the mandate is to reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, *California Code of Regulations* (CCR), sections 60100 and 60110.

Title 2, CCR, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3), states that reimbursement shall be paid only to a group home organized and operated on a nonprofit basis.

The parameters and guidelines also state that all costs claimed must be traceable to source documents that show evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county implement policies and procedures to ensure that out-of-state residential placements are made in accordance with laws and regulations. Further, we recommend that the county claim

only eligible treatment and board-and-care costs corresponding to the authorized placement period of each eligible client.

County's Response

The County does not agree with the finding concerning ineligible vendor costs with the following five arguments.

1. The County Contracted with Nonprofit Facilities.

For the audit period, the County believed, and still believes, it contracted with nonprofit facilities to provide all program services. The County cannot be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. This is not prohibited by California statute, regulation, or federal law.

The County complies with a number of prerequisites before placing seriously emotionally disturbed ("SED") pupils in out-of-state residential facilities. For example, the pupil must be determined to be "emotionally disturbed" by his or her school district. In-state facilities must be unavailable or inappropriate. One of the County's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. When advised that the facility is for-profit, that facility is no longer considered for SED pupil placement. When advised that the facility is nonprofit, the County obtains documentation of that status, e.g., an IRS tax determination letter.

Neither the federal nor the state government has provided procedures or guidelines to specify if and/or exactly how counties should determine for-profit or nonprofit status. Although counties have used many of these out-of-state residential facilities for SED student placement for years, the State only recently has begun to question their nonprofit status. Nor has the State ever provided the County with a list of facilities that it deems to be nonprofit, and therefore acceptable to the State. The State's history of paying these costs without question encouraged the County to rely upon the State's acceptance of prior claims for the very same facilities now characterized as for-profit.

Considering the foregoing, the audit's conclusion lacks the "fundamental fairness" that even minimal procedural due process requires.

2. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Regardless of the State's view of the validity of the residential facility contracts questioned by the DRAFT Audit Report, the State's position in this matter is in glaring discord with the requirements of the federal Individuals with Disabilities Education Act ("IDEA"). This is because the IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement.

The stated purpose of the IDEA is ". . . to ensure that all children with disabilities have available to them. . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . ." 20 U.S.C. §

1400(d)(1)(A). The “free appropriate public education” required by IDEA must be tailored to the unique needs of the handicapped child by means of an “individualized educational program.” 20 U.S.C. § 1401(9)(D); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (U.S. 1982). When a state receives funds under the IDEA, as does California, it must comply with the IDEA and its regulations. 34 C.F.R. § 300.2 (2006).

Local educational agencies (“LEAs”) initially were responsible for providing all special education services including mental health services when necessary. The passage of Assembly Bill 3632/882 transferred the responsibility for providing mental health services to the counties. In conjunction with special education mental health services, the IDEA requires that a state pay for a disabled student’s residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. 34 C.F.R. § 300.302 (2006); *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001).

Before 1997, the IDEA required counties to place special education students in nonprofit residential placements only. In 1997, however, section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 amended section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) to strike the nonprofit requirement. Section 472(c)(2) currently states:

The term “child-care institution” means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

In direct opposition to the IDEA, California’s regulations limit special education residential placements to nonprofit facilities as follows:

... Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). 2 C.C.R. § 60100(h).

... State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis. Welfare and Institutions Code § 11460(c)(3).

Therefore, California law is inconsistent with the requirements of IDEA and incompatible with its foremost purpose, i.e., to provide each disabled child with special education designed to meet that child’s unique needs. 20 U.S.C. §1401(25). Indeed, special education students who require residential treatment are often the students with the most unique needs of all because of their need for the most restrictive level of placement. This need rules out California programs. The limited number of out-of-state residential facilities that are appropriate for a special education student may not operate on a nonprofit basis. Thus, California’s nonprofit

requirement results in fewer appropriate services being available to the neediest children—those who can only benefit from their special education when placed in residential facilities.

It should also be noted that LEAs are not precluded by any similar nonprofit limitation. When special education children are placed in residential facilities, out-of-state LEAs can utilize education services provided by certified nonpublic, nonsectarian schools and other agencies operated on a for-profit basis. Educ. Code § 56366.1. Nonpublic schools are certified by the State of California when they meet the provisions of Education Code sections 56365 *et seq.* Nonprofit operations is *not* a requirement. Consequently, the two entities with joint responsibility for residential placement of special education students must operate within different criteria. This anomaly again leads to less available services for critically ill special education children.

3. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The principles set forth in Item 2 above were recently validated and corroborated by the State's own Office of Administrative Hearings ("OAH"), Special Education Division in OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In that matter, the school district and mental health agency were unable to find a residential placement that could meet the student's unique mental health and communication needs. All parties agreed that a particular for-profit residential placement was the appropriate placement for the student. Interpreting Title 2 of Cal. Code Regs., section 60100(h) and Welfare and Institutions Code section 11460(c)(2) through (c)(3) in the same fashion as the State Controller's Audits, the school district and mental health agency concluded that they could not place the student at the for-profit facility.

The OAH disagreed. In fact, it found that section 60100(h) of Title 2 of the California Code of Regulations did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. *Student v. Riverside Unif. Scho. Dist. and Riverside Co. Dept. of Mental Health*, Case No. N 2007090403, January 15, 2008. Moreover, the OAH indicated such an interpretation "is inconsistent with the federal statutory regulatory law by which California has chosen to abide." *Riverside Unif. Sch. Dist.* at p. 8.

The OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children. *Riverside Unif. Sch. Dist.* at p. 8, quoting *Katz v. Los Gatos-Saratoga Joint Union High School District*, 117 Cal. App. 4th 47, 63 (2004).

Like the school district and mental health agency in *Riverside*, the audits in question utilized a blanket, hard and fast rule that for-profit placements are never allowed, even when the placement itself indicates it is nonprofit, even when there is no other

appropriate placement available, and even when the for-profit placement is in the best interest of the child. None of these factors were taken into consideration when the Audits determined that certain residential vendor expenses were ineligible for reimbursement.

4. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities.

Under the IDEA, when parents of a special education pupil believe their child's school district and/or county mental health agency breached their duties to provide the student with a free appropriate public education, the parents can seek reimbursement for the tuition and costs of a placement of the parents' choice. The United States Supreme Court has ruled that parents who unilaterally withdraw their child from an inappropriate placement must be reimbursed by the placing party(ies). This is true even if the parents' school placement does not meet state educational standards and is not state approved. *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7 (U.S. 1993).

This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand that the school district and/or mental health agency pay the bill. The California regulatory requirement for nonprofit residential placement prevents school districts and mental health agencies from selecting the most appropriate placement, regardless of tax status. Because of California's arbitrary regulatory requirement, which is no in accord with the 1997 amendment to IDEA, school districts and mental health agencies may be forced to place a child in a less appropriate facility increasing the likelihood that the parents will choose a different facility. The placement agencies are thereafter legally required to subsidize the expenses of the parents' unilateral choice, even if that unilateral placement does not meet the State's nonprofit and academic standards. The decision in *Riverside* explained and cited above precisely mirrors such a situation.

5. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

Special education mental health psychotherapy and assessment services must be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education. . . . California Government Code § 7572(c). These services can be provided directly or by contract at the discretion of county mental health agencies. 2 C.C.R. § 60020(i). Licensed practitioners included as "qualified mental health professionals" are listed in California Code of Regulations Title 2, section 60020(j). Neither section contains any requirement regarding the provider's tax status. Because tax status has no bearing on eligibility for mental health provider services, there is no basis for disallowing these claimed treatment costs.

SCO's Comment

The finding remains unchanged. The residential placement issue is not unique to this county; other counties have voiced concerns about it as well. In 2008, the proponents of Assembly Bill (AB) 1805 sought to change the regulations and allow payments to for-profit facilities for placement of SED pupils. This legislation would have permitted retroactive application, so that any prior unallowable claimed costs identified by the SCO would be reinstated. However, the Governor vetoed this legislation on September 30, 2008. In the next legislative session, AB 421, a bill similar to AB 1805, was introduced to change the regulations and allow payments to for-profit facilities for placement of SED pupils. On January 31, 2010, AB 421 failed passage in the Assembly. Absent any legislative resolution, counties must continue to comply with the governing regulations cited in the SED Pupils: Out-of-State Mental Health Services Program's parameters and guidelines. Our response addresses each of the five arguments set forth by the county in the order identified above.

1. The County Contracted with Nonprofit Facilities.

As noted in the finding, the mandate reimburses counties for payments to service vendors (group homes) providing mental health services to SED pupils in out-of-state residential placements that are organized and operated on a nonprofit basis. Based on documents the county provided us in the course of the audit, we determined that Mental Health Systems, Inc.—a California nonprofit corporation—contracted with Charter Provo Canyon School—a Delaware for-profit limited liability company—to provide out-of-state residential placement services. The referenced Provo Canyon, Utah, residential facility is not organized and operated on a nonprofit basis.

2. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The parameters and guidelines specify that the mandate is to reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, CCR, sections 60100 and 60110. Title 2, CCR, section 60100, subdivision (h), specifies that out-of-state residential placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code section 11460, subdivision (c)(2) through (3). Welfare and Institutions Code section 11460, subdivision (c)(3) states that reimbursement shall only be paid to a group home organized and operated on a nonprofit basis. The program's parameters and guidelines do not provide reimbursement for out-of-state residential placements made outside the regulation.

We agree there is inconsistency between the California law and federal law related to IDEA funds. Furthermore, we do not dispute the assertion that California Law is more restrictive than federal law in terms of out-of-state residential placement of SED pupils; however,

the fact remains that this is a state-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100.

We also agree that Education Code sections 56366.1 and 56365 do not restrict local educational agencies (LEAs) from contracting with for-profit schools for educational services. These sections specify that educational services must be provided by a school certified by the California Department of Education.

3. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Office of Administrative Hearings (OAH) Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, is not legally binding on the SCO. In this case, the administrative law judge found that not placing the student in an appropriate facility (for-profit) was to deny the student a free appropriate public education under federal regulations. The issue of funding residential placements made outside of the regulation was not specifically addressed. Nevertheless, the fact remains that this is a state-mandated cost program and the county filed a claim seeking reimbursement from the State under the provisions of Title 2, CCR, section 60100, and Welfare and Institutions Code section 11460, subdivision (c)(3). Residential placements made outside of the regulation are not reimbursable under the state-mandated cost program.

4. Counties Face Increased Litigation if Restriction to Nonprofit Residential Facilities.

Refer to previous response.

5. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

We do not dispute that Government Code section 7572 requires mental health services to be provided by qualified mental health professionals. As noted in the finding, the mandate reimburses counties for payments to service vendors (group homes) providing mental health services to SED pupils in out-of-state residential placements that are organized and operated on a nonprofit basis. The treatment and board-and-care vendor payments claimed result from the placement of clients in non-reimbursable out-of-state residential facilities. The program's parameters and guidelines do not include a provision for the county to be reimbursed for vendor payments made to out-of-state residential placements made outside of the regulation.

**Attachment—
County's Response to
Draft Audit Report**



**COUNTY OF ORANGE
HEALTH CARE AGENCY**
BEHAVIORAL HEALTH SERVICES

DAVID L. RILEY
DIRECTOR

MARK A. REFOWITZ
DEPUTY AGENCY DIRECTOR
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*Excellence
Integrity
Service*

August 9, 2010

Jim L. Spano, Chief
Mandated Cost Audits Bureau
California State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Re: Orange County DRAFT Audit Report, Seriously Emotionally Disturbed Pupils:
Out-of-State Mental Health Services Program for the period of July 1, 2005,
through June 30, 2006

Dear Mr. Spano:

The County of Orange ("the County") Health Care Agency ("HCA") is writing in response to the letter sent to the County Auditor-Controller, David E. Sundstrom on June 30, 2010 regarding the June 2010 DRAFT Audit Report referenced above. The County received an extension from you to submit its response to the June 2010 DRAFT Audit Report on or before August 10, 2010. The County is submitting this response in compliance with that extension.

We wish to advise you that HCA does not agree with the audit's conclusions that \$1,150,605 represents unallowable program costs identified in the DRAFT Audit Report as is discussed below. Additionally, the DRAFT Audit Report should reflect that the exit conference occurred on March 19, 2010 instead of April 19, 2010.

1. The County Contracted with Nonprofit Facilities.

For the audit period, the County believed, and still believes, it contracted with nonprofit facilities to provide all program services. The County cannot be held responsible if its nonprofit contractor in turn subcontracts with a for-profit entity to provide the services. This is not prohibited by California statute, regulation, or federal law.

The County complies with a number of prerequisites before placing seriously emotionally disturbed ("SED") pupils in out-of-state residential facilities. For example, the pupil must be determined to be "emotionally disturbed" by his or her school district. In-state facilities must be

unavailable or inappropriate. One of the County's procedural steps is to telephone the out-of-state facility to inquire about its nonprofit status. When advised that the facility is for-profit, that facility is no longer considered for SED pupil placement. When advised that the facility is nonprofit, the County obtains documentation of that status, e.g., an IRS tax determination letter.

Neither the federal nor the state government has provided procedures or guidelines to specify if and/or exactly how counties should determine for-profit or nonprofit status. Although counties have used many of these out-of-state residential facilities for SED student placement for years, the State only recently has begun to question their nonprofit status. Nor has the State ever provided the County with a list of facilities that it deems to be nonprofit, and therefore acceptable to the State. The State's history of paying these costs without question encouraged the County to rely upon the State's acceptance of prior claims for the very same facilities now characterized as for-profit.

Considering the foregoing, the audit's conclusions lacks the "fundamental fairness" that even minimal procedural due process requires.

2. California For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

Regardless of the State's view of the validity of the residential facility contracts questioned by the DRAFT Audit Report, the State's position in this matter is in glaring discord with the requirements of the federal Individuals with Disabilities Education Act ("IDEA"). This is because the IDEA requires that special education students are provided "the most appropriate placement," and not the most appropriate nonprofit placement.

The stated purpose of the IDEA is ". . . to ensure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A). The "free appropriate public education" required by IDEA must be tailored to the unique needs of the handicapped child by means of an "individualized educational program." 20 U.S.C. § 1401(9)(D); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (U.S. 1982). When a state receives funds under the IDEA, as does California, it must comply with the IDEA and its regulations. 34 C.F.R. § 300.2 (2006).

Local educational agencies ("LEAs") initially were responsible for providing all special education services including mental health services when necessary. The passage of Assembly Bill 3632/882 transferred the responsibility for providing mental health services to the counties. In conjunction with special education mental health services, the IDEA requires that a state pay for a disabled student's residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. 34 C.F.R. § 300.302 (2006); *Indep. Schl. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001).

Before 1997, the IDEA required counties to place special education students in nonprofit residential placements only. In 1997, however, section 501 of the Personal Responsibility and Work Opportunity Responsibility Act of 1996 amended section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) to strike the nonprofit requirement. Section 472(c)(2) currently states:

The term "child-care institution" means a private child-care

institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

In direct opposition to the IDEA, California's regulations limit special education residential placements to nonprofit facilities as follows:

... Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). 2 C.C.R. § 60100(h).

... State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis. Welfare and Institutions Code § 11460(c)(3).

Therefore, California law is inconsistent with the requirements of IDEA and incompatible with its foremost purpose, i.e., to provide each disabled child with special education designed to meet that child's unique needs. 20 U.S.C. §1401(25). Indeed, special education students who require residential treatment are often the students with the most unique needs of all because of their need for the most restrictive level of placement. This need rules out California programs. The limited number of out-of-state residential facilities that are appropriate for a special education student may not operate on a nonprofit basis. Thus, California's nonprofit requirement results in fewer appropriate services being available to the neediest children—those who can only benefit from their special education when placed in residential facilities.

It should also be noted that LEAs are not precluded by any similar nonprofit limitation. When special education children are placed in residential facilities, out-of-state LEAs can utilize education services provided by certified nonpublic, nonsectarian schools and other agencies operated on a for-profit basis. Educ. Code § 56366.1. Nonpublic schools are certified by the State of California when they meet the provisions of Education Code sections 56365 *et seq.* Nonprofit operation is *not* a requirement. Consequently, the two entities with joint responsibility for residential placement of special education students must operate within different criteria. This anomaly again leads to less available services for critically ill special education children.

3. California Office of Administrative Hearings Special Education Division Corroborates HCA's Contention that For-Profit Placement Restriction Is Incompatible With IDEA's "Most Appropriate Placement" Requirement and Placement Provisions.

The principles set forth in Item 2 above were recently validated and corroborated by the State's own Office of Administrative Hearings ("OAH"), Special Education Division in OAH Case No. N 2007090403, *Student v. Riverside Unified School District and Riverside County Department of Mental Health*, decided January 15, 2008.

In that matter, the school district and mental health agency were unable to find a residential placement that could meet the student's unique mental health and communication needs. All parties agreed that a particular for-profit residential placement was the appropriate placement for the student. Interpreting Title 2 of Cal. Code Regs., section 60100(h) and Welfare and Institutions Code section 11460(c)(2) through (c)(3) in the same fashion as the State Controller's Audits, the school district and mental health agency concluded that they could not place the student at the for-profit facility.

The OAH disagreed. In fact, it found that section 60100(h) of Title 2 of the California Code of Regulations did not prevent placement in a for-profit facility where no other appropriate placement existed for a child. *Student v. Riverside Unif. Sch. Dist. and Riverside Co. Dept. of Mental Health*, Case No. N 2007090403, January 15, 2008. Moreover, the OAH indicated such an interpretation "is inconsistent with the federal statutory and regulatory law by which California has chosen to abide." *Riverside Unif. Sch. Dist.* at p. 8.

