STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

July 7, 2016

Dr. Robin Kay
County of Los Angeles
Department of Mental Health
550 S. Vermont Avenue, 12th Floor
Los Angeles, CA 90020

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

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

Re: **Proposed Decision**
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The Proposed Decision for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey
Executive Director

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Hearing Date: July 22, 2016
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ITEM 6

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

Government Code Sections 7572.55 and 7576;
Statutes 1994, Chapter 1128 (AB 1892);
Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200[1]
(Emergency regulations effective July 1, 1998 [Register 98, No. 26]
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students II

Fiscal Years 2002-2003 and 2003-2004

12-0240-I-01

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) annual reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues. In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission direct the Controller to reinstate $448,202.

After a review of the record and the applicable law, staff finds that:

1. The IRC was untimely filed; and
2. By clear and convincing evidence, the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

[1] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the underlying test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

Accordingly, staff recommends that the Commission deny this IRC.

Procedural History

The claimant submitted its reimbursement claims, dated May 8, 2006, for fiscal years 2002-2003 and 2003-2004.[2]

The Controller sent a letter to claimant, dated August 12, 2008, confirming the start of the audit.[3]

The Controller issued the Draft Audit Report dated March 26, 2010.[4] The claimant sent a letter to the Controller, dated April 30, 2010, regarding the Draft Audit Report.[5] The Controller issued the Final Audit Report dated May 28, 2010.[6]

On June 11, 2013, the claimant filed this IRC.[7] On November 25, 2014, the Controller filed late comments on the Incorrect Reduction Claim.[8] On December 23, 2014, the claimant filed a request for extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[9]

On May 20, 2016, Commission staff issued the Draft Proposed Decision.[10] On June 6, 2016, the Controller filed comments on the Draft Proposed Decision.[11] On June 10, 2016, the claimant filed comments on the Draft Proposed Decision.[12]

Commission Responsibilities

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

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[2] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[3] Exhibit B, Controller's Late Comments on the IRC, page 148-149, (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which assert "The SCO contacted the county by phone on July 28, 2008, to initiate the audit, and confirmed the entrance conference date with a start letter dated August 12, 2008 . . . ."

[4] Exhibit A, IRC, page 101.

[5] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[6] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Oct. 31, 2014, paragraph 7); Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[7] Exhibit A, IRC, pages 1, 3.

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

[9] Exhibit C, Claimant's Rebuttal Comments, page 1.

[10] Exhibit D, Draft Proposed Decision.

[11] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[12] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[13] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[15]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[16] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[17]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

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

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

[15] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

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

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

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated May 28, 2010. The Controller issued two documents, dated June 12, 2010, which summarized the Final Audit Report's findings and which set a deadline for payment. On June 11, 2013, the claimant filed this IRC.	*Deny IRC as untimely* – The claimant must file an IRC within three years of "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." Former Cal. Code Regs., title 2, § 1185(b) (effective from May 8, 2007, to June 30, 2014). Remittance advices and other communications which merely re-state the findings of the Final Audit Report do not affect the running of the three-year limitations period.
Did the Controller's statements or actions suspend or reset the statute of limitations (under the doctrine of equitable estoppel)?	In a letter to the claimant dated May 7, 2013, the Controller incorrectly stated that the three-year period for filing an IRC started to run from the Controller's issuance of the two documents dated June 12, 2010. The claimant asserts that it relied upon this inaccurate statement. The claimant also asserts that the Controller reconsidered its claim and did not reject the claim until May 2013.	*Deny IRC as untimely* – No estoppel occurs when both parties make a mistake of law; each party had the opportunity to research the law. Estoppel would negate the strong policy of enforcing statutes of limitation. The claimant also failed to establish that the Controller acted with a degree of turpitude. The Controller stated in a letter to the claimant dated May 7, 2013, that the claimant's reconsideration request was denied. A reconsideration that never occurred cannot affect the statute of limitations.
Did the claimant waive the objections it is now raising?	In two letters both dated April 30, 2010, the claimant agreed with the Controller's audit findings and made representations which contradict arguments claimant now makes in its IRC.	*Deny IRC as waived* – The record contains clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object

		to the audit or to add additional claims.

Staff Analysis

I. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) 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.[18]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated May 28, 2010.[19] Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later.[20]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of two documents issued by the Controller, dated June 12, 2010, which the claimant refers to as a "Notice of Claim Adjustment."[21] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[22]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the issuance of the two documents.

For purposes of state mandate law, the Legislature has enacted a statutory definition of what constitutes a "notice of adjustment." Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

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[18] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, which was re-numbered section 1185(c) as of January 1, 2011, and which was in effect until June 30, 2014.

[19] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[20] Exhibit A, IRC, page 1.

[21] Exhibit A, IRC, pages 13-17.

[22] Exhibit A, IRC, page 5.

In other words, a notice of adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of adjustment because none of the documents adjusts anything. The two documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[23]

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this confusingly named rule, a right accrues — and the limitations period begins to run — from the *earliest* point in time when the claim could have been filed and maintained.[24] In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim.[25]

Under these principles, the claimant's three-year limitations period began to run on May 28, 2010, the date of the Final Audit Report. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had (from its perspective) been harmed by a reduction.

Claimant also argues that the statements and actions of the Controller led the claimant to file late since the Controller in a letter dated May 7, 2013, stated that the claimant could file an IRC three years from the date of the documents dated June 12, 2010. The claimant was merely following the Controller's instruction, it argues.[26] Therefore, under principles of equitable estoppel, Claimant argues the IRC was timely filed.

Equitable estoppel does not affect the statute of limitations in this case. The Controller made a mistake of law when (in the letter dated May 7, 2013[27]) the Controller stated that the three-year IRC filing period started to run from the Controller's notice contained in the two documents dated June 12, 2010. As analyzed in this Proposed Decision, the three-year limitations period commenced to run from the date of the Final Audit Report.

