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DMH**  
LOS ANGELES COUNTY  
MENTAL HEALTH

LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH  
550 S. VERMONT AVE., LOS ANGELES, CA 90020 [HTTP://DMH.LACOUNTY.GOV](http://DMH.LACOUNTY.GOV)



ROBIN KAY, Ph.D.  
Acting Director  
DENNIS MURATA, M.S.W.  
Acting Chief Deputy Director  
RODERICK SHANER, M.D.  
Medical Director

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

September 15, 2016

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

Dear Ms. Halsey:

**SERIOUSLY EMOTIONALLY DISTURBED STUDENTS:  
OUT-OF-STATE MENTAL HEALTH SERVICES 12-9705-I-04**

On behalf of the County of Los Angeles (County), I am submitting the following comments to the draft proposed decision in the above matter. The County disagrees with the conclusions and recommendations in the draft proposed decision.

The County is entitled to the full amount of the costs claimed in its Incorrect Reduction of Claim filing for the reasons stated in the County's filing and in the related documents filed by the County in this action. The County is entitled to reimbursement for mental health services to pupils by out-of-state providers whether or not the vendor is operated on a "for profit" or "not for profit" basis.

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

The draft proposed decision sets forth a judicial standard of review that requires the Commission to determine whether the Controller's reduction of costs is correct as a matter of law and is not "arbitrary, capricious or entirely lacking in evidentiary support." Draft Proposed Decision, p. 3. The Commission does not cite any statutory or regulatory authority for this standard. Although this standard is one that an appellate court may apply to its review of a Commission decision, this deferential standard of review does not apply to the administrative body (here, the Commission) that is hearing evidence. It is contrary to the statutes and regulations that define the Commission's quasi-judicial power and the hearing procedures contained in Government Code §§ 17500, *et seq.*, and California Code of Regulations (CCR), Title 2, Chapter 2.5, Article 7. The Commission must hear the matter *de novo*.

The evidentiary hearing authority found in Article 7 and in the Government Code contradicts (and does not support) the use of an "abuse of discretion" standard during the Commission's hearing. Both the Government Code and Article 7 envision a robust hearing procedure allowing for an independent review of the facts and law – which is

clearly more than a review that provides such a high level of deference to agency. The Commission's hearing procedures are detailed and provide for the presentation of evidence, presence of witnesses, issuance of subpoenas, representation and argument at Commission hearings.

In *Kolender v. San Diego County Civil Service Commission* (2005) 132 Cal.App.4<sup>th</sup> 1150, 1156-1158, the Sheriff contended that the Civil Service Commission should have reviewed his department's actions in disciplining an employee under a "substantial evidence" standard rather than conducting an independent review of the facts and law. *Id.* The appellate court disagreed. In determining the appropriate standard to be applied by the Civil Service Commission in reviewing the Sheriff's decision, the court observed that there was no statute or regulation specifying the applicable standard of review and that the Civil Service Commission could affirm, modify or revoke the Sheriff's disciplinary order. *Id.*, 1156. The court also found that the Civil Service Commission had the authority to hold a full evidentiary hearing to ascertain the basis of the Sheriff's charges, that the parties could subpoena witnesses, that the witnesses were sworn, and that the parties had the right to be represented by counsel. The court also observed that the Civil Service Commission had the authority to review documents, hear the arguments of the parties, and use its own judgment to reach conclusions that differed from the Sheriff's disciplinary order. *Id.*, 1156-1157. The court, therefore, found that the Civil Service Commission's authority was more consistent with an independent review rather than with the "substantial evidence" review advocated by the Sheriff. Otherwise, "there would be no need for the statute to authorize the Commission's adjudicatory review, and the Commission could simply exist to rubberstamp the Sheriff's disciplinary orders." *Id.*, 1157.

Similarly here, the Commission on State Mandates conducts a full evidentiary review. It conducts a quasi-judicial proceeding that includes the submission of evidence, sworn testimony of witnesses, issuance of subpoenas, representation and argument at hearing. The Commission hears the arguments of the parties and makes its own decision as to the propriety of any reduction made by the State Controller based on the law and the evidence. See Government Code §§11527, 17551; 2 CCR, Title 2, Chapter 2.5, Title 7, §§1185.1(a), 1187.5, 1187.7, 1187.8. This procedure should not be a "rubberstamp" of the Controller's audit findings, and the Commission is not restricted by an "abuse of discretion" standard. The Commission's review must be an independent review, rather than a determination of whether the Controller "abused its discretion."<sup>1</sup>

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<sup>1</sup> The County also joins in, and incorporates by this reference, the arguments made by Orange County in its Comments in the proposed decision for Incorrect Reductions of Claim Nos. 11-9705-1-02 and 12-970-1-03, set for hearing on September 23, 2016.

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Accordingly, the County requests that the draft proposed decision be rewritten taking into account the Commission's authority to make an independent determination of the Controller's actions in this matter and the position of the County as reflected in the Incorrect Reduction of Claim filing and the related documents on file with the Commission.

Sincerely,



Robin Kay, Ph.D.  
Acting Director

RK:tld

**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 September 15, 2016, I served the:

**Claimant Comments on the Draft Proposed Decision**

*Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services,*  
12-9705-I-04

Government Code Section 7576 as amended by Statutes 1996, Chapter 654 (AB 2726);  
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110  
Fiscal Years 2003-2004, 2004-2005, and 2005-2006  
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 September 15, 2016 at Sacramento, California.



Lorenzo Duran Jr.  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/14/16

**Claim Number:** 12-9705-I-04

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

**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.)

**Socorro Aquino**, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Lacey Baysinger**, *State Controller's Office*

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

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

**Danielle Brandon**, Budget Analyst, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

danielle.brandon@dof.ca.gov

**Allan Burdick**,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

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

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

Phone: (916) 323-0706

gcarlos@sco.ca.gov

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

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcs@aol.com

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

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

Phone: (916) 322-4320

mdelfin@sco.ca.gov

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

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

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

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

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

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dillong@csda.net

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

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Mary.Halterman@dof.ca.gov

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

915 L Street, Sacramento, CA 95814

Phone: (916) 445-1546

justyn.howard@dof.ca.gov

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

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

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

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

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

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

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

Phone: (916) 324-5919

akato@sco.ca.gov

**Robin Kay**, *County of Los Angeles***Claimant Representative**

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

Phone: (213) 738-4108

rkay@dmh.lacounty.gov

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

Division of Accounting &amp; Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0256

JLal@sco.ca.gov

**John Naimo**, *Acting Auditor-Controller, County of Los Angeles*

Auditor-Controller, 500 West Temple Street, Room 525, Los Angeles, CA 90012

Phone: (213) 974-8302  
jnaimo@auditor.lacounty.gov

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

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

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

**Christian Osmena**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

**Arthur Palkowitz**, *Artiano Shinoff*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@as7law.com

**Keith Petersen**, *SixTen & Associates*  
P.O. Box 340430, Sacramento, CA 95834-0430  
Phone: (916) 419-7093  
kbsixten@aol.com

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

**Camille Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Carla Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 327-6490  
carla.shelton@csm.ca.gov

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-5849  
jspano@sco.ca.gov

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