The OAH declared that the fundamental purpose of legislation dealing with educational systems is the welfare of the children. *Riverside Unif. Sch. Dist.* at p. 8, quoting *Katz v. Los Gatos-Saratoga Joint Union High School District*, 117 Cal. App. 4th 47, 63 (2004).

Like the school district and mental health agency in *Riverside*, the audits in question utilized a blanket, hard and fast rule that for-profit placements are never allowed, even when the placement itself indicates it is nonprofit, even when there is no other appropriate placement available, and even when the for-profit placement is in the best interests of the child. None of these factors were taken into consideration when the Audits determined that certain residential vendor expenses were ineligible for reimbursement.

4. Counties Face Increased Litigation if Restricted to Nonprofit Residential Facilities.

Under the IDEA, when parents of a special education pupil believe their child's school district and/or county mental health agency breached their duties to provide the student with a free appropriate public education, the parents can seek reimbursement for the tuition and costs of a placement of the parents' choice. The United States Supreme Court has ruled that parents who unilaterally withdraw their child from an inappropriate placement must be reimbursed by the placing party(ies). This is true even if the parents' school placement does not meet state educational standards and is not state approved. *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7 (U.S. 1993).

This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand that the school district and/or mental health agency pay the bill. The California regulatory requirement for nonprofit residential placement prevents school districts and mental health agencies from selecting the most appropriate placement, regardless of tax status. Because of California's arbitrary regulatory requirement, which is not in accord with the 1997 amendment to IDEA, school districts and mental health agencies may be forced to place a child in a less appropriate facility increasing the likelihood that the parents will choose a different facility. The placement agencies are thereafter legally required to subsidize the expenses of the parents' unilateral choice, even if that unilateral placement does not meet the State's nonprofit and

academic standards. The decision in *Riverside* explained and cited above precisely mirrors such a situation.

5. Federal and State Law Do Not Impose Tax Status Requirements on Provider Treatment Services.

Special education mental health psychotherapy and assessment services must be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health in consultation with the State Department of Education California Government Code § 7572(c). These services can be provided directly or by contract at the discretion of county mental health agencies. 2 C.C.R. § 60020(i). Licensed practitioners included as "qualified mental health professionals" are listed in California Code of Regulations Title 2, section 60020(j). Neither section contains any requirement regarding the provider's tax status. Because tax status has no bearing on eligibility for mental health provider services, there is no basis for disallowing these claimed treatment costs.

Based on the foregoing, the County of Orange maintains that its total claimed program costs of \$4,108,407 remain allowable and eligible for reimbursement. Please feel free to contact the undersigned with any questions or concerns.

Sincerely,



Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

cc: David E. Sundstrom, CPA, Auditor-Controller
Mary R. Hale, Chief, Behavioral Health Services
Patricia Rogers, Division Manager, Children & Youth Services
Kimberly Engelby, HCA Accounting Manager

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-1

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-1

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT				
Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		(19) Program Number 00191		
		(20) Date File		
		(21) LRS Input		
L A B E L H E R E	(01) Claimant Identification Number	Reimbursement Claim Date		
	(02) Mailing Address	(22) SEDP-1, (03)	75	
	Claimant Name Auditor-Controller	(23) SEDP-1, (04)(A)(1)(f)	0	
	County of Location County of Orange	(24) SEDP-1, (04)(A)(2)(f)	0	
	Street Address or P.O. Box P.O. Box 567	(25) SEDP-1, (04)(B)(1)(f)	<i>From A-2</i> 1,125,732 ✓	
	City Santa Ana	State CA	Zip Code 92702	(26) SEDP-1, (04)(B)(2)(f) <i>From A-2</i> 100,462 ✓
	Type of Claim	Estimated Claim	Reimbursement Claim	(27) SEDP-1, (04)(B)(3)(f)
		(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)
		(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29) SEDP-1, (06)
		(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(30)
Fiscal Year of Cost	(06) 2001 /2002	(12) 2000 /2001		
Total Claimed Amount	(07) 1,268,382	(13) 1,226,194	<i>From A-2</i>	
Less: 10% Late Penalty, not to exceed \$1,000		(14) 0		
Less: Estimated Claim Payment Received		(15) 33,556	<i>From B-1</i>	
Net Claimed Amount		(16) 1,192,638		
Due From State	(08) 1,268,382	(17) h		
Due to State		(18) h		
(38) CERTIFICATION OF CLAIM				
<p>In accordance with the provisions of Government Code 17561, I certify that I am the officer of the local agency authorized to file claims with the State of California for costs mandated by Chapter 654, Statutes of 1966 and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, 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 654, Statutes of 1966.</p> <p>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 654, Statutes of 1966, set forth on the attached statements.</p>				
Signature of Authorized Representative		Date		
PASCAL SAGHBINI		MANAGER, FICA ACCOUNTS/FINANCIAL REPORTING		
Type or Print Name		Title		
(39) Name of Contact Person for Claim		Telephone Number (714) 834-7591 Ext. _____		
DEBBIE REED		E-mail Address		

Form FAM-27 (New 1/01)

Chapters 654/96

Amended - 1/11/11

State Controller's Office

Mandated Cost Manual

MANDATED COSTS						FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES						SEDP-1
CLAIM SUMMARY						
(01) Claimant	(02) Type of Claims Reimbursement <input checked="" type="checkbox"/>				Fiscal Year	
County of Orange Health Care Agency	Estimated <input type="checkbox"/>				2000/2001	
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						75
Direct Costs			Object Accounts			
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Fixed Assets	(e) Travel and Training	(f) Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						0
2. Conduct County Staff Training						0
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements	0	0	1,125,732	0	0	1,125,732
2. Case Management	0	0	100,462	0	0	100,462
3. Travel						0
4. Program Management						0
(05) Total Direct Costs	0	0	1,226,194	0	0	1,226,194
Indirect Costs						
(06) Indirect Cost Rate	[From ICRP]					0%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x { (05)(a) + (05)(b) }]					0
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					1,226,194
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					1,226,194

New 1/01

Chapter 654/96

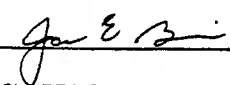
A-2

MANDATED COSTS							FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS:							SEDP-2
OUT-OF-STATE MENTAL HEALTH SERVICES							
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant				(02) Fiscal Year Costs Were Incurred			
County of Orange Health Care Agency				FY 2000-2001			
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training			
Ongoing Costs:							
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel			
<input type="checkbox"/> Case Management				<input type="checkbox"/> Program Management			
(04) Description of Expenses: Complete columns (a) through (h).							
							Object Accounts
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Colorado Boys Ranch Mental Health Services	\$ 91.30/day						
	\$ 97.59/day				139,975		
Daystar Residential Inc Mental Health Services	\$ 60.00/day				112,980		
Devereux Foundation (Scottsdale) Mental Health Services	\$ 51.00/day				2,091		
Devereux Texas Treatment Center Mental Health Services							
Unit 1	\$119.42/day				24,802		
Unit 4/5	\$ 88.17/day				113,210		
Unit 6	\$123.20/day				199,461		
Victoria Campus	\$ 46.00/day				38,180		
Excelsior Youth Center Mental Health Services	\$ 75.06/day				148,243		
Forest Heights Lodge Mental Health Services	\$ 45.19/day				9,259		
* Island View Academy Mental Health Services	* \$ 39.50/day			*	6,359		
* Mental Health Systems Inc Mental Health Services	* \$ 54.50/day			*	217,346		
Yellowstone Treatment Center Mental Health Services	\$ 61.00/day				113,826		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>					0	0	0
Page: 1 of 1					1,125,732	0	0

A-3

* identified in Audit as "for-profit" facility

MANDATED COSTS							FORM SEDP-2	
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES								
COMPONENT/ACTIVITY COST DETAIL								
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year Costs Were Incurred FY 2000/2001				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.								
One-Time Costs:								
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs:								
<input type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel				
<input checked="" type="checkbox"/> Case Management				<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h).							Object Accounts	
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training	
East County-Santa Ana Provider No. 3006	0.91	13,406			12,199	<i>From: C.1, C.2, C.3</i>		
West County-Westminster Provider No. 3008	1.30	25,740			33,462			
South County-Laguna Provider No. 8002	0.57	58,481			33,334			
North County-Placentia Provider No. 8067	0.87	24,675			21,467			
<i>See attached SED Claim Supporting Schedule for detail.</i>								
<i>Added Case Mgmt</i>								
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			Page: 1 of 1		0	0	100,462	<i>To: A.2</i>