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[23] Compare Exhibit A, IRC, pages 13-17 with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[24] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[25] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.

[26] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[27] Exhibit A, IRC, page 21.

The Commission should interpret the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. A situation in which a government agency and a third party both misinterpret the law does not create an estoppel against the government. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel had an equal opportunity to discover the law."[28] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[29] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[30]

Furthermore, the Controller had, two years earlier, referred the claimant to the Commission's website for IRC information.[31] In addition, the record does not indicate that the Controller engaged in some quantum of turpitude — a requisite to a finding of equitable estoppel.[32] Separately and independently, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public; specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[33]

The claimant also argues that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[34] However, the Controller stated at the relevant time (May 2013) that it was not engaging in a reconsideration and that the claimant's reconsideration request was denied.[35] The claimant's argument should therefore be rejected, because a statute of limitations cannot be affected by a reconsideration which never occurred.

Accordingly, the IRC should be denied as untimely filed.

II. In the Alternative, the County Waived Its Right To File An IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results.

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[28] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[29] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[30] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[31] Exhibit A, IRC, page 96 ("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 the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf.").

[32] "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[33] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[34] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[35] Exhibit A, IRC, page 20 ("This letter confirms that we denied the county's reconsideration request . . . .").

Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[36]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[37] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[38] Waiver is a question of fact and is always based upon intent.[39] Waiver must be established by clear and convincing evidence.[40]

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[41] In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[42] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[43]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission should note that the claimant indicated active "agreement" as opposed to passive "acceptance." In addition, the following two pages of the three-page letter

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[36] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[37] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[38] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[39] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[40] *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd. (1994)* , 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[41] Exhibit A, IRC, page 101.

[42] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[43] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

contain further statements of agreement with each of the Controller's findings and recommendations.[44]

The claimant also sent a separate two-page letter dated April 30, 2010, in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

For example, in its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[45] However, neither claimant's four-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors. Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[46] "We designed and implemented the County's accounting system to ensure accurate and timely records."[47] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[48] "We are not aware of . . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[49]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under an alleged right of equitable setoff.[50] However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[51] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[52]

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[44] Exhibit A, IRC, pages 108-109.

[45] Exhibit A, IRC, pages 6-7, 10-12.

[46] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[47] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[48] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[49] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[50] Exhibit A, IRC, pages 8-10.

[51] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[52] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 16, 2010, paragraph 9).

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained records of actual costs, had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, staff finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Conclusion

Staff finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision denying the IRC and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572.55 and 7576; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200[53] (Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33]) Fiscal Years 2002-2003 and 2003-2004 County of Los Angeles, Claimant	Case No.: 12-0240-I-01 *Handicapped and Disabled Students II* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted July 22, 2016*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2016. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

[53] Note that this caption differs from the Test Claim and the Parameters and Guidelines captions in that it includes only those sections that were approved for reimbursement in the Test Claim Decision. Generally, a parameters and guidelines caption should include only the specific sections of the statutes and executive orders that were approved in the test claim decision. However, that was an oversight in the case of the Parameters and Guidelines at issue in this case.

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

Summary of the Findings

This IRC was filed in response to an audit by the State Controller's Office (Controller) of the County of Los Angeles's (claimant's) initial reimbursement claims under the *Handicapped and Disabled Students II* program for fiscal years 2002-2003 and 2003-2004. The Controller reduced the claims because it found the claimant: (1) overstated costs by using inaccurate units of service, and (2) overstated offsetting revenues.[54] In this IRC, the claimant contends that the Controller's reductions were incorrect and requests, as a remedy, that the Commission reinstate the following cost amounts, which would then become subject to the Program's reimbursement formula:

FY2002-2003: $216,793

FY2003-2004: $231,409[55]

After a review of the record and the applicable law:

1. The Commission finds that the IRC was untimely filed; and
2. The Commission finds, by clear and convincing evidence, that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

Accordingly, the Commission denies this IRC.

I. Chronology

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2002-2003.[56]

05/08/2006 Claimant dated the reimbursement claim for fiscal year 2003-2004.[57]

[54] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[55] Exhibit A, IRC, page 1.

[56] Exhibit A, IRC, page 113 (cover letter), page 117 (Form FAM-27).

[57] Exhibit A, IRC, page 113 (cover letter), page 254 (Form FAM-27).

08/12/2008 Controller dated a letter to claimant confirming the start of the audit.[58]

03/26/2010 Controller issued the Draft Audit Report, dated March 26, 2010.[59]

04/30/2010 Claimant sent a letter to Controller dated April 30, 2010, in response to the Draft Audit Report.[60]

05/28/2010 Controller issued the Final Audit Report dated May 28, 2010.[61]

06/11/2013 Claimant filed this IRC.[62]

11/25/2014 Controller filed late comments on the IRC.[63]

12/23/2014 Claimant filed a request for extension of time to file rebuttal comments which was granted for good cause.

03/26/2015 Claimant filed rebuttal comments.[64]

05/20/2016 Commission staff issued the Draft Proposed Decision.[65]

06/06/2016 Controller filed comments on the Draft Proposed Decision.[66]

06/10/2016 Claimant filed comments on the Draft Proposed Decision.[67]

II. Background

In 1975, Congress enacted the Education for All Handicapped Children Act (EHA) with the stated purpose of assuring that "all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."[68] Among other things, the EHA authorized the payment of

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[58] Exhibit B, Controller's Late Comments on the IRC, page 148-149 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). See also Exhibit B, Controller's Late Comments on the IRC, page 19, which asserts "The SCO contacted the county by phone on July 28, 2008, to initiate the audit . . . ." However, this assertion is not supported by a declaration of a person with personal knowledge or any other evidence in the record.

[59] Exhibit A, IRC, page 101.

[60] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[61] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[62] Exhibit A, IRC, pages 1, 3.

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

[64] Exhibit C, Claimant's Rebuttal Comments, page 1.