State Controller's Office CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES	Mandated Cost Mandate For State Controller Use Only (19) Program Number 00191 (20) Date File _____/_____/_____ (21) LRS Input _____/_____/_____		
L A B E L H E R E	(01) Claimant Identification Number (0) 9930 Cl AUDITOR-CONTROLLER Cr COUNTY OF ORANGE P.O. BOX 567 St SANTA ANA, CA 92702 City _____ State _____ Zip Code _____		
Reimbursement Claim Date			
(22) SEDP-1, (03) _____ 55			
(23) SEDP-1, (04)(A)(1)(f) _____ 0			
(24) SEDP-1, (04)(A)(2)(f) _____ 0			
(25) SEDP-1, (04)(B)(1)(f) _____ 1,125,732			
(26) SEDP-1, (04)(B)(2)(f) _____ 0			
(27) SEDP-1, (04)(B)(3)(f) _____ 0			
(28) SEDP-1, (04)(B)(4)(f) _____ 0			
(29) SEDP-1, (06) _____ 0			
(30) _____			
Type of Claim	Estimated Claim	Reimbursement Claim	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f) _____ 0
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f) _____ 0
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) SEDP-1, (06) _____ 0
Fiscal Year of Cost	(06) 2001 /2002	(12) 2000 /2001	
Total Claimed Amount	(07) 1,268,382	(13) 1,125,732	
Less: 10% Late Penalty, not to exceed \$1,000		(14)	
Less: Estimated Claim Payment Received		(15)	33,556
Net Claimed Amount		(16)	1,092,176
Due From State	(08) 1,268,382	(17)	1,092,176
Due to State		(18)	
(38) CERTIFICATION OF CLAIM			
In accordance with the provisions of Government Code 17561, I certify that I am the officer of the local agency authorized to file claims with the State of California for costs mandated by Chapter 654, Statutes of 1966 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 was no application other than from the claimant, nor any grant or payment received, 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 654, Statutes of 1966. 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 654, Statutes of 1966, set forth on the attached statements.			
Signature of Authorized Representative		Date	
		12/27/01	
CLAIRE MOYNIHAN		MANAGER, SINGLE AUDIT	
Type or Print Name		Title	
(39) Name of Contact Person for Claim		Telephone Number (714) 834 - 5252 Ext. _____	
JOANN HOVER		E-mail Address _____	

E-1

State Controller's Office

Mandated Cost Manual

MANDATED COSTS							FORM SEDP-1
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES							
CLAIM SUMMARY							
(01) Claimant		(02) Type of Claims			Fiscal Year		
County of Orange Health Care Agency		Reimbursement <input checked="" type="checkbox"/>			2000/2001		
		Estimated <input checked="" type="checkbox"/>					
Claim Statistics							
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						55	
Direct Costs		Object Accounts					
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)	
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total	
A. One-Time Costs							
1. Develop Policies, Procedures, and Contractual Arrangements						0	
2. Conduct County Staff Training						0	
B. Ongoing Costs							
1. Mental Health Service Vendor Reimbursements	0	0	1,125,732	0	0	1,125,732	
2. Case Management						0	
3. Travel						0	
4. Program Management						0	
(05) Total Direct Costs	0	0	1,125,732	0	0	1,125,732	
Indirect Costs							
(06) Indirect Cost Rate	[From ICRP]					0%	
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x { (05)(a) + (05)(b) }]					0	
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					1,125,732	
Cost Reduction							
(09) Less: Offsetting Savings							
(10) Less: Other Reimbursements							
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					1,125,732	

New 1/01

Chapter 654/96

E-2


MANDATED COSTS							FORM		
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							SEDP-2		
COMPONENT/ACTIVITY COST DETAIL									
(01) Claimant			(02) Fiscal Year Costs Were Incurred						
County of Orange Health Care Agency			FY 2000-2001						
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.									
One-Time Costs:									
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training						
Ongoing Costs:									
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*			<input type="checkbox"/> Travel						
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management						
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts									
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training		
Colorado Boys Ranch <i>Board and Care</i>	\$ 91.30/day \$ 97.59/day				139,975				
Daystar Residential Inc <i>Board and Care</i>	\$ 60.00/day				112,980				
Devereux Foundation (Scottsdale) <i>Board and Care</i>	\$ 51.00/day				2,091				
Devereux Texas Treatment Center <i>Board and Care</i>									
Unit 1	\$119.42/day				24,802				
Unit 4/5	\$ 88.17/day				113,210				
Unit 6	\$123.20/day				199,461				
Victoria Campus	\$ 46.00/day				38,180				
Excelsior Youth Center <i>Board and Care</i>	\$ 75.06/day				148,243				
Forest Heights Lodge <i>Board and Care</i>	\$ 45.19/day				9,259				
Island View Academy <i>Board and Care</i>	\$ 39.50/day				6,359				
Mental Health Systems Inc <i>Board and Care</i>	\$ 54.50/day				217,346				
Yellowstone Treatment Center <i>Board and Care</i>	\$ 61.00/day				113,826				
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			Page: 1 of 1		0	0	1,125,732	0	0

**ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-2**

**ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-2**

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT		For State Controller Use Only		
Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		(19) Program Number 00191		
		(20) Date File	____/____/____	
		(21) LRS Input	____/____/____	
L A B E L H E R E	(01) Claimant Identification Number	Reimbursement Claim Date		
	(02) Mailing Address	(22) SEDP-t, (03)		
	Claimant Name Auditor-Controller	(23) SEDP-1, (04)(A)(1)(f)		
	County of Location County of Orange	(24) SEDP-1, (04)(A)(2)(f)		
	Street Address or P.O. Box P.O. Box 567	(25) SEDP-1, (04)(B)(1)(f)		
	City Santa Ana	State CA	Zip Code 92702	(26) SEDP-1, (04)(B)(2)(f)
				1,423,385
	Type of Claim	Estimated Claim	Reimbursement Claim	(27) SEDP-1, (04)(B)(3)(f)
		(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)
		(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29) SEDP-1, (06)
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(30)	
Fiscal Year of Cost	(06) 2002 /2003	(12) 2001 /2002		
Total Claimed Amount	(07) 1,600,269	(13) 1,539,794		
Less: 10% Late Penalty, not to exceed \$1,000		(14)		
Less: Estimated Claim Payment Received		(15)		
Net Claimed Amount		(16) 1,539,794		
Due From State	(08) 1,600,269	(17) 1,539,794		
Due to State		(18)		
(38) CERTIFICATION OF CLAIM				
In accordance with the provisions of Government Code 17561, I certify that I am the officer of the local agency authorized to file claims with the State of California for costs mandated by Chapter 654, Statutes of 1966 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 was no application other than from the claimant, nor any grant or payment received, 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 654, Statutes of 1966.				
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 654, Statutes of 1966, set forth on the attached statements.				
Signature of Authorized Representative		Date		
		9/3/03		
Pascal Saghbini Type or Print Name		Manager, HCA Acctg/Financial Reporting Title		
(39) Name of Contact Person for Claim Debbie Reed		Telephone Number (714) 834 - 7591 Ext. _____ E-mail Address DeReed@hca.co.orange.ca.us		

State Controller's Office

Mandated Cost Manual

MANDATED COSTS						FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES						SEDP-1
CLAIM SUMMARY						
(01) Claimant	(02) Type of Claims				Fiscal Year	
County of Orange Health Care Agency	Reimbursement			<input checked="" type="checkbox"/>	2001/2002	
	Estimated			<input type="checkbox"/>		
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						35
Direct Costs		Object Accounts				
(04) Reimbursable Components	(b)	(c)	(d)	(e)	(f)	(g)
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements			1,423,385			1,423,385
2. Case Management			116,409			116,409
3. Travel						
4. Program Management						
(05) Total Direct Costs	0	0	1,539,794	0	0	1,539,794
Indirect Costs						
(06) Indirect Cost Rate	[From ICRP]					0.00%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x { (05)(a) + (05)(b) }]					
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					1,539,794
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					1,539,794