[65] Exhibit D, Draft Proposed Decision.

[66] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

[67] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 1.

[68] Public Law 94-142, section 1, section 3(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 775. See also 20 U.S.C. § 1400(d) (current version).

federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[69] The EHA was ultimately renamed the Individuals with Disability Education Act (IDEA) and guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs.[70]

The *Handicapped and Disabled Students* Mandate

In California, the responsibility of providing both "special education" and "related services" was initially shared by local education agencies (broadly defined) and by the state government.[71] However, in 1984, the Legislature enacted AB 3632, which amended Government Code chapter 26.5 relating to "interagency responsibilities for providing services to handicapped children" which created separate spheres of responsibility.[72] And, in 1985, the Legislature further amended chapter 26.5.[73]

The impact of the 1984 and 1985 amendments — sometimes referred to collectively as "Chapter 26.5 services" — was to transfer the responsibility to provide mental health services for disabled pupils from school districts to county mental health departments.[74]

In 1990 and 1991, the Commission adopted the Statement of Decision and the Parameters and Guidelines approving the Test Claim *Handicapped and Disabled Students*, CSM 4282, as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[75] The Commission found that the activities of providing

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[69] Public Law 94-142, section 5(a) (Nov. 29, 1975) 89 U.S. Statutes at Large 773, 793. See also 20 U.S.C. 1411(a)(1) (current version).

[70] Public Law 101-476, section 901(a)(1) (October 30, 1999) 104 U.S. Statutes at Large 1103, 1141-1142.

[71] *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1514.

[72] Statutes of 1984, chapter 1747.

[73] Statutes of 1985, chapter 1274.

[74] "With the passage of AB 3632 (fn.), California's approach to mental health services was restructured with the intent to address the increasing number of emotionally disabled students who were in need of mental health services. Instead of relying on LEAs [local education agencies] to acquire qualified staff to handle the needs of these students, the state sought to have CMH [county mental health] agencies — who were already in the business of providing mental health services to emotionally disturbed youth and adults — assume the responsibility for providing needed mental health services to children who qualified for special education." Stanford Law School Youth and Education Law Clinic, *Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California*, May 2004, page 12.

[75] "As local mental health agencies had not previously been required to provide Chapter 26.5 services to special education students, local mental health agencies argued that these requirements constituted a reimbursable state mandate." (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1515.)

mental health assessments; participation in the individualized education plan (IEP) process; and providing psychotherapy and other mental health treatment services were reimbursable and that providing mental health treatment services was funded as part of the Short-Doyle Act, based on a cost-sharing formula with the state.[76] Beginning July 1, 2001, however, the cost-sharing ratio for providing psychotherapy and other mental health treatment services no longer applied, and counties were entitled to receive reimbursement for 100 percent of the costs to perform these services.[77]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[78] In May 2005, the Commission adopted the Statement of Decision on Reconsideration, 04-RL-4282-10, and determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations impose a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. The Commission concluded, however, that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, for costs incurred beginning July 1, 2004, the Commission identified the activities expressly required by the test claim statutes and regulations that were reimbursable, identified the offsetting revenue applicable to the program, and updated the new funding provisions enacted in 2002 that required 100 percent reimbursement for mental health treatment services.

The *Handicapped and Disabled Students II* Mandate

In May 2005, the Commission also adopted the Statement of Decision on *Handicapped and Disabled Students II*, 02-TC-40/02-TC-49, a Test Claim addressing statutory amendments enacted between the years 1986 and 2002 to Government Code sections 7570 et seq., and 1998 amendments to the joint regulations adopted by the Departments of Education and Mental Health.[79]

The Controller's Audit and Reduction of Costs

The Controller issued a Draft Audit Report dated March 26, 2010, and provided a copy to the claimant for comment.[80]

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[76] Former Welfare and Institutions Code sections 5600 et seq.

[77] Statutes 2002, chapter 1167 (AB 2781, §§ 38, 41).

[78] Statutes 2004, chapter 493 (SB 1895).

[79] Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students* (4282, 04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) by transferring responsibility for providing mental health services under IDEA back to school districts, effective July 1, 2011. On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

[80] Exhibit A, IRC, page 101.

In a three-page letter dated April 30, 2016, the claimant responded to the Draft Audit Report, agreeing with the audit's findings and accepting its recommendations.[81] The first page of this three-page letter contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[82]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[83]

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[84]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[85]

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[81] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[82] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[83] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[84] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[85] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

In a separate two-page letter also dated April 30, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[86] Material statements in the two-page letter include:

> • "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[87]
>
> • "We designed and implemented the County's accounting system to ensure accurate and timely records."[88]
>
> • "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines."[89]
>
> • "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[90]
>
> • "We are not aware of any . . . Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[91]
>
> • "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[92]
>
> • "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[93]

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[86] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[87] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[88] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[89] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 4).

[90] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

[91] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[92] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 8).

[93] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

On May 28, 2010, the Controller issued the Final Audit Report.[94] The Controller reduced the claims because the claimant: (1) overstated costs by using inaccurate units of service, (2) and overstated offsetting revenues.[95]

On June 11, 2013, the claimant filed this IRC with the Commission.[96]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to reductions totaling $448,202 to the claimant's reimbursement claims for fiscal years 2002-2003 and 2003-2004.

The claimant takes the following principal positions:

1. The Controller reviewed and utilized incomplete and inaccurate data and documentation when it conducted its audit.[97]
2. The claimant's claims were timely filed.[98]
3. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[99]

On June 10, 2016, the claimant filed comments on the Draft Proposed Decision, arguing that the IRC should be considered timely filed because the claimant relied upon statements made by the Controller that it had three years to file an IRC from the notices dated June 12, 2010, as follows:

> The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction.[100]

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[94] Exhibit A, IRC, page 96 (cover letter), pages 95-110 (Final Audit Report).

[95] See, e.g., Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[96] Exhibit A, IRC, pages 1, 3.