New 1/01

Chapter 654/96

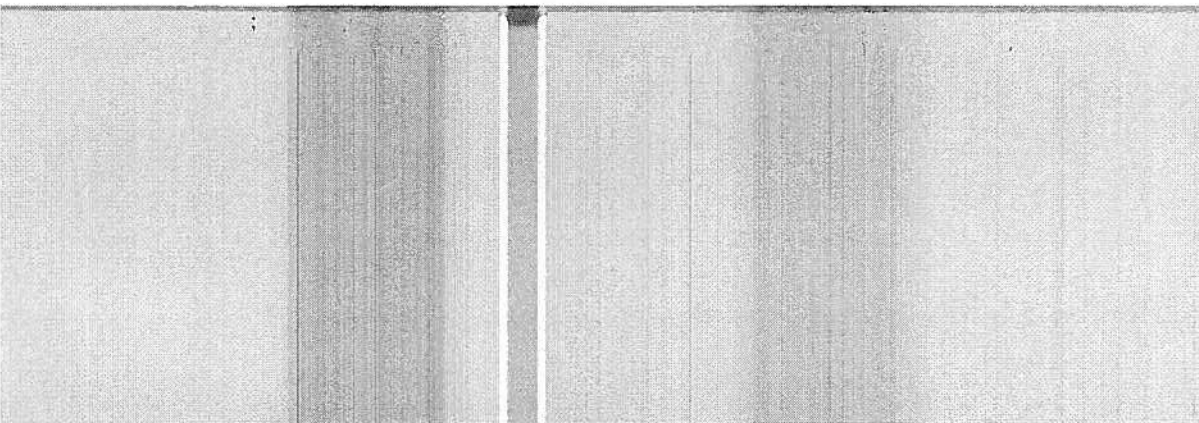
MANDATED COSTS							FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							SEDP-2
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant			(02) Fiscal Year Costs Were Incurred				
County of Orange Health Care Agency			FY 01-02				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs:							
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*			<input type="checkbox"/> Travel				
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h).							
Object Accounts							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Colorado Boys Ranch Mental Health Services	\$97.59/day			from B	98,663		
Daystar Residential Inc. Mental Health Services	\$60.00/day				187,120		
Devereux Foundation (Scottsdale) Mental Health Services	\$30.00/day				20,736		
Devereux Texas Treatment Mental Health Services							
Unit 1	\$128.86/day				165,456		
Unit 4/5	\$90.53/day				145,391		
Unit 6	\$124.23/day			49,617	56,649		
Victoria Campus	\$50.02/day				52,121		
Excelsior Youth Center Mental Health Services	\$79.20/day				98,525		
Forest Heights Lodge Mental Health Services	\$52.78/day				19,265		
Heritage Center Mental Health Services	\$41.72/day				13,934		
* Island View Academy Mental Health Services	* \$49.50/day				18,662		
* Mental Health Systems Inc. Mental Health Services	* \$54.50/day				359,349		
Yellowstone Boys & Girls Ranch Mental Health Services	\$61.00/day				187,514		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> Page: 1 of 1							
			0	0	1,423,385	To A-2	0

A.3

* identified in Audit as "for-profit" facility.

MANDATED COSTS							FORM SEDP-2	
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL								
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year Costs Were Incurred FY 01-02				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.								
One-Time Costs:								
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs:								
<input type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel				
<input checked="" type="checkbox"/> Case Management				<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts								
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training	
East County - Santa Ana Provider No. 3006	/1.29	/10,763			/13,884			
West County - Westminster Provider No. 3006A	/1.61	/21,700			/34,937	} <i>Sum C-1</i>		
South County - Laguna Provider No. 8002	/0.68	/60,829			/41,364			
North County - Placentia Provider No. 8087	/1.22	/21,495			/26,224			
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			0	0	/116,409		0	0

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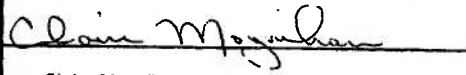



ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-3

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-3

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		For State Controller Use Only		Program
		(19) Program Number	00191	191
		(20) Date File	___/___/___	
		(21) LRS Input	___/___/___	
9930		Reimbursement Claim Data		
AUDITOR-CONTROLLER COUNTY OF ORANGE P.O. BOX 567 SANTA ANA, CA 92702		(22) SEDP-1 (03)	42	
		(23) SEDP-1, (04)(A)(1)(f)		
		(24) SEDP-1, (04)(A)(2)(f)		
		(25) SEDP-1, (04)(B)(1)(f)	1,397,575	
Type of Claim	Estimated Claim	Reimbursement Claim	(26) SEDP-1, (04)(B)(2)(f)	295,568
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(29) SEDP-1, (06)	
Fiscal Year of Cost	(06)	(12) 2002/2003	(30) SEDP-1, (07)	
Total Claimed Amount	(07)	(13) 1,693,143	(31) SEDP-1, (09)	
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32) SEDP-1, (10)	
Less: Prior Claim Payment Received		(15)	(33)	
Net Claim Amount		(16) 1,693,143	(34)	
Due to Claimant	(08)	(17) 1,693,143	(35)	
Due to State		(18) 0	(36)	
(37) CERTIFICATION OF CLAIM				
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, 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 was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.				
The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
Signature of Authorized Officer		Date		
		1-7-05		
Type or Print Name		Manager, Financial Reporting & Mandated Costs		
Claire Moynihan		Title		
(38) Name of Contact Person for Claim		Telephone Number	(714) 834-5252	Ext.
Jennifer Mitchell 		E-mail Address	jennifer.mitchell@ac.ocgov.com	

Form FAM-27 (Revised 09/03)

State Controller's Office

Mandated Cost Manual

MANDATED COSTS						FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES						SEDP-1
CLAIM SUMMARY						
(01) Claimant	(02) Type of Claims				Fiscal Year	
County of Orange Health Care Agency	Reimbursement	<input checked="" type="checkbox"/>		2002/2003		
	Estimated	<input type="checkbox"/>				
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						42
Direct Costs			Object Accounts			
(04) Reimbursable Components	(b)	(c)	(d)	(e)	(f)	(g)
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements			1,397,575			1,397,575
2. Case Management			295,568			295,568
3. Travel						
4. Program Management						
(05) Total Direct Costs	0	0	1,693,143	0	0	1,693,143
Indirect Costs						
(06) Indirect Cost Rate	[From ICRP]					0.00%
(07) Total Indirect Costs	[Line (06) x line (05)(a) or { Line (06) x { (05)(a) + (05)(b) }]					
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					1,693,143
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements						
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					1,693,143

New 1/01

Chapter 654/96

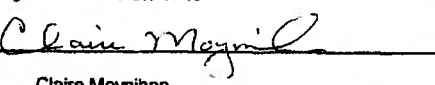

MANDATED COSTS							FORM SEDP-2
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year Costs Were Incurred FY 02-03			
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs: <input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements <input type="checkbox"/> Conduct County Staff Training							
Ongoing Costs: <input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements* <input type="checkbox"/> Travel <input type="checkbox"/> Case Management <input type="checkbox"/> Program Management							
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Colorado Boys Ranch <i>Mental Health Services</i>	\$97.59/day				85,489		
Daystar Residential Inc. <i>Mental Health Services</i>	\$80.00/day				226,240		
Devereux Foundation (Scottsdale) <i>Mental Health Services</i>	\$67.50/day				20,794		
Devereux Texas Treatment <i>Mental Health Services</i>							
Unit 1	\$129.70/day						
Unit 4/5	\$91.28/day						
Unit 6	\$125.16/day						
Victoria Campus	\$51.84/day				540,852		
Emily Griffith Center <i>Mental Health Services</i>	\$112.41/day				1,349		
Excelsior Youth Center <i>Mental Health Services</i>	\$83.95/day				82,859		
Forest Heights Lodge <i>Mental Health Services</i>	\$53.84/day				19,652		
Heritage Center <i>Mental Health Services</i>	\$46.04/day				49,217		
* Island View Academy <i>Mental Health Services</i>	* \$52.00/day				* 3,120		
* Mental Health Systems Inc. <i>Mental Health Services</i>	* \$54.50/day				* 217,182		
Yellowstone Boys & Girls Ranch <i>Mental Health Services</i>	\$62.22/day				150,821		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			0	0	1,397,575	0	0
Page: 1 of 1							

* identified in Audit as "for-profit" facility

MANDATED COSTS							FORM SEDP-2
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year Costs Were Incurred FY 02-03			
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training			
Ongoing Costs:							
<input type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel			
<input checked="" type="checkbox"/> Case Management				<input type="checkbox"/> Program Management			
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
East County	1.71	17,504			29,932		
West County	1.71	31,620			54,070		
South County, Incl. Costa Mesa and Mission Viejo	1.71	88,110			150,668		
North County	1.71	35,613			60,898		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			0	0	295,568	0	0
Page: 1 of 1							

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-4

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-4

State Controller's Office		Mandated Cost Manual	
CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES		For State Controller Use Only: (19) Program Number 00191 (20) Date File / / (21) LRS Input / /	Program 191
		Reimbursement Claim Data	
(01) CI	9930	(22) SEDP-1 (03)	70
(02) Cl		(23) SEDP-1, (04)(A)(1)(f)	
County	AUDITOR-CONTROLLER	(24) SEDP-1, (04)(A)(2)(f)	
Street	COUNTY OF ORANGE	(25) SEDP-1, (04)(B)(1)(f)	2,036,041
City	P.O. BOX 567	(26) SEDP-1, (04)(B)(2)(f)	362,791
	SANTA ANA, CA 92702	(27) SEDP-1, (04)(B)(3)(f)	
		(28) SEDP-1, (04)(B)(4)(f)	
		(29) SEDP-1, (06)	
Type of Claim	Estimated Claim	Reimbursement Claim	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	
Fiscal Year of Cost	(06) 2004/2005	(12) 2003/2004	(30) SEDP-1, (07)
Total Claimed Amount	(07) 1,647,310	(13) 1,497,554	(31) SEDP-1, (09)
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32) SEDP-1, (10)
Less: Prior Claim Payment Received		(15)	(33)
Net Claim Amount		(16) 1,497,554	(34)
Due to Claimant	(08) 1,647,310	(17) 1,497,554	(35)
Due to State		(18) 0	(36)
(37) CERTIFICATION OF CLAIM In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, 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 was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant. The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.			
Signature of Authorized Officer		Date	
 Claire Moynihan		1-6-05	
Type of Print Name		Manager, Financial Reporting & Mandated Costs	
		Title	
(38) Name of Contact Person for Claim		Telephone Number	Ext.
Jennifer Mitchell 		(714) 834-5252	
		E-mail Address	jennifer.mitchell@ec.ocgov.com