[97] Exhibit A, IRC, pages 6-8, 10-12.

[98] Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment" dated June 12, 2010, filed as a supplement to this IRC to establish alleged timeliness).

[99] Exhibit A, IRC, pages 8-10.

[100] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 485-486, from Jim Spano to Robin C. Kay, dated May 7, 2013.

The claimant also argued that the limitations period should be reset or suspended because the Controller engaged in a reconsideration of the audit results.[101]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $448,202 in reductions to the claimant's fiscal year 2002-2003 and 2003-2004 reimbursement claims.

The Controller takes the following principal positions:

1. The claimant failed to provide support for its claims in a format which could be verified.[102]
2. The claimant agreed to the findings of the audit.[103]
3. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[104]

On June 6, 2016, the Controller filed comments agreeing with the Draft Proposed Decision.[105]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6, of the California Constitution.[106] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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[101] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[102] Exhibit B, Controller's Late Comments on the IRC, pages 20-22.

[103] Exhibit B, Controller's Late Comments on the IRC, pages 19, 22.

[104] Exhibit B, Controller's Late Comments on the IRC, page 19, 21-22.

[105] Exhibit E, Controller's Comments on the Draft Proposed Decision, page 1.

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

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[107]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[108] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]' " ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[109]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[110] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[111]

A. The IRC Was Untimely Filed.

At the time the reimbursement claims were audited and when this IRC was filed, the regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state

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

[108] *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

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

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

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

> audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[112]

Applying the plain language of the limitations regulation — that the IRC must have been filed no later than three years after "the date" of the Final Audit Report — the IRC was untimely. The Controller's Final Audit Report is dated May 28, 2010.[113] Three years later was Tuesday, May 28, 2013. Instead of filing this IRC by the deadline of Tuesday, May 28, 2013, the claimant filed this IRC with the Commission on Tuesday, June 11, 2013 — 14 days later.[114]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from June 12, 2010, the date of two documents sent by the Controller which the claimant dubs a "Notice of Claim Adjustment."[115] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on May 28, 2010. The report was followed by a Notice of Claim Adjustment dated June 12, 2010."[116] Although the claimant reads the document dated June 12, 2010, as a single document, the Commission reads it as two documents — specifically, two letters each containing a separate "Dear Claimant" salutation, of which the main text of the second letter is reproduced twice.[117]

The claimant's argument fails because: (1) the two documents were not notices of claim adjustment; and (2) even if they were, the limitations period commenced upon the date of the Final Audit Report and did not re-commence upon the receipt of the later two documents.

1. <u>The Two Documents Dated June 12, 2010, Are Not Notices of Claim Adjustment.</u>

For purposes of state mandates law, the Legislature has enacted a statutory definition of what constitutes a notice of claim adjustment.

Government Code section 17558.5(c) reads in relevant part:

> The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the

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[112] Former Code of California Regulations, title 2, section 1185(b), which was renumbered section 1185(c) as of January 1, 2011. Effective July 1, 2014, the regulation was amended to state as follows: "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 to a reimbursement claim." Code of California Regulations, title 2, section 1185.1(c).

[113] Exhibit A, IRC, pages 96 (cover letter), 95-110 (Final Audit Report).

[114] Exhibit A, IRC, page 1.

[115] See Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[116] Exhibit A, IRC, page 5.

[117] The two "Dear Claimant" salutations appear at Exhibit A, IRC, pages 13 and 15. The main text of Exhibit A, IRC, page 17, appears to be identical to the main text of Exhibit A, IRC, pages 15 and 16.

overall reimbursement to the local agency or school district, and the reason for the adjustment.

In other words, a notice of claim adjustment is a document which contains four elements: (1) a specification of the claim components adjusted, (2) the amounts adjusted, (3) interest charges, and (4) the reason for the adjustment.

Both of the two documents which the claimant dubs a "Notice of Claim Adjustment" contain the amount adjusted, but the other three required elements are absent. Neither of the two documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students II* program costs adjusted for the entirety of the relevant fiscal year. Neither of the two documents contains interest charges. Perhaps most importantly, neither of the two documents enunciates any reason for the adjustment.[118]

In addition to their failure to satisfy the statutory definition, the two documents cannot be notices of claim adjustment because neither of the documents adjusts anything. The two documents restate, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[119] The claimant asserts that if the documents dated August 6, 2010 do not constitute notices of claim adjustment, then the Controller never provided notice.[120] The Final Audit Report provides abundant notice.

Neither of the two documents provides the claimant with notice of any new finding. The Final Audit Report contained the dollar amounts which would not be reimbursed.[121] The two later documents merely repeat information which was already contained in the Final Audit Report. The two documents do not provide any new and material information nor do they contain any previously unannounced adjustments.[122]

For these reasons, the two documents are not notices of adjustment within the meaning of Government Code section 17558.5(c).

2. <u>The Limitations Period Begins to Run Upon the Occurrence of the Earliest Event Which Would Have Allowed the Claimant to File a Claim.</u>

The Commission's regulation setting out the limitation period lists several events which could potentially trigger the running of the limitations period. Specifically, the limitations regulation

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[118] Exhibit A, IRC, pages 13-17 ("Notice of Claim Adjustment").

[119] Compare Exhibit A, IRC, pages 13-17 (the "Notice of Claim Adjustment") with Exhibit A, IRC, page 102 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[120] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

[121] The Final Audit Report is dated May 28, 2010. (Exhibit A, IRC, pages 96, 101.)

[122] Moreover, the governing statute provides that a remittance advice or a document which merely provides notice of a payment action is not a notice of adjustment. (Government Code section 17558.5(c) ["Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."].) Whatever term may accurately be used to characterize the two documents identified by the claimant, the two documents are not "notices of claim adjustment" under state mandate law.

lists, as potentially triggering events, the date of a final audit report, the date of a letter, the date of a remittance advice, and the date of a written notice of adjustment. The claimant argues that, if more than one of these events occurred, then the limitations period should begin to run upon the occurrence of the event which occurred last in time.[123] The Commission reaches (and has, many times in the past, reached) the opposite conclusion; the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. Subsequent events do not reset the limitations clock.

At the time the reimbursement claims were audited and when this IRC was filed, the Commission's regulation containing the limitations period read:

> All incorrect reduction claims shall be filed with the commission no later than three (3) 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.[124]

Under a legal doctrine with the potentially confusing name of the "last essential element" rule, a limitations period begins to run upon the occurrence of the *earliest* event in time which creates a complete claim. Under this rule, a right accrues — and the limitations period begins to run — from the earliest point in time when the claim can be filed and maintained.

As recently summarized by the California Supreme Court:

> The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. (See Code Civ. Proc., § 312 [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; (Citations.). Traditionally at common law, a "cause of action accrues 'when [it] is complete with all of its elements' — those elements being wrongdoing, harm, and causation." (Citations.) This is the "last element" accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[125]

In determining when a limitations period begins to run, the California Supreme Court looks to the earliest point in time when a litigant could have filed and maintained the claim:

> Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.] In other words, "[a] cause of action accrues 'upon the occurrence of the last element essential to the cause of action.' " [Citations.][126]

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[123] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[124] Former Code of California Regulations, title 2, section 1185(b), effective May 8, 2007, renumbered as 1185(c) effective January 1, 2011.

[125] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.

[126] *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal. 4th 809, 815.

Under these principles, the claimant's three-year limitations period began to run from the date of the Final Audit Report. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant had been, from its perspective, harmed by a claim reduction. The Controller's subsequent issuance of a letter or other notice that does not change the reason for the reduction does not start a new limitations clock; the limitations period starts to run from the earliest point in time when the claimant could have filed an IRC — and the limitations period expires three years after that earliest point in time.

This finding is consistent with two recent Commission decisions regarding the three-year period in which a claimant can file an IRC.

In the *Collective Bargaining* Program IRC Decision adopted on December 5, 2014, the claimant argued that the limitations period should begin to run from the date of the *last* notice of claim adjustment in the record.[127] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated May 28, 2010, and the two letters dated June 12, 2010, the *later* event should commence the running of the limitations period.

In the *Collective Bargaining* Decision, the Commission rejected the argument. The Commission held that the limitations period began to run on the *earliest* applicable event because that was when the claim was complete as to all of its elements.[128] "Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate the IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation," the Commission held.[129]

In the *Domestic Violence Treatment Services — Authorization and Case Management* program IRC Decision adopted on March 25, 2016, the Commission held, "For IRCs, the 'last element essential to the cause of action' which begins the running of the period of limitations . . . is a notice to the claimant of the adjustment that includes the reason for the adjustment."[130] In the instant IRC, the limitations period therefore began to run from the Final Audit Report, which is the notice that informed the claimant of the adjustment and of the reasons for the adjustment.

Furthermore, the Commission's finding in the instant IRC is not inconsistent with a recent Commission ruling regarding the timeliness of filing an IRC.

In the *Handicapped and Disabled Students* Program IRC Decision adopted September 25, 2015, the Commission found that an IRC filed by a claimant was timely because the limitations period began to run from the date of a remittance advice letter which was issued after the Controller's Final Audit Report.[131] The Decision is distinguishable because the Controller's cover letter accompanying the audit report to the claimant in that case requested additional information and

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[127] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[128] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), pages 20-22.

[129] Decision, *Collective Bargaining*, 05-4425-I-11 (adopted December 5, 2014), page 21.

[130] Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, 07-9628101-I-01 (adopted March 25, 2016), page 16.

[131] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14.

implied that the attached audit report was not final.[132] In the instant IRC, by contrast, the Controller's cover letter contained no such statement or implication; rather, the Controller's cover letter stated that, if the claimant disagreed with the attached Final Audit Report, the claimant would need to file an IRC within three years.[133]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[134]

In comments on the Draft Proposed Decision, the claimant argues that the Commission should not apply the "last essential element" rule because Regulation 1185 used the disjunctive "or" when listing the events which triggered the running of the limitations period.[135] The claimant provides no legal authority for its argument or evidence that Regulation 1185 was intended to be read in such a manner. The Commission therefore rejects the argument.

The Commission also notes that the claimant's interpretation would yield the absurd result of repeatedly resetting the limitations period. Under the claimant's theory, a statute of limitations containing a disjunctive "or" restarts whenever one of the other events in the list occurs. In other words, if a regulation states that a three-year limitations period begins to run upon the occurrence of X, Y, or Z, then (under the claimant's theory), X can occur, a decade can elapse, and then the belated occurrence of Y or Z restarts the limitations clock. This interpretation cannot be correct, particularly in the context of monetary claims against the State's treasury. The "last essential element" rule provides the claimant with the opportunity to timely file a claim while protecting the State from reanimated liability.

Consequently, the Commission concludes that the limitations period begins to run from the occurrence of the earliest event which would have allowed the claimant to file a claim. That event, in this case, was the date of the Final Audit Report. Since more than three years elapsed between that date and filing of the IRC, the IRC was untimely.

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[132] Decision, *Handicapped and Disabled Students*, 05-4282-I-03 (adopted September 25, 2015), pages 11-14. In the proceeding which resulted in this 2015 Decision, the cover letter from the Controller to the claimant is reproduced at Page 71 of the administrative record. In that letter, the Controller stated, "The SCO has established an informal audit review process to resolve a dispute of facts. The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report." The Controller's cover letter in the instant IRC contains no such language. Exhibit A, IRC, page 96 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated May 28, 2010).

[133] Exhibit A, IRC, page 96.