State Controller's Office

Mandated Cost Manual

MANDATED COSTS							FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS:							SEDP-1
OUT-OR-STATE MENTAL HEALTH SERVICES							
CLAIM SUMMARY							
(01) Claimant	(02) Type of Claims					Fiscal Year	
County of Orange Health Care Agency	Reimbursement		<input checked="" type="checkbox"/>		2003/2004		
	Estimated		<input type="checkbox"/>				
Claim Statistics							
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						FR: B-5	70
Direct Costs		Object Accounts					
(04) Reimbursable Components	(b)	(c)	(d)	(e)	(f)	(g)	
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total	
A. One-Time Costs							
1. Develop Policies, Procedures, and Contractual Arrangements							
2. Conduct County Staff Training							
B. Ongoing Costs							
1. Mental Health Service Vendor Reimbursements		FR: A-7	2,036,041		TO: A-1	2,036,041	
2. Case Management		FR: A-8	362,791		TO: A-1	362,791	
3. Travel							
4. Program Management							
(05) Total Direct Costs	0	0	2,398,831	0	0	2,398,831	
Indirect Costs							
(06) Indirect Cost Rate	[From ICRP]					0.00%	
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x { (05)(a) + line (05)(b) }]						
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					2,398,831	
Cost Reduction							
(09) Less: Offsetting Savings							
(10) Less: Other Reimbursements - IDEA Mental Health Allocation	FR: A-3.1					901,277	
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					TO: A-1	1,497,554

New 1/01

Chapter 654/96

JB 01/05/04

A-3

MANDATED COSTS							FORM SEDP-2
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year Costs Were Incurred FY 03-04			
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training			
Ongoing Costs:							
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel			
<input type="checkbox"/> Case Management				<input type="checkbox"/> Program Management			
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
* Aspen Solutions/Aspen Ranch Mental Health Services	* \$80/day	FR: 4.4			* 20,320	FR: 4.4	
* Aspen Solutions/Youth Care of Utah Mental Health Services	* \$90/day	FR: 4.3			* 900	FR: 4.3	
Buckeye Ranch Mental Health Services	\$138/day	FR: 4.20.1			35,672	FR: 4.20.1	
Cathedral Home for Children Mental Health Services	\$120/day	FR: 4.5			118,560	FR: 4.5	
Chileda Institute Mental Health Services	\$80.40/day	FR: 4.24			723	FR: 4.24	
Colorado Boys Ranch Mental Health Services	\$100.43/day	FR: 4.6			172,539	FR: 4.6	
Daystar Residential, Inc. Mental Health Services	\$80/day	FR: 4.7			187,520	FR: 4.7	
Devereux Cleo Wallace Mental Health Services	\$118.45/day	FR: 4.9			161,786	FR: 4.9	
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>			0	0	698,019	0	0

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* identified in Audit as "for-profit" facility.

State Controller's Office

Mandated Cost Manual

MANDATED COSTS							FORM SEDP-2
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant			(02) Fiscal Year Costs Were Incurred				
County of Orange Health Care Agency			FY 03-04				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs: <input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements <input type="checkbox"/> Conduct County Staff Training Ongoing Costs: <input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements* <input type="checkbox"/> Travel <input type="checkbox"/> Case Management <input type="checkbox"/> Program Management							
(04) Description of Expenses: Complete columns (a) through (h).							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
Devereux Texas Treatment Network Mental Health Services: Unit 1 Unit 4/5 Unit 6 Victoria Campus	\$125.16/day \$91.28/day \$129.70/day \$51.84/day	} FR: 4.10			579,404	FR: 4.10	
Emily Griffith Center Mental Health Services	\$112.41/day	FR: 4.11			84,195	FR: 4.11	
Excelsior Youth Center Mental Health Services	\$88.03/day	FR: 4.12			168,665	FR: 4.12	
Forest Heights Lodge Mental Health Services	\$48.87/day	FR: 4.13			1,857	FR: 4.13	
Heritage Schools, Inc. Mental Health Services	\$46.04/day	FR: 4.14			82,181	FR: 4.14	
Intermountain Children's Home Mental Health Services	\$50.90/day	FR: 4.21.1			7,890	FR: 4.21.1	
* Island View Academy Mental Health Services	* \$55/day	FR: 4.15			* 7,865	FR: 4.15	
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>	Page: 2 of 3				932,057		

New 1/01

Chapter 654/96

A-6

* identified in audit as "for-profit" facility

State Controller's Office

Mandated Cost Manual

MANDATED COSTS							FORM SEDP-2
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant			(02) Fiscal Year Costs Were Incurred				
County of Orange Health Care Agency			FY 03-04				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs:							
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*			<input type="checkbox"/> Travel				
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h).							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
* Mental Health System, Inc./dba Logan River Mental Health Services	\$65/day	FR: 4.16			26,000	FR: 4.16	
* Mental Health System, Inc. Mental Health Services	\$80/day	FR: 4.17			227,400	FR: 4.17	
* National Deaf Academy Mental Health Services	\$122.57/day	FR: 4.22.1			3,800	FR: 4.22.1	
Pathway School Mental Health Services	\$107.07/day	FR: 4.18			23,341	FR: 4.18	
Utah Youth Village/Alpine Academy Mental Health Services	\$84.25/day	FR: 4.23.1			11,879	FR: 4.23.1	
Yellowstone Boys and Girls Ranch Mental Health Services	\$63.15/day	FR: 4.19			113,544	FR: 4.19	
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>	Page: 3 of 3				2,038,041	To: A-3	

New 1/01

Chapter 654/96

A-7

* identified in Audit as "for-profit" facility.

State Controller's Office

Mandated Cost Manual

MANDATED COSTS							FORM
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES							SEDP-2
COMPONENT/ACTIVITY COST DETAIL							
(01) Claimant				(02) Fiscal Year Costs Were Incurred			
County of Orange Health Care Agency				FY 03-04			
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.							
One-Time Costs:							
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements				<input type="checkbox"/> Conduct County Staff Training			
Ongoing Costs:							
<input type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel			
<input checked="" type="checkbox"/> Case Management				<input type="checkbox"/> Program Management			
(04) Description of Expenses: Complete columns (a) through (h).							
Object Accounts							
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate of Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Fixed Assets	(h) Travel and Training
East County-Santa Ana <i>FR: C</i>	\$1.75	21,495	<i>FR: B-1</i>		37,616		
West County-Westminster	\$1.75	32,296	<i>FR: B.5</i>		56,518		
South County-Laguna, Costa Mesa, Mission Viejo, CYS Residential	\$1.75	113,415	<i>FR: B.5</i>		198,476		
North County-Placentia, Fullerton	\$1.75	40,103	<i>FR: B.2</i>		70,180		
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			0	0	362,791	<i>TO: A-3</i>	0

New 1/01

Chapter 654/96

4/30/05/04

A-8

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-5

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-5

State Controller's Office

Mandated Cost Manual

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES	(19) Program Number 00191 (20) Date File _____/_____/_____ (21) LRS Input _____/_____/_____ <div style="text-align: right; font-size: 2em; font-weight: bold;">191</div>
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L	(01) Claimant Identification Number	Reimbursement Claim Data	
A	(02) Claimant Name Auditor Controller	(22) SEDP-1, (03)	122
B		(23) SEDP-1, (04)(A)(1)(f)	
E	County of Location Orange	(24) SEDP-1, (04)(A)(2)(f)	
L	Street Address or P.O. Box P.O. Box 567	(25) SEDP-1, (04)(B)(1)(f)	5,043,632
H	Suite		
E	City Santa Ana		
R	State CA		
E	Zip Code 92702		
	Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(26) SEDP-1, (04)(B)(2)(f) 443,489
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f)
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)
			(29) SEDP-1, (06)
	Fiscal Year of Cost	(06)	(12) 2004/2005 (30) SEDP-1, (07)
	Total Claimed Amount	(07)	(13) 3,803,568 (31) SEDP-1, (09)
	Less: 10% Late Penalty not to exceed \$1,000		(14) (32) SEDP-1, (10) 1,683,553
	Less: Prior Claim Payment Received		(15) 1,194,276 (33)
	Net Claimed Amount		(16) 2,609,292 (34)
	Due to Claimant	(08)	(17) 2,609,292 (35)
	Due to State		(18) (36)

(37) CERTIFICATION OF CLAIM

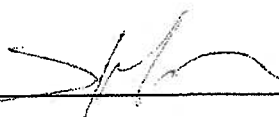
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date



1/10/07

Alice Sworder

Manager, HCA Accounting

Type or Print Name

Title

(38) Name of Contact Person for Claim

Telephone Number (714) 834 - 7407

Howard Thomas

E-mail Address hthomas@ochca.com

State Controller's Office

Mandated Cost Manual

Program		MANDATED COSTS					FORM
191		SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES					SEDP-1
		CLAIM SUMMARY					
(01) Claimant		(02) Type of Claim			Fiscal Year		
County of Orange Health Care Agency		Reimbursement <input checked="" type="checkbox"/>			2004_/2005_		
Estimated <input type="checkbox"/>							
Claim Statistics							
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim						122	
Direct Costs							
Object Accounts							
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)	
	Salaries	Benefits	Services and Supplies	Fixed Assets	Travel and Training	Total	
A. One-Time Costs							
1. Develop Policies, Procedures, and Contractual Arrangements							
2. Conduct County Staff Training							
B. Ongoing Costs							
1. Mental Health Service Vendor Reimbursements			5,043,632			5,043,632	
2. Case Management			443,489			443,489	
3. Travel							
4. Program Management							
(05) Total Direct Costs			5,487,121			5,487,121	
Indirect Costs							
(06) Indirect Cost Rate	[From ICRP]					%	
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x {line (05)(a) + line (05)(b)}]						
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					5,487,121	
Cost Reduction							
(09) Less: Offsetting Savings							
(10) Less: Other Reimbursements						1,683,553	
(11) Total Claimed Amount	[Line (08) - (line (09) + line (10))]					3,803,568	

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 04-05
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
* Aspen Solutions/Youth Care Mental Health Services	* \$94/day				* 61,100		
* Aspen Solutions/Island View Mental Health Services	* \$57.75/day				* 9,356		
* Aspen Solutions/Sunhawk Academy Mental Health Services	* \$80/day				* 10,960		
Cathedral Home for Children Mental Health Services	\$135/day				425,520		
Chileda Institute Mental Health Services - July thru Dec'04	\$80.40/day						
Mental Health Services - Jan thru June'05	\$77.54/day				34,600		
Colorado Boys Ranch Mental Health Services	\$106.56/day				173,480		
Daystar Residential, Inc. Mental Health Services	\$80.00/day				71,840		
Devereux Cleo Wallace Mental Health Services:	\$124.37/day				132,081		

(05) Total <input type="checkbox"/>	Subtotal <input checked="" type="checkbox"/>	Page: <u>1</u> of <u>5</u>	0	0	918,937	0	0
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Revised 09/03

* identified in audit as "for-profit" facility.

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL						FORM SEDP-2		
(01) Claimant County of Orange Health Care Agency			(02) Fiscal Year FY 04-05						
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.									
One-Time Costs:									
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training						
Ongoing Costs:									
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*			<input type="checkbox"/> Travel						
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management						
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts									
(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training		
Devereux Texas Treatment Network <i>Mental Health Services:</i> Unit 1 Unit 4/5 Unit 3/6 Victoria Campus(Children) Victoria Campus(Adult)	\$138.10/day \$100.72/day \$143.11/day \$57.20/day \$23.03/day				299,323				
Excelsior Youth Center <i>Mental Health Services</i>	\$89.83/day				81,745				
Griffith Centers for Children, Inc. <i>Mental Health Services</i>	\$115/day				124,545				
Heritage Schools, Inc. dba Residential Trmt Ctr <i>Mental Health Services</i>	\$50.81/day				157,460				
* Mental Health System, Inc. dba Logan River <i>Mental Health Services</i>	*\$77.41/day				* 60,999				
* Mental Health System, Inc <i>Mental Health Services</i>	*\$70.00/day				* 223,580				
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>			Page: <u> 2 </u> of <u> 5 </u>		0	0	947,652	0	0

Revised 09/03

* Identified in Audit as "for-profit" facility

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 04-05
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
Yellowstone Boys & Girls Ranch <i>Mental Health Services</i>	\$67.00/day				281,802		
The Buckeye Ranch <i>Mental Health Services</i>	\$138.00/day				20,148		
* National Deaf Academy <i>Mental Health Services</i>	* \$135.00/day				* 24,975		

(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>	Page: <u>3</u> of <u>5</u>	0	0	326,925	0	0
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* identified in Audit as "for-profit" facility.

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 04-05 SUPPLEMENTAL
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangement Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
Aspen Solutions/Youth Care <i>Board and Care</i>	\$5265/mth				120,824		
Cathedral Home for Children <i>Board and Care</i>	\$6,355/mth				380,439		
Chileda Institute <i>Board and Care</i>	\$4240/mth				46,102		
Cinnamon Hills Youth Crisis Center <i>Board and Care</i>	\$6158/mth				276,739		
Colorado Boys Ranch <i>Board and Care</i>	\$3643.64/mth				141,988		
Daystar Residential, Inc. <i>Board and Care</i>	\$6347.43/mth				94,024		
Devereux Cleo Wallace <i>Board and Care</i>							
Devereux Cleo Wallace <i>Board and Care</i> <i>Unit 1</i>	\$4780.36/mth				117,156		

(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>	Page: <u>4</u> of <u>5</u>	0	0	1,177,271	0	0
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State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS						FORM SEDP-2	
SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL								
(01) Claimant County of Orange Health Care Agency				(02) Fiscal Year FY 04-05 SUPPLEMENTAL				
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.								
One-Time Costs:								
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangement:				<input type="checkbox"/> Conduct County Staff Training				
Ongoing Costs:								
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*				<input type="checkbox"/> Travel				
<input type="checkbox"/> Case Management				<input type="checkbox"/> Program Management				
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts								
(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training	
Devereux Texas Treatment Network <i>Board and Care</i>	\$5825.75/mth				344,060			
Excelsior Youth Center <i>Board and Care</i>	\$3549.15/mth				70,622			
Griffith Centers for Children, Inc. <i>Board and Care</i>	\$4,495/mth				94,221			
Heritage Schools, Inc. dba Residential Trmt C <i>Board and Care</i>	\$5,585.33/mth				388,634			
Mental Health System, Inc. <i>Board and Care</i>	\$3584.56/mth				298,061			
Yellowstone Boys & Girls Ranch <i>Board and Care</i>	\$4897.69/mth				456,772			
The Buckeye Ranch <i>Board and Care</i>	\$6572/mth				20,479.20			
(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>			Page: <u>5</u> of <u>5</u>	0	0	5,043,632	0	0

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State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year ✓ FY 04-05
---	---------------------------------------

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
AMHS Santa Ana <i>FL: D42</i>	\$2.03	X 492	FR: D1		999		
CYS East Region	\$2.03	X 21,356	FR: D6		43,353		
CYS North Region	\$2.03	Y 29,397	FR: D41		59,676		
CYS South & Mission Viejo Region	\$2.03	X 99,482	FR: D34		201,948		
CYS West Region	\$2.03	X 41,388	FR: D13		84,018		
CYS Costa Mesa Region	\$2.03	X 26,352	FR: D18		53,495		
		213,467	FR: D41				

(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>	Page: <u> 1 </u> of <u> 1 </u>	0	0	To: AZ 443,489	0	0
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Revised 09/03

B

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-6

ITEM 11
REIMBURSEMENT CLAIMS
EXHIBIT D-6

CLAIM FOR REIMBURSEMENT

Pursuant to Government Code Section 17561
**SERIOUSLY EMOTIONALLY DISTURBED PUPILS:
 OUT-OF-STATE MENTAL HEALTH SERVICES**

(19) Program Number 00191
 (20) Date File ___/___/___
 (21) LRS Input ___/___/___

L A B E L	(01) Claimant Identification Number		Reimbursement Claim Data	
	(02) Claimant Name Auditor Controller		(22) SEDP-1, (03)	148
	County of Location Orange		(23) SEDP-1, (04)(A)(1)(f)	
	Street Address or P.O. Box P.O. Box 567		(24) SEDP-1, (04)(A)(2)(f)	
H E R E	Suite		(25) SEDP-1, (04)(B)(1)(f)	5,736,818
	City Santa Ana	State CA	Zip Code 92702	
Type of Claim		Estimated Claim	Reimbursement Claim	(26) SEDP-1, (04)(B)(2)(f)
		(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) SEDP-1, (04)(B)(3)(f)
		(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) SEDP-1, (04)(B)(4)(f)
		(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(29) SEDP-1, (06)
Fiscal Year of Cost		(06) 2006/2007	(12) 2005/2006	(30) SEDP-1, (07)
Total Claimed Amount		(07)	(13) 4,118,407	(31) SEDP-1, (09)
Less: 10% Late Penalty not to exceed \$1,000			(14)	(32) SEDP-1, (10)
Less: Prior Claim Payment Received			(15) 625,818 1,050,348	(33)
Net Claimed Amount			(16) 3,492,592 3,068,058	(34)
Due to Claimant		(08)	(17) 3,492,592 3,068,058	(35)
Due to State			(18)	(36)