[134] All that being said, an administrative agency's adjudications need not be consistent so long as they are not arbitrary. See, e.g., *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777 ("The administrator is expected to treat experience not as a jailer but as a teacher."); *California Employment Commission v. Black-Foxe Military Institute* (1941) 43 Cal.App.2d Supp. 868, 876 ("even were the plaintiff guilty of occupying inconsistent positions, we know of no rule of statute or constitution which prevents such an administrative board from doing so.").

[135] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3.

3. The Controller's Misstatement of Law (Specifically, the Controller's Erroneous Statement That the Limitations Period Began to Run as of the Three Documents Dated June 12, 2010) Does Not Result in an Equitable Estoppel That Makes the IRC Timely.

In its comments on the Draft Proposed Decision, the claimant argues that the IRC should be considered timely because the claimant relied upon statements made by the Controller. "The County relied upon the statements and the actions of the SCO in making its determinations. In its cover letter to the County accompanying the audit report, the SCO states that the County must file an IRC within three years of the SCO notifying the County of a claim reduction. The SCO then refers to the notices as notices of claim reduction. The SCO then specifically referred to the dates of the notices upon which the County relied as the dates they notified the County of a claim reduction."[136]

Although the claimant does not use the precise term (and does not conduct the requisite legal analysis), the claimant is arguing that the Controller should be equitably estopped from benefiting from the statute of limitations, and that the Commission should find the IRC timely. The claimant is arguing that, if the filing deadline provided by the Controller was erroneous, then the claimant should be forgiven for filing late because the claimant was relying upon the Controller's statements.

A state administrative agency may possess[137] — but does not necessarily possess[138] — the authority to adjudicate claims of equitable estoppel. The Commission possesses the authority to adjudicate claims of equitable estoppel because, without limitation, the Commission is vested with exclusive and original jurisdiction and the Commission is obligated to create a full record for the Superior Court to review in the event that a party seeks a writ of administrative mandamus.[139]

The general elements of estoppel are well-established. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."[140] "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the

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[136] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 3. The letter the claimant is referring to is the letter at Exhibit A, IRC, pages 20-21 from Jim Spano to Robin C. Kay, dated May 7, 2013.

[137] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 406.

[138] *Foster v. Snyder* (1999) 76 Cal.App.4th 264, 268 ("The holding in *Lentz* does not stand for the all-encompassing conclusion that equitable principles apply to all administrative proceedings.").

[139] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 404 (regarding exclusive jurisdiction) & fn. 8 (regarding duty to create full record for review). See also Government Code section 17552 (exclusive jurisdiction); Government Code section 17559(b) (aggrieved party may seek writ of administrative mandamus).

[140] Evidence Code section 623.

facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."[141]

"The doctrine of estoppel is available against the government '"where justice and right require it."' (Citation.)"[142] However, "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public."[143] Estoppel against the government is to be limited to "exceptional conditions," "special cases," an "exceptional case," or applied in a manner which creates an "extremely narrow precedent."[144]

Furthermore, the party to be estopped must have engaged in some quantum of turpitude. "We have in fact indicated that some element of turpitude on the part of the party to be estopped is requisite even in cases not involving title to land," the California Supreme Court noted.[145] In the federal courts, equitable estoppel against the government "must rest upon affirmative misconduct going beyond mere negligence."[146]

Upon a consideration of all of the facts and argument in the record, the Commission concludes for the following reasons that the Controller is not equitably estopped from benefiting from the statute of limitations.

The Commission interprets the evidence in the record as presenting a mutual mistake of law by both the Controller and the claimant. On the date of the Controller's erroneous letter (May 7, 2013), the three-year limitations period had been in effect and had been published since at least May 2007.[147] Despite the fact that the limitations period had been in effect for several years, both the claimant and the Controller incorrectly calculated the IRC filing deadline as starting from the date of the two documents dated June 12, 2010, when, for the reasons explained in this Decision, the filing deadline started to run as of the date of the Final Audit Report.

A situation in which a government agency and a third party both misinterpret the law does not allow for an estoppel against the government — because the third party should have taken the time to learn what the law actually said. "Acts or conduct performed under a mutual mistake of law do not constitute grounds for estoppel. (Citation.) It is presumed the party claiming estoppel

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[141] *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.

[142] *Robinson v. Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 244, quoting *Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377.

[143] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994–995.

[144] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496 & fn. 30, 500.

[145] *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490 fn. 24.

[146] *Morgan v. Heckler* (1985) 779 F.2d 544, 545 (Kennedy, J.). See also *Mukherjee v. I.N.S.* (9th Cir. 1986) 793 F.2d 1006, 1009 (defining affirmative misconduct as "a deliberate lie . . . or a pattern of false promises").

[147] Title 2, California Code of Regulations section 1185; California Regulatory Code Supplement, Register 2007, No. 19 (May 11, 2007), page 212.1 [version operative May 8, 2007].

had an equal opportunity to discover the law."[148] "Where the facts and law are known to both parties, there can be no estoppel. (Citation.) Even an expression as to a matter of law, in the absence of a confidential relationship, is not a basis for an estoppel."[149] "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation."[150]

In point of fact, the Controller had earlier provided the claimant with general IRC filing information and had admonished the claimant to visit the Commission's website. In the cover letter dated May 28, 2010, the Controller summarized the audit findings and then stated, "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 the CSM's Web site at www.csm.ca.gov/docs/IRCform.pdf."[151] In other words, as of May or June 2010, the claimant had been informed in general terms of the filing deadline and had been directed to the Commission's website. The fact that the claimant failed to do so and the fact that the Controller made an erroneous statement more than two years later does not somehow make the claimant's IRC timely.

Separately and independently, the record does not indicate that the Controller engaged in some quantum of turpitude. There is no evidence, for example, that the Controller acted with an intent to mislead.

Finally, the finding of an estoppel under this situation would nullify a strong rule of policy adopted for the benefit of the public, specifically, the policy that limitations periods exist "to encourage the timely presentation of claims and prevent windfall benefits."[152]

For each of these reasons, the claimant's argument of equitable estoppel is denied.