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date

Alice Sworder
 HT

1-11-08

Alice Sworder
 Type or Print Name

Manager, HCA Accounting
 Title

(38) Name of Contact Person for Claim

Celia Diaz-Garcia

Telephone Number (714) 834 - 5313 Ext.
 E-mail Address cdiaz-garcia@ochca.com

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OR-STATE MENTAL HEALTH SERVICES CLAIM SUMMARY					FORM SEDP-1
(01) Claimant County of Orange Health Care Agency			(02) Type of Claim Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>		Fiscal Year 2005_/2006_	
Claim Statistics						
(03) Number of pupils placed in out-of-state residential programs in the fiscal year of claim					148	
Direct Costs			Object Accounts			
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Fixed Assets	(e) Travel and Training	(f) Total
A. One-Time Costs						
1. Develop Policies, Procedures, and Contractual Arrangements						
2. Conduct County Staff Training						
B. Ongoing Costs						
1. Mental Health Service Vendor Reimbursements			5,736,818			5,736,818
2. Case Management			494,891			494,891
3. Travel						
4. Program Management						
(05) Total Direct Costs			6,231,709			6,231,709
Indirect Costs						
(06) Indirect Cost Rate	[From ICRP]					%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [Line (06) x {line (05)(a) + line (05)(b) }]					
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					6,231,709
Cost Reduction						
(09) Less: Offsetting Savings						
(10) Less: Other Reimbursements : Dept of Education						2,113,302
(11) Total Claimed Amount	[Line (08) - {line (09) + line (10)}]					4,118,407

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Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 05-06 SUPPLEMENTAL
---	--

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
* Aspen Solutions/Youth Care Mental Health Services	* \$95/day				* 115,235		
Alpine Academy Mental Health Services	\$109.05/day				39,803		
* Aspen Solutions/Sunhawk Academy Mental Health Services	* \$82.00/day				* 51,988		
Cathedral Home for Children Mental Health Services	\$135.00/day				465,615		
Chileda Institute Mental Health Services - July thru Dec'05 Mental Health Services - Jan thru June'06	\$74.96/day \$85.28/day				29,228		
Cinnamon Hills Youth Crisis Center Mental Health Services	\$45/day				264,645		
Colorado Boys Ranch Mental Health Services	\$109.80/day				181,280		
Daystar Residential, Inc. Mental Health Services: Devereux Cleo Wallace	\$80/day				72,240		
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>	Page: <u> 1 </u> of <u> 5 </u>		0	0	1,220,034	0	0

Revised 09/03

* identified in audit as "for-profit" facility

State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 05-06 Supplemental
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
Devereux Cleo Wallace <i>Mental Health Services:</i> <i>Unit 1</i>	\$130.59/day				271,105		
Devereux Texas Treatment Network <i>Mental Health Services:</i> <i>Unit 1</i>	\$138.10/day						
<i>Unit 4/5</i>	\$100.72/day						
<i>Unit 3/6</i>	\$143.11/day						
<i>Victoria Campus(Children)</i>	\$57.20/day						
<i>Victoria Campus(Adult)</i>	\$23.03/day				316,322		
Excelsior Youth Center <i>Mental Health Services</i>	\$91.63/day				82,284		
Griffith Centers for Children, Inc. <i>Mental Health Services</i>	\$117.30/day				40,938		
Heritage Schools, Inc. dba Residential Trmt Ctr <i>Mental Health Services</i>	\$53.35/day				153,968		
* Mental Health System, Inc. dba Logan River <i>Mental Health Services</i>	*\$77.41/day				* 41,337		
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>			0	0	905,954	0	0

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Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL						FORM SEDP-2	
(01) Claimant County of Orange Health Care Agency			(02) Fiscal Year FY 05-06 Supplemental					
(03) Reimbursable Components: Check only one box per form to identify the component being claimed.								
One-Time Costs:								
<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements			<input type="checkbox"/> Conduct County Staff Training					
Ongoing Costs:								
<input checked="" type="checkbox"/> Mental Health Service Vendor Reimbursements*			<input type="checkbox"/> Travel					
<input type="checkbox"/> Case Management			<input type="checkbox"/> Program Management					
(04) Description of Expenses: Complete columns (a) through (h). Object Accounts								
(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training	
* Kids Behavioral Health of Alaska, Inc. <i>Mental Health Services</i>	* \$105.00/day				* 190,785			
* Mental Health System, Inc. <i>Mental Health Services</i>	* \$75.00/day				* 216,975			
Yellowstone Boys & Girls Ranch <i>Mental Health Services</i>	\$70.00/day				139,370			
Nevada County <i>Mental Health Services</i>	\$2.28/min				1,179			
(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>			Page: <u>3</u> of <u>5</u>				0	0
					548,309	0	0	

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Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 05-06 SUPPLEMENTAL
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
Alpine Academy <i>Board and Care</i>	\$3272/mo				48,964		
* Aspen Solutions (Youth & Sun Hawk) <i>Board and Care</i>	* \$2850/mo				* 223,493		
Cathedral Home for Children <i>Board and Care</i>	\$4050/mo				422,628		
Chileda Institute <i>Board and Care</i>	\$2558/mo				45,771		
Cinnamon Hills Youth Crisis Center <i>Board and Care</i>	\$1350/mo				739,091		
Colorado Boy Ranch <i>Board and Care</i>	\$3294/mo				140,626		
Day Star Residential Inc. <i>Board and Care</i>	\$2400/mo				94,652		
Devereux Cleo Wallace Center <i>Board and Care</i>	\$3915/mo				257,553		
Devereux Texas Treatment Network <i>Board and Care</i>	\$3519/mo				358,300		

(05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/>	Page: <u>4</u> of <u>5</u>	0	0	2,331,078	0	0
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Revised 09/03

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State Controller's Office

Mandated Cost Manual

Program 191	MANDATED COSTS SERIOUSLY EMOTIONALLY DISTURBED PUPILS: OUT-OF-STATE MENTAL HEALTH SERVICES COMPONENT/ACTIVITY COST DETAIL	FORM SEDP-2
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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 05-06 SUPPLEMENTAL
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

Develop Policies, Procedures, and Contractual Arrangements Conduct County Staff Training

Ongoing Costs:

Mental Health Service Vendor Reimbursements* Travel

Case Management Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
Emily Griffith Center <i>Board and Care</i>	\$2749/mo				28,397		
Excelsior Youth Center <i>Board and Care</i>	\$2749/mo				76,123		
Heritage Center <i>Board and Care</i>	\$1600/mo				360,673		
* Kids Behavioral Health of Alaska <i>Board and Care</i>	* \$3150/mo				105,300		
* Mental Health Systems (Logan River) <i>Board and Care</i>	* \$2250/mo				274,958		
Yellowstone Boys & Girls Ranch <i>Board and Care</i>	\$2100/mo				225,779		
Realignment Funds <i>Board and Care</i>					(339,787)		

(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>	Page: <u>5</u> of <u>5</u>	0	0	5,736,818	0	0
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Revised 09/03

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State Controller's Office

Mandated Cost Manual

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(01) Claimant County of Orange Health Care Agency	(02) Fiscal Year FY 05-06
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

One-Time Costs:

<input type="checkbox"/> Develop Policies, Procedures, and Contractual Arrangements	<input type="checkbox"/> Conduct County Staff Training
---	--

Ongoing Costs:

<input type="checkbox"/> Mental Health Service Vendor Reimbursements*	<input type="checkbox"/> Travel
<input checked="" type="checkbox"/> Case Management	<input type="checkbox"/> Program Management

(04) Description of Expenses: Complete columns (a) through (h). **Object Accounts**

(a) Employee Names, Job Classifications, Functions 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) Fixed Assets	(h) Travel and Training
AMHS Santa Ana	\$2.02	1,532			3,095		
CYS East Region	\$2.02	29,007			58,594		
CYS North Region	\$2.02	38,176			77,116		
CYS South & Mission Viejo Region	\$2.02	98,503			198,976		
CYS West Region	\$2.02	43,647			88,167		
CYS Costa Mesa Region	\$2.02	33,232			67,129		
CYS Anaheim Region	\$2.02	898			1,814		

(05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/>	Page: <u> 1 </u> of <u> 1 </u>	0	0	494,891	0	0
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COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 November 17, 2011, I served the:

Incorrect Reduction Claim

Seriously Emotionally Disturbed (SED) Pupils: Out-of State Mental Health Services,
11-9705-I-02

Government Code Section 7576; Statutes 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1,
Sections 60000-60610

California Department of Mental Health Information Notice Number 86-29

Fiscal Years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006
County of Orange, 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 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 November 17, 2011 at Sacramento, California.


Heidi J. Palchik

Commission on State Mandates

Original List Date: 11/14/2011

Last Updated:

List Print Date: 11/17/2011

Claim Number: 11-9705-I-02

Issue: Seriously Emotionally Distrubed (SED) Pupils: Out-of-State Mental Health Services

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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