The Commission is also unpersuaded that the events which the claimant characterizes as the Controller's reconsideration of the audit act to extend, reset, suspend or otherwise affect the limitations period.[153] While the claimant contends that the Controller reconsidered the audit findings and then withdrew from the reconsideration,[154] the Controller contends that it did not engage in a reconsideration, but instead denied the claimant's request for a reconsideration.[155] On this point, the factual evidence in the record, within the letter from the Controller dated May 7, 2013, provides, "This letter confirms that we denied the county's reconsideration request

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[148] *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 883-884.

[149] *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784.

[150] *Lavin v. Marsh* (9th Cir. 1981) 644 F.2d 1378, 1383.

[151] Exhibit A, IRC, page 96.

[152] *Lentz v. McMahon* (1989) 49 Cal.3d 393, 401.

[153] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[154] Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[155] Exhibit A, IRC, page 20.

. . . ."[156] The limitations period cannot be affected by a reconsideration which did not occur. Separately, the process which the claimant characterizes as a reconsideration did not commence until a June 2012 delivery of documents,[157] by which time the limitations period had been running for about two years. The claimant does not cite to legal authority or otherwise persuasively explain how the Controller's alleged reconsideration stopped or reset the already-ticking limitations clock.

Accordingly, the IRC is denied as untimely filed.

B. In the Alternative, the County Waived Its Right to File an IRC.

Even if the claimant filed its IRC on time (which is not the case), the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims; on that separate and independent basis, the Commission hereby denies this IRC.

In its comments on the IRC, the Controller stated that the claimant had agreed to the Controller's audit and findings. "In response to the findings, the county agreed with the audit results. Further, the county provided a management representation letter asserting that it made available to the SCO all pertinent information in support of its claims (Tab 10)."[158] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the Controller's audit findings.[159]

The Second District of the Court of Appeal has detailed the law of waiver and how it differs from the related concept of estoppel:

> The terms "waiver" and "estoppel" are sometimes used indiscriminately. They are two distinct and different doctrines that rest upon different legal principles.
>
> Waiver refers to the act, or the consequences of the act, of one side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts and

[156] Exhibit A, IRC, page 20.

[157] Exhibit A, IRC, page 20.

[158] Exhibit B, Controller's Late Comments on the IRC, page 19. The referenced "Tab 10" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 152-153).

[159] While the Controller's raising of the waiver issue could have been made with more precision and detail, the Controller's statements regarding the claimant's April 2010 agreement with the audit findings sufficiently raises the waiver issue under the lenient standards which apply to administrative hearings. See, e.g., *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051 ("less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding"). (In its Comments on the Draft Proposed Decision (Exhibit F, page 4), the claimant questions why this lenient standard is not also used to determine whether waiver occurred. The claimant is confusing the standard for determining whether an issue is raised and preserved at an administrative hearing (a lenient standard in which a few words in isolation may suffice) with the standard for determining whether waiver occurred (a strict standard which requires a weighing of all evidence in the record).)

> depends upon the intention of one party only. Waiver does not require any act or conduct by the other party. . . . .
>
> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (Citations.)
>
> The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right.[160]

Courts have stated that a "waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right."[161] In addition, "[i]t is settled law in California that a purported 'waiver' of a statutory right is not legally effective unless it appears that the party charged with the waiver has been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation."[162] Waiver is a question of fact and is always based upon intent.[163] Waiver must be established by clear and convincing evidence.[164]

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in April 2010 was to accept the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

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[160] *DRG/Beverly Hills, Ltd v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59-61.

[161] *Waller v. Truck Insurance Exchange* (1995) 11 Cal.4th 1, 31.

[162] *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 233.

[163] *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1506.

[164] *DRG/Beverly Hills, Ltd, supra,* 30 Cal.App.4th 54, 60. When a fact must be established by clear and convincing evidence, the substantial evidence standard of review for any appeal of the Commission's decision to the courts still applies. See Government Code section 17559(b).

"The 'clear and convincing' standard . . . is for the edification and guidance of the [trier of fact] and not a standard for appellate review. (Citations.) ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (Citations.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (Citation.)" *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880 (substituting "trier of fact" for "trial court" to enhance clarity).

The Controller provided the claimant a draft copy of the audit report, dated March 26, 2010.[165] The record contains no evidence of the claimant objecting to the Draft Audit Report or attempting to alter the outcome of the audit before the draft report became final. Instead, the record contains substantial evidence of the claimant affirmatively agreeing with the Controller's reductions, findings and recommendations.

In response to the Draft Audit Report, the claimant's Auditor-Controller sent a three-page letter dated April 30, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[166] The first page of this three-page letter[167] contains the following statement:

> *The County's response, which is attached, indicates agreement with the audit findings* and the actions that the County will take to implement policies and procedures to ensure that the costs claimed under HDSII are eligible, mandate related, and supported.[168]

The claimant's written response to the Draft Audit Report — the moment when a claimant would and should proffer objections to the Controller's reductions — was to indicate "agreement with the audit findings." The Commission notes that the claimant indicated active "agreement" as opposed to passive "acceptance." In the quoted passage, the claimant states unambiguously that it agreed with the Controller's "findings." The record therefore contradicts the claimant's argument, in comments on the Draft Proposed Decision that it only agreed with the Controller's "recommendations."[169]

The following two pages of the three-page letter contain further statements of agreement with the Controller's findings and recommendations.

In response to the Controller's Finding No. 1 that the claimant overstated medication support costs by more than $1.1 million, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandate program.[170]

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[165] Exhibit A, IRC, page 101.

[166] Exhibit A, IRC, pages 107-109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[167] This three-page letter (which is in the record at Exhibit A, IRC, pages 107-109) will be referred to herein as the "three-page letter" to distinguish it from a separate two-page letter sent by the same author on the same date of April 30, 2010 (which is in the record at Exhibit B, Controller's Late Comments on the IRC, pages 152-153). The two-page letter is referred to herein as the "two-page letter."

[168] Exhibit A, IRC, page 107 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010) (emphasis added).

[169] Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.

[170] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

In response to the Controller's Finding No. 2 that the claimant overstated indirect costs by more than $80,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that indirect cost rates are applied to eligible and supported direct costs.[171]

In response to the Controller's Finding No. 3 that the claimant overstated offsetting reimbursements by more than $500,000, the claimant responded:

> We agree with the recommendation. The County will review and establish policies and procedures to ensure that revenues are applied to valid program costs, appropriate SD/MC and EPSDT reimbursement percentage rates are applied to eligible costs, and supporting documentation for applicable offsetting revenues are maintained.[172]

Each of the claimant's responses to the Controller's three findings supports the Commission's finding that the claimant waived its right to pursue an IRC by affirmatively agreeing in writing to the Controller's audit findings. While the claimant also purported at various times in the three-page letter to reserve rights or to clarify issues,[173] the overall intention communicated in the letter is that the claimant intended to accept and be bound by the results of the Controller's audit. The fact that the claimant then waited more than three years to file the IRC is further corroboration that, at the time that the three-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.[174]

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated April 10, 2010 — in which the claimant contradicted several positions which the claimant now attempts to take in this IRC.

The separate two-page letter is hereby recited in its entirety due to its materiality:

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[171] Exhibit A, IRC, page 108 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[172] Exhibit A, IRC, page 109 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated April 30, 2010).

[173] For example, the claimant purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provides additional information to support its claims. (Exhibit A, IRC, page 107. See also Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs statements lacking legal or factual foundation.

[174] In addition, the claimant waited more than two years after the issuance of the Final Audit Report to provide information to the Controller regarding a purported reconsideration request. Exhibit B, Controller's Late Comments on the IRC, page 19 ("The county provided information regarding its reconsideration request in June and August 2012 . . . .").

April 30, 2010

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

Dear Mr. Spano:

Handicapped and Disabled Students Program II

July 1, 2002, through June 30, 2004

In connection with the State Controller's Office (SCO) audit of the County's claims for the mandated program and audit period identified above, we affirm, to the best of our knowledge and belief, the following representations made to the SCO's audit staff during the audit:

1. We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO.

2. We designed and implemented the County's accounting system to ensure accurate and timely records.

3. We prepared and submitted our reimbursement claims according to the Handicapped and Disabled Students II Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students II Program's parameters and guidelines.

5. We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims.

6. Excluding mandated program costs, the County did not recover indirect cost from any State or federal agency during the audit period.

7. We are not aware of any:

a. Violations or possible violations of laws and regulations involving management or employees who had significant roles in the accounting system or in preparing the mandated cost claims.

b. Violations or possible violations of laws and regulations involving other employees that could have had a material effect on the mandated cost claims.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, accounting and reporting practices that could have a material effect on the mandated cost claims.

d. Relevant, material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims.

8. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims.

9. We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims.

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov

Very truly yours,

Wendy L. Watanabe
Auditor-Controller[175]

The admissions made by the claimant in the two-page letter contradict arguments now made by claimant in the instant IRC.

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[176] For example, the claimant now contends, "It was this fourth generation data set that became the basis for the audit report. . . . . However, upon further review, this fourth generation data run actually excluded many of the units of service that had been properly used to calculate the costs of the claim."[177]

However, neither claimant's three-page letter nor claimant's two-page letter dated April 30, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in April 2010, since the claimant and its personnel had spent the prior two years working with the Controller's auditors.

Rather, the claimant's two-page letter stated the opposite by repeatedly emphasizing the accuracy and completeness of the records provided to the Controller: "We maintain accurate financial records and data to support the mandated cost claims submitted to the SCO."[178] "We designed and implemented the County's accounting system to ensure accurate and timely records."[179] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[180] "We are not aware of . . . . Relevant,

[175] Exhibit B, Controller's Late Comments on the IRC, pages 152-153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010).

[176] Exhibit A, IRC, pages 6-7.

[177] Exhibit A, IRC, page 6.

[178] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 1).

[179] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 2).

[180] Exhibit B, Controller's Late Comments on the IRC, page 152 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 5).

material transactions that were not properly recorded in the accounting records that could have a material effect on the mandated cost claims."[181]

In the IRC, the claimant now argues that, even if the Controller correctly reduced its claims, the claimant should be allowed to submit new claims based upon previously unproduced evidence under a right of equitable setoff.[182]

However, in its two-page letter, the claimant stated the opposite: "There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion that would have a material effect on the mandated cost claims."[183] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[184]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in April 2010, it had maintained accurate and complete records, had provided the Controller with accurate and complete records, and had acknowledged that it had no further reimbursement claims. The claimant now attempts to make the opposite arguments in this IRC.

Given the totality of the circumstances and all of the evidence in the record, the Commission finds by clear and convincing evidence that the claimant's intention in April 2010 was to agree with the results of the Controller's audit and to waive any right to object to the audit or to add additional claims.

On this separate and independent ground, the Commission denies the IRC.

V. Conclusion

The Commission finds that claimant's IRC was untimely filed and that, even if it were timely filed, the claimant waived its arguments.

The Commission therefore denies this IRC.

[181] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 7(d)).

[182] Exhibit A, IRC, pages 8-10.

[183] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 10, 2010, paragraph 8).

[184] Exhibit B, Controller's Late Comments on the IRC, page 153 (Letter from Wendy L. Watanabe to Jim L. Spano, dated April 30, 2010, paragraph 9).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 7, 2016, I served the:

Proposed Decision
Handicapped and Disabled Students II, 12-0240-I-01
Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
(Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2002-2003 and 2003-2004
County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 7, 2016 at Sacramento, California.

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/5/16

Claim Number: 12-0240-I-01

Matter: Handicapped and Disabled Students II

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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